

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUDITOR-GENERAL BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
the Honourable Kim C. Beazley, MP)

**THIS MEMORANDUM TAKES ACCOUNT OF
AMENDMENTS MADE BY THE HOUSE OF
REPRESENTATIVES TO THE BILL AS INTRODUCED**

AUDITOR-GENERAL BILL 1994

OUTLINE

1. This Bill is one of a package of three Bills to replace the *Audit Act 1901*. The three Bills are:

The Financial Management and Accountability Bill 1994,

- *The Commonwealth Authorities and Companies Bill 1994, and*
The Auditor-General Bill 1994.

2. Collectively the Bills buttress the Commonwealth's financial management reforms by providing a legislative framework which emphasises performance, propriety and accountability of Commonwealth Agencies and entities. Legislation is to be introduced subsequently that will repeal the *Audit Act 1901*; provide transitional arrangements; and make consequential amendments to other Acts as required.

3. The decision to replace the *Audit Act 1901* flowed from the Government's response to the Joint Committee of Public Accounts' Report 296 - *The Auditor-General: Ally of the People and Parliament* - (March 1989), which followed a comprehensive review of the Office of the Auditor-General and the Australian National Audit Office in light of the changes which have occurred in Commonwealth financial administration since Federation.

4. The Auditor-General Bill creates the office of Auditor-General for the Commonwealth and defines the powers and functions of that office to support its functional independence. The independence of the office is served by the requirement that, in relation to the appointment of a person to be Auditor-General, the responsible Minister consult with the Finance Minister, a nominee of the Leader of the Opposition in the House of Representatives, the Chairman of the Joint Committee of Public Accounts and Chairperson of the Audit Committee of the Parliament. Moreover, the Auditor-General may not be dismissed from office except on a vote of the Parliament. The Auditor-General's functional and professional independence from the Executive Government is preserved in the Bill through the mechanism of reports to Parliament on any matter, and by clarifying and strengthening the Auditor-General's mandate. To augment that functional and professional independence, the Bill also establishes the Australian National Audit Office as a statutory authority to assist the Auditor-General in the performance of the audit task. The Bill also creates the office of the Independent Auditor as the auditor of the Australian National Audit Office.

5. The Bill also provides for:

appointments to the offices of Auditor-General and Independent Auditor, to be made expeditiously whenever either office becomes vacant;

the Auditor-General to perform financial statement and performance audits and to report the results to Parliament;

the Auditor-General to report matters which, in his or her opinion, are of importance to the Parliament and to Ministers of State;

information-gathering and access powers to enable the Auditor-General and the Independent Auditor to perform auditing functions of their respective offices;

the staff of the Australian National Audit Office to be employed under the *Public Service Act*,

the contracting-out of work to outsiders - i.e., persons not employed under the *Public Service Act*; and

- the audit of the Australian National Audit Office by the Independent Auditor.

FINANCIAL IMPACT STATEMENT

6. The Bill will have no direct impact on Commonwealth expenditure.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. When enacted, it will be cited as the *Auditor-General Act 1994*

Clause 2 - Commencement

2. The Bill is intended to commence on the same day as the *Financial Management and Accountability Bill 1994* and the *Commonwealth Authorities and Companies Bill 1994*.

Clause 3 - This Act binds the Crown

3. The Bill intends that the Act would bind the Crown, but not make the Crown liable to be prosecuted for an offence. This is consistent with existing Commonwealth Law.

Clause 4 - This Act extends to things outside Australia

4. The provisions of the Bill extend outside Australia where the Auditor-General has a mandate to perform a function in relation to Commonwealth activities. For example, it will be an offence to deny the Auditor-General or an authorised official access to information or premises overseas when he or she is undertaking an audit of a Commonwealth Agency.

PART 2 - GENERAL DEFINITIONS

Clause 5 - General definitions

5. As this Bill is part of a package of legislation, in many instances there are definitional links between the three Bills. For example, "Agency" and "FMA Official" in this Bill assume the same meaning as in the *Financial Management and Accountability Bill 1994*.

Clause 6 - Effect of maximum penalty at foot of a section or subsection, etc.

6. The clause is self-explanatory.

PART 3 - THE AUDITOR-GENERAL

Clause 7 - Auditor-General

Clause 8 - Appointment, conditions etc. for Auditor-General

7. These clauses establish the Office of Auditor-General for the Commonwealth of Australia and specify the terms and conditions etc. for appointment to that Office. Subclause 7(2) places an obligation on the Executive Government to act expeditiously in filling the position of office of Auditor-General.

8. The appointment and conditions for the Office of Auditor-General are specified in Schedule 1 to the Bill. The clauses mirror those in the *Audit Act 1901*, except for the following:

- Appointment - the Auditor-General is appointed for a single period of not less than 5 years but not more than 7 years. Prior to advising the Governor-General, the Minister responsible for Part 3 must consult with:
 - the Finance Minister,
 - a nominee of the Leader of the Opposition in the House of Representatives,
 - the Chairman of the Joint Committee of Public Accounts, and
 - the Chairperson of the Audit Committee of the Parliament (if established).
- Transitional provisions will provide for an incumbent Auditor-General as at 30 June 1995 to remain in office on the same basis as if the person had been appointed under the terms of this Bill.
- Acting appointments - the actions of a person claiming to be in the position of acting Auditor-General are not invalid due to errors in the appointment. This means the powers exercised by, and indemnity granted to, a person will be valid in such circumstances.

9. A summary of the details of Schedule 1 is referred to later in this memorandum.

PART 4 - MAIN FUNCTIONS AND POWERS OF THE AUDITOR-GENERAL

Overview

10. This part is intended to set out in broad terms the mandate and reporting responsibilities of the Auditor-General to conduct financial statement and performance audits of Commonwealth Agencies, authorities and companies and, in this way, to perform the role of providing an independent audit function to the Parliament on the operations of the public sector.

Reports of the Auditor-General

11. In addition to statutory audit reports on financial statements, other reports of the Auditor-General may contain any matters of significance which, in the opinion of the Auditor-General, should be brought to the attention of the Parliament. These reports may include, but would not be limited to details of:

- matters relating to the administrative operations of the Commonwealth public sector to which the Parliament has indicated it has attached an audit priority;
 - significant breaches of legislation;
 - accounting and other records not maintained in accordance with generally accepted accounting practice;
 - public money or the money of a Commonwealth Authority or company not accounted for correctly;
- accounting and other records not maintained, or procedures and practices insufficient to:
- safeguard and control public property or the property of a Commonwealth authority or company,

- ensure effective controls over the collection and allocation of receipts and payments of money,
- proper use of Commonwealth resources,
- ensure satisfactory monitoring, measuring and reporting of the effectiveness of operations or programs,
- ensure accepted standards of accountability are maintained;

matters relating to the probity and propriety of the transactions of the Commonwealth or of any actions of its officials;

recommendations for change in an administrative process, a system or an operation within the Commonwealth public sector which, in the opinion of the Auditor-General, will lead to improved performance, better control of resources, compliance with the law, or to greater efficiency or economy;

the economy, efficiency and effectiveness of the operations of the administration of the Commonwealth public sector.

Division 1 - Statement audits

Overview

12. The Bill describes the Auditor-General's functions to include the audit of the financial statements of Commonwealth Agencies, authorities and companies. The objectives of a financial statement audit are to inform Parliament whether, in the Auditor-General's opinion, the annual financial statements present a true and fair view of the body's operations during the year and financial position at year end.

Clause 9 - Agencies

13. This clause outlines the scope of the Auditor-General's statutory mandate which includes auditing financial statements of Commonwealth Agencies under the *Financial Management and Accountability Bill 1994*. The Auditor-General's specific reporting responsibilities in relation to Agencies are set out in the *Financial Management and Accountability Bill 1994*.

Clause 10 - Commonwealth authorities and subsidiaries

14. This clause outlines the scope of the Auditor-General's statutory mandate which includes auditing financial statements of Commonwealth authorities and subsidiaries under the *Commonwealth Authorities and Companies Bill 1994*. The Auditor-General's specific reporting responsibilities in relation to these bodies are set out in the *Commonwealth Authorities and Companies Bill 1994*.

Clause 11 - Commonwealth companies and subsidiaries

15. This clause outlines the scope of the Auditor-General's statutory mandate which includes auditing financial statements of Commonwealth companies and subsidiaries.

Clause 12 - Audit fees for statement audits

16. Consistent with generally accepted commercial practice, Commonwealth authorities and companies are to be liable to pay the Auditor-General fees for financial statement audits performed under clauses 10 and 11. The fees are to be calculated based on a scale of fees determined by the Auditor-General. The Auditor-General is to disclose, in the annual report of the office, details of how the scale (or scales) of fees that applied during the year being reported on were determined.

17. Audit fees are to be payable to the Auditor-General 30 days after issue of a payment claim and fees may be claimed and payable by instalment. Unpaid fees may be recovered in a court with the legal capacity to pursue debts of the Commonwealth.

Division 2 - Performance audits

Background

18. Under the *Audit Act 1901*, the Auditor-General has the power to conduct "project performance audit" and "efficiency audits" of public sector bodies. In practical terms there is little distinction between these types of audits and the existing provisions are a source of duplication and unnecessary confusion for auditors, auditees and the Parliament.

19. The term "performance audit" is generally accepted as the generic name for audits other than audits which are designed to form an opinion on the financial statements of a body or person. It is a term becoming widely used in Australia and internationally.

20. The Auditor-General has been undertaking performance audits for many years and the Bill will simplify and clarify the Auditor-General's powers and functions in this area. The Bill provides for two type of performance audits, one being a performance audit on a Commonwealth agency, authority, or company, the other, an audit which will examine the operations of more than one of these bodies.

Overview

21. A performance audit in this Division is defined as a review or examination of any aspect of the operation of a person or body. The Bill adopts the *Acts Interpretation Act 1901* definition of "person" which includes bodies corporate and politic. The term body has been included to emphasise the fact the Auditor-General's mandate extends to collections of people comprising a body which may not be a legally defined entity. In this regard the term body includes, but is not limited to, unincorporated associations such as partnerships and joint ventures.

22. A performance audit may encompass the whole or part of the operations of a body or person. For example, a performance audit may review or examine amongst other things:

- a program, activity or sub-program or sub-activity which is part of, or administered by, a body or person,
- a physical, geographic or organisational component or sub-component of and body or person, or

an administrative function of a body or person whether unique to a body or person or common across a number of bodies or persons.

23. A performance audit may also consist of a review or examination of a combination of different parts of the operation of a body or person.

Performance audit reports

24. The Auditor-General must cause reports on performance audits of a Commonwealth agency, authority, or company to be tabled in each House of the Parliament in accordance with the standing orders of each House. A copy of each performance audit report must also be supplied to the Minister or Ministers responsible for the administration of the program, activity, component or function of the body or person which has been subject to audit.

Effective limits of a performance audit

25. The aim of a performance audit is to examine and report to the Parliament on the economy, efficiency and effectiveness of the operations of the administration of the Commonwealth and to recommend ways in which these may be improved. The Auditor-General's "performance audit" functions do not extend to examining or reporting on the appropriateness of Government policy.

26. The *Audit Act 1901* exempted certain statutory officers from being the subject of a performance audit. These include Ministers of State of the Commonwealth, judicial and quasi-judicial officers and Royal Commissioners. The provisions of this Bill provide that the Auditor-General may audit and report on the administration of Commonwealth activities and, on this basis, the focus of "performance audits" is on the administration of Commonwealth bodies - i.e., a focus on activities of agencies, Commonwealth authorities and Commonwealth companies. As a consequence, the "performance audit" provisions of the *Auditor-General Bill 1994* would not extend to auditing the performance of Ministers of State in relation to the exercise of their Constitutional duties or to judicial and quasi judicial officers and Royal Commissioners in relation to the exercise of their statutory duties insofar as these duties do not involve the management of an agency, Commonwealth authority or Commonwealth company. For example, judicial decisions of Commonwealth Judges, Commissioners of the Industrial Relations Commission, Presidential members of the Administrative Appeals Tribunal or an Ombudsman would not be the subject of a performance audit.

27. However, many statutory office holders have administrative responsibilities in addition to their statutory officer responsibilities. The Bill provides that the administrative functions of statutory office holders may be subject to a performance audit.

Clause 13 - Agencies

28. The Auditor-General is empowered at any time to conduct a performance audit of an Agency - that is, a review of any aspect of the operations of a body which is an Agency under the *Financial Management and Accountability Bill 1994*. This includes the operations of the offices of statutory office holders determined to be Agencies under the *Financial Management and Accountability Bill 1994*.

Clause 14 - Commonwealth authorities and subsidiaries

Clause 15 - Commonwealth companies and subsidiaries

29. The intention of these clauses are to set out the scope of Auditor-General's power to undertake performance audits of Commonwealth authorities and their subsidiaries, and wholly-owned Commonwealth companies and their subsidiaries.

Clause 16 - General performance audit

30. The Bill provides for the Auditor-General to conduct a performance audit which examines the operations of more than one Agency, person or body, other than a body that is a GBE.

31. These performance audits will generally be on themes or common aspects of administration. Some examples are the use of Australian Government Credit Cards, asset management, procurement, protective security, and fraud control. As such audits would normally be conducted in more than one Agency, person or body, it has been necessary to identify these audits separately from performance audits of individual Agencies, people or bodies.

32. The Auditor-General must cause reports relating to general performance audits to be tabled in each House of the Parliament in accordance with the standing orders of each House. Because of the nature of these audits it is possible no single Minister will have responsibility for the subject matter of the audit report. The Bill therefore provides for a copy of the general performance audit report to be supplied to the Finance Minister. The Auditor-General may also supply copies of the report to other Ministers who the Auditor-General considers may have a special interest in the report.

Clause 17- Auditee's comments on proposed report

33. The purpose of this clause is to ensure that auditees and other persons considered by the Auditor-General to have a special interest have the opportunity to review all proposed reports arising from a performance audit. Recipients of proposed reports have 28 days to respond to the Auditor-General on the proposed report. Under subclause 33(3), recipients must not disclose information in the reports except as authorised by the Auditor-General.

Division 3 - Audits, etc. by arrangement

Background

34. The *Audit Act 1901* provides for the Auditor-General, if requested by the Minister, to conduct efficiency audits of a range of bodies such as bodies established under a Commonwealth/State agreement and the recipients of Commonwealth grants. These audits require the agreement of the body concerned. The *Audit Act 1901* also provides for the Auditor-General, at the request of a Minister, to make an arrangement with a body to conduct an audit of the financial statements or an inspection and audit of the accounts and records of the body.

Clause 18 - Audits etc. by arrangement

35. This Bill provides for the continuation of these audits by arrangements in a more simplified and straight forward manner. Under this clause, the Auditor-General has the authority to:

- undertake financial statement audits,
- conduct performance audits, and
- provide services of a kind normally performed by auditors or accounting firms by arrangement with any person or body.

36. Clause 18 allows the Auditor-General to enter into agreements to provide services where, in the Auditor-General's opinion, it is in the interests of the Commonwealth to do so.

37. Audits by arrangement may include, but are not be limited to:

Audits of Commonwealth Corporation Law companies where the audit is not otherwise permitted or required under the Act.

Audits of international organisations of which the Commonwealth is a member.

Joint audits with State Auditors-General of Commonwealth / State activities

Joint audits with international audit institutions of international bodies of which the Commonwealth is a member.

Provision of services normally performed by auditors and accounting firms including, but not limited to, workers' compensation certificates, letters of comfort, investigating accountants reports and assistance in matters of financial administration.

Audits of organisations or people who are the recipients of Commonwealth grants or benefits.

38. Arrangements may include provisions for payment of fees to the Auditor-General on behalf of the Commonwealth for the performance of these tasks, access and other details which allow the Auditor-General to conduct the audit as well as the reporting arrangements.

Division 4 - Functions under other Acts

Clause 19 - Acting as auditor under the Corporations Law

39. The purpose of this clause is to give the Auditor-General the legislative authority to accept appointments as a company auditor under the Corporations Law of any State or Territory.

Clause 20 - Functions under other Acts

40. This clause recognises functions and powers may be conferred on the Auditor-General by other Acts of the Commonwealth. It is intended that powers and obligations should only be conferred on the Auditor-General by an Act of the Parliament.

Division 5 - Miscellaneous functions and powers

Clause 21 - Auditing standards

41. Auditing standards are statements which outline the requirements which must be complied with in the conduct of audits. The Bill requires the Auditor-General to publish in the *Gazette* auditing standards specifying the standard and quality of audits expected in the Commonwealth public sector.

Clause 22 - Extra reports to Parliament

42. The Auditor-General may report to the Parliament at any time on any matter which he or she considers the Parliament should be informed including matters arising from financial statement audits. As Parliament's auditor, this gives the Auditor-General the authority to report matters to the Parliament which may not relate to specific audit activity. The reports may be prepared using information already gathered from actual audits. In other circumstances, the Auditor-General may simply be expressing an opinion on a matter.

43. While preparing extra reports is an "Auditor-General function", it is a non-auditing task. It is not the same as carrying out an audit, where access and information-gathering powers are crucial to support that task. Access powers of the Auditor-General and the power to obtain information are very wide and carry penalties associated with refusal to comply. It is not appropriate for these powers to be given for the purpose only of preparing a report.

44. Reports will be addressed to the Presiding Officers of each House of Parliament and the Auditor-General will supply copies to the Prime Minister and Finance Minister. The Auditor-General may supply copies to other Ministers if he or she considers they have a special interest in the report.

Clause 23 - Extra reports to Ministers

45. As auditor of the Commonwealth public sector, the Auditor-General plays an important role in assisting to improve the overall economy, efficiency and effectiveness of the administration of the Commonwealth. This clause assists in allowing that role to be more effective by authorising the Auditor-General to keep the Executive informed of matters which he or she considers are important to the administration of the Commonwealth.

46. There is continuing provision for the Auditor-General to report to the responsible Minister any matter which comes to the attention of the Auditor-General during the conduct of financial statement audits of bodies. The reports may include, but are not limited to, comments on the quality of administrative systems, any significant system weaknesses or breakdowns and significant breaches of legislation which do not warrant inclusion in a financial statement audit report.

47. The Auditor-General may also report to a Minister at any time on any matter which, in his or her opinion, is of significance and should be reported to the Minister.

48. For the same reasons as those given for preparing extra reports to Parliament, the Auditor-General's access and information gathering powers are not appropriate for the preparation of extra reports for Ministers.

Clause 24 - Contracting outsiders to assist with audits

49. The Auditor-General may, on behalf of the Commonwealth, engage any person to assist in the performance of audit functions. "Outsiders" would include, for example, people who have skills or expertise not available in the Australian National Audit Office (ANAO) and suitably qualified people engaged to meet periods of peak work load. The Auditor-General may engage people to undertake complete audits or elements of audits on his or her behalf.

Clause 25 - Annual report for the Australian National Audit Office

50. The Auditor-General is required to prepare an Annual Report on the operations of the ANAO and submit this report to the Parliament.

51. Consistent with the responsibilities of the Chief Executives of Agencies of the Commonwealth, the Auditor-General is required to prepare financial statements and submit them for audit. The requirement for the preparation of the statements in respect of the operations of the ANAO is contained in the *Financial Management and Accountability Bill 1994*. The audit will be performed by the Independent Auditor who reports to the relevant Minister. The Financial Statements would be included in the ANAO's Annual Report.

Clause 26 - Delegation by Auditor-General

52. The Auditor-General may delegate any power or function held under any Act to any person to whom he or she considers necessary to perform the functions of the Auditor-General. It is anticipated the Auditor-General will issue instructions on the exercise of delegated powers or functions which must be complied with by delegates.

53. Such powers would be issued to ANAO audit staff during their employment with the ANAO and to contractors only for the specified periods they are performing work on behalf of the Auditor-General. In this context, they would constitute "officials", as defined by the *Financial Management and Accountability Bill 1994*, and clause 26 is so expressed.

PART 5 - INFORMATION-GATHERING POWERS AND SECRECY

Overview

54. The Auditor-General's powers to obtain information and access to premises are essential for the effective discharge of his or her functions under this and other Acts.

Division 1 - Information-gathering powers

Clause 27 - Information-gathering powers not limited by other laws

55. The Auditor-General's information-gathering powers are not to be limited by the provisions of any other law unless that law *expressly* excludes the power to gather information

and access to premises by the Auditor-General. This requirement is to ensure that Parliament is expressly alerted to any restrictions that might be sought in the future that would limit the Auditor-General's capacity to carry out his or her statutory functions. That is, it is not intended that Acts which contain merely general or blanket privacy provisions, restricting access to data or premises to other than specified persons, should apply to the Auditor-General in undertaking any such statutory function.

Clause 28 - Purpose for which information-gathering powers may be used

56. The information-gathering and access powers granted to the Auditor-General are available for all functions of the Auditor-General except:

- Audits by arrangement (clause 18) - because of the broad scope of this clause it is not intended compulsive powers be available for audits undertaken by arrangement between the Auditor-General and other parties. Agreements between the Auditor-General and other parties will need to detail the arrangements for the Auditor-General to conduct such audits.
- Preparation of extra reports to the Parliament (clause 22) or Ministers (clause 23) - it is not intended the Auditor-General have compulsive powers to gather information to prepare such reports as this information will generally arise through the course of conducting audits which would be additional to any audit reports prepared by the Auditor-General.

Clause 29 - Power of Auditor-General to obtain information

57. The Auditor-General is (to continue) to have the power to direct a person (in writing) to:

- provide any information required,
- attend to give evidence before the Auditor-General or authorised official, or
- produce any documents in the custody, or under the control, of the person.

Any such directions by the Auditor-General would be expected to detail reasonable deadlines and the form in which the information is to be supplied.

58. The Auditor-General is able to direct the information or answers to questions be given orally or in writing and, if necessary, be verified under oath or affirmation. The oath or affirmation may be administered by the Auditor-General or authorised official.

59. Where persons are required to attend to provide information or answers to questions, the regulations may prescribe scales of expenses allowable to those persons to compensate for their time or out-of-pocket expenses.

Clause 30 - Access to premises etc.

60. "Premises occupied by the Commonwealth, a Commonwealth authority or a Commonwealth company" is intended to cover all locations in which the Commonwealth ordinarily conducts its affairs, whether occupied by FMA officials, statutory office holders, employees, Directors or Ministers.

61. To remain on premises and perform Auditor-General functions, authorised officials must, if requested, produce written authority which states they are working on behalf of, and may exercise the powers of, the Auditor-General. Written authorisation would include instruments signed by the Auditor-General or official identity cards indicating the powers delegated to the official.

62. Where an authorised official enters, or proposes to enter, premises, the occupier must provide all reasonable facilities to assist in the effective exercise of the Auditor-General's powers. The facilities required will vary depending on the nature of the function being performed but may include secure offices, furniture, filing cabinets and access to in-house computer facilities.

Clause 31 - False statements

63. Significant penalties are proposed for intentionally providing false or misleading information to an audit official. If a person giving information to an audit official is aware the information is false or misleading, the person must identify that information and, where possible, detail the extent of the problem.

Clause 32 - Self-incrimination no excuse

64. This clause provides that a person must produce a document to, or answer a question of, the Auditor-General or authorised officer even if the document or answer may incriminate the person. However, the answer to the question or the document cannot be used as evidence against the person in criminal proceedings other than proceedings for an offence of not providing information or giving false statements to the Auditor-General or an authorised official (clause 29 or 31 of the Bill).

Division 2 - Confidentiality of information

Clause 33 - Confidentiality of information

65. In recognition of the Auditor-General's broad information gathering powers, legislative limitations have been imposed on persons in relation to the disclosure of information obtained in the performance of an Auditor-General function.

66. This clause specifies information obtained by a person in the course of performing a function of the Auditor-General (under this or any other Act) must not be disclosed except in the course of performing that function.

67. The Auditor-General will have a discretionary power to report matters which, in his or her opinion, should be disclosed in the public interest. Examples would include reporting to or through the Australian Federal Police instances of suspected fraud and breaches of the law.

68. Subclause (3) of clause 33 imposes a restriction on the disclosure of information by persons receiving proposed reports in accordance with clause 17.

Clause 34 - Sensitive information not to be included in reports

69. In some instances, information collected during the course of an audit may be sensitive and its disclosure would be contrary to the public interest. The issue of non-disclosure is intended to turn on whether or not it is concluded that the public disclosure of a particular matter would be contrary to the public interest, rather than on the characteristics of the matter concerned. Moreover, the public interest test is limited to conclusions based on reasons set out in subclause (2) of clause 34.

70. Where the Auditor-General concludes that disclosure of particular information would be contrary to the public interest, or the Attorney-General has issued a certificate to the Auditor-General stating that disclosure would be contrary to the public interest, the Auditor-General must not include that information in a report which is to be tabled in either House of the Parliament. Where particular information is not disclosed in a public report, the Auditor-General may prepare a restricted report that includes such information to be given to the Prime Minister, the Finance Minister and the responsible Minister.

PART 6 - THE AUSTRALIAN NATIONAL AUDIT OFFICE

Clause 35 - Establishment

Clause 36 - Function

Clause 37 - Staff

71. These clauses establish the ANAO as a statutory authority to assist the Auditor-General in the performance of the audit task. The ANAO is to be a branch of the Australian Public Service and the Auditor-General to be its head. The Auditor-General has, under section 25 of the *Public Service Act 1922*, authority of a Secretary in relation to the appointment or employment of staff members to the ANAO. Note that, to augment the staff, the Auditor-General, under clause 24, may engage persons under contract to perform any Auditor-General function.

PART 7 - AUDIT OF THE AUSTRALIAN NATIONAL AUDIT OFFICE

Background

72. The existing arrangements for the audit of the ANAO are carried forward in the Bill. Transitional provisions will allow for the continuation of the current appointment of the Independent Auditor.

Division 1 - The Independent Auditor

Clause 38 - Independent Auditor

73. There is to be an Independent Auditor. Subclause 38(2) places an obligation on the Executive Government to act expeditiously in filling the position of office of Independent Auditor. The role of the Independent Auditor is to provide the Parliament with an independent audit function on the operations of the ANAO.

Clause 39 - Appointment, conditions etc. for Independent Auditor.

74. As the Parliament's auditor of the activities of the ANAO, the appointment and conditions for the Office of Independent Auditor reflect, as far as is appropriate, those of the Auditor-General. The appointment and conditions are specified in Schedule 2 to the Bill.

75. The actions of a person claiming to be in the position of acting Independent Auditor are not invalid due to errors in the appointment. This means the powers exercised and indemnity granted by the Commonwealth will be valid in spite of an error in the appointment.

Division 2 - Audit of the Australian National Audit Office

Clause 40 - Audit of annual financial statements

76. The Auditor-General is required to prepare financial statements for the ANAO under clause 50 of the *Financial Management and Accountability Bill 1994* and these must be given to the Independent Auditor who is required to audit the statement in accordance with clause 58 of the *Financial Management and Accountability Bill 1994*.

Clause 41 - Performance audit

77. The clause allows the Independent Auditor at any time to conduct of performance audit of the ANAO. Where an audit is conducted, the Independent Auditor is also required to provide a copy of the proposed report to the Auditor-General for comment. After completing the report on the audit the Independent Auditor must cause a copy of the report to be tabled in each House of the Parliament and give a copy to the relevant Minister.

Clause 42 - Sensitive information not to be included in public reports

78. For the same reasons outlined in clause 34, sensitive information obtained during the conduct of an audit by the Independent Auditor must not be included in public reports. Clause 34 applies to the Independent Auditor as if he or she were the Auditor-General.

Division 3 - Miscellaneous

Clause 43 - Independent Auditor to have same access powers etc. as Auditor-General

79. For the same reasons as outlined above in respect of in Division 1 of Part 5, the Independent Auditor requires the same information gathering powers as the Auditor-General to discharge his or her functions in relation to audits of the ANAO. The powers outlined in Division 1 of Part 5 of the Bill are available to the Independent Auditor as though he or she were the Auditor-General in relation to audits of the ANAO.

Clause 44 - Confidentiality of information

80. In recognition of the Independent Auditor's broad information gathering powers, legislative limitations are imposed on the Independent Auditor in relation to the disclosure of information obtained in the performance of their official functions.

81. This clause specifies that information obtained by a person in the course of performing a function of the Independent Auditor must not be disclosed except in the course of performing that function, or to or through the Australian Federal Police, if it is in the public interest to do so.

Clause 45 - Indemnity

82. The Commonwealth indemnifies any person for any liability incurred for an act or omission of the person while performing a function of the Independent Auditor. The indemnity does not apply if the liability arises for an act or omission in bad faith.

PART 8 - MISCELLANEOUS

Clause 46 - Guaranteed availability of parliamentary appropriations

Clause 47 - Auditor-General may approve expenditure

85. Clause 46 requires money appropriated for the purposes of the ANAO to be made available for the purposes of the ANAO. The general power of the Finance Minister to withhold, vary or cancel drawing rights in respect of permissive appropriations would not be exercisable to reduce amounts appropriated for the purposes of the ANAO. The intention, or the effect, is not to compel the ANAO to spend or draw down in full its parliamentary appropriations, but rather, to compel the Finance Minister to issue the full measure of drawing rights against which spending by the ANAO would be allowed.

86. Clause 47 provides a statutory power to the Auditor-General to approve, in his/her own right, the spending of public money on behalf of the Commonwealth against ANAO appropriations. The effect of this clause is not intended to enable the Auditor-General to spend other than in accordance with the terms of the parliamentary appropriations, but to spend without the "permission" of a Minister.

Clause 48 - Agreements for "net appropriations"

Clause 49 - Provision of Information to the Finance Minister

87. These clauses are intended to safeguard the operational independence of the Auditor-General from the possibility of interference by the Executive. Together, these clauses limit the proposed general power of the Finance Minister under the *Financial Management and Accountability Bill 1994* in relation to their application to the operations of the ANAO whereby the Minister may determine, unilaterally, the extent of specified receipts that may be made available to augment an agency's appropriations; and require an agency to furnish additional financial statements and operational information.

Clause 50 - Indemnity

83. The Commonwealth will indemnify any person for any liability incurred for an act or omission of the person while performing an Auditor-General function except where the liability arises from an act or omission in bad faith and where a person is already or may be indemnified under an insurance contract or other indemnity. The purpose of this latter

exemption is to limit the Commonwealth's responsibility for indemnity to those people who are not otherwise entitled to indemnity through, for example, professional indemnity insurance.

Clause 51 - Modifications of Act for intelligence or security agency, etc.

84. This clause provides for regulations to be made which vary the application of the Bill in relation to security organisations of the Commonwealth that are "intelligence or security" agencies as are defined by section 85ZL of the *Crimes Act 1914*, or companies that are operated for the purposes of those agencies.

Clause 52 - Regulations

88. Regulations may be made by the Governor-General which prescribe matters require or permitted by the Bill or which are necessary or convenient for giving effect to the Bill. The regulations must be consistent with the provisions of the Bill.

SCHEDULE 1
APPOINTMENT, CONDITIONS OF APPOINTMENT ETC. FOR
AUDITOR-GENERAL

Clause 1 - Appointment of Auditor-General	<p>The Auditor-General is a full time statutory officer appointed by the Governor-General on the advice of the relevant Minister for a single period of not less than 5 years but not more than 7 years. Prior to advising the Governor-General, the relevant Minister must consult with:</p> <ul style="list-style-type: none"> • the Finance Minister; • a nominee of the Leader of the Opposition in the House of Representatives; • the Chairman of the Joint Committee of Public Accounts; • the Chairperson of the Audit Committee of the Parliament (if established). <p>A person cannot hold the Office of Auditor-General if they have previously held the Office under this Bill or the <i>Audit Act 1901</i>.</p>
Clause 2 - Age limit etc.	<p>A person cannot hold the Office of Auditor-General after they have attained the age of 65 years. Sub-clause (2) specifies that, for superannuation purposes, the minimum retiring age for an Auditor-General is to be 55 years or such younger age as may be specified in the instrument of appointment. The specification of a minimum retiring age enables an Auditor-General to access voluntary retirement benefits that are payable under either the <i>Superannuation Act 1976</i> or the <i>Superannuation Act 1990</i> to a person retiring on or after reaching the minimum retiring age.</p>
Clause 3 - Remuneration of Auditor-General	<p>Remuneration of the Auditor-General is to be determined by the Remuneration Tribunal (subject to the <i>Remuneration Act 1973</i>) or, if no determination is made by the Tribunal, prescribed by Regulations under the Bill. The Consolidated Revenue Fund is appropriated in this Bill to pay the remuneration and allowances of the Auditor-General.</p> <p>Allowances for the Office of the Auditor-General may be prescribed by regulation.</p>
Clause 4 - Recreation leave	<p>The Auditor-General will have recreation leave entitlements as determined by the Remuneration Tribunal. If formerly a public servant, the Auditor-General's rights in respect of leave are preserved on appointment by virtue of section 87E of the <i>Public Service Act 1922</i>.</p> <p>Other leave may be granted to the Auditor-General on terms and conditions (including those relating to remuneration) as determined by the relevant Minister.</p>

SCHEDULE 1
APPOINTMENT, CONDITIONS OF APPOINTMENT ETC. FOR
AUDITOR-GENERAL

Clause 5 - Resignation	The Auditor-General may resign at any time by giving the Governor-General notice in writing.
Clause 6 - Removal from Office etc.	The Auditor-General cannot be removed from Office unless the Governor-General is requested by both Houses of Parliament in the same session to do so; or unless the Auditor-General becomes bankrupt etc. Sub-clauses (4) and (5) ensures that the Auditor-General who is removed or retired from office and meets the conditions for superannuation invalidity benefits under the <i>Superannuation Act 1976</i> or the <i>Superannuation Act 1990</i> will be entitled to those benefits.
Clause 7 - Acting appointment	<p>May be made by the relevant Minister while there is a vacancy in the Office of Auditor-General or during any period when the Auditor-General is absent from duty.</p> <p>The remuneration and allowances for acting appointees are to be the same as for the position of Auditor-General and the Bill provides a standing appropriation from the Consolidated Revenue Fund for payment of these moneys.</p> <p>The actions of a person purporting to be in the position of acting Auditor-General are not invalid due to errors in the appointment. This means the powers exercised and indemnity granted by the Commonwealth will be valid in spite of an error in the appointment.</p>

SCHEDULE 2 APPOINTMENT, CONDITIONS OF APPOINTMENT ETC. FOR INDEPENDENT AUDITOR	
Clause 1 - Appointment of Independent Auditor	<p>Appointed by the Governor-General on recommendation from the relevant Minister following consultation with the Chairman of the Joint Committee of Public Accounts. The Independent Auditor holds Office on a part-time basis.</p> <p>A person cannot be appointed unless they have the qualifications and experience determined by the relevant Minister in consultation with the Chairman of the Joint Committee of Public Accounts and the Chairperson of the Audit Committee of the Parliament (if established).</p>
Clause 2 - Remuneration of Independent Auditor	The Independent Auditor's fees and allowances are to be determined by the relevant Minister. The <i>Remuneration Tribunal Act 1973</i> does not apply to the Office of Independent Auditor.
Clause 3 - Resignation	The Independent Auditor may resign by giving the Governor-General notice in writing.
Clause 4 - Removal from Office etc.	The conditions for removal of the Independent Auditor mirror those for the removal of the Auditor-General. Sub-clauses (4) and (5) ensures that the Independent Auditor, if a contributor to Commonwealth superannuation and if removed or retired from office for reasons of physical or mental incapacity and meets the conditions for superannuation invalidity benefits under the <i>Superannuation Act 1976</i> or the <i>Superannuation Act 1990</i> will be entitled to those benefits.
Clause 5 - Acting appointment	<p>The relevant Minister may appoint a person to act as Independent Auditor if there is a vacancy in the Office or during any period when the appointed Independent auditor is unable to perform the duties of Office.</p> <p>The actions of a person purporting to be in the position of acting Independent Auditor are not invalid due to errors in the appointment. This means the powers exercised and indemnity granted by the Commonwealth will be valid in spite of an error in the appointment.</p>



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