



Express law fast track information for clients

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RECENT AMENDMENTS EXTEND AUDITOR-GENERAL'S POWERS OF REVIEW AND AUDIT

Recent amendments to the *Auditor-General Act 1997* (the Act) broaden the scope of the Auditor-General's powers.

Significantly for Commonwealth agencies, authorities and companies and persons or bodies that receive Commonwealth funding for a particular purpose, the Auditor-General now has the power to:

- **review the appropriateness of performance indicators** and how agencies, authorities and companies report against them
- **conduct assurance reviews** of Commonwealth agencies, authorities and companies
- in certain circumstances, **audit 'Commonwealth partners'**, meaning entities, such as grant recipients and contractors, who receive money for Commonwealth purposes.

There are also changes to the provisions that relate to government business enterprises and the production of documents.

The Auditor-General Amendment Bill 2011 was introduced to Parliament as a private member's Bill. Its purpose was to implement the majority of the recommendations made by the Joint Committee of Public Accounts and Audit (JCPAA) in its report 419, *Inquiry into the Auditor-General Act 1997*. The amendments commenced on 8 December 2011.

The amendments broaden the Act to include new powers and functions for the Auditor-General. Some of these are discussed below.

Appropriateness and reporting against performance indicators

The amendments allow the Auditor-General to audit the appropriateness of the performance indicators of Commonwealth agencies, authorities and companies, and how agencies, authorities and companies report against their performance indicators.

Assurance reviews

The Auditor-General now has the explicit power to conduct assurance reviews of Commonwealth agencies, authorities and companies. Previously, the Auditor-General could conduct assurance reviews by arrangement with an agency, authority or company under s 20 of the Act; now, the Auditor-General will have a standing power to conduct an assurance review. An assurance review will be conducted in accordance with standards set by the Auditor-General. The Auditor-General's coercive information-gathering powers will only apply to assurance reviews identified by the JCPAA as 'priority assurance reviews'.

Performance audits of ‘Commonwealth partners’

The Auditor-General’s powers have been extended to provide for the conduct of performance audits of Commonwealth partners. A ‘Commonwealth partner’ includes a grant recipient or contractor who receives money directly or indirectly from the Commonwealth for a particular purpose. The audit may be conducted only to the extent that it assesses the operations of the Commonwealth partner in relation to achieving the Commonwealth purpose.

This new power extends to audits of State and Territory bodies that receive money from the Commonwealth. In these cases, an audit may only be conducted at the request of the responsible Commonwealth minister or the JCPAA.

The Auditor-General’s power to audit Commonwealth partners is not dependent on the terms of the relevant agreement under which the partner receives money from the Commonwealth. The Auditor-General’s powers will be in addition to whatever audit provisions exist under an agreement.

Government business enterprises

The amendments also limit the circumstances in which a government business enterprise (GBE) and its subsidiaries can be subject to a performance audit or assurance review. Previously, a GBE could be subject to a performance audit at the request of the JCPAA, the GBE’s responsible minister or the Finance Minister; now, only the JCPAA can request the performance audit or assurance review of a GBE. Nothing prevents the Auditor-General from asking the JCPAA to request an audit or review. The Auditor-General remains able to undertake a performance audit or assurance review of a GBE by arrangement with the GBE under s 20 of the Act.

Privilege and public interest

Section 30 of the Act has been amended so that the Auditor-General’s information-gathering powers are not limited by a claim that information or a document is the subject of legal professional privilege, any other privilege or the public interest. Section 30 also now provides that the production of a document or the provision of information to the Auditor-General does not affect the operation of a rule of law relating to privilege or the public interest in relation to the disclosure of the information or production of the document.

One effect of these amendments will be to make it clear that the Auditor-General can require the production of legal advice in the performance of an audit, despite any legal professional privilege attached to the advice. An agency is not able to claim legal professional privilege in response to a request for access from the Auditor-General, but the disclosure of legal advice to the Auditor-General, when required, will not waive the privilege attached to the advice.

If you would like further information on the Auditor-General’s new powers, please contact one of our specialist lawyers listed below:

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