

Parliamentary Joint Committee on Intelligence and Security
ANSWERS TO QUESTIONS ON NOTICE
Review of Administration and Expenditure No. 20 (2020-21) –
Australian Intelligence Agencies

Portfolio: Prime Minister and Cabinet

Department/Agency: Australian National Audit Office

Outcome/Program Group:

Topic: Barriers to Completing Reports.

Senator: N/A

Committee: Parliamentary Joint Committee on Intelligence and Security

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Question:

PJCIS Committee: Please detail any barriers to the Australian National Audit Office completing detailed reports on the activities of Australia's intelligence activities.

Answer:

There are no barriers to the ANAO undertaking any function of the Auditor-General, including financial statements audits or performance audits in the Australian Intelligence Agencies. The Auditor-General has wide ranging powers of access to premises, documents and officials of entities contained within Part 5 Division 1 of the *Auditor-General Act 1997*. These powers are also conferred on the officers of the ANAO.

The ANAO completes the following engagements with Australian Intelligence Agencies (the Agencies):

- annual financial statements audits of the Agencies as required by Section 43 of the *Public Governance, Performance and Accountability Act 2013*;
- performance audits. The conduct of performance audits is at the discretion of the Auditor-General following the risk assessment and development process which identifies potential audit topics as part of the ANAO's Annual Audit Work Plan (AAWP). Information on the process undertaken to develop the AAWP is available on the ANAO website at: <https://www.anao.gov.au/work-program/overview>.

The ANAO undertakes performance audits in the Agencies periodically as identified in the AAWP process. The most recent performance audit of an Australian Intelligence Agency was tabled on 28 September 2021. Auditor-General Report No.2 of 2021-22 *Workforce Planning in the Australian Security Intelligence Organisation* is available

on the ANAO website at: <https://www.anao.gov.au/work/performance-audit/workforce-planning-the-australian-security-intelligence-organisation>.

While there are no barriers to the Auditor-General and ANAO conducting audit work in these agencies there are confidentiality requirements impacting the Auditor-General and ANAO communicating the outcomes of the results of audit work in certain circumstances described in the *Auditor-General Act 1997* (the Act). Section 37 of the Act states:

- (1) The Auditor-General must not include particular information in a public report if:
 - (a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); or*
 - (b) the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2).**
- (2) The reasons are:
 - (a) it would prejudice the security, defence or international relations of the Commonwealth; ...**
- (3) The Auditor-General cannot be required, and is not permitted, to disclose to:
 - (a) a House of the Parliament; or*
 - (b) a member of a House of the Parliament; or*
 - (c) a committee of a House of the Parliament or a joint committee of both Houses of the Parliament;**information that subsection (1) prohibits being included in a public report.**

As a result the Auditor-General is not able to publish information they consider would prejudice the security, defence or international relations of the Commonwealth in a public report. If the Auditor-General determines that information cannot be included in a public report the Auditor-General can only provide this information to the Prime Minister, Minister for Finance and responsible Minister (for each agency). The Auditor-General cannot disclose to, or discuss the information with, any other person or body, including to the Parliament or a Parliamentary committee.

Given the nature of the activities, functions and administration undertaken by the agencies it is likely that the confidentiality requirements of the Act could have a more substantial impact on the reporting of results, findings and analysis included in performance audits (depending on the topic, scope and criteria of the audit). These factors are taken into consideration when developing the AAWP.

Amendments would be required to the Act in order to permit the Auditor-General to provide the Parliamentary Joint Committee on Intelligence and Security (for example) with reports including the particular information covered by the confidentiality requirements of Section 37 of the Act.