
The Parliament of the Commonwealth of Australia

Report 386

Review of the *Auditor–General Act 1997*

Joint Committee of Public Accounts and Audit

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Chairman's Foreword

The success of Australia's democracy owes much to the ability of the Parliament to scrutinise and hold executive government to account. This is a key feature of successful parliamentary democracies.

The Auditor-General, as an independent officer of the Parliament, plays a key role in the accountability framework by supporting the Parliament in its scrutiny function.

It is essential that the legislation underpinning the Auditor-General is current and provides the Australian National Audit Office (ANAO) with sufficient powers and privileges to scrutinise the administration of government agencies.

The *Auditor-General Act 1997* (the Act) came into effect on 1 January 1998. The Act provides for the Joint Committee of Public Accounts and Audit (JCPAA) to examine the budget estimates of the ANAO and to make recommendations to Parliament on the proper resourcing of the office. In addition, the JCPAA determines the audit priorities of the Parliament and advises the Auditor-General of those priorities.

The role of the JCPAA provides for a stronger and practical relationship between the Auditor-General and the Parliament.

Other features of the Act include a number of provisions which strengthen the Auditor-General's role as external auditor of Commonwealth agencies, authorities and companies and their subsidiaries. The Act provides the Auditor-General with a comprehensive mandate to conduct, with some limited exceptions, financial statement and performance audits of all government entities.

In view of the Committee's significant legislative responsibilities to guard the independence of the Auditor-General it was considered timely to conduct a review of the Act. The overall finding is that the Act provides an effective

framework for the ANAO to carry out its functions. The Committee has identified the following legislative amendments which will further enhance the Act:

- subsection 19(3) should be amended to provide the Auditor-General with the power to circulate extracts of draft reports where necessary;
- amendments to subsection 37(4) to ensure that it reflects the original intentions set out in the Explanatory Memorandum. The amendment will remove ambiguity in the event that the Attorney-General issues a certificate requiring certain information to be omitted from a public report;
- amendments to subsection 15(2) to provide the Auditor-General with the power to provide a copy of a completed report to a Minister who has a special interest in the report;
- amendment to subsection 19(4) to provide for the Auditor-General to include agency comments, in full, in a final report; and
- the Committee has resolved that, as part of its power to review and change the Annual Report Guidelines, it will require government agencies to include in their Annual reports:
 - ⇒ a list showing all contracts by name, value, and the reason why the standard access clause, which provides the Auditor-General with access to the premises of Commonwealth contractors, was not included in the contract.

The Committee is confident that these proposals will enhance the *Auditor-General Act 1997* and will ensure that the Australian National Audit Office can continue to perform efficiently and effectively.

In conclusion, and on behalf of the Committee, I would like to thank all those who have contributed to this inquiry.

Bob Charles, MP
Chairman



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Membership of the Committee

Chair Mr Bob Charles MP

Deputy Chair Mr David Cox MP

Members	Senator Helen Coonan	Mr Kevin Andrews MP
	Senator the Hon Rosemary Crowley (until 28/6/01)	Mr Malcolm Brough MP (until 7/3/00)
	Senator the Hon John Faulkner (until 12/10/00)	Mr Petro Georgiou MP
	Senator the Hon Brian Gibson AM	Ms Julia Gillard MP
	Senator John Hogg	Mr Alan Griffin MP (until 9/8/99)
	Senator Andrew Murray	Mr Peter Lindsay MP (from 7/3/00)
	Senator the Hon Nick Sherry (from 28/6/01)	Ms Tanya Plibersek MP (until 10/4/00)
	Senator John Watson	The Hon Alex Somlyay MP
		Mr Stuart St Clair MP
		Mr Lindsay Tanner MP (from 9/8/99)
		Mr Kelvin Thomson MP (from 10/4/00)



Membership of the Sectional Committee

Chair Mr Bob Charles MP

Deputy Chair Mr David Cox MP

Members Senator Helen Coonan Mr Kevin Andrews MP
Senator the Hon Rosemary Crowley Ms Julia Gillard MP
(until 28/6/01)
Senator Andrew Murray The Hon Alex Somlyay MP
Senator John Watson

Committee Secretariat

Secretary Dr Margot Kerley

Inquiry Secretary Mr Stephen Boyd

Research Officer Mr Ngan Thai

Administrative Officer Ms Maria Pappas



Duties of the Committee

The Joint Committee of Public Accounts and Audit is a statutory committee of the Australian Parliament, established by the *Public Accounts and Audit Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being to:

- (a) examine the accounts of the receipts and expenditure of the Commonwealth, including the financial statements given to the Auditor-General under subsections 49(1) and 55(2) of the *Financial Management and Accountability Act 1997*;
- (b) examine the financial affairs of authorities of the Commonwealth to which this Act applies and of intergovernmental bodies to which this Act applies;
- (c) examine all reports of the Auditor-General (including reports of the results of performance audits) that are tabled in each House of the Parliament;
- (d) report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament;
- (e) report to both Houses of the Parliament any alteration that the Committee thinks desirable in:
 - (i) the form of the public accounts or in the method of keeping them; or
 - (ii) the mode of receipt, control, issue or payment of public moneys;

- (f) inquire into any question connected with the public accounts which is referred to the Committee by either House of the Parliament, and to report to that House on that question;
- (g) consider:
 - (i) the operations of the Audit Office;
 - (ii) the resources of the Audit Office, including funding, staff and information technology;
 - (iii) reports of the Independent Auditor on operations of the Audit Office;
- (h) report to both Houses of the Parliament on any matter arising out of the Committee's consideration of the matters listed in paragraph (g), or on any other matter relating to the Auditor-General's functions and powers, that the Committee considers should be drawn to the attention of the Parliament;
- (i) report to both Houses of the Parliament on the performance of the Audit Office at any time;
- (j) consider draft estimates for the Audit Office submitted under section 53 of the *Auditor-General Act 1997*;
- (k) consider the level of fees determined by the Auditor-General under subsection 14(1) of the *Auditor-General Act 1997*;
- (l) make recommendations to both Houses of Parliament, and to the Minister who administers the *Auditor-General Act 1997*, on draft estimates referred to in paragraph (j);
- (m) determine the audit priorities of the Parliament and to advise the Auditor-General of those priorities;
- (n) determine the audit priorities of the Parliament for audits of the Audit Office and to advise the Independent Auditor of those priorities; and
- (o) undertake any other duties given to the Committee by this Act, by any other law or by Joint Standing Orders approved by both Houses of the Parliament.



Terms of reference

The Committee will inquire into and report on the adequacy of the *Auditor-General Act 1997* focusing on:

- the Auditor-General's information gathering powers;
- the confidentiality of information;
- the application of parliamentary privilege to draft reports, extracts of draft reports, and reports;
- access by relevant parties to draft Auditor-General reports;
- procedural fairness;
- a comparison of State Auditor-General provisions to the Commonwealth Auditor-General Act; and
- any other aspects of the *Auditor-General Act 1997* that require attention.



List of abbreviations

Act	<i>Auditor-General Act 1997</i>
AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
Committee	Join Committee of Public Accounts and Audit
CPA	Certified Practising Accountants - Australia
CTC	Competitive Tendering and Contracting
Defence	Department of Defence
DEH	Department of Environment and Heritage
DETYA	Department of Education, Training and Youth Affairs
DFAT	Department of Foreign Affairs and Trade
DoFA	Department of Finance and Administration
EM	Explanatory Memorandum
FaCS	Department of Family and Community Services
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit

List of recommendations

2 Section 19 – Comments on proposed reports

Recommendation 1

The Committee suggests that the Privileges Committees of both the Senate and the House of Representatives examine whether Australian National Audit Office draft reports and extracts of draft reports attract Parliamentary privilege, and if they do not, should they attract Parliamentary privilege. [Paragraph 2.33]

Recommendation 2

The Committee recommends that the Government amend section 19(3) of the *Auditor-General Act 1997*, to read:

■ After preparing a proposed report on an audit under sections 15, 16, 17 or 18, the Auditor-General ~~may~~ *must* give a copy *or an extract* of the proposed report to any person who, in the Auditor-General's opinion, has a special interest in the report.

The Government will need to ensure that all consequential amendments arising from this amendment are made. [Paragraph 2.52]

Recommendation 3

Subsection 19(4) of the *Auditor-General Act 1997* should be amended to read:

■ If the recipient of the proposed report gives written comments to the Auditor-General within 28 days after receiving the proposed report, the Auditor-General must consider, *and include*, those comments, *in full*, ~~before preparing a~~ *in the* final report and any summary documents. [Paragraph 2.68]

3 Sections 32 and 33 – Access Powers of the Auditor-General

Committee resolution

The Committee has resolved that, as part of its power to review and change the Annual Report Guidelines, it will require government agencies to include in their Annual Reports:

- a list showing all contracts by name, value, and the reason why the standard access clause, which provides the Auditor-General with access to the premises of Commonwealth contractors, was not included in the contract.

4 Section 37 – Sensitive information not to be included in reports

Recommendation 4

The Committee recommends that the Government amend section 37(4) of the *Auditor-General Act 1997*, to read:

- ~~If~~ *When the Auditor-General decides to* is required to omit particular information from a public report because the Attorney-General has issued a certificate under paragraph (1)(b) in relation to the information, the Auditor-General must state in the report:

(a) that information (which does not have to be identified) has been omitted from the report; and

(b) the reason or reasons (in terms of subsection (2)) why the Attorney-General issued the certificate.

5 Other issues

Recommendation 5

The Committee recommends that the Government amend section 15(2) of the *Auditor-General Act 1997*, to read:

- As soon as practicable after completing the report on the audit, the Auditor-General must:

⇒(a) cause a copy to be tabled in each House of Parliament; ~~and~~

⇒(b) give a copy to the responsible Minister; *and*

⇒(c) *to any other Minister who, in the Auditor-General's opinion, has a special interest in the report.*

