



AUSTRALIAN CAPITAL TERRITORY

Auditor-General Act 1996

No. 23 of 1996

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SCHEDULE

**APPOINTMENT AND TERMS OF OFFICE OF
AUDITOR-GENERAL**



AUSTRALIAN CAPITAL TERRITORY

Auditor-General Act 1996

No. 23 of 1996

An Act to provide for an Auditor-General and for related purposes

[Notified in ACT Gazette S101: 4 June 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Auditor-General Act 1996*.

Commencement

2. This Act commences on the day on which the Financial Management Act commences.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“controlling interest” has the meaning given by section 5;
“Financial Management Act” means the *Financial Management Act 1996*;
“Independent Auditor” means the person for the time being engaged under section 27 to conduct audits under Part V;

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“performance audit”, in relation to a person, body or thing, means a review or examination of any aspect of the operations of the person, body or thing;

“Public Accounts Committee” means the committee of the Legislative Assembly whose functions include the examination of financial statements for the Territory, a department or a Territory authority;

“public sector company” means—

- (a) a subsidiary of a Territory authority;
- (b) a Territory owned corporation;
- (c) a subsidiary of a Territory owned corporation;
- (d) a company prescribed by the regulations; or
- (e) any other company in which the Territory or another Territory entity has a controlling interest;

“Public Sector Management Act” means the *Public Sector Management Act 1994*;

“responsible chief executive”—

- (a) in relation to a Department—means the responsible Chief Executive in relation to the Department under the Financial Management Act;
- (b) in relation to a Territory authority—means the chief executive officer in relation to the authority under the Financial Management Act;
- (c) in relation to a public sector company—means the person responsible for managing the affairs of the company; and
- (d) in relation to a joint venture or trust in which the Territory or a Territory entity has a controlling interest—means the responsible chief executive of the Department or Territory entity which is responsible for matters most closely related to that interest;

“Speaker” means the Presiding Officer of the Legislative Assembly elected under section 11 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;

“Territory entity” means—

- (a) a Territory authority; or
- (b) a public sector company;

“Territory owned corporation”, and “subsidiary” in relation to such a corporation, have the same respective meanings as in the *Territory Owned Corporations Act 1990*.

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(2) An expression that is used in this Act and the Financial Management Act has, unless the contrary intention appears, the same meaning in this Act as in that Act.

Reports to be given to Speaker

4. (1) A report required by this Act to be given to the Speaker shall—

- (a) if the Speaker is unavailable—be given to the Deputy Speaker; or
- (b) if both the Speaker and Deputy Speaker are unavailable—be given to the Clerk of the Legislative Assembly.

(2) For the purposes of subsection (1), the Speaker or Deputy Speaker is unavailable if—

- (a) he or she is absent from duty; or
- (b) there is a vacancy in the office.

Controlling interests

5. (1) For the purposes of this Act, the Territory or a Territory entity has a controlling interest in a company if its interest in the company is such that—

- (a) it is able to—
 - (i) control the composition of the board of directors of the company;
 - (ii) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or
 - (iii) control more than 50% of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) where paragraph (a) does not apply—no other person holds a greater interest in the company.

(2) For the purposes of this Act, the Territory, or a Territory entity, has a controlling interest in a joint venture if its interest in the venture is such that—

- (a) it is able to control the acts and things done in the course of the venture; or
- (b) where paragraph (a) does not apply—no other person is able to exercise greater control over the acts and things done in the course of the venture.

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(3) For the purposes of this Act, the Territory, or a Territory entity, has a controlling interest in a trust if its interest in the trust is such that—

- (a) it is able to control the acts and things done in the course of carrying out the terms of the trust; or
- (b) where paragraph (a) does not apply—no other person is able to exercise greater control over the acts and things done in the course of carrying out the terms of the trust.

PART II—THE AUDITOR-GENERAL

Auditor-General

6. There shall be an Auditor-General for the Territory.

Appointment and terms of office

7. The Schedule has effect in relation to the appointment and terms of office of the Auditor-General.

Veto by Public Accounts Committee

8. (1) The Executive shall not appoint a person to be the Auditor-General unless—

- (a) the Minister has given the presiding member of the Public Accounts Committee written notice of the proposed appointment, inviting the Committee to respond to the proposal within the relevant period; and
- (b) either—
 - (i) the relevant period has expired without the presiding member having notified the Minister in writing that the Committee objects to the proposal; or
 - (ii) before the expiry of that period, the presiding member gives the Minister notice in writing that the Committee agrees with the proposal.

(2) The Minister’s notice shall be taken for all purposes to have been referred to the Committee by the Legislative Assembly for inquiry and report to the presiding member.

(3) In subsection (1)—

“relevant period”, in relation to the Minister’s notice, means—

- (a) 14 days after the notice is given to the presiding member; or
- (b) if the presiding member notifies the Minister within the 14 days that the Committee requires more time to consider the proposal—30 days after the expiry of the 14 days.

PART III—FUNCTIONS AND POWERS

Independence

9. The Auditor-General is not subject to direction by the Executive or any Minister in the performance of the functions of the Auditor-General.

Functions

10. In addition to the functions conferred on the Auditor-General by this Act, the Auditor-General has the following functions:

- (a) to promote public accountability in the public administration of the Territory;
- (b) to audit annual financial statements of the Territory, departments and Territory authorities under the Financial Management Act;
- (c) to audit the accounts and records in respect of any person, body or thing ascertained in accordance with the regulations;
- (d) to conduct performance audits in respect of any person, body or thing ascertained in accordance with the regulations;
- (e) any function conferred on the Auditor-General by or under any other law of the Territory;
- (f) to do anything incidental or conducive to any of the Auditor-General's functions.

Special financial audits

11. (1) The Auditor-General may, in relation to each financial year—

- (a) audit the accounts and records of a public sector company;
- (b) audit the accounts and records in respect of a joint venture in which the Territory or a Territory entity has a controlling interest;
or
- (c) audit the accounts and records in respect of a trust in which the Territory or a Territory entity has a controlling interest.

(2) An audit under subsection (1) of a public sector company shall not be taken to be an audit under the Corporations Law.

Performance audits

12. The Auditor-General may at any time conduct a performance audit in respect of—

- (a) a Department;
- (b) a Territory entity;
- (c) a joint venture in which the Territory or a Territory entity has a controlling interest; or

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- (d) a trust in which the Territory or a Territory entity has a controlling interest.

Auditor under the Corporations Law

13. (1) The Auditor-General shall accept appointment under the Corporations Law as the auditor of a public sector company.

(2) This section does not, by implication, limit the Auditor-General's power to engage a person under section 24.

Power to obtain information

14. (1) In connection with the performance of a function of the Auditor-General, the Auditor-General may direct a person in writing—

- (a) to give information to the Auditor-General within the time and in the manner specified in the direction;
- (b) to attend before the Auditor-General at a specified time and place (that are reasonable in the circumstances) and answer questions; or
- (c) to produce a document to the Auditor-General in accordance with the direction.

(2) A person shall not, without reasonable excuse, contravene a direction under subsection (1).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Access to premises etc.

15. (1) In connection with the performance of a function of the Auditor-General, the Auditor-General or an authorised person is entitled, at any reasonable time—

- (a) to enter and remain on premises occupied by the Territory or a Territory entity;
- (b) to full and free access to any document or other property in the possession of the occupier; and
- (c) to examine, make copies of or take extracts from, such a document.

(2) An authorised person is not entitled to enter or remain on the premises if the person does not produce written proof of authority on request by the occupier.

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(3) In this section—

“authorised person” means a person authorised in writing by the Auditor-General for the purposes of this section;

“premises” includes land and any place.

Audit fees

16. (1) A prescribed person—

(a) whose annual financial statements are audited under the Financial Management Act; or

(b) whose accounts or records are audited under section 11;

is liable to pay audit fees for the audit, based on a scale of fees determined by the Auditor-General.

(2) Fees are payable within 30 days after a claim for payment is given to the person.

(3) A claim for payment may be made for an instalment of fees before the audit is completed.

(4) Fees due under this section may be recovered by the Auditor-General on behalf of the Territory.

(5) A report by the Auditor-General under the *Annual Reports (Government Agencies) Act 1995* shall include details of the basis on which audit fees were determined in respect of the reporting period.

(6) In this section—

“prescribed person” means a person included in a class of persons determined by the Minister in writing for the purposes of this section.

Reports to Legislative Assembly etc.

17. (1) The Auditor-General may at any time prepare a report for the Legislative Assembly on any matter arising in connection with the performance of the Auditor-General’s functions.

(2) The report shall include the substance of any written comments made by the responsible chief executive that were taken into account by the Auditor-General when finalising the report.

(3) The Auditor-General shall give the report to the Speaker.

(4) The Speaker shall present the report to the Legislative Assembly.

(5) The Auditor-General may give a copy of the report to a Minister who, in the Auditor-General’s opinion, has a special interest in the report.

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Proposed reports

18. (1) Before finalising a report for the Legislative Assembly, the Auditor-General shall—

- (a) give a copy of the proposed report to the responsible chief executive; and
- (b) by notice in writing, invite the chief executive to provide written comments about the proposed report to the Auditor-General within a period specified in the notice.

(2) If the chief executive gives written comments about the proposed report to the Auditor-General within the period specified in the Auditor-General's notice, the Auditor-General shall take account of those comments when finalising the report.

Reporting sensitive information

19. (1) The Auditor-General shall not include particular information in a report for the Legislative Assembly if—

- (a) the Auditor-General is of the opinion that its disclosure in the report would be contrary to the public interest because it could—
 - (i) have a serious adverse impact on the commercial interests of any person or body;
 - (ii) reveal trade secrets of any person or body;
 - (iii) prejudice the investigation of an alleged contravention of a law;
 - (iv) prejudice the fair trial of a person; or
 - (v) prejudice relations between the Government of the Territory and another Government; or
- (b) the information consists of the deliberations or decisions of the Executive and a certificate under subsection (2) is in force in respect of the information.

(2) The Chief Minister may give a certificate to the Auditor-General that the disclosure of particular information in such a report would reveal the deliberations or decisions of the Executive and would be contrary to the public interest.

(3) If because of paragraph (1) (a) the Auditor-General omits information from a report for the Legislative Assembly, the Auditor-General may prepare a special report for the Public Accounts Committee that includes that information.

(4) The Auditor-General shall give a special report to the presiding member of the Committee.

(5) The presiding member shall present the report to the Committee.

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(6) A special report presented to the Committee shall be taken for all purposes to have been referred to the Committee by the Legislative Assembly for inquiry and such report as the Committee considers appropriate.

Legislative Assembly Secretariat

20. This Part applies to the Legislative Assembly Secretariat as if—
- (a) a reference in this Part to a Department were a reference to the Secretariat; and
 - (b) a reference in this Part to the responsible chief executive were a reference to the Clerk of the Legislative Assembly.

PART IV—ADMINISTRATION

Application of Financial Management Act

21. Unless the contrary intention appears, the provisions of Parts II, III and V of the Financial Management Act apply to the Auditor-General as if—

- (a) a reference in those provisions to a department included a reference to the Auditor-General and the staff assisting the Auditor-General;
- (b) a reference in those provisions to the responsible Minister of a department were a reference to the Speaker;
- (c) a reference in those provisions to the responsible Chief Executive of a department included a reference to the Auditor-General; and
- (d) a reference in those provisions to the Auditor-General were a reference to the Independent Auditor.

Proposed appropriations

22. (1) Before the commencement of each financial year, the presiding member of the Public Accounts Committee may—

- (a) advise the Treasurer of the appropriation that the Committee considers should be made for the operations of the Auditor-General for the year; and
- (b) provide the Treasurer with a draft budget for the operations of the Auditor-General for the year that contains the information referred to in section 12 of the Financial Management Act other than that referred to in paragraphs 12 (1) (e) and (2) (b) of that Act.

(2) The issues about the proposed appropriation and draft budget shall be taken for all purposes to have been referred to the Committee by the Legislative Assembly for inquiry and report to the Treasurer.

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Staff

23. (1) The staff assisting the Auditor-General shall be employed under the Public Sector Management Act.

(2) The Public Sector Management Act applies in relation to the management of the staff assisting the Auditor-General.

(3) The Auditor-General has all the powers of a Chief Executive in relation to the staff assisting him or her as if the staff were employed in a Department under the control of the Auditor-General.

Contractors

24. (1) The Auditor-General may, on behalf of the Territory, engage a person under a contract to assist in the performance of any function of the Auditor-General.

(2) Subsection (1) does not apply to a person who—

(a) is the Independent Auditor; or

(b) has been the Independent Auditor within the 12 months before the engagement.

Arrangements with Departments

25. The Auditor-General may make arrangements with the Chief Executive of a Department for the use of the services of public servants, or the use of facilities, in the Department.

Delegation

26. The Auditor-General may delegate in writing all or any of the Auditor-General's powers under any Act to—

(a) a member of the staff assisting the Auditor-General; or

(b) a person engaged under section 24.

PART V—AUDIT OF AUDITOR-GENERAL'S OPERATIONS

Independent Auditor

27. The Minister may, on behalf of the Territory, engage a person under a contract to conduct an audit under this Part.

Audit of annual financial statements

28. (1) The Independent Auditor shall audit each annual financial statement prepared by the Auditor-General by virtue of section 21.

(2) As soon as practicable after completing the audit, the Independent Auditor shall give a written report about the audit to the Speaker.

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(3) The Auditor-General shall give a copy of each annual financial statement in respect of the Auditor-General's operations to the Independent Auditor as soon as practicable after receiving a written request for the statement by the Independent Auditor.

Performance audits

29. The Independent Auditor shall conduct a performance audit of the operations of the Auditor-General as soon as practicable after receiving a written request to do so by the presiding member of the Public Accounts Committee.

Performance audit—proposed report

30. (1) Before finalising a report about a performance audit, the Independent Auditor shall—

- (a) give a copy of the proposed report to the Auditor-General; and
- (b) by notice in writing, invite the Auditor-General to provide written comments about the proposed report to the Independent Auditor within a period specified in the notice.

(2) If the Auditor-General gives written comments about the proposed report to the Independent Auditor within the period specified in the Independent Auditor's notice, the Independent Auditor shall take account of those comments when finalising the report.

Performance audit—report

31. (1) The Independent Auditor shall give a report about a performance audit to the Speaker as soon as practicable after completing the audit.

(2) The report shall include the substance of any written comments made by the Auditor-General that were taken into account by the Independent Auditor when finalising the report.

(3) The Speaker shall present a copy of the report to the Legislative Assembly.

Ancillary powers and disclosure of information

32. Sections 14, 15, 19 and 34 apply in connection with the performance of the functions of the Independent Auditor as if a reference in those sections to the Auditor-General were a reference to the Independent Auditor.

PART VI—MISCELLANEOUS

Indemnity

33. The Territory shall indemnify a person who is, or has been—

- (a) the Auditor-General; or
- (b) a member of the staff assisting the Auditor-General;

for any liability that the person incurs for an act or omission of the person in the performance, or purported performance, in good faith of a function on behalf of the Auditor-General.

Confidentiality

34. (1) A person who obtains information in the performance of a function of the Auditor-General shall not disclose the information except in the performance of such a function.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply to—

- (a) the disclosure of specified information to such persons as the Minister directs if the Minister certifies that it is necessary in the public interest that the information should be so disclosed;
- (b) the disclosure of information to an authority, or a person, prescribed by the regulations; or
- (c) the disclosure of information about a person to another person with the express or implied consent of the first-mentioned person.

Regulations

35. The Executive may make regulations for the purposes of this Act.

SCHEDULE

Section 7

APPOINTMENT AND TERMS OF OFFICE OF AUDITOR-GENERAL

Appointment

1. (1) The Executive shall appoint a person to be the Auditor-General.
- (2) The Auditor-General holds office, subject to this Act—
 - (a) for the period specified in the instrument of appointment; and
 - (b) on such terms and conditions (if any) in relation to matters not provided for by this Act as are—
 - (i) approved by resolution of the Legislative Assembly; and
 - (ii) specified in the instrument of appointment.
- (3) The period of the appointment shall be not less than 5 years and not more than 7 years.
- (4) A person who has been appointed Auditor-General is eligible for reappointment.

Remuneration and allowances

2. The Auditor-General is entitled to such remuneration, allowances and other entitlements—
 - (a) as are determined by the Remuneration Tribunal in respect of the Auditor-General; or
 - (b) if there is no such determination—as are determined by the Chief Minister in respect of the Auditor-General by an interim determination under the *Remuneration Tribunal Act 1995*.

Resignation

3. The Auditor-General may resign by giving a signed notice of resignation to the Chief Minister.

Retirement

4. The Executive may, with the consent of the Auditor-General, retire the Auditor-General on the ground of physical or mental incapacity.

Removal from office

5. (1) The Executive shall remove the Auditor-General from office if the Legislative Assembly passes a resolution to the effect that the Auditor-General should be removed from office on the ground of misbehaviour or physical or mental incapacity.

SCHEDULE—continued

(2) The Executive shall remove the Auditor-General from office if the Auditor-General becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

Acting Auditor-General

6. (1) The Executive may, in writing, appoint a person to act as the Auditor-General—

- (a) during a vacancy in the office of Auditor-General, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Auditor-General is for any reason unable to perform the functions of the office.

(2) Before the Executive appoints a person under subclause (1), the Minister shall consult the presiding member of the Public Accounts Committee about the proposed appointment.

(3) A person appointed to act as the Auditor-General during a vacancy in the office of Auditor-General shall not so act continuously for more than 12 months.

(4) Anything done by or in relation to a person purporting to act pursuant to an appointment under subclause (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 18 April 1996]