

1989

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

SENATE

AUDIT AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
Senator the Hon. Peter Walsh)

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

AUDIT AMENDMENT BILL 1989

GENERAL OUTLINE

The purpose of this Bill is to amend the Audit Act 1901 (the Act). The principal amendments seek to:-

- . enable the Minister for Finance to direct that moneys appropriated to one Parliamentary Department should, on a transfer of functions, be transferred to the Parliamentary Department gaining those functions and that the Minister may give directions which apply retrospectively or reduce amounts previously transferred (clause 7);
- . improve and update the current provisions concerning audits of the Audit Office and arrangements for signing and transmitting audit reports (clauses 8 to 13 and 20);
- . authorise the Auditor-General to carry out project performance audits of any operations of a body whose accounts and records the Auditor-General is required to audit (clause 14);
- . provide that the "standard" financial and auditing provisions, appropriate to an authority which should maintain its accounts in accordance with commercial practice, shall apply automatically to any body corporate which is established by legislation after the commencement of the provision, unless the establishing legislation provides otherwise (clauses 16 to 18);
- . provide that where the Auditor-General audits the financial statements of a body the Auditor-General shall also audit, and report to the Minister administering that body, on the financial statements of any subsidiary company of that body (clause 22);
- . indemnify the Auditor-General and his or her officers against liabilities arising out of civil proceedings for things properly done in the normal course of duty (clause 23);
- . give the Auditor-General limited discretion not to include details of minor technical breaches of legislation in reports on financial statements (clause 24); and

- . enable regulations to be made which give legal backing to guidelines given by a Minister on matters within that Minister's responsibilities (clause 26).

Other minor amendments will provide for the Director-General of the Australian Secret Intelligence Service to be responsible for the financial management of the Service (clause 3), make it clear that bank accounts are opened under section 21 and not 20 (clause 4), provide that reimbursements of Drawing Accounts are not subject to sections 33 or 34 (clauses 5 and 6), substitute "Minister" (for Finance) for "Governor-General" in section 62 (clause 15) and authorise regulations to be made on the commitment of moneys and estimates of future expenditure (clause 25).

FINANCIAL IMPACT STATEMENT

It is possible that the increased complexity of the financial statements of the Australian Audit Office, in comparison with those of previous years, could lead to the independent auditor seeking an increase in remuneration for auditing and reporting on those statements.

The proposed exclusion of the Australian Capital Territory and Norfolk Island from the application of Part XI will result in nominal savings, although these will be offset by increased costs elsewhere within the Audit Office.

There will also be a contingent cost in the proposal to provide the Auditor-General, and his or her officers, with an indemnity. It should be noted however that up to the present there have been no claims for damages entered into against the Auditor-General or his officers.

The other proposed changes, including those affecting the duties of the Auditor-General, are not expected to have any significant financial impact on Government revenue or expenditure.

NOTES ON INDIVIDUAL CLAUSES

CLAUSE 1: Short Title

CLAUSE 2: Commencement (Amended in the House of Representatives)

Clause 2 provides that, with the exception of paragraph 17(a) and subclause 18(2), the Act shall come into operation 28 days after Royal Assent.

Paragraph 17(a) and subclause 18(2) are to commence either on Proclamation or 6 months after Royal Assent. The two provisions are consequential upon self-government in the Australian Capital Territory; they provide for references to the Australian Capital Territory in section 63C and proposed section 63CA to be omitted. Flexibility in the commencement of the provisions is necessary to ensure that sections 63C and 63CA apply to ACT authorities right up to the time of self-government.

CLAUSE 3: Responsibilities of Secretaries

Section 2AB of the Act provides that the Secretary of a Department shall be responsible for making arrangements to implement the provisions of the Audit Act and its subsidiary legislation in relation to that Department.

The proposed amendment will make the Australian Secret Intelligence Service (ASIS) a Department and the Director-General of ASIS its Secretary for the purposes of the Act, thus making the Director-General responsible for implementing the provisions of the Act, and its subsidiary legislation, in ASIS.

The amendment will mirror a similar amendment made in respect of the Director-General of the Australian Security Intelligence Organization by the Intelligence and Security (Consequential Amendments) Act 1986.

CLAUSE 4: Commonwealth Public Account

Sections 20 and 21 deal with the opening and maintenance of bank accounts. Section 20 gives the Minister for Finance the necessary powers to make agreements with banks for the conduct of the banking business of the Commonwealth. Section 21 requires that the Minister shall open and maintain certain bank accounts as part of the

"Commonwealth Public Account" but also permits him to open and maintain other accounts which are not within the Commonwealth Public Account.

Under the present provisions there has been some doubt as to whether bank accounts are opened under section 20 or under section 21 or whether they are opened through the combined operation of both sections.

The proposed amendment will clarify the situation by making it clear that bank accounts are opened under section 21 in accordance with agreements entered into under section 20.

CLAUSE 5: Drawing of money from the Commonwealth Public Account

Section 31 provides that no money shall be drawn from the Commonwealth Public Account except in the manner provided by the Act.

The amendment will provide that section 31 does not apply to the drawing of money to reimburse a Drawing Account. This amendment, the reasons for which are set out below under the explanation in clause 6, is consequential upon the proposed amendment to section 34 to be made by that clause.

CLAUSE 6: Duties of paying, authorising and certifying officers

Section 34 currently provides that before a payment may be made from a bank account comprised in the Commonwealth Public Account (ie the bank accounts opened under paragraph 21(1)(a) of the Act) or from a Drawing Account (opened under paragraph 21(1)(b)), the claim for payment must be-

- (a) certified by a Certifying Officer indicating that the claim is properly payable; and
- (b) authorised by an authorising officer once that officer is satisfied, inter alia, that funds are available for the payment.

Legal advice has been obtained that section 34 probably applies to payments made from the Commonwealth Public Account to reimburse Drawing Accounts.

Drawing Accounts are in effect 'holding' accounts used to facilitate payments and the reconciliation of cheques.

They do not form part of the Commonwealth Public Account since the amounts are, in effect, already spent. The procedure followed when a claim is received is for the claim to be certified and authorized, pursuant to section 34, then a cheque drawn on the Drawing Account for the amount to be paid. Subsequently, the Drawing Account is reimbursed by the Paymaster from the Commonwealth Public Account, usually each day, by transferring an amount equal the total amount of the cheques raised for that day.

The requirement that section 34 apply to the reimbursement of the Drawing Account means that it would be necessary to, in effect, duplicate the original certification and authorisation. Such a procedure would serve no purpose.

Accordingly, the proposed amendment will provide that section 34 does not apply to reimbursements of Drawing Accounts from the Commonwealth Public Account.

CLAUSE 7: Transfer of functions between Departments

Section 35A provides, inter alia, that where, by virtue of an enactment or an order of the Governor-General, any of the functions of a Department (the original Department) becomes the function of another Department, the Minister for Finance may direct that all or any of the moneys appropriated (the funds) for the performance of the function by the original Department, may be transferred to the other Department for use on that function.

Major deficiencies in the current section are that it does not-

- (a) apply to transfers of functions between the Parliamentary Departments.
- (b) authorise the Minister for Finance to give a direction which would reduce an amount previously transferred under section 35A to another Department; and
- (c) authorise directions to be given retrospectively.

As a consequence of (a), when functions are transferred between Parliamentary Departments the transfer of funds has to be arranged through the Appropriation process. This is a time consuming and administratively cumbersome means of transferring funds which have already been appropriated and there is no reason why the Parliamentary Departments should be treated differently from Departments

of State in these matters. The proposed amendment will provide that the Minister for Finance may approve a transfer of funds when the Presiding Officers have ordered that a function of one Parliamentary Department should be transferred to another.

The inability to reduce an amount previously transferred and to give retrospective directions also creates administrative difficulties. In the former case it means that the Minister does not have full control over the transfer of funds between Departments, he or she can only increase funds. In the latter it means that directions cannot be given after the accounts for a financial year are closed; that is, after the appropriations have lapsed. This could become necessary when the Administrative Arrangements Orders are changed toward the end of a financial year leaving insufficient time for directions to be given prior to 30 June.

The proposed amendments will permit the Minister to give directions which reduce an amount previously transferred and to give directions which apply retrospectively thus allowing for presentation of more accurate accounting records.

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| CLAUSE 8 | Audits of the Australian Audit Office |
| CLAUSE 9 | Powers of independent auditor |
| CLAUSE 10 | Reports of independent auditor concerning financial audits |
| CLAUSE 11 | Departmental financial statements |

The amendments proposed to sections 48K, 48L, 48N and 50 refer to the section 50 financial statement, which is required to be submitted to the Parliament in respect of the Australian Audit Office, and of its audit by the independent auditor.

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| CLAUSE 12 | Auditor-General to audit and report
(Amended in the House of Representatives) |
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The amendment in paragraph (a) of clause 12 is consequential upon the introduction of clause 24.

The proposed amendment to section 51 in paragraph (b) of clause 12 provides for the Auditor-General to authorise officers to sign on his behalf the audit reports on departmental financial statements. The requirement for separate departmental financial statements introduced by Audit Amendment Act 1988 has added significantly to the onerous personal workload of the Auditor-General. This

amendment proposes to alleviate that workload. The authorisation to sign on behalf of the Auditor-General follows the precedent set in section 70BA. Authorisation is intended to be restricted to experienced senior audit officers. The final responsibility for all audit reports, nevertheless, remains with the Auditor-General.

CLAUSE 13 Auditor-General's reports on Departmental financial statements to be given to Minister administering the Department etc

The amendment proposed to section 53A is necessary as it was found that, as presently worded, some reports on departmental financial statements would have needed to have been addressed to other than the appropriate Minister. For example, the report on the financial statements of the Australian Taxation Office which is prescribed in the Public Service Regulations under subsection 25(4B) of the Public Service Act, would need to be addressed to the Prime Minister instead of the Treasurer who administers the Australian Taxation Office.

CLAUSE 14 Project performance audits

The proposed substitution of section 54 is necessary to put beyond doubt the Auditor-General's powers to carry out project performance audits in departments and other bodies where it is not cost effective to institute the formalities required by Division 2 of Part VI relating to efficiency audits. The practice of carrying out project performance audits has been developed over many years and is incorporated in the Australian Audit Office Auditing Standards published in Commonwealth of Australia Gazette No 200 of 7 August 1987.

CLAUSE 15: Provisions of Act to apply in relation to Trust Fund

Section 62 provides, inter alia, that the Governor-General shall have the same authority over Trust Moneys and the expenditure thereof as he has over moneys standing to the credit of the Consolidated Revenue Fund.

Amendments made to the Act by the Statute Law (Miscellaneous Provisions) Act 1987 gave the functions associated with the allocation of funds to the Minister for Finance, in lieu of the Governor-General. It is proposed, therefore, that to reflect this change in responsibilities under the Act, the reference in section 62 to the Governor-General be changed to the Minister for Finance.

CLAUSE 16 Interpretation
 CLAUSE 17 Application

The proposed amendments to sections 63B and 63C and insertion of new section 63CA are to make it mandatory for new authorities of the Commonwealth to have the standard accounting, reporting and auditing provisions of either Division 2 or Division 3 of Part XI apply, subject to any modifications in their enabling legislation. This will facilitate any 'across the board' changes and eliminate in the future the proliferation of similar but differently worded provisions in legislation. The amendments also provide for deletion of Norfolk Island from the provisions relating to external territories consequent upon the Norfolk Island Amendment Act 1988 which provides for an auditor other than the Auditor-General. Also the amendments provide for deletion of the Australian Capital Territory, on a date to be Proclaimed or after 12 months from the date of Assent, to allow for that Territory to appoint its own auditor after self-government becomes effective.

CLAUSE 18 Application of Part to new bodies

Divisions 2 and 3 of Part XI of the Audit Act set out the standard financial provisions on accounts, audit and annual reports that may be applied to incorporated bodies established by legislation. Division 2 contains provisions for a body which is required to keep its accounts in accordance with commercial practice. Division 3 contains those provisions appropriate to a body which is not required to keep its accounts in accordance with commercial practice.

Proposed section 63CA will provide that where a body corporate is established by legislation that body shall be taken to be a body to which Division 2 applies (subject to any modifications (if any) as are made to the provisions of that Division by the legislation establishing the body), unless the legislation establishing the body -

- (a) declares that the body is a body to which Division 3 applies (subject to any modifications to that Division); or
- (b) declares that the body is not a public authority to which Division 2 or 3 applies.

The proposed amendment should avoid the profusion (and

confusion) of similar but not necessarily identical, financial and auditing provisions in legislation establishing different authorities. It will also ensure that all non-standard provisions are expressed in terms of being specific exceptions or modifications to the standard provisions in Divisions 2 or 3.

CLAUSE 19 Definitions

The proposed amendment to section 63N, which widens the definition of a body, is to overcome the problem arising when legislation requires an unincorporated organisation or a person or an office to produce financial statements.

CLAUSE 20 Auditor-General shall report on all cases of
non-compliance
(Introduced in the House of Representatives)

This amendment is consequential upon the amendment proposed in clause 24.

CLAUSE 21 Signing reports concerning certain
authorities and other bodies

Section 70BA is proposed to be amended to provide a means to allow the Auditor-General to authorise officers to sign audit reports on companies, in particular the subsidiary companies formed by those authorities already prescribed in the Audit Regulations. An anomalous situation prevails at present whereby an officer can be authorised to sign the audit report on a parent authority but the Auditor-General must sign the audit reports on its subsidiaries. The proliferation of subsidiaries has added to the onerous personal workload of the Auditor-General. As with the amendment proposed to section 51 referring to authorisation of officers to sign audit reports on departmental financial statements the final responsibility for the report remains with the Auditor-General.

CLAUSE 22 Audit of subsidiaries

The insertion of proposed new section 70BB makes it mandatory for the Auditor-General to report on financial statements and on the inspection and audit of the accounts and records of subsidiaries where the Auditor-General is the auditor of the parent authority or other body. The proposed section is to apply to subsidiaries acquired after the commencement of the section but does not disturb any present arrangements for the Auditor-General to audit

and report on relevant subsidiaries of authorities and other bodies, ie a subsidiary cannot unilaterally dismiss the Auditor-General. The proposed section provides that the Auditor-General may decline the audit if it would not be cost effective, such as if a subsidiary was acquired for a short transitional period and/or it operates in a remote locality.

CLAUSE 23 Liability of Auditor-General

Proposed section 70E adds an indemnity provision to cover the Auditor-General, the staff of the Australian Audit Office and persons appointed under section 11 except for acts or omissions in bad faith. Although there has not been an action against the Auditor-General it has become a matter of increasing concern to Auditors-General when the scope of public sector auditing has extended widely and reports are required to lending consortia to facilitate public borrowing, in particular overseas borrowings to authorities. While it would be possible for the Executive Government to agree to provide financial indemnity to the Auditor-General or an AAO officer should the need ever arise, it is inappropriate that the Auditor-General should need to rely on what would be essentially a grace and favour decision. The independent status of the Auditor-General calls for a suitable indemnity provision in the legislation such as now proposed.

CLAUSE 24 Non-reporting of minor technical breaches (Introduced in the House of Representatives)

The Auditor-General is required, pursuant to sections 51 and 63R, to report all cases of non-compliance with the Constitution or an enactment. This can, however, be done other than in a formal audit report on the financial statements.

The proposed amendment provides authority for the Auditor-General not to include in the reports on the financial statements, minor technical breaches of the Constitution or of an enactment. The authority to be provided by the proposed amendment will be conditional upon the breach being of a minor and technical nature, and being not material and that not reporting particulars of the breach in the report is in accordance with accepted professional standards concerning the conduct of audits.

CLAUSE 25 Regulations

Section 71 presently empowers the Governor-General to make regulations for carrying out the provisions of the Act but does not permit regulations to be made dealing with the commitment of funds on other than supplies (eg on grants or loans). Nor may regulations be made dealing with the procedures to be followed by Departments in making estimates of future expenditure from appropriated moneys.

For the proper administration of Departments it is essential that Regulations be made on these matters setting out the procedures to be followed by Departments. Accordingly, the proposed amendments will enable regulations to be made on both matters.

CLAUSE 26 Guidelines by Ministers

This clause proposes the inclusion of a new section in the Act which will enable the regulations to authorise a Minister to issue guidelines on any matters for which that Minister is responsible (provided they are matters on which regulations may be given). The purpose of this clause is to give direct legal backing in the regulations to guidelines given by Ministers.

The basic legal framework for financial administration to which, by law, officers must conform, is the Audit Act and the Finance Regulations and Directions made pursuant to the Act.

Within the mandatory constraints of that framework, it is also proper to augment it by the issue of general guidance from time to time in the form of "Guidelines" on particular matters on which the Audit Act impinges - with such guidelines being developed and issued by the relevant policy source within the Executive Government (eg purchasing and disposals of stores, contracting, certain financial aspects of employment - occupational health and safety, travel policies, etc.)

Technically, as it presently stands, were a Finance Regulation to state in relation to such a matter that officers "shall have regard to guidelines issued by the Minister for", such a Regulation would need to be reissued each time there was any change at all in the guidelines. This would be cumbersome and inefficient.

The clause corrects this situation and allows guidance on policies to be clearly recognised as the responsibility of the relevant Minister to the extent that the observance of such policies is an appropriate requirement under the Audit Act and Finance Regulations.



