



Australian Capital Territory

# **Auditor-General Act 1996**

**A1996-23**

**Republication No 8**

**Effective: 17 December 2009 – 30 June 2011**

Republication date: 17 December 2009

Last amendment made by A2009-49

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Auditor-General Act 1996* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 17 December 2009. It also includes any amendment, repeal or expiry affecting the republished law to 17 December 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Auditor-General Act 1996

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Australian Capital Territory

# Auditor-General Act 1996

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An Act to provide for an auditor-general, and for related purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Auditor-General Act 1996*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*subsidiary*, of a territory-owned corporation—see the *Territory-owned Corporations Act 1990*, section 3 (1).’ means that the term ‘subsidiary’ is defined in that subsection and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3 Application of terms used in Financial Management Act

A term defined in the Financial Management Act has the same meaning in this Act.

### 3A Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



### **3B Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### **4 Reports to be given to Speaker**

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

### **5 Controlling interests**

- (1) For 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; or

- (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) if paragraph (a) does not apply—no other person holds a greater interest in the company.
- (2) For 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) if 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.
- (3) For 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) if 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 2                      The auditor-general

### 6                      Auditor-general

There must be an Auditor-General for the Territory.

### 7                      Appointment and terms of office

Schedule 1 has effect in relation to the appointment and terms of office of the auditor-general.

### 8                      Veto by public accounts committee

- (1) The Executive must 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 ended without the presiding member having notified the Minister in writing that the committee objects to the proposal; or
    - (ii) before the end of that period, the presiding member gives the Minister written notice that the committee agrees with the proposal.
- (2) The Minister's notice may 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 end of the 14 days.

## Part 3 Functions and powers

*Note* Certain provisions of this part apply to an independent auditor, see s 32.

### 9 Independence

The auditor-general is not subject to direction by the Executive or any Minister in the exercise of the functions of the auditor-general.

### 9A Reports for Annual Reports (Government Agencies) Act 2004

If the auditor-general considers that compliance with the *Annual Reports (Government Agencies) Act 2004* would prejudice the auditor-general's independence, the auditor-general is not required to comply with that Act to that extent.

### 10 Functions

In addition to the functions given to 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 relation to any person, body or thing ascertained in accordance with the regulations;
- (d) to conduct performance audits in relation to any person, body or thing ascertained in accordance with the regulations;
- (e) any function given to 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.

## **11 Special financial audits**

- (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 relation to a joint venture in which the Territory or a territory entity has a controlling interest; or
  - (c) audit the accounts and records in relation to 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 must not be taken to be an audit under the Corporations Act.

## **12 Performance audits**

- (1) The auditor-general may at any time conduct a performance audit in respect of—
  - (a) a department; or
  - (b) a territory entity; or
  - (c) a joint venture in which the Territory or a territory entity has a controlling interest; or
  - (d) a trust in which the Territory or a territory entity has a controlling interest.
- (2) The auditor-general may at any time conduct a single performance audit of 2 or more of the entities mentioned in subsection (1) in relation to any aspect of the operations of the entities that the auditor-general is satisfied is common to each of them.

(3) In the conduct of a performance audit, the auditor-general may, where appropriate, take into account environmental issues relative to the operations being reviewed or examined, having regard to the principles of ecologically sustainable development.

(4) In this section:

*ecologically sustainable development* means the effective integration of economic and environmental considerations in decision-making processes achievable through implementation of the following principles:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

*the inter-generational equity principle* means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

*the precautionary principle* means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

### **13 Auditor under the Corporations Act**

- (1) The auditor-general must accept appointment under the Corporations Act 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.

**14 Power to obtain information etc**

- (1) For this Act, the auditor-general may, by written notice, require a person to do any 1 or more of the following:
- (a) to give stated information to the auditor-general within a stated reasonable time;
  - (b) to produce a stated document in the possession or control of the person to the auditor-general within a stated reasonable time;
  - (c) to attend and answer questions before the auditor-general at a stated reasonable time and place.

*Note 1* For how the notice may be given, see the Legislation Act, pt 19.5.

*Note 2* The notice may require a person to verify information or a document by a statutory declaration (see Legislation Act, s 54 (1)).

*Note 3* **Document** includes anything from which images, sounds, messages or writings can be produced or reproduced, (see Legislation Act, dict, pt 1).

- (2) The notice must—
- (a) state that the requirement is made under this section; and
  - (b) contain a statement to the effect that failure to comply with the notice is an offence; and
  - (c) contain a statement about the effect of section 14D (Privileges against selfincrimination and exposure to civil penalty).
- (3) To remove any doubt, a reference to the giving of information to, or answering a question before, the auditor-general includes the giving of an explanation in relation to something done or not done by a person.
- (4) A regulation may prescribe fees and expenses payable to a person who is given a notice under subsection (1).



**14A Power to administer oath or affirmation**

- (1) For section 14 (1) (c), the auditor-general may require the person to answer questions on oath or affirmation.

*Note* For the taking of an oath or the making of an affirmation, see the *Oaths and Affirmations Act 1984*.

- (2) For subsection (1), the auditor-general may administer an oath or affirmation to the person that the answers the person is to give will be true.

**14B Failure to comply with notice under s 14 (1)**

- (1) A person who is given a notice under section 14 (1) (a) or (b) (Power to obtain information etc) commits an offence if the person fails to comply with the notice.

Maximum penalty: 50 penalty units.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (2) A person who is given a notice under section 14 (1) (c) commits an offence if the person fails to attend before the auditor-general in accordance with the notice.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

**14C Attendance before auditor-general—offences**

- (1) A person commits an offence if—
- (a) the person is required by a notice under section 14 (1) (c) (Power to obtain information etc) to attend and answer questions before the auditor-general; and
  - (b) the person attends before the auditor-general; and

(c) the auditor-general requires the person to swear an oath or make an affirmation that the answers the person is to give will be true; and

(d) the person fails to swear the oath or make the affirmation.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is required by a notice under section 14 (1) (c) to attend and answer questions before the auditor-general; and

(b) the person attends before the auditor-general; and

(c) the auditor-general requires the person to answer a question; and

(d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if—

(a) the person is required by a notice under section 14 (1) (c) to attend and answer questions before the auditor-general; and

(b) the person attends before the auditor-general; and

(c) the person fails to continue to attend as required by the auditor-general until excused from further attendance.

Maximum penalty: 50 penalty units.

(4) Subsection (3) does not apply if it was not reasonable in the circumstances for the auditor-general to continue to require the person to attend and answer questions.

(5) An offence against this section is a strict liability offence.

**14D Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if—
  - (a) a person is attending before the auditor-general in accordance with a requirement under section 14 (Power to obtain information etc); and
  - (b) the auditor-general requires the person to give information or answer a question.
- (2) This section also applies if a person is required by a notice under section 14 to produce a document.
- (3) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to give the information, produce the document or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (4) However, any information, document or thing obtained, directly or indirectly, because of the giving of the information, the production of the document or the answer to the question is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence against this part or the Criminal Code, part 3.4 (False or misleading statements, information and documents).

**15 Access to premises and things**

- (1) For this Act, the auditor-general or an authorised person may, at any reasonable time, enter and remain on premises occupied by the Territory or a territory entity.

- (2) The auditor-general or an authorised person may do any 1 or more of the following in relation to the premises or anything on the premises:
- (a) examine and copy, or take extracts from, any document on the premises;
  - (b) examine anything else on the premises;
  - (c) require a person on the premises to give the auditor-general or authorised person reasonable help to exercise a function under this section.

**Example for par (a)**

copying a computer file to a data storage device

**Example for par (c)**

assisting in accessing data held in or accessible from a computer on the premises

*Note 1* **Document** includes anything from which images, sounds, messages or writings can be produced or reproduced, (see Legislation Act, dict, pt 1).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The auditor-general is not entitled to enter or remain on the premises if the auditor-general does not produce written proof of his or her appointment when asked by a person on the premises.
- (4) An authorised person is not entitled to enter or remain on the premises if the person does not produce written proof of authority when asked by a person on the premises.
- (5) In this section:

**authorised person** means a person authorised in writing by the auditor-general for this section.

**premises** includes land and any place.

**15A Failure to comply with requirement—offence**

- (1) A person commits an offence if—
  - (a) the auditor-general or an authorised person makes a requirement of the person under section 15 (2) (c); and
  - (b) the person is informed by the auditor-general or authorised person to the effect that failure to comply with the requirement is an offence; and
  - (c) the person fails to comply with the requirement.

Maximum penalty: 50 penalty units.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:  
*authorised person*—see section 15 (5).

**16 Audit fees**

- (1) This section applies to an entity if—
  - (a) the entity's annual financial statements are audited under the Financial Management Act; or
  - (b) the entity's accounts or records are audited under section 11 (Special financial audits); or
  - (c) the entity's accounts or records are audited under another territory law.
- (2) The entity is liable to pay to the auditor-general on behalf of the Territory fees for the audit based on a scale of fees decided by the auditor-general.
- (3) The fees are payable within 30 days after the day a claim for payment is given to the person by the auditor-general.

- (4) The auditor-general may make a claim for payment for an instalment of the fees before the audit is finished.
- (5) A report by the auditor-general under the *Annual Reports (Government Agencies) Act 2004* must include details of the basis on which fees for audits conducted during the reporting period were decided by the auditor-general.

## **17 Reports for Legislative Assembly**

- (1) The auditor-general may at any time prepare a report for the Legislative Assembly on any matter arising in connection with the exercise of the auditor-general's functions.
- (2) The report must 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, in a report of a special financial audit or a performance audit—
  - (a) may include any information that he or she considers desirable in relation to the activities that are the subject of the audit; and
  - (b) is to set out the reasons for opinions expressed in the report; and
  - (c) may include any recommendations arising out of the audit that the auditor-general considers appropriate to make.
- (4) If the Legislative Assembly is sitting when the auditor-general has finished the report—
  - (a) the auditor-general must give the report to the Speaker; and
  - (b) the Speaker must present the report to the Legislative Assembly on the next sitting day.
- (5) If the Legislative Assembly is not sitting when the auditor-general has finished the report—

- (a) the auditor-general must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
  - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the auditor-general gives it to the Speaker (the *report day*); and
  - (c) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
  - (d) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
  - (e) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report; and
  - (f) despite paragraph (b), the Speaker must present the report to the Legislative Assembly on the next sitting day.
- (6) 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.
- (7) In this section:

*Speaker*, for a report given to the Deputy Speaker or clerk under section 4 (Reports to be given to Speaker), means the Deputy Speaker or clerk.

## 18 Proposed reports

- (1) Before finalising a report for the Legislative Assembly, the auditor-general must—
- (a) give a copy of the proposed report to the responsible chief executive; and
  - (b) by written notice, 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 must take account of those comments when finalising the report.

## 19 Reporting sensitive information

- (1) The auditor-general must not include information in a report for the Legislative Assembly if the auditor-general is of the opinion that the disclosure of the information would be contrary to the public interest because the disclosure could—
- (a) be an unreasonable disclosure of personal information about a person; or
  - (b) disclose a trade secret; or
  - (c) disclose information (other than a trade secret) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
  - (d) be an unreasonable disclosure of information about the business, commercial or financial interests or affairs of an entity; or
- Note* **Entity** includes a person (see Legislation Act, dict, pt 1).
- (e) prejudice the investigation of a contravention of a law; or
  - (f) prejudice the fair trial of a person; or
  - (g) prejudice relations between the ACT government and another government.
- (2) However, the auditor-general may include in the report information mentioned in subsection (1) if the auditor-general is satisfied that the substance of the information is public knowledge.
- (3) If, under subsection (1), 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 the information.

- (4) The auditor-general must give the special report to the presiding member of the committee.
- (5) The presiding member must present the special report to the committee.
- (6) A special report presented to the committee is taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and any report that the committee considers appropriate.

#### **19A Deliberations etc of the Executive**

- (1) The auditor-general must not include information in a report for the Legislative Assembly if the information would disclose a deliberation or decision of the Executive and a certificate under subsection (2) is in force in relation to the information.
- (2) The Chief Minister may give a certificate to the auditor-general that the inclusion of particular information in a report for the Legislative Assembly would disclose a deliberation or decision of the Executive and would be contrary to the public interest.

#### **20 Legislative Assembly secretariat**

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 4 Administration

### 21 Application of Financial Management Act

The Financial Management Act, part 2, part 3 and part 5 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; and
- (b) a reference in those provisions to the *responsible Minister* of a department were a reference to the Speaker; and
- (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.

### 22 Proposed appropriations

- (1) Before the beginning 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 mentioned in the Financial Management Act, section 12 other than that mentioned in subsections (1) (e) and (2) (b).
- (2) The issues about the proposed appropriation and draft budget may be taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and report to the Treasurer.

**22A Additional amounts for certain audits**

- (1) If the auditor-general is of the opinion that the appropriation available for the operations of the auditor-general for a financial year is insufficient for the auditor-general to conduct audits under section 11 and section 12 promptly, the auditor-general may tell the presiding member of the public accounts committee.
- (2) The committee may advise the Treasurer that an additional amount is needed for the auditor-general to conduct audits under section 11 and section 12 promptly.
- (3) If the committee advises the Treasurer under subsection (2), the Treasurer may authorise payment of the additional amount under the Financial Management Act, section 18 (Treasurer's advance) unless the Treasurer is satisfied that that Act, section 18 (1) (c) or (d) prevents authorisation of the amount.

**23 Staff**

- (1) The staff assisting the auditor-general must 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 the auditor-general as if the staff were employed in a department under the control of the auditor-general.

**24 Contractors**

- (1) The auditor-general may, on behalf of the Territory, engage a person under a contract to assist in the exercise 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.

**25 Arrangements with departments**

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.

**26 Delegation**

The auditor-general may delegate the auditor-general's functions under this Act to—

- (a) a member of the staff assisting the auditor-general; or
- (b) a person engaged by the auditor-general under section 24 (Contractors).

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

## Part 5                      Audit of auditor-general's operations

### 27                      Independent auditor

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

### 28                      Audit of annual financial statements

- (1) The independent auditor must audit each annual financial statement prepared by the auditor-general under section 21.
- (2) As soon as practicable after completing the audit, the independent auditor must give a written report about the audit to the Speaker.
- (3) The auditor-general must give a copy of each annual financial statement in relation to 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.

### 29                      Performance audits

The independent auditor must 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.

### 30                      Performance audit—proposed report

- (1) Before finalising a report about a performance audit, the independent auditor must—
  - (a) give a copy of the proposed report to the auditor-general; and
  - (b) by written notice, 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 must take account of those comments when finalising the report.

**31 Performance audit—report**

- (1) The independent auditor must give a report about a performance audit to the Speaker as soon as practicable after completing the audit.
- (2) The report must 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 must present a copy of the report to the Legislative Assembly.

**32 Independent auditor—ancillary powers and disclosure of information**

- (1) The following sections apply in relation to the exercise of the functions of the independent auditor:
  - (a) section 14 (Power to obtain information etc);
  - (b) section 14A (Power to administer oath or affirmation);
  - (c) section 14B (Failure to comply with notice under s 14 (1));
  - (d) section 14C (Attendance before auditor-general—offences);
  - (e) section 14D (Privileges against selfincrimination and exposure to civil penalty);
  - (f) section 15 (Access to premises and things);
  - (g) section 15A (Failure to comply with requirement—offence);
  - (h) section 19 (Reporting sensitive information);
  - (i) section 19A (Deliberations etc of the Executive);

- (j) section 34 (Disclosure of protected information);
  - (k) section 35 (Directions about protected information);
  - (l) section 36 (Authorised disclosures of protected information).
- (2) The sections mentioned in subsection (1) apply to the independent auditor as if any reference to the *auditor-general* were a reference to the independent auditor and any other necessary changes were made.

## Part 6 Miscellaneous

### 33 Meaning of *protected information* for pt 6

In this part:

*protected information* means information obtained by a person while the person was exercising a function of the auditor-general.

### 34 Disclosure of protected information

- (1) A person commits an offence if—
  - (a) the person is exercising, or has exercised, a function of the auditor-general; and
  - (b) the person discloses protected information to someone else.

Maximum penalty: 50 penalty units.

*Note* See s 36 for when s (1) does not apply.

- (2) An offence against this section is a strict liability offence.

### 35 Directions about protected information

- (1) The auditor-general, or a person authorised by the auditor-general (an *authorised person*), may give a direction to a person prohibiting or restricting the disclosure of protected information.
- (2) In deciding whether to give a direction under subsection (1), the auditor-general or authorised person must have regard to whether the direction—
  - (a) would promote the purposes of this Act; or
  - (b) is necessary or desirable to protect the integrity of an audit or investigation (however described) by the auditor-general.



- (3) The auditor-general or authorised person may also have regard to any other relevant matter in deciding whether to give a direction under subsection (1).
- (4) A person commits an offence if—
- (a) the auditor-general or an authorised person has given to the person or someone else a direction under subsection (1) prohibiting or restricting the disclosure of protected information; and
  - (b) the person knows that the direction has been given; and
  - (c) the person discloses the information to someone else.

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

### **36 Authorised disclosures of protected information**

- (1) Section 34 (1) and section 35 (4) do not apply if the information—
- (a) is disclosed in the exercise of a function of the auditor-general; or
  - (b) is disclosed in accordance with a direction of the Minister; or
  - (c) is disclosed to an entity prescribed by regulation; or
  - (d) is about a person (the *first person*) and the disclosure is made to someone else with the express or implied consent of the first person.
- (2) The Minister may give a direction under subsection (1) (b) only if the Minister certifies that the disclosure of the information is necessary in the public interest.

**37 Protection of auditor-general etc from liability**

- (1) A protected person is not personally liable for conduct done honestly and without recklessness—
  - (a) in the exercise of a function under this Act or another law; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act or another law.
- (2) Any liability that would, apart from this section, attach to the protected person attaches instead to the Territory.
- (3) In this section:

*conduct* means an act or an omission to do an act.

*protected person* means a person who is or has been—

- (a) the auditor-general; or
- (b) a member of the staff of the auditor-general.

**38 Regulation-making power**

The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Schedule 1      Appointment and terms of office of auditor-general

(see s 7)

### 1.1      Appointment

- (1) The Executive must appoint a person to be the auditor-general.

*Note*      For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) The auditor-general holds office, subject to this Act—
- (a) for the period specified in the instrument of appointment; and
  - (b) on the terms and conditions (if any) in relation to matters not provided for by this Act that are—
    - (i) approved by resolution of the Legislative Assembly; and
    - (ii) specified in the instrument of appointment.
- (3) The auditor-general is to be appointed for 7 years.
- (4) A person who has been appointed auditor-general is not eligible for reappointment.

### 1.2      Resignation

The auditor-general may resign by giving a signed notice of resignation to the Chief Minister.

### 1.3      Retirement

The Executive may, with the consent of the auditor-general, retire the auditor-general on the ground of physical or mental incapacity.

**1.4 Removal from office**

- (1) The Executive must 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.
- (2) The Executive must remove the auditor-general from office if the auditor-general becomes bankrupt or personally insolvent.

**1.5 Acting auditor-general**

Before the Executive appoints a person to act as auditor-general, the Minister must consult the presiding member of the public accounts committee about the proposed appointment.

**1.6 Application of Legislation Act, div 19.3.3**

The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment of a person to be auditor-general, or to act as auditor-general, as if the power to make the appointment were vested in a Minister, and in that application a reference in the division to a Minister is taken to be a reference to the Executive.

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## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- appointment
- bankrupt or-personally insolvent
- entity
- Executive
- exercise
- fail
- function
- law, of the Territory
- Speaker
- territory authority
- territory-owned corporation
- under.

***controlling interest***—see 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 5.

***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.

***protected information***, for part 6 (Miscellaneous)—see section 32A.

***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; or
- (b) a territory-owned corporation; or
- (c) a subsidiary of a territory-owned corporation; or
- (d) a company prescribed by regulation; 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*** means—

- (a) in relation to a department—the responsible chief executive in relation to the department under the Financial Management Act; and
- (b) in relation to a territory authority—the chief executive officer in relation to the authority under the Financial Management Act; and
- (c) in relation to a public sector company—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—the responsible chief executive of the department or territory entity that is responsible for matters most closely related to that interest.

***subsidiary***, of a territory-owned corporation—see the *Territory-owned Corporations Act 1990*, section 3 (1).

***territory entity*** means—

- (a) a territory authority; or
- (b) a public sector company.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Auditor-General Act 1996 No 23**

notified 4 June 1996 (Gaz 1996 No S101)  
commenced 1 July 1996 (s 2)

as amended by

#### **Auditor-General (Amendment) Act 1997 No 90**

notified 1 December 1997 (Gaz 1997 No S380)  
commenced 1 December 1997 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 27**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 27 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Auditor-General Amendment Act 2001 No 52**

notified 12 July 2001 (Gaz 2001 No 28)  
commenced 12 July 2001 (s 2)

#### **Legislation Amendment Act 2002 No 11 pt 2.2**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.2 commenced 28 May 2002 (s 2 (1))

#### **Statute Law Amendment Act 2002 No 30 pt 3.5**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.5 commenced 17 September 2002 (s 2 (1))

#### **Annual Reports (Government Agencies) Act 2004 A2004-8 s 27**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
s 27 commenced 13 April 2004 (s 2 and CN2004-5)

#### **Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.3**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.3 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)



**Auditor-General Amendment Act 2004 A2004-72**

notified LR 8 September 2004

s 1, s 2 commenced 8 September 2004 (LA s 75 (1))

remainder commenced 9 September 2004 (s 2)

**Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.6**

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 3 pt 3.6 commenced 26 August 2008 (s 2)

**Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.4**

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.4 commenced 17 December 2009 (s 2)

**4 Amendment history****Name of Act**

s 1 sub 2002 No 30 amdt 3.36

**Dictionary**

s 2 om 2001 No 44 amdt 1.311

ins 2002 No 30 amdt 3.39

**Application of terms used in Financial Management Act**

s 3

def **Speaker** om R2 LAdef **subsidiary** om 2002 No 30 amdt 3.37def **Territory owned corporation** om 2002 No 30 amdt 3.37

defs reloc to dict 2002 No 30 amdt 3.38

sub 2002 No 30 amdt 3.39

**Notes**

s 3A ins 2002 No 30 amdt 3.39

**Offences against Act—application of Criminal Code etc**

s 3B ins A2004-72 s 4

**Reports to be given to Speaker**

s 4 am A2008-28 amdt 3.34

**Auditor-general**

s 6 am A2008-28 amdt 3.34

**Veto by public accounts committee**

s 8 am A2008-28 amdt 3.34, amdt 3.35

**Functions and powers**

pt 3 note ins A2004-72 s 5

## Endnotes

4 Amendment history

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### **Independence**

s 9 am 2002 No 30 amdt 3.49

### **Reports for Annual Reports (Government Agencies) Act 2004**

s 9A ins A2004-8 s 27

### **Functions**

s 10 am 2002 No 30 amdt 3.40

### **Special financial audits**

s 11 am A2008-28 amdt 3.34

### **Performance audits**

s 12 am 1997 No 90 s 4; 2002 No 30 amdt 3.41; A2004-72 s 6;  
ss renum R6 LA (see A2004-72 s 7); A2008-28 amdt 3.35

### **Auditor under the Corporations Act**

s 13 am A2008-28 amdt 3.34

### **Power to obtain information etc**

s 14 am 2002 No 30 amdt 3.49  
sub A2004-72 s 8

### **Power to administer oath or affirmation**

s 14A ins A2004-72 s 8

### **Failure to comply with notice under s 14 (1)**

s 14B ins A2004-72 s 8

### **Attendance before auditor-general—offences**

s 14C ins A2004-72 s 8

### **Privileges against selfincrimination and exposure to civil penalty**

s 14D ins A2004-72 s 8

### **Access to premises and things**

s 15 am 2002 No 30 amdt 3.49  
sub A2004-72 s 9

### **Failure to comply with requirement—offence**

s 15A ins A2004-72 s 9

### **Audit fees**

s 16 am A2004-9 amdt 1.3  
sub A2004-72 s 10

### **Reports for Legislative Assembly**

s 17 sub 2001 No 52 s 4  
am 2002 No 30 amdt 3.42, amdt 3.49

### **Proposed reports**

s 18 am A2008-28 amdt 3.34

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<b>Reporting sensitive information</b>	
s 19	sub A2004-72 s 11
<b>Deliberations etc of the Executive</b>	
s 19A	ins A2004-72 s 11
<b>Application of Financial Management Act</b>	
s 21	am 2002 No 30 amdt 3.43
<b>Proposed appropriations</b>	
s 22	am A2008-28 amdt 3.35
<b>Additional amounts for certain audits</b>	
s 22A	ins 2001 No 52 s 5
<b>Staff</b>	
s 23	am A2008-28 amdt 3.34
<b>Contractors</b>	
s 24	am 2002 No 30 amdt 3.49
<b>Delegation</b>	
s 26	sub 2002 No 30 amdt 3.44
<b>Performance audits</b>	
s 29	am A2008-28 amdt 3.34
<b>Performance audit—proposed report</b>	
s 30	am A2008-28 amdt 3.34
<b>Performance audit—report</b>	
s 31	am A2008-28 amdt 3.34
<b>Independent auditor—ancillary powers and disclosure of information</b>	
s 32	am 2002 No 30 amdt 3.49 sub A2004-72 s 12
<b>Meaning of <i>protected information</i> for pt 6</b>	
s 32A	renum as s 33
<b>Disclosure of protected information</b>	
s 32B	renum as s 34
<b>Directions about protected information</b>	
s 32C	renum as s 35
<b>Authorised disclosures of protected information</b>	
s 32D	renum as s 36
<b>Meaning of <i>protected information</i> for pt 6</b>	
s 33	orig s 33 renum as s 37 (prev s 32A) ins A2004-72 s 13 renum R6 LA (see A2004-72 s 15)

## Endnotes

### 4 Amendment history

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#### **Disclosure of protected information**

s 34 orig s 34 am 2002 No 30 amdt 3.49  
om A2004-72 s 14  
(prev s 32B) ins A2004-72 s 13  
renum R6 LA (see A2004-72 s 15)

#### **Directions about protected information**

s 35 orig s 35 renum as s 38  
(prev s 32C) ins A2004-72 s 13  
renum R6 LA (see A2004-72 s 15)

#### **Authorised disclosures of protected information**

s 36 (prev s 32D) ins A2004-72 s 13  
renum R6 LA (see A2004-72 s 15)

#### **Protection of auditor-general etc from liability**

s 37 (prev s 33) am 2002 No 30 amdt 3.49  
renum R6 LA (see A2004-72 s 15)  
sub A2008-28 amdt 3.32

#### **Regulation-making power**

s 38 (prev s 35) sub 2001 No 44 amdt 1.312  
renum R6 LA (see A2004-72 s 15)

#### **Appointment and terms of office of auditor-general**

sch 1 ss renum R7 LA

#### **Appointment**

sch 1 s 1.1 am 2001 No 52 s 6; 2002 No 30 amdt 3.45; A2008-28  
amdt 3.34

#### **Resignation**

sch 1 s 1.2 om 2002 No 30 amdt 3.46  
(prev s 1.3) renum as s 1.2 R7 LA

#### **Retirement**

sch 1 s 1.3 (prev s 1.4) renum as s 1.3 R7 LA

#### **Removal from office**

sch 1 s 1.4 (prev s 1.5) am A2008-28 amdt 3.33, amdt 3.34  
renum as s 1.4 R7 LA  
am A2009-49 amdt 3.10

#### **Acting auditor-general**

sch 1 s 1.5 (prev s 1.6) sub 2002 No 30 amdt 3.47  
renum as s 1.5 R7 LA

#### **Application of Legislation Act, div 19.3.3**

sch 1 s 1.6 (prev s 1.7) ins 2002 No 11 amdt 2.4  
renum as s 1.6 R7 LA

**Application of Legislation Act, div 19.3.3**

sch 1 s 1.7 renum as s 1.6 R7 LA

**Dictionary**

dict

ins 2002 No 30 amdt 3.48  
 am A2004-72 s 16; A2009-49 amdt 3.11  
 def **controlling interest** reloc from s 3 2002 No 30 amdt 3.38  
 def **Financial Management Act** reloc from s 3 2002 No 30  
 amdt 3.38  
 def **independent auditor** reloc from s 3 2002 No 30 amdt 3.38  
 def **performance audit** reloc from s 3 2002 No 30 amdt 3.38  
 def **protected information** ins A2004-72 s 17  
 def **public accounts committee** reloc from s 3 2002 No 30  
 amdt 3.38  
 def **public sector company** reloc from s 3 2002 No 30  
 amdt 3.38  
 def **Public Sector Management Act** reloc from s 3 2002  
 No 30 amdt 3.38  
 def **responsible chief executive** reloc from s 3 2002 No 30  
 amdt 3.38  
 def **subsidiary** ins 2002 No 30 amdt 3.48  
 def **Territory entity** reloc from s 3 2002 No 30 amdt 3.38

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1997 No 90	1 March 1999
2	Act 2001 No 52	12 September 2001
3	Act 2002 No 11	30 May 2002
4	A2002-30	17 September 2002
5	A2004-9	13 April 2004
6	A2004-72	9 September 2004
7	A2008-28	26 August 2008

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