



Australian Capital Territory

Auditor-General Amendment Act 2004

A2004-72

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 New section 3B	2
5 Functions and powers Part 3, new note	2
6 Performance audits New section 12 (1A)	3
7 Section 12	3
8 Section 14	3
9 Section 15	7
10 Section 16	9
11 Section 19	9
12 Section 32	11
13 New sections 32A to 32D	12

2002 174B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

		Page
14	Confidentiality Section 34	14
15	Part 6	14
16	Dictionary, note 2	14
17	Dictionary, new definition of <i>protected information</i>	14



Australian Capital Territory

Auditor-General Amendment Act 2004

A2004-72

An Act to amend the *Auditor-General Act 1996*

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

2002 174B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Auditor-General Amendment Act 2004*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

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

4 New section 3B

insert

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.

**5 Functions and powers
Part 3, new note**

before section 9, insert

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

**6 Performance audits
New section 12 (1A)**

insert

- (1A) 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.

7 Section 12

renumber subsections when Act next republished under Legislation Act

8 Section 14

substitute

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 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) The regulations 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).

9 Section 15

substitute

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).

10 Section 16

substitute

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.

11 Section 19

substitute

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 Territory 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.

12 Section 32

substitute

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 32B (Disclosure of protected information);
 - (k) section 32C (Directions about protected information);
 - (l) section 32D (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.

13 New sections 32A to 32D

in part 6, insert

32A 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.

32B 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 32D for when s (1) does not apply.

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

32C 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.

32D Authorised disclosures of protected information

- (1) Section 32B (1) and section 32C (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 under the regulations; 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.

**14 Confidentiality
Section 34**

omit

15 Part 6

renumber sections when Act next republished under Legislation Act

16 Dictionary, note 2

insert

- entity
- exercise
- fail
- law, of the Territory
- Territory authority
- under

17 Dictionary, new definition of *protected information*

insert

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2004.

2 Notification

Notified under the Legislation Act on 8 September 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Auditor-General Amendment Bill 2004, which was passed by the Legislative Assembly on 26 August 2004.

Acting Clerk of the Legislative Assembly

© Australian Capital Territory 2004