

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUDITOR-GENERAL BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM
(Amendments to be moved on behalf of the Government)

(Circulated by Authority of the Minister for Finance,
the Honourable Kim C. Beazley, MP)

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OUTLINE

1 The *Auditor-General Bill 1994* is one of a package of three Bills (the other two being the *Financial Management and Accountability Bill 1994* and the *Commonwealth Authorities and Companies Bill 1994*) that were introduced into the House of Representatives on 29 June 1994, by the Minister for Finance, the Honourable Kim C. Beazley, MP. Together these Bills are to replace the Audit Act 1901.

2 After their first reading, the Minister successfully moved that the Bills be referred to the Joint Committee of Public Accounts (JCPA) for review and for an advisory report. The Committee reported to the House on 22 September 1994 (JCPA Report No.331 refers).

3 The proposed amendments to the *Auditor-General Bill 1994*, arise not only directly from the Government's consideration of JCPA Report No.331, but also, indirectly from it - in the identification of three minor changes, the desirability of which only became evident during the process of review and analysis of the Bill by that Committee.

4 The amendments are intended to cover obligations for timeliness in making appointments to the positions of Auditor-General and Independent Auditor, whenever either office becomes vacant; removing inconsistencies in relation to the scope of performance audits; minor technical corrections, including to cross references to other clauses; clarification of the practical requirements applying to the confidentiality of information and the handling of sensitive information; improving the procedural symmetry between audits by the Auditor-General and audits of the ANAO by the Independent Auditor; providing for a minimum term of appointment for the Auditor-General; and providing for consultations with the Chairperson of the Audit Committee of Parliament in the processes for the appointments to the positions of Auditor-General and Independent Auditor.

ADDITIONAL INFORMATION

5 The JCPA made one other recommendation to the effect that the Explanatory Memorandum for the Bill be amended in relation to clause 27, which provides that the Auditor-General's information-gathering powers (ie, to obtain information and access to premises) are not limited by other laws except to the extent that the other law expressly excludes the exercise of those powers by the Auditor-General. The JCPA wished the Explanatory Memorandum to be amended to indicate the nature of 'the other laws'. Accordingly, the Notes on Clauses that accompanied the Bill's introduction should be read as if paragraph 55 of those Notes contained the additional following words:-

"This requirement is to ensure that Parliament is expressly alerted to any restrictions that might be sought in the future that would limit the Auditor-General's capacity to carry out his or her statutory functions. That is, it is not intended that Acts which contain merely general or blanket privacy provisions, restricting access to data or premises to

other than specified persons, should apply to the Auditor-General in undertaking any such statutory function."

FINANCIAL IMPACT STATEMENT

6 The proposed amendments have no financial impact.

NOTES ON PROPOSED AMENDMENTS

ITEM (1)

Clause 7- Auditor-General

1 The purpose of subclause 7(2) is to place an obligation on the Executive Government to act expeditiously in filling the position of office of Auditor-General.

ITEMS (2) and (3)

Clause 15 - Commonwealth companies and subsidiaries

2 The proposed amendment preserves the principle reflected in subsection 48C(2) of the *Audit Act 1901* in relation to companies that are not wholly-owned Commonwealth companies.

ITEM(4)

Clause 16 - General performance audit

3 The Auditor-General may conduct a performance audit of a Commonwealth authority that is a GBE, or a wholly-owned Commonwealth company that is a GBE, but only if requested to do so by both Houses of Parliament or the responsible Minister. The proposed amendment is to remove the inconsistency that would otherwise occur in relation to the inclusion of GBEs with respect to general performance audits, that is, those audits that involve the examination or review of the operations of more than one agency, person or body on some service-wide aspect of public administration (say, for example, management of motor vehicle fleets).

ITEMS (5), (6) and (7)

Clause 17 - Auditee's comments on proposed report

4 The intention of these amendments is to broaden the scope of clause 17, under which the Auditor-General may be provided with written comments on proposed reports arising from a performance audit. The proposed amendments are to allow not only auditees to comment, but also other persons who may have a special interest in the report because of their particular working relationship with the audited body, such as contractors of that body.

ITEMS (8) and (9)

Clause 21 - Auditing standards

Clause 28 - Purpose for which information-gathering powers may be used

5 The proposed amendment (Item 8) removes the obligation on the Auditor-General to report breaches of his own auditing standards; such breaches, where they might be committed by ANAO staff, should more appropriately be reported on by the Independent Auditor arising from audits of the ANAO. The proposed amendment (Item 9) is a consequential amendment.

ITEM (10)**Clause 33 - Confidentiality of information**

6 The proposed amendment corrects an anomaly whereby auditees and others did not have the same restrictions for confidentiality as the Auditor-General would have in relation to information disclosed to them from the conduct of an audit. The need to correct that anomaly is highlighted by the broadened scope of persons to whom a proposed report of a performance audit may be given for comment - see Item (7) above. This is also relevant in the case of proposed reports of general performance audits where information relating to more than one agency or body might be disclosed.

ITEMS (11), (12), (13), and (14)**Clause 34 - Sensitive information not to be included in public reports**

7 The proposed amendments are to recast clause 34 so as to clarify the extent of the Auditor-General's discretion for disclosure of certain matters in a public report. The purpose of the amendments is to show that the question is intended to turn on whether or not it is concluded that the public disclosure of a particular matter would be contrary to the public interest, rather than on the characteristics of the matter concerned. Moreover, the public interest test is limited to conclusions based on reasons set out in proposed subclause (1A).

ITEM (15)**Clause 38 - Independent Auditor**

8 The proposed amendment imposes a requirement for expeditiousness by the Executive Government in filling a vacancy in the office of Independent Auditor, mirroring that applying in relation to filling a vacancy in the office of Auditor-General - see Item (1) above.

ITEM (16)**Clause 41 - Performance audit**

9 The proposed amendment is intended to create a parallel in the Independent Auditor's responsibilities to the Auditor-General in making available for comment proposed reports of performance audits of the ANAO, so as to mirror the Auditor-General's responsibilities to auditees in that same regard.

ITEMS (17), (18) and (19)**Schedule 1, Clause 1 - Appointment of Auditor-General****Schedule 2, Clause 1 - Appointment of Independent Auditor**

10 The proposed amendment (Item 17) sets a minimum period of 5 years for which a person may be appointed as Auditor-General. The intention is to support continuity in office as a particularly important and desirable objective for this statutory position.

11 The proposed amendments (Items 18 and 19) effect the inclusion of the Chairperson of the Audit Committee of the Parliament amongst those whom the responsible Minister is required to consult prior to making a recommendation to the Governor-General for an appointment to the position of either the Auditor-General or the Independent Auditor.



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