

# Auditor General Amendment Bill 2022

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## **Auditor General Amendment Bill 2022**

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Western Australia

LEGISLATIVE ASSEMBLY

## **Auditor General Amendment Bill 2022**

**A Bill for**

**An Act to amend the *Auditor General Act 2006*.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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1   **1.     Short title**

2           This is the *Auditor General Amendment Act 2022*.

3   **2.     Commencement**

4           This Act comes into operation as follows —

- 5           (a) sections 1 and 2 — on the day on which this Act  
6                receives the Royal Assent;
- 7           (b) the rest of the Act — on a day fixed by proclamation,  
8                and different days may be fixed for different provisions.

9   **3.     Act amended**

10          This Act amends the *Auditor General Act 2006*.

11   **4.     Section 4 amended**

12          In section 4(1) insert in alphabetical order:

13

14                    ***Parliament*** includes —

- 15           (a) each House of Parliament; and
- 16           (b) the members of each House of Parliament; and
- 17           (c) the committees of each House of Parliament  
18                and joint committees of both Houses of  
19                Parliament;
- 20

21   **5.     Section 4A inserted**

22          After section 4 insert:

23

24           **4A.    Parliamentary privilege not affected**

- 25           (1) Nothing in this Act limits or otherwise affects the  
26                operation of the *Parliamentary Privileges Act 1891* or  
27                the *Parliamentary Papers Act 1891*.

1           (2) Except as authorised by Parliament, a power, right or  
2           function conferred under this Act must not be exercised  
3           if, or to the extent that, the exercise would relate to a  
4           matter determinable by Parliament.  
5

6   **6.    Section 7 amended**

7           Delete section 7(4).

8   **7.    Section 25 amended**

9           Delete section 25(2)(a) and (b) and insert:

- 10
- 11                   (a) consult regarding the terms of the report  
12                   with —
- 13                       (i) the Treasurer; and  
14                       (ii) the agency or audited local subsidiary,  
15                       as the case may be; and  
16                       (iii) a person who is taken to have a special  
17                       interest in the report under  
18                       section 36B(5); and  
19                       (iv) any other person who, in the Auditor  
20                       General’s opinion, has a special interest  
21                       in the report;
- 22                   and
- 23                   (b) by written notice, invite each person consulted  
24                   under paragraph (a) to make submissions or  
25                   comments on the terms of the report before a  
26                   specified day, being not more than 14 days after  
27                   the person is consulted.  
28

1 **8. Part 4 Division 2 replaced**

2 Delete Part 4 Division 2 and insert:

3

4 **Division 2 — Information gathering powers and duties**

5 **Subdivision 1 — Preliminary**

6 **32A. Terms used**

7 (1) In this Division —

8 *audit request* means —

9 (a) a notice under section 33B(2); or

10 (b) a direction under section 34(1);

11 *business day* means a day that is not a Saturday, a  
12 Sunday or a public holiday;

13 *Director General* means the chief executive officer of  
14 the department of the Public Service principally  
15 assisting the Premier;

16 *material* means —

17 (a) records; and

18 (b) information contained or recorded in, or  
19 obtained or extracted from, records;

20 *parliamentary privileged material* means material the  
21 disclosure of which would, apart from any immunity of  
22 the Crown, infringe the privileges of Parliament;

23 *protected material* has the meaning given in  
24 subsection (2);

25 *record* has the meaning given in the *State Records*  
26 *Act 2000* section 3(1);

27 *requested material* means material to which an audit  
28 request relates;

- 1                    *restricted material* has the meaning given in  
2                    subsection (3);
- 3                    *specified person* has the meaning given in  
4                    section 36B(1).
- 5                    (2) Whether or not it is restricted material, an item of  
6                    requested material is *protected material* if —
- 7                            (a) it relates to proceedings, deliberations or  
8                            decisions of Cabinet or of any committee of  
9                            Cabinet (including proposed or contemplated  
10                            proceedings, deliberations or decisions); or
- 11                            (b) its disclosure could —
- 12                                    (i) damage the security or defence of the  
13                                    Commonwealth or the security of the  
14                                    State; or
- 15                                    (ii) divulge any material communicated in  
16                                    confidence by or on behalf of the  
17                                    Commonwealth, a State or a Territory  
18                                    that relates to the security or defence of  
19                                    the Commonwealth or the security of  
20                                    any State or Territory.
- 21                    (3) Whether or not it is protected material, an item of  
22                    requested material is *restricted material* if —
- 23                            (a) it is subject to legal professional privilege; or
- 24                            (b) its disclosure could —
- 25                                    (i) prejudice the investigation of a  
26                                    contravention or possible contravention  
27                                    of the law; or
- 28                                    (ii) prejudice the fair trial of a person; or
- 29                                    (iii) damage relations between the  
30                                    Government of the State and a  
31                                    government of the Commonwealth,  
32                                    another State or a Territory; or

- 1 (iv) reasonably be expected to unfairly  
2 prejudice the commercial interests of a  
3 person or body.

4 **33. Auditor General may authorise people to perform**  
5 **functions**

6 The Auditor General may, by written notice, authorise  
7 a person (an *authorised person*) to perform functions  
8 under this Division.

9 **33A. Delegation**

- 10 (1) A specified person may, by written notice, delegate to a  
11 person any power or duty of the specified person under  
12 this Division.
- 13 (2) A person to whom a power or duty is delegated in  
14 accordance with this section cannot delegate that power  
15 or duty.
- 16 (3) A person exercising or performing a power or duty that  
17 has been delegated to the person in accordance with  
18 this section is taken to do so in accordance with the  
19 terms of the delegation unless the contrary is shown.
- 20 (4) Nothing in this section limits the ability of a specified  
21 person to perform a function through an officer or  
22 agent.

23 **Subdivision 2 — Information gathering powers**

24 **33B. Access to information, records, systems, money and**  
25 **property**

- 26 (1) In this section —  
27 *premises* means any land or place;  
28 *written authority*, in relation to an authorised person,  
29 means a written notice signed by the Auditor General



- 1                   that states that the person is authorised to exercise  
2                   powers under this Division.
- 3           (2) For the purpose of an audit the Auditor General or an  
4           authorised person may, upon notice to any person, at  
5           all reasonable times —
- 6                   (a) access, search, take extracts from and make  
7                   copies of information, records and systems that  
8                   are in the possession or control of that person  
9                   and that the Auditor General considers to be  
10                  relevant to the audit; or
- 11                  (b) access public money, other money or statutory  
12                  authority money in the possession or control of  
13                  that person; or
- 14                  (c) access public property or other property in the  
15                  possession or control of that person.
- 16           (3) No search or other fee is payable by the Auditor  
17           General in respect of the exercise of powers under this  
18           section.
- 19           (4) Subject to subsection (6), the Auditor General or an  
20           authorised person may, at all reasonable times, enter  
21           and remain on any premises in order to exercise powers  
22           under this section.
- 23           (5) If an authorised person enters, or proposes to enter,  
24           premises under this section, the occupier must not,  
25           without reasonable excuse, fail to provide the  
26           authorised person with all reasonable facilities for the  
27           effective exercise of powers under this section.  
28           Penalty for this subsection: a fine of \$50 000.
- 29           (6) An authorised person is not entitled to enter or remain  
30           on premises if the authorised person fails to produce a  
31           written authority on being asked by the occupier to  
32           produce proof that the entry is authorised.

- 1           (7) This section has effect subject to Subdivision 3.
- 2           **34. Power to obtain information**
- 3           (1) For the purpose of an audit the Auditor General may,  
4           by written notice, direct a person to do all or any of the  
5           following —
- 6               (a) provide the Auditor General with any  
7               information or explanation that the Auditor  
8               General requires;
- 9               (b) attend and give evidence before the Auditor  
10              General or an authorised person;
- 11              (c) produce to the Auditor General any records in  
12              the possession or under the control of the  
13              person;
- 14              (d) give access to information, records, systems,  
15              money or property so as to facilitate the  
16              exercise of powers under section 33B.
- 17           (2) A direction under subsection (1) must specify a  
18           reasonable time for compliance, which must be not less  
19           than 10 business days after the direction is received.
- 20           (3) The Auditor General may —
- 21               (a) direct that the information, explanation or  
22               answers to questions be given either orally or in  
23               writing (as the Auditor General requires); and
- 24               (b) direct that the information, explanation or  
25               answers to questions be verified or given on  
26               oath or affirmation that the information or  
27               evidence the person will give will be true.
- 28           (4) The Auditor General or an authorised person may  
29           administer an oath or affirmation for the purposes of  
30           this section.

1 (5) A person who, without reasonable excuse, fails to  
2 comply with a direction under this section commits an  
3 offence.

4 Penalty for this subsection: a fine of \$50 000.

5 (6) This section has effect subject to Subdivision 3.

6 **35. Preparation of s. 24 report**

7 The powers conferred by sections 33B and 34 may be  
8 exercised when preparing a report under section 24(1),  
9 but only for the purpose of forming the opinion  
10 required by section 24(2)(c) to be included in the  
11 report.

12 **36. Duty to give information overrides other duties and**  
13 **rights**

14 (1) A person is not excused from complying with a  
15 direction under section 34 on the ground that doing so  
16 might tend to incriminate the person.

17 (2) A person must comply with a direction under  
18 section 34 despite any duty of secrecy or  
19 confidentiality imposed by law.

20 (3) If a person complies with a direction under section 34,  
21 neither the fact that the person complies nor anything  
22 obtained as a direct or indirect result of the person  
23 complying is admissible in evidence against the person  
24 in any civil or criminal proceedings except —

25 (a) proceedings for an offence against this  
26 Subdivision; or

27 (b) proceedings under *The Criminal Code*  
28 Chapter XX.

29 (4) Despite subsection (3), the person may, in any civil or  
30 criminal proceedings, be asked about an answer under  
31 the *Evidence Act 1906* section 21.

- 1           (5) If, in response to an audit request, a person discloses  
2           material in good faith to the Auditor General or an  
3           authorised person —
- 4               (a) the person incurs no civil or criminal liability in  
5               respect of the disclosure; and
- 6               (b) the disclosure is not to be regarded as a breach  
7               of any duty of secrecy or confidentiality  
8               imposed on the person by law.

9           **Subdivision 3 — Information gathering powers in relation to**  
10           **certain material**

11           **36A. Audit requests relating to parliamentary privileged**  
12           **material**

13           A person has a reasonable excuse for the purposes of  
14           section 33B(5) or 34(5) for failing to provide facilities  
15           or failing to comply with a direction, as the case may  
16           be, in relation to requested material if —

- 17               (a) the person believes in good faith that the  
18               requested material is parliamentary privileged  
19               material; and
- 20               (b) Parliament has not authorised the provision of  
21               the requested material to the Auditor General.

22           **36B. Audit requests relating to protected material and**  
23           **restricted material**

- 24           (1) In this section —
- 25           *specified person*, in relation to an item of protected  
26           material or restricted material, means —
- 27               (a) a person specified in the regulations in relation  
28               to the item for the purposes of this section; or
- 29               (b) if no person is specified in the regulations in  
30               relation to the item, a person in possession or  
31               control of the item.

- 
- 1           (2) An audit request relating to an item of protected  
2           material or restricted material must be addressed to the  
3           specified person for that item.
- 4           (3) The regulations may make further provision about  
5           audit requests relating to protected material or  
6           restricted material, including provision about —
- 7               (a) the form and content of the audit request; and  
8               (b) the rights and obligations of the specified  
9               person; and
- 10              (c) the rights and obligations of a person in  
11              possession or control of the material; and  
12              (d) processes and procedures to be following in  
13              making, or in responding to, the audit request.
- 14           (4) The specified person is not excused from responding to  
15           an audit request on the ground that it relates to  
16           protected material or restricted material that —
- 17               (a) is within the specified person’s possession or  
18               control; or  
19               (b) is provided to the specified person.
- 20           (5) A specified person who responds to an audit request is  
21           taken to have a special interest in the report on the  
22           audit for the purposes of section 25(2)(a).
- 23           (6) Subsection (7) applies if —
- 24               (a) an audit request is addressed to a person who is  
25               in possession or control of material; and
- 26               (b) that person believes in good faith that material  
27               to which the audit request relates is protected  
28               material or restricted material; and
- 29               (c) that person is not the specified person for an  
30               audit request relating to protected material or  
31               restricted material, as the case may be.

1           (7) The person has a reasonable excuse for the purposes of  
2           section 33B(5) or 34(5) for failing to provide facilities  
3           or failing to comply with a direction, as the case may  
4           be, in relation to the material believed to be protected  
5           material or restricted material.

6           **36C. Extracts from and copies of protected material and**  
7           **restricted material**

8           (1) Despite anything else in this Act, the Auditor General  
9           or an authorised person must not take extracts from, or  
10          make copies of, an item of protected material or  
11          restricted material, except with the written approval  
12          of the specified person in relation to that item.

13          (2) If the Auditor General takes or receives an extract from  
14          or copy of protected material or restricted material for  
15          the purposes of an audit, whether under this Division or  
16          otherwise, when the audit is completed the Auditor  
17          General must —

18                  (a) give the extract or copy to the person in  
19                  possession or control of the material; or

20                  (b) destroy the extract or copy and inform the  
21                  person in possession or control of the material  
22                  that it has been destroyed.

23                  **Subdivision 4 — Confidentiality of certain material**

24          **36D. Confidential material must not be disclosed**

25          (1) In this section —

26                  *confidential material* means any of the following —

27                          (a) parliamentary privileged material;

28                          (b) protected material;

29                          (c) restricted material;

30                          (d) material that for any other reason could form  
31                          the basis for a claim by the State in a judicial

- 
- 1 proceeding that the material should not be  
2 disclosed;
- 3 (e) material the disclosure of which the Auditor  
4 General considers would be contrary to the  
5 public interest;
- 6 **relevant person** means any of the following —
- 7 (a) the Auditor General;
- 8 (b) a person employed in the OAG;
- 9 (c) a person appointed to assist the Auditor General  
10 in respect of a particular matter;
- 11 (d) the independent auditor.
- 12 (2) Despite anything else in this Act, a relevant person  
13 must not —
- 14 (a) disclose, or disclose the substance of,  
15 confidential material to any person; or
- 16 (b) give any person access to confidential material;  
17 or
- 18 (c) disclose, or disclose the substance of,  
19 confidential material in any report or  
20 communication to Parliament.
- 21 (3) Subsection (2) does not constrain disclosures made, or  
22 access given, by a relevant person to another relevant  
23 person for the purposes of this Act.
- 24 (4) Subsection (2) does not affect the duty of the Auditor  
25 General —
- 26 (a) to notify as required by the *Corruption, Crime  
27 and Misconduct Act 2003* section 28 or 45H; or
- 28 (b) to comply with a notice issued under the  
29 *Corruption, Crime and Misconduct Act 2003*  
30 section 94 or 95; or

- 1 (c) to comply with an order to produce issued  
2 under the *Criminal Investigation Act 2006*  
3 section 53.
- 4 (5) Subsection (2)(c) does not prevent the Auditor General  
5 from including in a report to Parliament a statement  
6 that confidential material, or information about the  
7 substance of confidential material, has been omitted  
8 from the report.
- 9 **36E. Reporting to Premier, Treasurer and responsible**  
10 **Minister**
- 11 (1) In this section —  
12 ***responsible Minister***, in relation to a person, means —
- 13 (a) if the person is a Minister of the State — that  
14 Minister; or
- 15 (b) if the person is an agency or an organisation as  
16 those terms are defined in the *Public Sector*  
17 *Management Act 1994* section 3(1) — the  
18 Minister responsible for the administration of  
19 that agency or organisation; or
- 20 (c) if the person is a local government or a regional  
21 local government — the Minister responsible  
22 for the administration of the *Local Government*  
23 *Act 1995*; or
- 24 (d) in any other case — the Minister responsible  
25 for the administration of a written law under  
26 which the person is established or continued, or  
27 under which functions are conferred on the  
28 person.
- 29 (2) If, because of section 36D(2)(c), the Auditor General  
30 decides not to make a report to Parliament, or omits  
31 confidential material, or reference to confidential



- 1 material, from a report to Parliament, the Auditor  
2 General may —
- 3 (a) prepare a report under this subsection that  
4 includes the material or the reference; and
- 5 (b) subject to and in accordance with the  
6 regulations, give a copy of the report to —
- 7 (i) the Premier; and  
8 (ii) the Treasurer; and  
9 (iii) a responsible Minister in relation to the  
10 person in possession or control of the  
11 confidential material; and  
12 (iv) the Director General.

13 **37. Information subject to notice under *Financial***  
14 ***Management Act 2006 s. 82(1)***

- 15 (1) If the Minister decides that it would not be in the public  
16 interest for material that is the subject of a notice under  
17 the *Financial Management Act 2006* section 82(1) to  
18 be disclosed and advises the Auditor General of that  
19 decision, the Auditor General must not disclose the  
20 information in any report or communication to  
21 Parliament.
- 22 (2) This section applies in addition to, and does not  
23 derogate from the operation of, section 36D.

24 **37A. Preservation of privileges and immunities**

- 25 Providing, or giving access to, material to the Auditor  
26 General for the purposes of this Act, or disclosing  
27 material to Parliament, to a Minister or to the Director  
28 General under this Act, is not a waiver of, and does not  
29 otherwise impair, any of the following in relation to  
30 that material —
- 31 (a) parliamentary privilege;

- 1 (b) legal professional privilege;  
2 (c) public interest immunity;  
3 (d) any confidentiality attaching to protected  
4 material or restricted material;  
5 (e) any other confidentiality, privilege or  
6 immunity.

7 **Subdivision 5 — Transitional provision**

8 **37B. Transitional provision for *Auditor General***  
9 ***Amendment Act 2022***

- 10 (1) In this section —  
11 ***commencement day*** means the day on which the  
12 *Auditor General Amendment Act 2022* section 8 comes  
13 into operation;  
14 ***former Division*** means Part 4 Division 2 as in force  
15 immediately before commencement day.
- 16 (2) The provisions of this Division as inserted by the  
17 *Auditor General Amendment Act 2022* apply in relation  
18 to —
- 19 (a) an audit commenced before, and not completed  
20 by, commencement day; and  
21 (b) a record created before commencement day;  
22 and  
23 (c) material to which access is given under  
24 section 35, or that is provided under section 34,  
25 of the former Division before commencement  
26 day; and  
27 (d) an exercise of rights under section 35 of the  
28 former Division for the purpose of an audit  
29 commenced before, and not completed by,  
30 commencement day; and

- 1 (e) a direction given under section 34 of the former  
2 Division before, and not fully complied with  
3 by, commencement day; and  
4 (f) a report prepared before, but not signed by the  
5 Auditor General by, commencement day.  
6

7 **9. Section 46 amended**

- 8 (1) In section 46(2) in the Penalty delete “Penalty:” and insert:  
9

10 Penalty for this subsection:  
11

- 12 (2) In section 46(4) —

- 13 (a) delete “a summary of findings” and insert:  
14

15 a draft of a report or a summary of its findings  
16

- 17 (b) delete “the summary of findings” and insert:  
18

19 the draft or summary  
20

- 21 (c) in paragraph (b) delete “the summary of findings,” and  
22 insert:  
23

24 the draft or summary,  
25

- 26 (3) In section 46(4) in the Penalty delete “Penalty:” and insert:  
27

28 Penalty for this subsection:  
29

**s. 9**

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1       (4) After section 46(4) insert:

2

3               (5) This section applies in addition to, and does not  
4               derogate from the operation of, section 36D.

5

=====