



Office of the Auditor General Western Australia
Audit Practice Statement

Serving the Public Interest





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Local government audit

On 28 October 2017, the Auditor General for Western Australia received the mandate to:

- audit the annual financial report of WA local governments, related entities and subsidiaries
- conduct performance audits of local governments
- perform supplementary audits requested by the Minister
- report to Parliament on the results of financial and performance audits.

We are currently updating this Audit Practice Statement to reflect the new mandate; however, the majority of information is still relevant to local governments.

Further information is available on our website www.audit.wa.gov.au



Vision

Serving the public interest by an informed Parliament and community

Introduction

We have issued this audit practice statement in accordance with section 24 of the *Auditor General Act 2006*. This section of the Act requires the Auditor General to inform Parliament of any major change in the extent or character of the audit function.

This statement replaces the February 2010 *Audit Practice Statement*. This statement offers an updated, concise, and consolidated summary of:

- why we audit
- what we audit
- how we audit.

For more information about our Office and our functions, please refer to our [Auditing in the Public Interest](#) document on the Office of the Auditor General website at www.audit.wa.gov.au.

Why we audit

In the Westminster system of government, all authority for government activity ultimately stems from Parliament. Public sector agencies are therefore accountable to Parliament for use of public resources and the powers conferred on them by Parliament.

To assist it to oversee the public sector, Parliament seeks independent assurance that agencies are operating, and accounting for their performance, in accordance with Parliament's purpose. It is the Auditor General's role to provide this assurance.

It is the role of the Auditor General to:

- perform an audit on each public sector agencies' annual financial statements
- perform an audit of key performance indicators adopted by public sector agencies and assess whether they are relevant, appropriate and fairly represent agency performance
- perform an audit on the adequacy of controls exercised by the agency to provide reasonable assurance that the receipt, expenditure, and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions

- assess public sector agencies' internal controls and compliance with legislation and policy
- evaluate the efficiency and effectiveness of public sector agencies' services and programs
- have regard to requests for an audit from the Treasurer (under specific circumstances and in relation to specific matters)
- have regard to requests for an audit from committees of Parliament including the Public Accounts Committee or the Estimates and Financial Operations Committee (under specific circumstances and in relation to specific matters)
- provide an opinion on ministerial notifications given under section 82 of the *Financial Management Act 2006* (decision by Minister to not provide information to Parliament)
- certify financial and statistical information produced by departments and statutory authorities
- report to Parliament on matters of significance arising from audits or relating to the Auditor General activities.

Independent reports tabled in Parliament by the Auditor General assist Members of Parliament and the public to have a better understanding of the performance of public sector agencies. These reports, together with recommendations provided to agencies, assist agency management to improve governance and control environments and the cost effectiveness and responsiveness of its services.

Adverse comments, recommendations, or audit qualifications by the Auditor General alert Parliament and the public to matters of concern.

Positive reports and opinions add credibility to an agency's assertions of good performance, increasing Parliament and community confidence.

What we audit

In the last financial year the Auditor General audited a Western Australian public sector of over 137 000 employees with combined assets in excess of \$218 billion.

Organisations and accounts audited by the Auditor General include:

- state government departments
- statutory authorities
- state-owned corporations
- entities controlled by public sector agencies
- entities performing functions on behalf of public sector agencies
- Public Ledger – the Consolidated Account, Treasurer's Advance Account and Treasurer's special purpose accounts
- Annual Report on State Finances.

For a comprehensive list of audited agencies please refer to our current annual report at www.audit.wa.gov.au.

Types of audits

The Auditor General undertakes the following five types of audits.

Financial statements audits

These audits provide Parliament with independent assurance that agencies have based their financial statements on proper accounts, and have fairly presented their operating results, cash flows and financial position at the end of the financial reporting period, in accordance with Treasurers Instructions, Australian Accounting Standards and other mandatory professional reporting requirements.

For most agencies, these audits also provide assurance that there are effective controls in place to ensure the receipt, expenditure, and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions.

Key performance indicator audits

Treasurer's Instruction 904 mandates the reporting of agency key performance indicators in annual reports.

Performance indicators allow agencies to measure, monitor, evaluate, report and improve on their performance.

The audit of KPIs of most agencies involves reviewing the performance measures adopted by public sector entities and providing independent assurance regarding the extent to which key performance indicators are relevant and appropriate to assist users assess agency performance and fairly represent indicated performance for the period under review.

The Auditor General's audit of performance indicators differs from financial audits in that the audit opinion not only addresses whether the indicators fairly represent indicated performance for the period but also provides an opinion whether or not the indicators are relevant and appropriate having regard to the purpose.

Performance audits

There are two types of performance audits the Auditor General undertakes in accordance with section 18 of the *Auditor General Act 2006* – narrow scope and broad scope performance audits.

Narrow scope performance audits

Narrow scope performance audits assess the efficiency or effectiveness of specific aspects of agency performance, agencies' internal controls and compliance with legislation, policy and good practice. Such audits aim to determine:

- opportunities for improving efficiency or effectiveness
- compliance with legislation, public sector policies, an agency's own internal policies and accepted good practice
- instances of inefficiency, waste or extravagance
- the adequacy of internal controls

- the functionality of computerised information systems including business continuity and management of risks
- good management principles and practices applicable to the wider public sector.

Broad scope performance audits

Broad scope performance audits evaluate the efficiency and effectiveness of public sector agencies, services and programs. Such audits aim to:

- identify good practices as well as deficiencies to recommend ways of improving efficiency and effectiveness
- encourage and assist agencies to remedy deficiencies by identifying ways of improving operations and procedures
- identify and communicate good management principles and practices that are applicable to the wider public sector.

Requests from the Treasurer

The Auditor General may audit any accounts specifically requested by the Treasurer. These requests generally arise when government has given a grant or advance of money to a person for a specific purpose. The Treasurer may request the Auditor General to audit the accounts of that person to determine if they have used the money appropriately for the purpose of the grant or advance.

These audits are done in accordance with section 19 of the *Auditor General Act 2006*.

Audit requests from the committees of Parliament

The Auditor General gives serious regard to the audit priorities of Parliament and in particular, to requests from either house of Parliament, the Public Accounts Committee or the Estimates and Financial Operations Committee (section 8 and section 20 of the *Auditor General Act 2006*).

The Auditor General formally invites the Public Accounts Committee and the Estimates and Financial Operations Committee to suggest audits for inclusion in our forward program but also welcomes suggestions from the other committees of Parliament.

Prior to undertaking an audit requested by a committee, we will advise it of our intended lines of inquiry and then keep the committee informed of our progress.

Non audit work

Research

A less significant area of work within the Office of the Auditor General is the work involved on research projects.

We do these projects to increase capacity and knowledge, with the results being used by other government agencies, possibly being tabled in Parliament and then for it to be included in a library for access by the community. Such research informs the Auditor General's practice and communicates issues.

How we audit

General principles

In achieving our purpose of 'serving the public interest', we follow the principles of:

- **integrity** – we conduct our business in an independent, professional and ethical manner. We apply an open and honest approach to our stakeholders
- **quality** – we provide credible work that makes a difference. We take pride in our work and strive to deliver above expectations, using continuous improvement opportunities to improve our efficiency and effectiveness
- **respect** – we value the contribution of our people, our clients and the community and encourage a collaborative approach to our work
- **compliance** – we conduct all audits in accordance with applicable Auditing Standards
- **fairness** – we approach all audits in a fair and constructive way
- **professional judgement** – we report matters of significance arising from audits to Parliament.

Common elements

There are some common elements to all audits performed within our Office: quality, communication and collaboration, human resources and methodology.

QUALITY	Independence	<p>The Auditor General for Western Australia is a statutory officer with responsibility for auditing the state public sector.</p> <p>The Governor appoints the Auditor General for a non-renewable term of 10 years.</p> <p>The Auditor General reports directly to Parliament.</p> <p>This independence is the cornerstone of public sector audit and the Auditor General must be free from pressure, influence or interference from any source that may erode or perceive to erode that independence.</p> <p>The Auditor General is the Accountable Authority and Chief Executive Officer of the Office of the Auditor General, which is a public sector department established to support the Auditor General.</p> <p>Subject to the <i>Auditor General Act 2006</i> and other written laws, the Auditor General has complete discretion in the performance of her functions.</p>
	Audit evidence	<p>We gather credible evidence to form our conclusions and recommendations.</p> <p>Audit employees gather information and evidence from a range of sources including agency records, data analysis, interviews with relevant staff members and surveys or client questionnaires.</p> <p>Audit work may also include discussions with special interest groups, gathering and analysing information and special studies.</p>
	Access to information	<p>Under the Auditor General Act, audit employees have unrestricted access to information held by agencies, irrespective of any restrictions on disclosure imposed on those agencies by other legislation such as secrecy and commercial in confidence provisions.</p> <p>We ensure confidentiality of audit files and working papers through strict provisions of the Auditor General Act and exemption from key confidentiality sections of the <i>Freedom of Information Act 1992</i>.</p>
	Acting on recommendations of the Auditor General	<p>The Auditor General has no authority to enforce the adoption of recommendations arising from an audit.</p> <p>While an audit can be a catalyst for positive change, the Auditor General cannot, and should not, be seen as the implementer of such change. This remains the responsibility of agency management, Executive Government and ultimately Parliament.</p> <p>The Public Accounts Committee asks agencies to advise it of their progress in implementing the Auditor General's performance audit recommendations and may follow up the report in detail.</p>
	Accountability	<p>With independence and wideranging powers comes the responsibility to undertake audits efficiently, effectively and in compliance with clarity auditing standards.</p> <p>A number of internal and external quality mechanisms are in place to help us measure our compliance with the needs of Parliament and audited agencies. These include:</p> <ul style="list-style-type: none"> • internal quality reviews performed by our Technical and Audit Quality unit • external peer review of the audit files by other Australasian Council of Auditors-General audit offices or independent contractors • self-assessment against a framework agreed to by the Australasian Council of Auditors-General.

Table 1

COMMUNICATION AND COLLABORATION

<p>Agency</p>	<p>Effective communication with agencies is a vital part of the audit process. To achieve this we:</p> <ul style="list-style-type: none"> • hold entry interviews with the client to clarify the audit scope, confirm our understanding of the entity, plan the audit process and agree on the communication protocols • progressively discuss significant findings and emerging issues with the agency's CEO and/or nominated contact officer • issue a formal management letter at the interim (where applicable) and final audit visit to report to those charged with governance and management the results of the audit process • hold exit interviews with management and those charged with governance to report our results, finalise the audit and confirm what can be improved.
<p>Parliament</p>	<p>Under section 24 of the Auditor General Act the Auditor General is required to report to Parliament at least once a year on the results of audits that, in their opinion, are of such significance as to require reporting. These reports may include matters of significance arising from assurance audits and performance audits. In addition, the Auditor General may submit a report to Parliament on any performance audit.</p> <p>These reports:</p> <ul style="list-style-type: none"> • often highlight issues of importance to Parliament and often generate considerable parliamentary and community debate • may include information and/or recommendations related to the audit, but must set out the reasons for all opinions expressed. <p>We offer entities and officials natural justice and procedural fairness as we finalise our reports.</p> <p>Audit findings and recommendations relate to areas such as:</p> <ul style="list-style-type: none"> • the degree to which value for money taxpayers dollars has been achieved • the effectiveness of organisations in meeting government objectives.
<p>Complaints and enquiries from the public</p>	<p>Members of the public make contact with the OAG suggesting areas for investigations and audit, often regarding specific actions taken by public sector agencies (referrals).</p> <p>While the referrals can be a crucial early warning of issues relating to the performance, probity and compliance of the sector, few of the matters by themselves lead directly to performance audits as they do not meet the Auditor General's criteria relating to materiality and risk. However, they can often serve as background and indicators of the need for an audit.</p> <p>The Office tries to assist referees by providing advice as to where they should direct their referral if the Auditor General cannot deal with it. This may include directing the complaint to who can best assist.</p>
<p>Other audit offices</p>	<p>The Auditor General regularly liaises with other audit offices within Australia to develop best practice and share knowledge management processes. This is done through the Australasian Council of Auditors-General.</p>
<p>Department of Treasury</p>	<p>Model financial statements developed by the Department of Treasury are considered by the Office. This is to ensure the model financial statements comply with all relevant Australian Accounting Standards.</p>

Table 2

HUMAN RESOURCES

Community involvement	Our senior management is encouraged to participate in community activities including committees, membership organisations, not for profit organisations and to take board positions. Their community involvement broadens their respect and appreciation for community issues.
Staff	The OAG attracts employees with a broad range and depth of experience in the private and public sector with academic, not-for-profit, international, legal, economical and political backgrounds.
Professional development	<p>The professional development of our employees is of paramount importance. We demonstrate this by:</p> <ul style="list-style-type: none"> • a dedicated professional development framework and officer responsible for a structured program which includes a graduate recruitment and induction program, coaching program for senior staff and supervisors and a formal mentor program for directors and assistant directors • the delivery of internal technical and non-technical, public sector and non-public sector training to develop employee knowledge in a broad range of areas • external training offered to employees to meet individual needs.
Contract auditors	<p>The Auditor General may appoint an appropriately qualified and experienced person who is not an employee of the OAG to be a contract auditor.</p> <p>Contract auditors are authorised auditors for the purpose of the <i>Financial Management Act 2006</i> and these standards.</p> <p>All work undertaken by contract auditors must be performed in accordance with the OAG contract for services and the auditing standards.</p> <p>Contract auditors are appointed by the Auditor General from a register of prequalified suppliers.</p> <p>Contract auditors must not engage in the provision of other services of any nature to a public sector agency that they are engaged to audit during the period of the contract for audit services without the prior written approval of the Auditor General.</p> <p>After the audit has been completed the OAG performs a review of the scope and quality of the audit to ensure that a high standard of ethical independence and compliance with the auditing standards are demonstrated. The audit is incorporated into our internal quality review process and then a recommendation is made to the Auditor General regarding the audit opinion.</p>

Table 3

METHODOLOGY	Risk based methodology or priority assessment	<p>Our financial statement audits use a risk based audit approach developed in partnership with other public sector audit offices in Australia and is designed for the public sector environment. It enables each audit program to be individually tailored for each agency's risk profile. The software program that the OAG uses is called IPSAM (Integrated Public Sector Audit Methodology).</p> <p>Our performance audits use a topic identification and selection process that integrates risk, materiality and coverage to establish priorities. The topic selection is the basis for the gathering and analysis of evidence to determine scope, lines of inquiry, criteria and availability and reliability of audit evidence.</p>
	Clarity Auditing Standards	Our methodology for all of the audit opinions that we issue are compliant with the Clarity Auditing Standards which are applicable for all audit engagements where the financial period/year begins on or after 1 January 2010.
	Technology	Technology is at the forefront of efficiency initiatives at the OAG. We equip our employees with modern laptops, software and wireless access and maintain a rigorous technology renewal program.
	Sampling methodology	<p>Our financial audit methodology is combined with IDEA (Interactive Data Extraction and Analysis) sampling technology to provide a robust audit framework which can be used to generate automated sample sizes from a data population and can also determine the quantity of the sample size.</p> <p>Our performance audits use sampling methodologies matched to the type of analysis required.</p>
	Continuous improvement	The OAG is committed to always look for areas where we can improve the efficiency of the audit methodology and audit process.

Table 4

Limitations

There are limitations to any external audit. Audits are not an absolute guarantee of the truth or reliability of agency information or the effectiveness of internal controls. They may not identify all matters of significance. This is because external audit techniques involve:

- use of reasonableness as a professional judgement
- materiality whereby absolute assurance is not provided
- use of sample testing
- assessment of the effectiveness of internal control structures
- assessment of risk
- limited scope in relation to fraud.

The primary responsibility for the detection, investigation and prevention of irregularities, fraud, illegal acts and errors always rests with agencies. Consequently, the agency's management is responsible for keeping proper accounts and maintaining adequate systems of internal control, preparing and presenting the financial statements and performance indicators, and complying with the *Financial Management Act 2006* and other relevant legislation.

The audit process

All of the audits we perform have similar elements, as demonstrated by the following table.

Phase	Level of activity	Financial statement audit	Performance audit
Planning	Preliminary planning	<p>Establish the terms of engagement and agency service requirements.</p> <p>Select the audit team.</p> <p>Generally we refer to the <i>Financial Management Act 2006</i>.</p>	<p>Topic selection process identifies priority topics. This process is further explained on page 14.</p> <p>Select the audit team.</p> <p>Proposal and plan for preliminary audit developed and approved.</p>
	Develop audit plan	<p>Assess and respond to engagement risk.</p> <p>Assess and respond to entity risk.</p> <p>Assess and respond to system risk.</p> <p>Understand the agency's business, control environment and accounting process.</p> <p>Perform preliminary analytical procedures and determine planning materiality.</p>	<p>Agency CEO notified of preliminary audit and lines of inquiry.</p> <p>Communication protocols agreed.</p> <p>Gather and analyse evidence to determine scope, lines of inquiry, criteria and availability and reliability of audit evidence.</p>
Execution	Perform audit plan	<p>Assess audit risk at the financial statement and assertion level and determine the audit strategy and audit plan including:</p> <ul style="list-style-type: none"> • specific risk identification • reliance on control activities • level of substantive testing including analytical review procedures and other substantive procedures. <p>Discuss audit strategy and plan, timetable and estimated cost with agency's audit committee/management at entrance interview.</p>	<p>Deliver preliminary audit report to confirm benefits of proceeding with audit now.</p> <p>Quality threshold 1 hot review and approval to proceed.</p> <p>Develop audit plan and program.</p>
Agency reporting	Conclude and report	<p>Perform subsequent events review, obtain management and solicitors representations, and prepare audit summary memorandum.</p> <p>Form audit opinion and report findings to agency in draft management letter.</p> <p>Form final audit opinion and report findings to agency in final management letter and at an exit interview with agency's audit committee/management.</p> <p>Provide audit opinion for inclusion in agency's annual report, for tabling in Parliament by the Minister within 90 days of agency's end of financial year.</p> <p>Advise Minister of management letter items raised with the agency.</p>	<p>Develop and test findings, conclusions and recommendations.</p> <p>Deliver indicative findings report (IFR). Quality threshold 2 hot review.</p> <p>Approval to proceed to draft summary of findings</p> <p>Discuss IFR/management letter findings with CEO or senior management in each agency reviewed.</p>

Phase	Level of activity	Financial statement audit	Performance audit
Tabling in Parliament	Draft summary of results	Prepare summary report on the results of all audit opinions issued and issues identified for each audit cycle (Audit Results Reports).	Deliver draft summary of findings. Quality threshold 3 hot review. Approval to release summary of findings to agency for response.
	Procedural fairness review	Agencies named in summary report presented with text for confirmation of facts and context.	Summary of Findings report presented to agency for confirmation of facts and context. Response from agency included in report or printed separately as appendix to report.
	Report to Parliament	Table Audit Results Report in Parliament. This is a summary of the results of all audit opinions issued for each audit cycle. Provide briefing for Members of Parliament after tabling.	Table report in Parliament and provide briefing for Members of Parliament after tabling.
Quality review	Quality review	Self-assessment of audit engagement quality. Quality review program of audit engagement. Seek feedback from audit employees, agency employees, contract auditors, and specialists for future audits. Internal peer review of audit files by Technical and Audit Quality team. External peer review of the audit files by other Australasian Council of Auditors-General audit offices or independent contractors.	Self-assessment of audit engagement quality. Quality review program of audit engagement. Seek feedback from audit employees, agency employees, contract auditors, and specialists for future audits Internal peer review of audit files by Technical and Audit Quality team. External peer review of the audit files by other Australasian Council of Auditors-General audit offices or independent contractors.
Follow-up	Follow-up audits	Financial statement audits are performed on an annual basis. Management letter points are followed up at the next audit visit.	Usually considered 2 to 3 years after a report is tabled. The decision will take into account any agency responses provided to parliamentary committee inquiries. Aims to provide Parliament with an assessment of changes that have occurred as a result of the initial audit. Not undertaken when circumstances have changed significantly since the original report or where reports from parliamentary committees or other sources have already provided an adequate assessment of agency progress.

Table 5

Topic selection

The interest in our reports to Parliament, and their impact, mean it is extremely important that we select the right topics for audit. Deciding what to audit is a key part of the Auditor General's independence and is not subject to direction from Parliament or government though the Auditor General does have regard for the priorities of Parliament. This independence has to be exercised responsibly, so we have processes in place which make sure that the selection of topics is objective, robust and transparent.

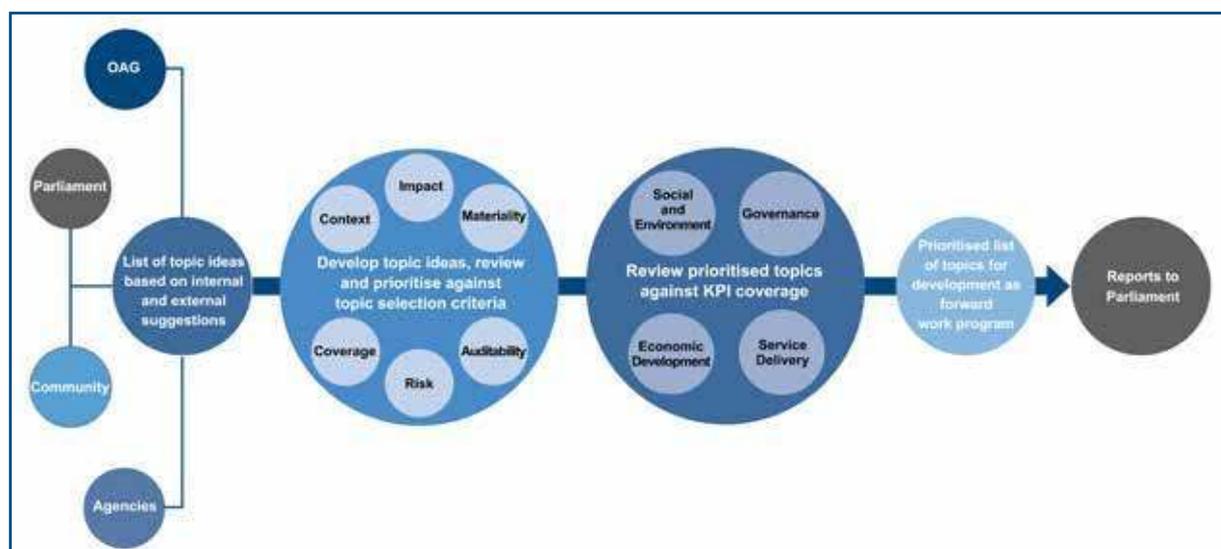


Figure 1: Topic selection framework

Each year we also receive many enquiries, expressions of concern and requests for audits and investigations from Members of Parliament and the community. The information we receive often helps us to identify topics for future audits. Our topic selection process allows us to balance these demands and to choose audits based on full consideration of their relative merits.

We collate all our potential topics for audit from which we select priority projects for our forward program. We aim to have a program that is balanced in its coverage, contains topics that matter to Parliament and the community, and that reflects how and where the state is spending taxpayer's money. We use the following criteria:

- **Materiality:** Does the activity or program have potentially significant financial, economic, social or environmental management implications?
- **Impact:** Is an audit likely to have a positive impact on the community? Could it lead to improvements across the public sector in efficiency, effectiveness or accountability? Would an audit address concerns within Parliament?
- **Risk:** Are there any indicators of known or suspected problems? Has the program changed significantly or undergone sudden expansion? Are issues emerging in related areas that could affect the area being considered for audit? Are there inherent risks that may not be well managed? Would any problems result in adverse consequences?
- **Context:** Is there strong community interest in the topic? Does the program have high political sensitivity or national importance? Is it the right time to review this area? Are issues already well known? Is there another review or audit in progress covering similar issues? Would an audit of the area reinforce other important current messages or themes?
- **Coverage:** Have we audited this area/agency recently? Does the topic help meet our objective of providing a balanced coverage of government portfolios and performance over time?

- **Auditability/Efficiency:** Is the area amenable to audit? Will information and evidence be available? Can a past methodology be used or will the methodology be reusable? Can analytical tools be used? Can it be audited with resources that match the impact and materiality of the topic or will it take disproportionate resources for limited benefit?

Our topic selection process also involves annually discussing our proposed forward audit program with our oversight committees – the Public Accounts Committee and the Estimates and Financial Operations Committee.

We publish both our current audits and our forward program on our website at www.audit.wa.gov.au/work-in-progress/. But, it is important to note that the forward audit program is not 'fixed in stone'. Changing circumstances and priorities require the program to be adaptive.

When the forward program changes, we will update our website. If we remove an audit from our forward program we will write to any parliamentary committees that have oversight of the subject matter and to the responsible agencies to explain our decision.

Performance audit methodology

Our performance audit methodology uses a phased approach to developing, planning and delivering audits. Using the methodology reduces risk, assures quality, and ensures compliance with relevant auditing standards.

Project progress through the phases is dependent on the approval of the Auditor General. In deciding whether to approve the start of the next phase the Auditor General is supported by an assessment of whether the audit meets the criteria set for the relevant quality threshold. The assessment is conducted independently by the Engagement Quality Control Reviewer.

Following the methodology, and meeting the requirements and objectives of each phase, provides assurance that individual audits are soundly based and maintain the Auditor General's objectivity, independence and credibility. Using the methodology is essential in demonstrating to external reviewers that our audits are well conducted, high quality and meet auditing standards.

A set of core professional values underpins our methodology. In every phase of an audit our approach is to be: objective, fair and balanced; professionally sceptical; evidence based and criteria driven; and consultative, open and clear.

Opinions on Ministerial Notifications

Introduction

Where a Minister decides not to provide certain information to Parliament concerning the conduct or operation of an agency (usually a decision taken in response to a parliamentary question), then certain requirements under the *Financial Management Act 2006* (FM Act) and the *Auditor General Act 2006* (AG Act) come into force.

Section 82 of the FM Act requires a Minister who decides that it is reasonable and appropriate not to provide certain information to Parliament, to give written notice of the decision to both Houses of Parliament and the Auditor General within 14 days of the decision.

Section 24 of the AG Act requires the Auditor General to provide an opinion to Parliament as to whether the Minister's decision was reasonable and appropriate.

How soon must the Minister send a notice?

Section 82 requires a Minister to issue the Auditor General with a notice within 14 days of making the decision not to provide the information to Parliament.

The receipt of a notice under section 82 of the FM Act triggers the Auditor General's obligation to provide an opinion to Parliament. However, the Auditor General may also take action if he becomes aware that a Minister has decided not to provide information to Parliament and has not issued a notice within the 14 day statutory requirement. Such action could for instance include contacting the Minister to advise them of the legislative requirement.

When are section 82 notices not required?

A notice under section 82 of the FM Act is unlikely to be required in the following circumstances:

- the Minister has advised that information will be provided at a later date and there is reasonable justification for the delay
- an answer has been provided in a previous question
- the information is already publicly available
- the requested information does not concern the conduct or operation of an agency as required by the FM Act
- the information is already being sought under the *Freedom of Information Act 1992* (however, refusal to provide information simply because it can be accessed under the Act is likely to be considered unreasonable and not appropriate)
- the Minister refers the request for information to another Minister, with responsibility for the agency in question.

If there is uncertainty about the above, then we recommend that the Minister issue a notice.

If a notice falls into one of the above categories, the Auditor General may form the view that the notice was unnecessary and an opinion pursuant to section 24(2)(c) of the AG Act is not required. In this event, the Auditor General will advise the Parliament of this assessment.

Methodology

All notices received under section 82 of the FM Act lead to an assessment. If the notice was valid, then an opinion on the reasonableness and appropriateness of a Minister's decision will be included in a report to Parliament as required by section 24(2)(c) of the AG Act.

The steps in our process are:

1. Determine whether the notice was required by section 82 of the FM Act. If the notice was not required (not valid), then the Auditor General will inform the Minister and Parliament.
2. If the notice was required, a review of the information in the notice, including the Minister's explanation for the decision, will occur. Our review will include discussions with ministerial and agency staff and examination of all relevant documents and advice provided to the Minister. For instance:
 - If the Minister's reason for not providing information was that it requires diversion of resources or a similar reason, then the Auditor General will consider whether the resources required to collect the information would be manifestly unreasonable. Our review would reflect on Parliament's need for information and a Minister's responsibility to ensure the efficient and effective use of their agencies' resources.
 - If the Minister's reason for not providing the information was that it is commercially confidential, then our assessment of the information will include considering whether non-disclosure meets the public interest test (see discussion below).
3. Based on this detailed review, an opinion will be provided that the Minister's decision was either:
 - reasonable and therefore appropriate, or
 - was not reasonable and therefore not appropriate.

Reporting

The Auditor General's opinion and the reasons for reaching the opinion are included in a report tabled in the Parliament. The tabling of the report occurs as soon as feasible after the opinion is determined.

Our natural justice process includes providing the draft report which incorporates the Auditor General's opinion to the Minister and the relevant agency for comment before tabling the report. As well, we will advise the Member of Parliament who sought the information of the report's tabling date.

Commercial-in-confidence and public interest

The legislation does not provide an interpretation of 'commercially confidential'. In the absence of such instruction to help form an opinion, we use commercial confidentiality criteria developed by the Australian National Audit Office from a 2007 guidance note produced by the federal Department of Finance and Deregulation. We also draw on a 2002 legal briefing published by the Australian Government Solicitor on identifying and protecting confidential information. It can be viewed at: www.ags.gov.au/publications/legal-briefing/br64.htm.

In applying the following criteria, it is important to draw the distinction between information that is commercial-in-confidence to a commercial third party and information generated by and commercial-in-confidence to government.

The criteria we use are:

1. If the information is commercial-in-confidence to a commercial counterparty, it must be specifically identified.
2. The information must be 'commercially sensitive'. This means that the information should not generally be known or ascertainable.
3. Disclosure would cause unreasonable detriment to the owner of the information or another party.
4. The information was provided under an understanding that it would remain confidential.

Criterion 1 is critical when assessing information provided to government by a third party. If criterion 1 is not met, the other criteria are not assessed. This approach supports a culture of openness and accountability for the expenditure of public money, efficient and effective management of government departments, and the most appropriate and beneficial use of public funds.

We also are mindful of the requirements of section 81 of the FM Act, which limits the capacity of a Minister to cite commercial-in-confidence as a ground to not provide information to Parliament. Section 81 states:

“The Minister and the accountable authority of an agency are to ensure that –

- (a) no action is taken or omitted to be taken; and*
- (b) no contractual or other arrangement is entered into, by or on behalf of the Minister or agency that would prevent or inhibit the provision by the Minister to Parliament of information concerning any conduct or operation of the agency”.*

Government contracts typically reflect this requirement in a standard clause that allows the disclosure of confidential information if it is 'required by any law, judicial or parliamentary body or governmental agency'.

Exemption from the section 81 requirement would require non-disclosure to be in the 'public interest'. That is, disclosure would likely cause underlying harm to the public interest and the extent of the probable harm is sufficient to outweigh reasons for disclosure. For instance, disclosure could:

- damage current government negotiations
- have a negative effect on future government procurement.

Further information

For more information on how we go about conducting our audits, please refer to www.audit.wa.gov.au/howweaudit.php.



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