

LOCAL GOVERNMENT AMENDMENT (AUDITING) BILL 2017

EXPLANATORY MEMORANDUM

OVERVIEW OF THE BILL

The *Local Government Amendment (Auditing) Bill 2017* makes legislative changes to the *Local Government Act 1995* to provide for the auditing of local governments by the Auditor General.

This Bill allows the Auditor General to contract out some or all of the financial audits but all audits will be done under the supervision of the Auditor General and Office of the Auditor General.

There will be a staged transition arrangement from when the Auditor General takes over auditing following commencement of the Bill. As the existing audit contracts of local governments expire, the responsibility for auditing local governments will transition to the Auditor General. By financial year 2020/2021, all local governments will be audited by the Auditor General, regardless of whether or not their contracts have expired.

The Bill provides for a new category of audits known as “performance audits” which will examine the economy, efficiency and effectiveness of any aspect of a local government’s operations.

The Bill also places an obligation on local governments to publish their annual reports on their official websites.

CLAUSE NOTES

Contained below is a brief description of each clause contained in the *Local Government Amendment (Auditing) Bill 2017* (Bill).

Clause 1 - Short title

Clause 1 cites the short title of the *Local Government Amendment (Auditing) Act 2017* (Act).

Clause 2 - Commencement

This clause provides that Part 1 and 2 will commence on the day on which the Act receives Royal Assent. The rest of the Act other than sections 4(2) and 7(2) will commence on a day fixed by proclamation, and different days may be fixed for different provisions.

Sections 4(2) and 7(2) will commence on a day fixed by proclamation under section 22(2). These sections commence on a different day from the rest of the Act due to the staged transition of the auditing responsibility to the Auditor General.

Section 4(2) provides that the definition of **auditor** in section 1.4 is replaced with a new definition in which the auditor is defined as the Auditor General.

Section 7(2) makes a subsequent amendment to section 5.53(2)(h) of the *Local Government Act 1995* (LG Act) (following the first amendment to section 5.53(2)(h) under section 7(1)). Section 7(2) amends 5.53(2)(h) to provide that the annual report is to contain the auditor's report prepared under section 7.12AD(1) (Reporting on a financial audit) for the financial year.

Clause 3 – Act amended

This clause provides that the Bill amends the LG Act.

Clause 4 – Section 1.4 amended

Section 1.4 provides definitions used throughout the LG Act.

Clause 4 of the Bill deletes the definition of **auditor** and inserts a new definition to replace it. This new definition recognises that the **auditor** of a local government will change during the transition period.

In relation to an audit other than a performance audit, where an audit contract is in force, a person already appointed under Part 7 Division 2 of the LG Act, is the auditor. Where a local government does not have an audit contract in place, the auditor is the Auditor General. For a performance audit, the auditor is the Auditor General.

Clause 5 – Section 3.64 amended

Clause 5 of the Bill replaces each occurrence of “chairman” in section 3.64 of the LG Act with “chairperson”. This reflects current drafting practice.

Clause 6 – Section 3.70A inserted

Clause 6 of the Bill provides for the Auditor General to audit regional subsidiaries in the same way as local governments are audited.

Clause 6(2) allows for regulations to prescribe or modify provisions in relation to the auditing of regional subsidiaries.

Clause 7 – Section 5.53 amended

Clause 7(1) of the Bill deletes section 5.53(2)(h) of the LG Act (relating to contents of the annual report) and inserts a new section 5.53(2)(h). The new section 5.53(2)(h) provides that the annual report is to contain the auditor's report prepared under section 7.9(1) (Audit to be conducted) or 7.12AD(1) (Reporting on a financial audit) for the financial year.

As clause 7(2) of the Bill takes effect on a day fixed by proclamation under clause 21(2) of the Bill, this clause makes a further amendment to section 5.53(2)(h) of the LG Act. Clause 7(2) of the Bill deletes section 5.53(2)(h) of the LG Act and inserts a new section 5.53(2)(h) providing that the annual report is to contain the auditor's report prepared under section 7.12AD(1) (Reporting on a financial audit) for the financial year.

Clause 8 – Section 5.55A inserted

Clause 8 of the Bill inserts a new section 5.55A after section 5.55 of the LG Act. Section 5.55A provides that the CEO is to publish the annual report on the local government's official website within 14 days after the report has been accepted by the local government.

Clause 9 – Section 5.94 amended

Section 5.94 of the LG Act provides that a person can attend the office of a local government to inspect certain local government information free of charge.

Clause 9 of the Bill inserts a new paragraph (ta) after paragraph (t) in section 5.94 of the LG Act. The new paragraph (ta) provides a person may inspect a report on a supplementary audit prepared under section 7.12AH(1) (Reporting on a supplementary audit) of the LG Act.

Clause 10 – Section 7.1 amended

Clause 10 of the Bill inserts the following new definitions in section 7.1 of the LG Act:

- **audit** – has the same meaning as the term in the *Auditor General Act 2006*.

- **audit contract** – is a written agreement made under section 7.8(1) (Terms of appointment of auditors) and was in force immediately before commencement day.
- **Auditor General Act** – is the *Auditor General Act 2006*.
- **audit report** – is a report prepared by an auditor on a local government audit.
- **commencement day** – is the day on which section 9 of the Act (this section) comes into operation.
- **financial audit** – is an audit conducted under section 7.12AB.
- **local government audit** – is an audit conducted under Part 7 of the LG Act, being a financial or supplementary audit, or a performance audit.
- **performance audit** – is an examination or investigation as carried out under section 18 of the Auditor General Act. Section 7.12AJ(1) of the LG Act will provide for the application of section 18 of the Auditor General Act to a local government.
- **supplementary audit** – is an audit conducted under section 7.12AG of the LG Act.

These definitions apply in Part 7 unless the contrary intention appears.

This clause also provides for a minor grammatical amendment to the definition of **regulations**.

Clause 11 – Section 7.1A amended

Under clause 11 of the Bill, the reference to “him or her” in section 7.1A(3) of the LG Act is deleted and replaced with “the CEO”. This reflects current drafting practice.

Clause 12 – Section 7.1D inserted

Clause 12 of the Bill inserts a new section 7.1D at the beginning of Part 7 Division 2 (Appointment of auditors) of the LG Act:

Section 7.1D Application

This new section 7.1D provides that Division 2 (Appointment of auditors) applies in relation to a local government that has an audit contract that is in force.

Clause 13 – Section 7.3 amended

Clause 13(1) of the Bill amends section 7.3(1) (Appointment of auditors by the local government) of the LG Act to provide that it is subject to the new section 7.3(1A) of the LG Act.

Clause 13(2) of the Bill inserts a new section 7.3(1A) after section 7.3(1) of the LG Act. The new section 7.3(1A) provides that a local government cannot appoint a person to be its auditor after the commencement day.

Clause 14 – Section 7.7 amended

Clause 14(1) of the Bill provides that section 7.7 of the LG Act (Departmental CEO may appoint auditor) is subject to section 7.7(2).

Clause 14(2) of the Bill inserts a new section 7.7(2) in the LG Act. The new section 7.7(2) provides that the Departmental CEO cannot appoint a person to be the auditor of a local government after commencement day.

Clause 15 – Section 7.8A inserted

Clause 15 of the Bill inserts a new section 7.8A at the beginning of Part 7 Division 3 of the LG Act.

Section 7.8A Application

This new section 7.8A provides that Division 3 (Conduct of audit) applies in relation to a local government that has an audit contract that is in force.

Clause 16 – Section 7.9 amended

Section 7.9 of the LG Act sets out how an audit is to be conducted.

Clause 16 of the Bill amends section 7.9(4) of the LG Act by removing the requirement for the local government to deal with the report (referred to in section 7.9(3)) under section 7.12A of the LG Act (Duties of local government with respect to audits). This amendment is made as a result of amendments to section 7.12A which change the duties of local governments with respect to audits.

Clause 17 – Section 7.11 amended

Clause 17 of the Bill amends section 7.11 of the LG Act by removing the reference to “inspection or inquiry” from the auditor’s power to demand production of books, etc. The auditor has the authority to demand the production of books, etc. only for the purpose of an audit.

Clause 18 – Part 7 Divisions 3A to 3D inserted

Clause 18 of the Bill inserts new Divisions 3A, 3B, 3C and 3D after Part 7 Division 3 of the LG Act:

Division 3A – Financial audit

Section 7.12AA Application

This new section 7.12AA provides that the new Division 3A of the LG Act applies in relation to a local government that does not have an audit contract in force. This Division provides for financial audits to be conducted by the Auditor General.

Section 7.12AB Conducting a financial audit

The new section 7.12AB provides that the auditor must audit the accounts and annual financial report of a local government at least once in respect of each financial year.

Section 7.12AC Dispensing with a financial audit

This new section 7.12AC provides that despite section 7.12AB, the auditor may dispense with all or any part of a financial audit if the auditor considers that the dispensation is appropriate in the circumstances.

The auditor must consult the Minister before exercising the dispensation power.

If the auditor exercises the dispensation power, the auditor must notify the Public Accounts Committee (as defined in the Auditor General Act section 4(1)) and the Estimates and Financial Operations Committee (as defined in the Auditor General Act section 4(1)).

An example of a situation when the dispensation power may be used is where a regional subsidiary is no longer making any financial transactions and therefore will not need to be audited.

Section 7.12AD Reporting on a financial audit

This new section 7.12AD provides that the auditor must prepare and sign a report on a financial audit. The auditor must give the report to the mayor, president or chairperson of the local government; the CEO of the local government, and the Minister.

Section 7.12AE Fees for a financial audit

This new section 7.12AE provides that the auditor must determine whether a fee is to be charged for a financial audit of a local government and if so, the amount of that fee.

The local government must pay the fee for a financial audit.

Division 3B — Supplementary audit

Section 7.12AF Application

This new section 7.12AF provides that the new Division 3B applies in relation to a local government that does not have an audit contract that is in force.

Section 7.12AG Conducting a supplementary audit

Under this new section 7.12AG, the auditor may audit any particular aspect of the accounts of a local government that the Minister requests the auditor to audit. This is known as a supplementary audit.

Section 7.12AH Reporting on a supplementary audit

This new section 7.12AH provides that the auditor must prepare and sign a report on a supplementary audit and the auditor must give the report to the Minister.

The Minister may give a copy of the report to the local government; and may request the CEO of the local government to publish the report on the local government's official website.

Within 14 days after receiving a request from the Minister, the CEO must publish a copy of the report on the local government's official website.

Section 7.12AI Fees for a supplementary audit

This new section 7.12AI provides that the auditor must determine whether a fee is to be charged for a supplementary audit of a local government and if so, the amount of that fee.

The local government is to pay the fee for a supplementary audit.

Division 3C — Performance audit

Section 7.12AJ Conducting a performance audit

Under section 18 of the Auditor General Act, the Auditor General may carry out an examination or investigation for certain purposes. This is known as a performance audit.

This new section 7.12AJ modifies the operation of section 18 of the Auditor General Act to apply to a local government as if —

- (a) the local government were an agency; and
- (b) money collected, received or held by any person for or on behalf of the local government were public money; and
- (c) money collected, received or held by the local government for or on behalf of a person other than the local government were other money; and
- (d) property held for or on behalf of the local government, other than money referred to in paragraph (b), were public property; and
- (e) property held by the local government for or on behalf of a person other than the local government were other property; and
- (f) the reference in the Auditor General Act section 18(2)(d) to "legislative provisions, public sector policies or its own internal policies;" were a reference to "legislative provisions or its own internal policies;".

A performance audit is taken for the purposes of the Auditor General Act to have been carried out under the Auditor General Act Part 3 Division 1.

Section 7.12AK Reporting on a performance audit

Section 25 of the Auditor General Act relates to reports on examinations or investigations carried out by the Auditor General.

This new section 7.12AK of the LG Act provides that the Auditor General Act section 25 applies to a performance audit as if —

- (a) a local government was an agency; and
- (b) the council of the local government was the accountable authority of the local government.

The auditor is required to give a report on a performance audit to the local government.

Division 3D — Other audits

Section 7.12AL Audits of accounts of related entities and certain subsidiary bodies

Sections 16 and 17 of the Auditor General Act relate to the audits of the accounts of certain subsidiary bodies and related entities.

This new section 7.12AL of the LG Act provides that the Auditor General Act sections 16 and 17 apply in relation to a local government as if —

- (a) the local government was an agency; and
- (b) the council of the local government was the accountable authority of the local government.

Clause 19 – Section 7.12A amended

Section 7.12A of the LG Act deals with the duties of local governments with respect to audits.

Clause 19(1) of the Bill replaces “his or her” in section 7.12A(1)(a) with “the auditor’s”. This reflects current drafting practice.

Clause 19(2) of the Bill amends section 7.12A(3) of the LG Act by:

- (a) deleting “is to examine the report of the auditor prepared under section 7.9(1), and any report prepared under section 7.9(3) forwarded to it, and is to —” and inserting “must —”;
- (b) before paragraph (a) inserting “(aa) examine an audit report received by the local government; and”; and
- (c) in paragraph (a), deleting “report, or reports,” and inserting “audit report,”.

These changes clarify that the local government must examine an audit report that it receives, determine if any matters raised by the audit report require the local government to take any action, and ensure that appropriate action is taken in respect of those matters.

Clause 19(3) of the Bill deletes section 7.12A(4) of the LG Act and inserts new sections 7.12A(4) and (5) in the LG Act.

The new sections 7.12A(4) and (5) provide that a local government must —

- (a) prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters; and
- (b) give a copy of that report to the Minister within 3 months after the audit report is received by the local government.

Within 14 days after a local government gives a report to the Minister under subsection 4(b), the CEO must publish a copy of the report on the local government's official website.

Clause 20 – Section 7.13 amended

Clause 20 of the Bill makes several amendments to section 7.13 of the LG Act which sets out the matters that may be provided for under regulations in relation to audits.

Paragraphs (aa), (ab), (ac) and (ad) of section 7.13 of the LG Act are deleted and replaced with the new paragraphs. Accordingly, regulations may make provision as to:

- the functions of a CEO in relation to a local government audit, a report (an action report) prepared by a local government under section 7.12A(4)(a), an audit report, and a report on an audit conducted by a local government under the LG Act or any other written law;
- the functions of an audit committee, including in relation to the selection and recommendation of an auditor under Division 2, a local government audit, an action report, an audit report, and a report on an audit conducted by a local government under the LG Act or any other written law; and
- the procedure to be followed in selecting an auditor under Division 2.

The deleted paragraphs relate to functions of the audit committee which will no longer apply. The new paragraphs recognise that the audit committee will retain certain functions until commencement day, for example, in relation to the selection and recommendation of an auditor.

The following changes have been made to improve clarity:

- In paragraph (ae) “a report by an auditor;” is deleted and replaced with “an audit report;”.

- In paragraph (a) “agreements between local governments and auditors;” is deleted and replaced with “an agreement in writing (**agreement**) made under section 7.8(1);”.
- Paragraph (b) is deleted and replaced with:
 - (b) for notifications and reports to be given in relation to an agreement, including any variations to, or termination of an agreement;
- In paragraph (ba), “copies of agreements between local governments and auditors” is deleted and replaced with “a copy of an agreement”.
- In paragraph (c), “auditor;” is deleted and replaced with “auditor under section 7.5;”
- In paragraph (d), “for —” is deleted and replaced with “for the following —”.
- In paragraph (f), “by auditors in their reports;” is deleted and replaced with “in an audit report;”
- Paragraphs (g) and (h) are deleted and replaced with:
 - (g) requiring an auditor (other than the Auditor General) to provide the Minister with prescribed information as to an audit conducted by the auditor;
 - (h) prescribing the circumstances in which an auditor (other than the Auditor General) is to be considered to have a conflict of interest and requiring an auditor (other than the Auditor General) to disclose in an audit report such information as to a possible conflict of interest as is prescribed;

Clause 21 Schedule 9.3 amended

Clause 21 of the Bill amends Schedule 9.3 of the LG Act (Transitional Provisions).

This clause deletes clause 32 of Schedule 9.3 relating to auditors’ appointments and inserts a new Division 3 at the end of Schedule 9.3. These provisions relate to the transition from local government appointed auditors to audits being conducted under the authority of the Auditor General.

Division 4 — Provisions for the *Local Government Amendment (Auditing) Act 2017*

Section 49 Terms used

This new section 49 provides definitions for certain terms used in Division 4:

- **audit contract** has the meaning given in section 7.1 of the LG Act; and
- **commencement day** has the meaning given in section 7.1 of the LG Act.

Section 50 Minister to publish status of audit contracts

This new section 50 provides that during the period beginning on commencement day and ending on the day fixed by proclamation under the *Local Government Amendment (Auditing) Act 2017* section 22(2), the Minister must publish on a website maintained by the Department a list of —

- (a) local governments that have an audit contract that is in force; and
- (b) local governments that do not have an audit contract that is in force.

This will provide transparency so that members of the community are aware of whether the Auditor General has supervision of audit contracts.

Section 51 Audit contracts may be terminated after completion of FY17/18 audit

This new section 51 provides that **FY17/18 audit** in this section, in relation to a local government, means an audit of the local government conducted under section 7.9(1) of the LG Act in respect of the financial year ending on 30 June 2018.

This new section 51 applies in relation to a local government after the completion of the FY17/18 audit for the local government.

The Departmental CEO may give notice (a notice) to a local government specifying the date (the termination date) on which the audit contract for the local government is to terminate. An audit contract in relation to which a notice is given is terminated by force of this section on the termination date. The Departmental CEO may give a notice on the Departmental CEO's own initiative.

The Minister may request the Departmental CEO to give a notice to a local government and nominate the termination date to be specified in the notice.

On request by the Minister, the Departmental CEO must give a notice to the local government specifying the termination date nominated by the Minister.

Under this new section 51, any notice given or request made must be in writing.

This section allows for the Office of the Auditor General to take responsibility for auditing local governments that have been assessed to be high-risk.

Section 52 Audit contracts are terminated after completion of FY19/20 audit

This new section 52 provides that ***FY19/20 audit***, in relation to a local government, means an audit of the local government conducted under section 7.9(1) of the LG Act in respect of the financial year ending on 30 June 2020.

An audit contract for a local government, unless earlier lawfully terminated, is terminated by force of this provision on completion of the FY19/20 audit for the local government.

The Office of the Auditor General will have the responsibility for all local government audits for the 2020/21 financial year.

Section 53 No breach of contract

This new section 53 provides that anything that occurs by operation of this Division 3 is not to be regarded as a breach of contract.

Section 54 Transitional regulations

Under this new section 54 –

- ***specified*** means specified or described in the regulations; and
- ***transitional matter*** means a matter or issue of a transitional nature that arises as a result of the enactment of the Act; and includes a saving or application matter.

This new section provides that if there is not sufficient provision in this Division for dealing with a transitional matter, regulations under the LG Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

Subsection (3) of this new section 54 provides that the regulations made may provide that specified provisions of a written law —

- (a) do not apply to or in relation to any matter; or
- (b) apply with specified modifications to or in relation to any matter.

Subsection (4) of this new section 54 provides that if the regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this section comes into operation, the regulations have effect according to their terms.

If the regulations contain a provision referred to in subsection (4), the provision does not operate so as —

- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

Regulations in relation to a matter referred to in subsection (3) must be made within whatever period is reasonably and practicably necessary to deal with a transitional matter.

22. Superseded provisions to be deleted

Clause 22 of the Bill provides that certain provisions in the LG Act are superseded provisions, namely:

- (a) section 5.43(c);
- (b) in section 7.1, the definitions of approved auditor, disqualified person, qualified person and registered company auditor;
- (c) Part 7 Division 2;
- (d) Part 7 Division 3;
- (e) section 7.12AA;
- (f) section 7.12AF;
- (g) section 7.13(1)(ab)(i), (ac), (a)-(e), (g) and (h).

Clause 22(2) of the Bill provides that the superseded provisions are deleted on a day fixed by proclamation. A proclamation cannot be made unless the Minister is satisfied that there is no reason for the superseded provisions to remain in operation.

Section 22(4) provides that this section is deleted immediately after the repealing proclamation has been made. This section will no longer be required at that time.

These provisions relate to the current practice of appointing auditors. They will be superseded when all local government auditing is conducted by the Auditor General.