AUDIT AMENDMENT BILL 1978

Date Introduced: 12 September 1978
House: House of Representatives
Presented by: Hon. E. Robinson, Minister for Finance

Purpose

The Bill provides for a comprehensive overhaul of the Audit Act 1901 to update and clarify auditing and associated functions of the Auditor-General for Government Departments and instrumentalities, and to introduce a system of efficiency audits.

Background

The Audit Act 1901 provides for the audit of the Government's accounts and lays down controls fundamental to the accounting for receipts and payments under the control of Government Departments, Parliamentary Departments and Instrumentalities.

An Audit Amendment Bill was passed by the House of Representatives on 19 May 1976 and introduced into the Senate on 20 May 1976. The Bill had not been debated in the Senate by the time Parliament was prorogued on 28 February 1977 and the Bill accordingly lapsed.

The 1976 Bill did not contain any provisions about efficiency audits. These had been recommended by the Royal Commission on Australian Government Administration and were approved in principle by the Prime Minister in a statement in the House on 9 December 1976. He added that the Public Service Board would continue its management improvement functions, including efficiency and staff utilization reviews. Subsequently an informal Working Party of Officials from the Department of the Prime Minister and Cabinet, the Auditor-General's Office, the Public Service Board and the Department of Finance was established to report on how a system of efficiency audits might be implemented, their conclusions and recommendations are set out in their Report, dated April 1977. The introduction of such audits significantly expands the ambit of the Auditor-General's role beyond the traditional one of financial auditing.
The Minister stated in his second reading speech, that all the proposed amendments in the Bill have the full support of the Auditor-General and the proposals have, with certain exceptions been explained to the relevant Joint Committees of Public Accounts.

Main Provisions

For a more detailed analysis see the Explanatory Memorandum by the Minister.

Miscellaneous Amendments

Clause 4 amends section 2 of the Act with the effect that the Act will no longer apply to the Northern Territory, following conferral of self-government. Clause 9 substitutes a new section 12 to provide that it will now be in the Auditor-General's discretion as to what matters he brings before the attention of the Minister, whereas before he was required to raise all matters.

Clause 20 substitutes a new section 32. The present section provides that the Governor-General's warrant can be obtained for moneys appropriated and required to be expended, even though a condition of the appropriation had not been satisfied. The new section will overcome this legally doubtful procedure by enabling the Minister to seek a warrant to cover his estimate of amounts that are required or are likely to be required to be withdrawn from the Commonwealth Public Account.

Clause 24 amends section 34 to take account of computer based account systems. Previously, a certifying officer had to ascertain that an account was "correct in every particular". Under the new section, the Minister is empowered to issue directions as to the checks to be imposed. Clauses 36 and 37 amend section 42 and repeal sections 43 and 44. The result is that there is no longer a requirement that the Auditor-General surcharge the person responsible for loss of public moneys or damage to public property. New procedures in this area are provided for by clause 58.

Clause 60 introduces a new section 70D which provides for the exemption of certain accounts of prescribed departments and organisations from inspection, examination and audit by the Auditor-General and introduces procedures for reporting to Parliament in respect of expenditure from such exempt accounts.

Among other things, Clause 40 introduces a new Division 3 in Part VI providing for procedures relating to
the financial and efficiency auditing of the Auditor-
General's Office.

Clause 54 introduces a new Part XI to the Act in
order to overcome certain legal doubts about the authority
of the Auditor-General to undertake audits imposed by
territorial legislation and his status in respect of audits
requested of him by a Minister.

Efficiency Audits

Clause 40 introduces a new Division 2 (sections
48A-H) in Part VI. Efficiency audits are defined in new
sub-section 2(4) inserted by Clause 3(e) of the Bill. New
section 48A(1) defines the relevant bodies for the purposes
of such audits. However, new section 48A(2) provides that
certain Commonwealth organisations, including the Defence
Force, ASIO and the Commonwealth Police, may be excluded by
regulations for the purposes of this Division.

New section 48C empowers the Auditor-General to
carry out efficiency audits of Departments, public
authorities and Commonwealth organizations at such intervals
as he thinks fit. For other bodies such as incorporated
companies which the Commonwealth is in a position to control
or certain bodies established under Commonwealth/State
agreements the request of a Minister is required before an
efficiency audit can be conducted. New section 48E gives
the Auditor-General a discretion as to the manner in which
he conducts the efficiency audits. Sub-sections 48E(3) and
(4) allow him access to all records of the relevant bodies
and a right of entry to premises.

New section 48F provides that the Auditor-General
may prepare a report on each efficiency audit carried out
and transmit it to Parliament. However, new section 48F(3)
permits the Attorney-General to issue a certificate to the
Auditor-General certifying that the disclosure of
information on a particular matter would be contrary to the
public interest for one of several enumerated reasons. Yet
new section 48F(4) provides that such restricted information
may be included in a report by the Auditor-General to the
Prime Minister, the Minister for Finance, the Public Service
Board and the relevant Minister.

New section 48G requires the Auditor-General to
prepare an annual report concerning efficiency audits
carried out during the year and to transmit it to
Parliament. The first one will be prepared for the year
ending 30 June 1979.
Losses of and Damage to Public Property

Clause 57 repeals section 70 and substitutes a new Part XIIA under this heading. As a consequence of clause 36 which will repeal the surcharge provisions of section 42, this Part has been inserted to provide more precise procedures for the recovery of losses in certain circumstances.

New section 70AB(1) provides that where there is loss of public moneys or loss or damage of Commonwealth property, an officer "who, by his misconduct or by performance of his duties in a grossly negligent manner causes or contributes to the loss or damage, is liable for the loss or damage". In certain circumstances also, an officer is liable for any loss or damage, even though the loss or damage is not due to his own misconduct or gross negligence. These instances include:

- public moneys held by an officer by way of an advance (s.70AB(4));
- moneys under the control of an accounting officer (s.70AB(5)); and
- property under the control of an officer having been acknowledged by that officer in writing as delivered to him on the condition that he would take strict care of it (s.70AB(8)).

Property under the control of an officer is defined by new section 70AB(10) to mean property delivered to him and not returned to the person entitled to receive it. In the instances above, an officer is not subject to the strict liability imposed if he can show that he has taken such steps as were reasonable in the circumstances to prevent loss or destruction of the property (new sections 70AB(7) and (9); section 70AE).

New section 70AC vests the initial responsibility for determining liability and recovering the loss from an officer, in the Permanent Head. The officer, if determined liable, may then have the option of obtaining a review of the decision by the Administrative Appeals Tribunal or a court of law. The Commonwealth itself may recover from an officer by an action in a court of law (section 70AD).