

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
ADDITIONAL ESTIMATES 2015

Prime Minister and Cabinet Portfolio

Department/Agency: Australian National Audit Office

Outcome/Program:

Topic: Amendments to the Auditor-General Act

Senator: Collins

Question reference number: 96

Type of question: Written

Date set by the committee for the return of answer: 10 April 2015

Number of pages: 2

Question:

1. You are aware of the proposed amendments to the *Auditor-General Act 1997* in the Public Governance and Resources Legislation Amendment Bill (No. 1) 2015 which relate to expand the exemption from disclosing information?
 - a) Can you explain to the committee what the rationale for this amendment is?
 - b) Are you aware of any breaches in previous audit processes that would justify applying the 2 year imprisonment penalty on people?
 - c) If so are you able to outline these to the committee, and what the implications were in terms of the audit process?
 - d) Have you consulted with other Commonwealth departments and agencies on the practical and operational effect of further constraining disclosure of information relating to drafts and extracts of reports?
 - e) If so, have there been any indications that such an exemption would place restrictions on how they would be able to best respond as part of audit processes?
 - f) If not [i.e. no consultation], why not?

Answer:

1. The ANAO is aware of the proposed amendments to the *Auditor-General Act 1997* (the Act) in the Public Governance and Resources Legislation Amendment Bill (No. 1) 2015 (the Bill), which extend the prohibition on disclosing information in proposed audit reports provided under section 19 of the Act, to draft reports, extracts and to any other document created for the purposes of preparing a proposed report.
 - a) In a submission dated 13 March 2015 to the Finance and Public Administration Legislation Committee in relation to its inquiry into the above-mentioned Bill, the ANAO explained that the rationale for the amendment is that it has the effect of protecting the drafts, extracts or any other document created for the purposes of preparing a proposed report, in the same way as a proposed report is protected by Section 36(3) of the Act. A draft report confirms factual information with public

sector agencies and other key stakeholders, and outlines tentative audit findings and conclusions for discussion with the recipient(s). As such, these documents have an important role in the preparation of a proposed report, both in terms of obtaining an agreed understanding of the facts and providing the opportunity for the relevant parties to comment on the issues arising from the audit. While our practice over many years has been to provide these reports to entities on an in-confidence basis in order to preserve the integrity of the audit process, they do not have any legal status, as the Act currently refers only to proposed reports, the confidentiality of which is protected by Section 36(3) of the Act.

The penalty provisions for the contravention of subsection 36(3) were not introduced with the proposed amendment. The penalties have been in the Act since it came into effect in 1998. The ANAO has recently received advice from the Attorney-General's Department that the penalty provisions in the Act are consistent with the relevant principles and precedents in Commonwealth criminal law. In addition, and as stated in the Explanatory Memorandum to the Bill, the advice of the Australian Government Solicitor was sought during the drafting of the Bill to ensure both the efficacy of the proposed provisions and alignment with the policy intent. The ANAO will continue to monitor the penalty provisions in the Act more generally to ensure that they are consistent with contemporary practices and Commonwealth criminal law policy.

- b) The ANAO is not aware of any breaches in the confidentiality of information in draft reports in previous audit processes.
- c) Not applicable.
- d) The proposed amendment has the support of the Joint Committee of Public Accounts and Audit and has been agreed to by the Prime Minister. As stated in the Explanatory Memorandum to the Bill, following the passage of the *Public Governance, Performance and Accountability Act 2014* and the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*, further consultation was undertaken in relation to the operation of these Acts, and opportunities for amendments to other Acts were identified by entities to achieve greater efficiency and consistency in governance arrangements across government. In view of the long-standing and well accepted practices of providing draft reports to entities on an in-confidence basis, entities were not consulted by the ANAO about the proposed amendment.
- e) Not applicable.
- f) As noted above, the proposed amendment has the support of the Joint Committee of Public Accounts and Audit and has been agreed to by the Prime Minister.