



Access to and Disclosure of Information by Australian and New Zealand Auditors-General

Prepared by the Australasian Council of Auditors-General – June 2024

Executive Summary

Auditors-General perform a key oversight function in our system of parliamentary democracy by independently reviewing and reporting on government finances and performance. They are one of the oldest integrity institutions and are an essential mechanism for prompting and upholding integrity, accountability and transparency in government. To fulfill their statutory duties to the Parliament and the people, Auditors-General need full and free access to information held by government agencies and other entities who deliver services on behalf of government.

International principles, endorsed by United Nations General Assembly resolutions to support the proper use of public resources and powers by public officials, have been enshrined in legislative frameworks to support the independence and effectiveness of Auditors-General.¹

This paper focuses on two of these principles: International Organisation of Supreme Audit Institutions (INTOSAI) Principle 4: 'unrestricted access to information', and to a lesser extent INTOSAI Principle 5: 'a right and obligation to report on audit work' and how these operate in practice across Australia and New Zealand.

All jurisdictions in Australia and New Zealand have empowered their Auditor-General to have access to documents, systems and persons who may have information relevant to the audit. Specific exclusions to documents or information are not legislated. Any restriction imposed on access to information has traditionally been attempted by officials, not the legislative framework.

Unfettered access to information ensures an auditor obtains sufficient and appropriate audit evidence to form a conclusion and reduces the risk of incorrect conclusions. An inability to obtain sufficient evidence can result in a qualified conclusion or a disclaimer of conclusion, whereby the auditor is unable to form a conclusion due to insufficient appropriate audit evidence being obtained.

In most jurisdictions in Australia and New Zealand, legislation requires the Auditor-General to report on the discharge of their functions and the results of audit work at least annually. All jurisdictions provide discretion to their Auditor-General to decide the content and timing of their reports, in the public interest. In all jurisdictions the Auditor-General has a direct reporting line to the Parliament.²

¹ Two international foundational documents, the Lima (1997) and Mexico (2007) Declarations, contain a set of principles essential for effective public sector auditing. These principles were recognised by the United Nations in two resolutions in 2011 and 2014. The International Organisation of Supreme Audit Institutions (INTOSAI), a non-government body with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations, operates as an umbrella organisation for the independent government audit community. INTOSAI continues to embed and promote these principles in its work.

² Reports are either tabled or, if the Parliament is not sitting, are treated by the Clerks of the Parliament as if they have been tabled.



Despite Auditor-General powers of unfettered access to information in Australia and New Zealand, this freedom of reporting can in practice be impacted by entities or officials seeking to introduce restrictions on access and disclosure. Auditors-General particularly encounter attempts to restrict their access to Cabinet information and documents subject to legal professional privilege.

However, Auditors-General have a long history of responsibly reporting their findings in the public interest, including where sensitive information is involved. Some jurisdictions impose legislative constraints designed to ensure that when certain sensitive information is accessed during an audit, such as the deliberations of Cabinet or matters related to national security, an Auditor-General is specifically required to consider whether disclosure of such information is in the public interest. That is, Auditors-General must satisfy themselves, and be willing to be accountable for their decisions, around the 'public interest test'.

Practices which put restrictions or controls on, or impose administrative impediments to, accessing information undermine the ability of an Auditor-General to perform their functions.

Auditors-General should not be restricted in any way from accessing all information required to gather evidence, form conclusions, report to the Parliament and publish reports. The transparency this brings to accountability forms a vital part of the overall integrity of the system of government.

Role of the Auditor-General

The role of an Auditor-General is to strengthen accountability, transparency, and integrity by independently auditing public sector operations and reporting on their findings.³ To ensure that elected officials and bureaucrats act in the best interests of the citizens they represent, governments and public sector entities need to be accountable for their stewardship over, and use of, public resources.⁴ As such, the Parliament relies on the Auditor-General for its jurisdiction to provide independent assurance that governmental activities are carried out and accounted for consistent with the Parliament's intentions.

The roles and responsibilities of an Auditor-General are established by a separate legislative framework in each jurisdiction, which are referred to in this paper as Audit Acts. These legislative frameworks govern the powers of Auditors-General to obtain information for the purposes of their audit functions and to report to the Parliament. In order to exercise their audit functions effectively, Auditors-General must have comprehensive statutory rights to access documents, information, premises, systems, property and people relating to the entities that they audit and to report their findings to the Parliament.

Fundamental elements of public sector auditing

The Lima Declaration of Guidelines on Auditing Precepts⁵ of 1977 (the Lima Declaration) is the foundational document for the work of Auditors-General⁶ and government auditing. It lays out the fundamental elements of that work, as well as the conditions Auditors-General need in order to be able to carry out their mandate and achieve independent, objective results. The

³ International Organisation of Supreme Audit Institutions Principle INTOSAI-P 12 *The Value and Benefits of Supreme Audit Institutions – making a difference to the lives of citizens*, p 7.

⁴ *ibid.*

⁵ This document is now titled International Organisation of Supreme Audit Institutions Principle INTOSAI-P 1 *The Lima Declaration*.

⁶ The term Supreme Audit Institution (SAI) is used in the Lima and Mexico declarations and other documents of INTOSAI to refer to Auditors-General, as described in this paper.



Mexico Declaration on Supreme Audit Institution Independence⁷ of 2007 (the Mexico Declaration) established eight principles that cover the essential requirements for effective, independent public auditing. These 'INTOSAI' principles are:

1. An effective statutory legal framework;
2. Independence and security of tenure for the head of the audit institution;
3. Full discretion to exercise a broad audit mandate;
4. Unrestricted access to information;
5. A right and obligation to report on audit work;
6. Freedom to decide the content and timing of audit reports and to publish them;
7. Appropriate mechanisms to follow-up on audit recommendations;
8. Financial, managerial and administrative autonomy and availability of appropriate resources.

The principles established in the Lima Declaration and Mexico Declaration (the Declarations) have been recognised by the United Nations General Assembly in two resolutions, 66/209 of 2011⁸ (Resolution 66/209) and 69/228 of 2014⁹ (Resolution 69/228).

Resolution 69/228 recognised that:

supreme audit institutions [i.e. Auditors-General] can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence

and also recognised:

the important role of [Auditors-General] in promoting the efficiency, accountability, effectiveness and transparency of public administration, which is conducive to the achievement of national development objectives and priorities as well as the internationally agreed development goals.

Resolution 66/209 encouraged UN Member States to apply the principles set out in the Declarations. Two of the key principles from the Declarations are about access to information and disclosure of information.

Access to information

Section 10 of the Lima Declaration states that:

Supreme Audit Institutions shall have access to all records and documents relating to financial management and shall be empowered to request, orally or in writing, any information deemed necessary by the SAI.¹⁰

⁷ International Organisation of Supreme Audit Institutions Principle INTOSAI-P 10 *Mexico Declaration on SAI Independence*.

⁸ Resolution adopted by the United Nations General Assembly on 22 December 2011 [on the report of the Second Committee (A/66/442)] 66/209. *Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions*.

⁹ Resolution adopted by the United Nations General Assembly on 19 December 2014 [on the report of the Second Committee (A/69/470)] 69/228. *Promoting and fostering the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions*.

¹⁰ International Organisation of Supreme Audit Institutions Principle INTOSAI-P 1 *The Lima Declaration*, p 11.



This principle was also repeated in the Mexico Declaration, which established eight principles that cover the essential requirements for effective, independent public auditing:

[Auditors-General] should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information, for the proper discharge of their statutory responsibilities.¹¹

This unfettered access is consistent with auditing standards, which require the auditor to obtain sufficient appropriate audit evidence to reduce the risk of forming an incorrect conclusion to an acceptably low level.¹² Determining whether sufficient appropriate audit evidence has been obtained is a matter of professional judgement—that is, the auditor determines what evidence they require to form their conclusion, and the principle of auditor independence requires that the auditor has full discretion to discharge this responsibility.¹³

If an auditor is prevented from accessing all of the information required to form their conclusion, the auditor is required to consider the implications for their audit conclusion.¹⁴ An inability to obtain sufficient appropriate evidence to form a conclusion is a limitation on the scope of the audit.¹⁵ A limitation on the scope of the audit can result in a qualified conclusion or a disclaimer of conclusion, depending on the extent of the limitation.¹⁶ A disclaimer of conclusion is a statement that the auditor is unable to form a conclusion because they have not been able to obtain sufficient appropriate audit evidence.

Disclosure of information

The Lima Declaration also sets out principles regarding disclosure of information. Section 16 states that an Auditor-General:

shall be empowered and required by the Constitution to report its findings annually and independently to Parliament or any other responsible public body; this report shall be published.

This Mexico Declaration elaborates on this in Principle 5, regarding the right and obligation to report on work:

[Auditors-General] should not be restricted from reporting the results of their audit work. They should be required by law to report at least once a year on the results of their audit work.¹⁷

Principle 6 adds that Auditors-General are:

... free to decide the content of their audit reports.

¹¹ International Organisation of Supreme Audit Institutions Principle INTOSAI-P 10 *Mexico Declaration on SAI Independence*, Principle 4 *Unrestricted access to information*, p 10.

¹² For example, Australian Auditing Standards ASA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards*, paragraph 17.

¹³ International Organisation of Supreme Audit Institutions Principle INTOSAI-P 10 *Mexico Declaration on SAI Independence*, Principle 3 *A sufficiently broad mandate and full discretion, in the discharge of SAI functions*, p 9.

¹⁴ Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, paragraph 64.

¹⁵ *Ibid.*, paragraph A66 and Australian Auditing Standard ASA 705 *Auditing Standard ASA 705 Modifications to the Opinion in the Independent Auditor's Report*, paragraph A8.

¹⁶ Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, paragraph A66 provides that withdrawal from the audit is another option where possible under applicable law or regulation.

¹⁷ International Organisation of Supreme Audit Institutions Principle INTOSAI-P 10 *Mexico Declaration on SAI Independence*, Principle 5 *The right and obligation to report on their work*, p 10.



... free to make observations and recommendations in their audit reports, taking into consideration, as appropriate, the views of the audited entity...

... free to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority—as required by law.¹⁸

This freedom to report is also consistent with auditing standards which require the auditor to report on their work, in accordance with auditing standards.¹⁹ The report is required to be in writing and to contain a clear expression of the conclusion against the subject matter.²⁰ Furthermore, performance audit reports in the public sector context should be comprehensive, convincing, timely, reader friendly and balanced.²¹

To be comprehensive, an audit report needs to include all the information and arguments needed to address the audit objective(s) and audit questions, while being sufficiently detailed to provide an understanding of the subject matter and the audit findings and conclusions.

Legislative frameworks

All jurisdictions in Australia and New Zealand have empowered their Auditor-General to have access to documents, systems and persons who may have information of value to their enquiries. Some also specifically enable the Auditor-General access to premises for inspection of documents or other things relevant to an audit. This access to documents includes all information relevant to the audit, and specific exclusions are not legislated. That is, any restriction attempted to be imposed on access to information has traditionally been attempted by officials, not the legislative framework.

The nature, scope and access requirements of the Auditor-General's role results in many thousands of government documents being accessed by public auditors every week in every jurisdiction, the majority of which will be routine with some of a more sensitive nature.

Legislation protects information that is accessed as part of an audit. Most jurisdictions provide for the information gathered by their Auditor-General to be kept confidential, in the public interest. Auditors-General determine their own internal protocols for the secure handling of sensitive information.

In terms of disclosure, in most jurisdictions, legislation requires the Auditor-General to report on the discharge of their functions and the results of audit work at least annually. All jurisdictions provide discretion to their Auditor-General to decide the content and timing of their reports, in the public interest. All jurisdictions also enable the Auditor-General to prepare reports on specific matters at any time. In all jurisdictions the Auditor-General has a direct reporting line to the Parliament and reports are either tabled or, if the Parliament is not sitting, are treated by the Clerks of the Parliament as if they have been tabled.

In 2020, the Australasian Council of Auditors General commissioned a comparative report of audit legislation in Australian and New Zealand jurisdictions, assessed against the eight

¹⁸ *ibid.*, Principle 6 *The freedom to decide the content and timing of audit reports and to publish and disseminate them*, pp 10-11.

¹⁹ Australian Auditing Standards ASA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards*, paragraph 11(b).

²⁰ Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, paragraph 67.

²¹ *ibid.*, paragraph 116.



INTOSAI principles.²² This concluded that there is wide variation in the independence safeguards embedded in the legislation of various jurisdictions and some jurisdictions enable greater Auditor-General independence than others, relative to the INTOSAI principles.

Issues with access and disclosure

Auditor-General powers of unfettered access to information and freedom of reporting can, in practice, be threatened by entities or officials seeking to introduce restrictions on access and disclosure. This can happen in many ways and may include delays in responding to requests, providing only partial responses to questions, inferring discretion of the information holder in complying with access requests, or at worst, preventing access to or denying the existence of documents, which the Auditor-General knows exist or should exist.

Two areas where Auditors-General particularly encounter attempts to restrict their access to information are Cabinet information and documents subject to legal professional privilege.

Cabinet information

The purported reason for restricting access to Cabinet information is the convention of Cabinet confidentiality. The rationale for the protection of Cabinet confidentiality is that it is necessary to ensure the proper functioning of Cabinet in the Westminster system of parliamentary democracy. Auditors-General require access to Cabinet documents because they form the basis for government decision-making and operations. The objective of an audit will often include assessing whether an entity has implemented a policy or program in accordance with the government's intent. Without access to the documentation of that intent, it is not possible to meet the objective of such an audit, fully or in part, which as noted above would impact the ability of the Auditor-General to form and report a conclusion. Practices which put restrictions or controls on, or impose administrative impediments to, accessing Cabinet information undermine the ability of an Auditor-General to perform their functions.

Legal professional privilege

Legal professional privilege (LPP) is the right of a person not to have their correspondence with legal advisors disclosed to the general public, whether in judicial proceedings or otherwise. Some entities in some jurisdictions have argued that an Auditor-General's access powers do not extend to documents covered by legal professional privilege. Auditors-General may require access to these documents where an entity has obtained legal advice that is relevant to the subject matter of the audit, as it may form the basis of the entity's decision-making. The objective of an audit may consider whether an entity has acted in accordance with legislative requirements, and where they have acted on the basis of advice it would be important to consider that advice as part of the audit. Without access to the legal advice, it may not be possible to meet the objective of such an audit, fully or in part, which as noted above would impact the ability of the Auditor-General to form and report a conclusion. Practices which put restrictions or controls on accessing legal advice undermine the ability of an Auditor-General to perform their functions. Some jurisdictions have specifically clarified in statute that access by Auditors-General does not waive common law rights and privileges such as LPP. In the absence of express statutory rights, a persuasive view - beyond the contradiction that arises from not being able to perform express statutory functions if such

²² Dr Gordon Robertson, *Independence of Auditors General: A 2020 update of a survey of Australian and New Zealand legislation*



information is not accessible - is that providing access to Auditors-General is *not* breaking the chain of privilege as Auditors-General are an integral apparatus of the Crown.

Disclosure

There is sometimes confusion or concern by government officials that providing Auditors-General access to information means disclosure of that information. It is important to emphasise that access does not generally equate to public disclosure. In fulfilling their duties, Auditors-General have a long history of responsibly reporting their findings in the public interest, including where sensitive information is involved. Some jurisdictions impose legislative constraints designed to ensure that when certain sensitive information is accessed during an audit, such as the deliberations of Cabinet or matters related to national security, an Auditor-General is specifically required to consider whether disclosure of such information is in the public interest. That is, Auditors-General must satisfy themselves, and be willing to be accountable for their decisions, around the 'public interest test'.

As a safeguard to audit independence and proper discharge of their duties to the Parliament and community, it is important that discretion around what to report and how to report rests with the Auditor-General. If discretion is impeded in any way, it is important that those instances are publicly reported and accountability for any restrictions are attributed to a specific individual who is directly accountable to the Parliament that the Auditor-General serves. Some jurisdictions have provisions that enable a Minister of the Crown to issue a notice to require the exclusion of certain information from Auditor-General reports, or enable or require the Auditor-General to direct reports elsewhere, such as to a relevant parliamentary committee, when sensitive information is involved.

Conclusion

Auditors-General have a vital statutory role to enhance accountability, transparency, and integrity in public governance. They do this by independently auditing public sector finances and operations, and reporting on their findings. Legislative frameworks provide important safeguards that govern the powers of Auditors-General to obtain information for the purposes of their audit functions and to report to the Parliament and community. These powers have been recognised by the United Nations General Assembly in two resolutions to support proper use of public resources and powers by public officials, and as an important safeguard to democratic systems of government. Auditing standards set requirements regarding evidence-gathering to form a conclusion and reporting those conclusions. Attempts to restrict access to information or the ability to report on their audits impairs Auditor-General independence in such a way that they are not able to provide reports that are consistent with the expectations of parliaments in creating their statutory roles, or best serve the public interest.