



Australian Securities and Investments Commission Amendment (Audit Inspection) Act 2007

No. 1, 2007

**An Act to facilitate cooperative arrangements
concerning audit oversight, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 1, 2007

**An Act to facilitate cooperative arrangements
concerning audit oversight, and for other purposes**

[Assented to 19 February 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Securities and Investments
Commission Amendment (Audit Inspection) Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	19 February 2007
2. Schedule 1	The day after this Act receives the Royal Assent.	20 February 2007
3. Schedule 2	Immediately after the commencement of Schedule 1 to the <i>Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004</i> .	1 July 2004

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Enhancement of ASIC's audit supervision

Australian Securities and Investments Commission Act 2001

1 Subsection 11(9B)

Repeal the subsection, substitute:

- (10) ASIC may, with the written consent of the Minister, enter into an agreement or arrangement with a regulatory body of a foreign country under which ASIC undertakes to assist that regulatory body to ascertain whether Australian auditors comply with audit requirements that are:
 - (a) imposed by or under laws of that foreign country; or
 - (b) adopted as professional standards in that foreign country.
- (11) The Minister may, in writing, vary or revoke the Minister's consent mentioned in subsection (10).
- (12) If ASIC enters into an agreement or arrangement with a regulatory body under subsection (10), it must, as soon as practicable after entering into that agreement or arrangement, by notice published in the *Gazette*:
 - (a) set out the identifying particulars of the regulatory body; and
 - (b) give brief particulars of the agreement or arrangement entered into; and
 - (c) identify the audit requirements to which the agreement or arrangement relates.
- (13) A notice published under subsection (12) is not a legislative instrument.
- (14) ASIC has the following functions:
 - (a) to assist a regulatory body with which it has entered into an agreement or arrangement under subsection (10) to examine the policies and working practices of an Australian auditor, so as to help the regulatory body to ascertain compliance with audit requirements to which the agreement or arrangement relates;

- (b) to disclose to a regulatory body with which it has entered into an agreement or arrangement under subsection (10) the information that ASIC has obtained in assisting in such an examination.
- (15) In performing the function referred to in paragraph (14)(a), ASIC may examine policies and working practices of an auditor in general or in their application to particular audits or in both of those respects.
- (16) ASIC is not under a duty to perform a function referred to in subsection (14) or to exercise a power in relation to such a function.
- (17) ASIC is not subject to any directions of the Minister in relation to:
 - (a) entering into an agreement or arrangement under subsection (8) or (10); or
 - (b) performing functions or exercising powers referred to in subsection (9); or
 - (c) performing functions conferred under subsection (9A) or (14) or exercising any related powers.

Note: The heading to section 11 is altered by omitting “**conferred by the States and Territories**”.

2 Division 3 of Part 3 (heading)

Repeal the heading, substitute:

Division 3—Inspection of books and audit information-gathering powers

3 Section 28

After “sections 29,”, insert “30A,”.

4 After section 30

Insert:

30A Notice to auditors concerning information and books

- (1) Subject to subsection (2), ASIC may give an Australian auditor a written notice requiring the auditor:
 - (a) to give specified information; or
-

(b) to produce specified books;
to a specified member or staff member at a specified place and
time.

Note: Failure to comply with a requirement made under this subsection is an
offence (see section 63).

- (2) The power in subsection (1) may only be exercised:
- (a) for the purposes of the performance or exercise of any of
ASIC's functions and powers relating to:
 - (i) audit-related matters (***Corporations Act audit
requirements***) under Chapter 2M or Part 9.2 or 9.2A of
the Corporations Act or under other provisions of that
Act that relate to that Chapter or that Part; or
 - (ii) audit requirements (***overseas audit requirements***)
referred to in subsection 11(10); or
 - (b) for the purposes of:
 - (i) ascertaining compliance with Corporations Act audit
requirements; or
 - (ii) assisting in ascertaining compliance with overseas audit
requirements; or
 - (c) in relation to:
 - (i) an alleged or suspected contravention of Corporations
Act audit requirements; or
 - (ii) an alleged or suspected contravention of a law of the
Commonwealth, or of a State or Territory in this
jurisdiction, being a contravention that relates to an
audit matter and that either concerns the management or
affairs of a body corporate or involves fraud or
dishonesty and relates to a body corporate; or
 - (d) for the purposes of an investigation under Division 1 relating
to a contravention referred to in paragraph (c).
- (3) Without limiting subsection (1), a notice under that subsection may
specify information or books that relate to any or all of the
following:
- (a) the policies relating to audit that the auditor has adopted or
proposes to adopt, or the procedures relating to audit that the
auditor has put in place or proposes to put in place;
 - (b) audits the auditor has conducted or proposes to conduct or in
which the auditor has participated or proposes to participate;
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(c) any other matter pertaining to audit that is prescribed by the regulations for the purposes of this paragraph.

Note: A person responding to a notice under subsection (1) has qualified privilege in respect of the response (see section 1289 of the Corporations Act).

- (4) Without limiting subsection (1), a notice under that subsection may require the auditor to give information or produce books even if doing so would involve a breach of an obligation of confidentiality that the auditor owes an audited body.
- (5) ASIC may, by written notice to an Australian auditor who has received a notice under subsection (1), extend the period within which the auditor must give the information or produce the books to which the notice under that subsection relates.

5 Section 33

Before "ASIC", insert "(1)".

6 At the end of section 33

Add:

- (2) ASIC may give to a person a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books that are in the person's possession and that relate to the question whether an auditor has complied with Corporations Act audit requirements, or overseas audit requirements, within the meaning of subsection 30A(2).

7 Subsection 34(2)

Repeal the subsection, substitute:

- (2) An authorisation under this section may be of general application or may be limited by reference to all or any of the following:
- (a) the persons of whom requirements may be made;
 - (b) the books that may be required to be produced;
 - (c) the information that may be required to be given.

8 Subsection 34(3)

After "sections 30,", insert "30A,".

9 Paragraph 34(3)(c)

Repeal the paragraph, substitute:

- (c) a reference to specified information were a reference to information that the person specifies, whether in the requirement or not and whether orally or in writing, to the person of whom the requirement is made; and
- (d) a reference to giving or producing to a specified person were a reference to giving or producing to the first-mentioned person.

Note: The heading to section 34 is replaced by the heading “**ASIC may authorise persons to require production of books, giving of information etc.**”.

10 Paragraphs 37(5)(b) and (c)

Repeal the paragraphs, substitute:

- (b) for any of the purposes referred to in paragraphs 28(a), (b) and (d) or 30A(2)(a), (b) and (d), as the case requires; or
- (c) except in the case of books required to be produced for a purpose specified in subparagraph 30A(2)(a)(ii) or 30A(2)(b)(ii)—for a decision to be made about whether or not a proceeding to which the books concerned would be relevant should be begun; or

11 At the end of Division 3 of Part 3

Add:

39B ASIC to notify foreign regulator's access to information or books

- (1) This section applies if:
 - (a) an Australian auditor gives information or produces books because of a requirement made under subsection 30A(1) for purposes referred to in subparagraph 30A(2)(a)(ii) or 30A(2)(b)(ii); or
 - (b) books specified in such a requirement are obtained from an Australian auditor under a warrant issued under section 36; or
 - (c) a person gives information or produces books that relate to the question whether an auditor has complied with overseas audit requirements within the meaning of subsection 30A(2) because of a requirement made under subsection 33(2); or
 - (d) such books are obtained from a person under a warrant issued under section 36.

- (2) If ASIC gives the information or books, or copies of the books, to a regulatory body with which it has entered into an agreement or arrangement under subsection 11(10), ASIC must, within 14 days of doing so, notify the Australian auditor or person in writing of the details of the information or books, or copies, given.

12 Paragraph 63(1)(c)

After “section 30,”, insert “30A,”.

13 After paragraph 80(1)(a)

Insert:

- (aa) an audit-related matter referred to in subparagraph 30A(2)(a)(i); or

14 After paragraph 127(4)(c)

Insert:

- (ca) will enable or assist a foreign body, although not an agency of a foreign country, to perform a regulatory function, or to exercise a related power, conferred on the body by or under a law in force in that foreign country; or

15 Subsection 127(4)

After “agency, government”, insert “, foreign body”.

16 After subsection 138(2)

Insert:

- (3) In relation to ASIC's functions under subsection 11(14), the report must include, in relation to each agreement or arrangement entered into by ASIC under that subsection, information about the activities that ASIC has undertaken during the reporting period in accordance with that agreement or arrangement.

Corporations Act 2001

17 Paragraph 1289(1)(d)

After “subsection”, add “30A(1) or”.

Schedule 2—Technical amendment

Corporations Act 2001

1 Subsection 1455(5)

Omit “if the contravention occurs before 1 July 2006”, substitute “if the audit or review is conducted in relation to a financial report for a period ending before that standard ceases to have effect as an auditing standard”.

*[Minister’s second reading speech made in—
House of Representatives on 18 October 2006
Senate on 30 November 2006]*

(153/06)
