

Report 7 of 2023

Access to Cabinet documents



Report of the Auditor-General

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By authority: M. Dowling, Government Printer, South Australia

2023

*The Auditor-General's Department acknowledges and respects
Aboriginal people as the State's first people and nations, and
recognises Aboriginal people as traditional owners and occupants of
South Australian land and waters.*



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25 September 2023

President
Legislative Council
Parliament House
ADELAIDE SA 5000

Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

Dear President and Speaker

**Report of the Auditor-General:
Report 7 of 2023 Access to Cabinet documents**

Under the *Public Finance and Audit Act 1987*, I present to each of you this Report.

The report recommends the Auditor-General's access to Cabinet submissions be resolved legislatively to ensure the Auditor-General has the information access powers needed to fulfil the legislated responsibilities for public audit and reporting to the Parliament. Legislative amendments can also ensure that the Parliament decides on matters of security and disclosure for related information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richardson'.

Andrew Richardson
Auditor-General

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1 Executive summary

Recommendation

I recommend that the Auditor-General's access to Cabinet submissions be resolved legislatively to ensure the Auditor-General has the information access powers needed to fulfil the legislated responsibilities for public audit and reporting to the Parliament. Legislative amendments can also ensure that the Parliament decides on matters of security and disclosure for related information.

Several times since 2016, I have reported on issues associated with the Auditor-General's access to Cabinet submissions. In 2016, the then SA Government introduced changes to accessing Cabinet submissions for the given reason of maintaining Cabinet confidentiality. These changes had the effect of restricting the Auditor-General's access to Cabinet submissions for audit purposes.

Figure 1.1 shows how access to Cabinet submissions has changed in my term as Auditor-General.¹

Figure 1.1: Auditor-General's access to Cabinet submissions over time

Period	Guidance	Access granted
From March 2015 (and prior) to September 2016	None	Yes, to Cabinet submissions and all attachments
From September 2016 to September 2017	Cabinet policy	No
From September 2017 to March 2019	Cabinet policy	Yes, to Cabinet decision sets only
From March 2019 to March 2022	PC 047 subject to approval by the Premier	Yes, to Cabinet submissions and attachments under PC 047
Since March 2022	PC 047 subject to approval by the Premier	No – requests declined or unresolved

The confidentiality of Cabinet discussions and documents is a longstanding and well-recognised convention. The Auditor-General had long been given access to required Cabinet submissions without compromising this convention before the 2016 changes were made.

¹ I have held the role of Auditor-General since March 2015. Before that I held executive positions in the Auditor-General's Department from 1991 and was involved in many audits where access to relevant Cabinet submissions was routinely requested and granted.

Cabinet approval is required at key points for significant spending of public sector funds. The Auditor-General audits the appropriateness of government spending, and reports to the Parliament about it each year. This sometimes necessitates accessing evidence about what Cabinet approved.

The amended policy allows the Auditor-General to request Cabinet submissions for audit purposes. Access is then subject to the Premier's approval. All of my 2022-23 requests are unresolved.

Without access to the Cabinet submissions that evidence key parts of the process for significant government initiatives, I am not able to report to the Parliament on them in a way that is consistent with the requirements of the *Public Finance and Audit Act 1987* (PFAA).

By way of example, two of the most significant infrastructure projects in South Australia – the North-South Corridor and the new Women's and Children's Hospital – are budgeted to cost in the order of \$6.9 billion up until 2026-27. Total costs for these projects are projected to be \$18.6 billion in the 2023-24 State Budget. I have not been able to sight the approvals for these projects in 2022-23.

Further, beyond the fundamental question of evidence of authority, it is emerging that the Cabinet confidentiality convention is restricting my access to operational documents that in my opinion should not be regarded as confidential, just because they are attached to Cabinet submissions.

As a consequence, the Auditor-General will be limited in the scope of the work that they are able to perform and report on for these significant infrastructure projects.

2 Background

Parliament and the community expect the Auditor-General to discharge their statutory audit responsibilities independently, impartially and professionally. Parliament has given the Auditor-General significant powers to access information commensurate with these expectations.

The Auditor-General is professionally bound to meet specific procedural and evidence requirements before forming and issuing an audit opinion. What is sufficient is a matter of judgement and risk for the auditor.

When an auditor is not provided with sufficient evidence that is necessary for an audit, it is incumbent on the auditor to bring this to the attention of the users of the auditor's work. For example, the auditor might modify an audit opinion because of a scope limitation due to the inaccessibility of required evidence. This was the case with my opinion on controls in 2021-22² and my conclusion on battery storage procurement in 2018.³

Cabinet is the pre-eminent decision-making body in State government.

Evidence of some of the decisions Cabinet has approved, and operational documents informing those decisions, are relevant to the Auditor-General discharging the statutory responsibilities under the PFAA.

I have reported on issues and changing practices for Auditors-General accessing Cabinet submissions and, to a lesser extent, other privileged information in six reports since 2016.⁴ I have done this because access to necessary evidence for audits is fundamental to auditors fulfilling their role and responsibilities.

I have experienced a range of practices and permissions since taking up the position of Auditor-General in 2015. Most recently, the Government has declined my requests.

Since my last annual report in October 2022, Parliament has commenced debating the Auditor-General's access to Cabinet submissions through proposed legislative amendments. The Government has stated that it does not support these amendments. At the time of this report the Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022 is before the House of Assembly.⁵

In this report I summarise and recap on this matter as it stands in this State, but also across some other Australian jurisdictions, and refer to related discussions on the matter of accessing Cabinet and privileged information beyond public audit.

² Auditor-General's Report 8 of 2022 *Annual report for the year ended 30 June 2022, Part B: Controls opinion*.

³ Auditor-General's Report 9 of 2018 *Battery storage procurement*.

⁴ My annual reports for the years ended 30 June 2016, 2017, 2018, 2019, 2021 and 2022.

⁵ House of Assembly Notice Paper No 67.

I appreciate that Cabinet confidentiality is a convention based on the principle of Cabinet solidarity in our Westminster system of government. The Government advises that decisions about releasing Cabinet information, in any circumstance, must balance preserving longstanding conventions to protect Cabinet deliberations against broader public interest and accountability.

This leads, however, to the Auditor-General being permanently in a position where elements of that work the Parliament has assigned to them cannot be completed.

Further, beyond the fundamental question of evidence of authority, it is emerging that the Cabinet confidentiality convention is restricting my access to operational documents that in my opinion should not be regarded as confidential, just because they are attached to Cabinet submissions.

I have concluded that the matter ought to be resolved legislatively because, in my opinion, the issue of express, comprehensive statutory rights to access directly relevant documents, information, premises, systems and people is:

- fundamental to the proper performance of the Auditor-General's statutory functions for Parliament
- consistent with international auditing principles
- consistent with Australian professional audit requirements.

I understand from its recent debates that Parliament is aware of differences in audit access to Cabinet submissions in this State compared to some other Australian jurisdictions. South Australia is now out of step with access legislatively provided to Auditors-General in several Australian jurisdictions. I have included some references to this in this report.

I have also referred to some other discussions about the principle of Cabinet solidarity and public immunity that have occurred in Australia in recent times.

3 Cabinet

Cabinet is the central and preeminent decision-making body of the South Australian Government. It is where the Premier and Ministers meet, discuss and decide issues for the State:

Cabinet considers major policy initiatives and matters of strategic importance, including significant financial expenditure and contracts, legislation, important intergovernmental matters and some administrative matters including key appointments.⁶

Cabinet's decisions set in motion public services and initiatives. They commit the State to public spending and set the terms and conditions that public sector employees must endeavour to deliver.

3.1 Cabinet submissions

Cabinet submissions are required for any matter where Cabinet is asked for a decision on a significant policy change, project, reform or appointment. They are prepared by SA Government agencies and generally recommend Cabinet's approval of a particular course of action. The Department of the Premier and Cabinet's (DPC's) website lists all the uses for Cabinet submissions.

The submissions that overlap the Auditor-General's statutory responsibilities are those that establish governance and control systems or requirements in SA Government, and that commit the State to financial transactions. For example:

- new public sector initiatives, contracts, purchases of goods and services or land, grants, payments and government office accommodation projects in line with Treasurer's Instructions 8 and 17, and sales of major assets
- significant appointments, including government boards and chief executives
- machinery of government changes
- the commissioning of significant internal or external reviews concerning financial management.

3.2 Cabinet confidentiality

I acknowledge that the confidentiality of Cabinet's deliberations is a fundamental convention of the Westminster system of government.

The convention's purpose is to support collective responsibility and full, frank and confidential exchange in Cabinet.

⁶ <https://www.dpc.sa.gov.au/responsibilities/cabinet-and-executive-council/cabinet>, viewed August 2023.

The Parliament of Australia explains:

*Cabinet is collectively responsible to the people, through the Parliament, for determining and implementing policies for national government. Broadly, it is required by convention that all Ministers must be prepared to accept collective responsibility for, and defend publicly, the policies and actions of the Government.*⁷

The consequence of Cabinet confidentiality is that Cabinet documents are also kept confidential, subject to government policy.

3.3 Public access to Cabinet documents after 10 years

The SA Government provides public access to some Cabinet documents that are more than 10 years old. This policy and the process for disclosure are set out in Premier and Cabinet Circular 031 *Disclosure of Cabinet documents 10 years or older*, which covers:

- the proactive disclosure of selected Cabinet documents after 10 years
- the disclosure of certain Cabinet documents under the *Freedom of Information Act 1991* after 10 years (known as the ‘Ten Year Rule’).

⁷ Parliament of Australia 2005, House of Representatives Practice (5th edition), Chapter 2 ‘Collective Cabinet responsibility’, https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice5/chapter2#col, viewed August 2023.

4 Auditor-General's statutory responsibilities

The Auditor-General's role is to perform independent audits and report the results to Parliament.

The audits look at the expenditure and receipt of public money and may involve examining the effectiveness with which public resources are used. All of them involve understanding what needs to be audited, gathering sufficient and appropriate evidence to allow conclusions to be drawn, and forming an audit opinion.

The PFAA is the primary legislation governing the position and functions of the Auditor-General.

4.1 Audits performed

There are four essential statutory obligations for the Auditor-General under the PFAA:⁸

Financial statements – annually audit the public accounts (Treasurer's statements) and the accounts of each public authority (about 160 financial audits).⁹

Financial controls – annually audit controls exercised by the Treasurer and public authorities over financial transactions to assess whether they are sufficient to provide reasonable assurance that the financial transactions were conducted properly and in accordance with law.¹⁰

Performance audits – examine the efficiency, economy and effectiveness with which a public authority uses its resources. Performance audits tend to be bespoke engagements on specific projects, transactions or services.¹¹

Local government – audit, review or examine publicly funded bodies and projects and local government indemnity schemes from the 68 separate local government councils.¹²

4.2 Reports on audits

The Auditor-General reports directly to Parliament about the audits performed and the audit conclusions and opinions reached. Parliament also expects the Auditor-General to report on any other matter that the Auditor-General believes should be brought to the attention of the Parliament and the SA Government.

⁸ The Auditor-General has responsibilities under other legislation, such as the *Passenger Transport Act 1994* and *Adelaide Oval Redevelopment and Management Act 2011*.

⁹ PFAA, sections 31(1) and (b).

¹⁰ PFAA, section 36(1)(a)(iii).

¹¹ PFAA, section 31(2).

¹² PFAA, section 32.

For clarity, the key statutory audit reporting obligations in the PFAA are as follows:

- **The Auditor-General's annual report** under section 36, delivered on 30 September annually and containing the opinions¹³ required by that section.
- **Other reports** under section 36(3), which cover audits not included in the annual report and contain opinions for public sector agencies' financial statements (for example, Auditor-General's Report 5 of 2023 *Agency audit reports*, which included universities).
- **Audits of publicly funded bodies and projects** under section 32, which are reports of audits and examinations mainly in local government (for example, Auditor-General's Report 4 of 2023 *Management of Community Wastewater Management Systems*).
- **Performance audits** under section 37, which report on the findings and recommendations from examinations of efficiency, economy and effectiveness in the public sector (for example, Auditor-General's Report 3 of 2023 *Gambling harm minimisation*).

Each audit obligation and report requires the auditor to address all the steps relevant to the audit engagement prescribed by Australian Auditing Standards. Any of them could be affected by not having access to sufficient audit evidence.

¹³ Section 36 of the PFAA requires the following opinions from the Auditor-General:

- (i) the Treasurer's statements reflect the financial transactions of the Treasurer as shown in the accounts and records of the Treasurer for the preceding financial year
- (ii) the financial statements of each public authority reflect the financial position of the authority at the end of the preceding financial year and the results of its operations and cash flows for that financial year
- (iii) the controls exercised by the Treasurer and public authorities in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities is sufficient to provide reasonable assurance that the financial transactions of the Treasurer and public authorities have been conducted properly and in accordance with law

5 The significance of authority and evidence

Two aspects of the auditor's responsibilities are essential to the discussion about access to Cabinet submissions: authority for transactions and sufficient audit evidence.

The concept of authority is pervasive to public audit. The Executive Government, and the public sector that serves it, are subject to law. Ministers and public sector officers are empowered under legislation to authorise binding financial transactions. Nothing can happen without appropriate authority.

This is then reflected in the Auditor-General's obligations, especially for the annual controls opinion as to:

*whether, in the Auditor-General's opinion ... the financial transactions of the Treasurer and public authorities have been conducted **properly and in accordance with law**.*¹⁴

My predecessors and I have taken this to mean that the Auditor-General must conclude on whether established frameworks, which provide for proper processes, have been followed and approvals for transactions have occurred in line with legal requirements. This includes the requirements in the Treasurer's Instructions.

The approval frameworks for public sector spending, which are established by the Treasurer's Instructions, refer to the need for Cabinet approval in recognition of Cabinet's role.

Cabinet records its approval on the submissions it receives. Approved documents are key evidence the Auditor-General needs to access to be able to conclude that certain spending has been conducted both properly and in accordance with law.

Sufficient evidence from audit work is needed to form an opinion, and this is expressly represented in the opinion given. For example, every independent auditor's report on financial statements includes the representation that:

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

So in summary, sufficient evidence that transactions have occurred **properly and lawfully** is required for every audit.

¹⁴ PFAA, section 36(1)(a)(iii).

6 Why access to relevant Cabinet documents is fundamental for audits

By convention or legislated administrative arrangements such as Treasurer's Instructions, Cabinet sometimes makes decisions authorising financial transactions.

Accordingly, giving an audit opinion on whether controls provide reasonable assurance that a transaction has been conducted properly and in accordance with law necessitates accessing evidence about what Cabinet authorised and the information that informed its decision.

6.1 The need for access to information for audits is constant

Access to Cabinet submissions for audit purposes is a constant need because of the way decision-making occurs in the functioning of the SA Government.

In the past, being given access to Cabinet submissions was fundamental to completing audits and forming conclusions and opinions about major activities such as the Gillman site transactions, the former Enterprise Patient Administration System and other health IT systems, the new Royal Adelaide Hospital, the Festival Plaza and the passenger transport service contracts for buses, light and heavy rail.

The Auditor-General will continue to be obliged to consider whether audits of new, high-value service initiatives, major multi-year contracts with private operators and infrastructure projects will require access to Cabinet submissions. For example, major projects recorded in the 2023-24 State Budget include the:

- North-South Corridor — River Torrens to Darlington project (\$5.7 billion from 2022-23 to 2026-27)
- new Women's and Children's Hospital (\$1.2 billion from 2022-23 to 2026-27)
- hydrogen jobs plan (\$593 million from 2023-24 to 2026-27)
- forensic science accommodation (\$348.9 million from 2023-24 to 2026-27).

It is likely that these projects will be subject to Cabinet approvals as they progress. Without access to the relevant Cabinet submissions, the Auditor-General cannot conclude:

- whether the appropriate approval was given for spending these amounts, in line with the established frameworks
- that the business cases for these projects, which are in practice provided as part of the Cabinet submissions, covered all the appropriate information and provided a good basis for the approval of the projects
- that the rationale for the approved proposals included appropriate consideration of the benefits and risks of alternatives
- that the risks associated with the projects were properly considered and documented and risk management plans advised before the approvals were provided.

6.2 Operational documents attached to Cabinet submissions

Longstanding practice is that government officials prepare documentation for decision-making purposes. Where Cabinet is the decision-maker, there is usually significant documentation attached to a submission. A range of operational documents prepared by public sector employees therefore become Cabinet records. Examples include:

- a business case – a sound business case will provide decision-makers with: critical information to make a fully informed decision on the merits of proceeding with a proposal and how funding should be provided; assurance that the proposal is sufficiently developed and capable of being delivered within the cost and time frames specified; and an ongoing tool for managing progress and evaluating benefit realisation post-implementation
- risk registers and analysis
- legal opinions
- grant evaluations
- consultant reports.

Attaching these documents to submissions in recent years has resulted in them also being treated as documents with Cabinet confidentiality. Not being able to access these key operational documents causes challenging issues for the Auditor-General.

6.3 Treasurer's Instruction 8 *Financial Authorisations* (TI 8)

TI 8 establishes a governance regime that applies to all public authorities. It requires prior approval by a person authorised under TI 8 before a public authority can:

- incur expenditure through contractual arrangements
- enter into an agreement with the potential to lead to expenditure
- make a payment or disbursement.

Under TI 8, Cabinet may be the approving authority for executing any contract for the purchase of goods and services, particularly where the value is \$15 million or more.

Cabinet approval is also required:

- to purchase land where the contracted expenditure involved exceeds \$6 million
- for office accommodation projects costing \$15 million and over.

6.4 Treasurer's Instruction 17 *Public Sector Initiatives* (TI 17)

The purpose of TI 17 is to ensure that public sector initiatives¹⁵ are justified and given the proper approval to proceed.

¹⁵ A public sector initiative is defined by TI 17 as:

- a new plan, project or program proposed by a public authority to achieve a particular outcome; or
- a substantial change in an existing plan, project or program being undertaken by a public authority.

Cabinet approval is required for a public sector initiative exceeding \$50 million. TI 17 requires the Cabinet submission seeking the approval to:

- (a) set out the conclusions of the justification statement; and*
- (b) be accompanied by or incorporate written advice from the Department of Treasury and Finance on the budget impact, and other relevant budgetary aspects, of the initiative where—*
 - (i) the estimated cost of the initiative is \$15 000 000 or more; or*
 - (ii) the public authority does not have sufficient financial resources to proceed; and*
- (c) be accompanied by or incorporate written advice from Infrastructure SA, where the public sector initiative is related to a major infrastructure project.*

7 The Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022

Following my 2021-22 annual report to Parliament on 16 November 2022, in which I raised the issue of not having access to Cabinet submissions, the opposition introduced the Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022 (the PFAA bill).

I have included comment about the PFAA bill in this report because the proposed provisions would achieve reasonable and express access to Cabinet submissions for the Auditor-General.

The purpose of the PFAA bill is to amend the PFAA, providing additional powers for the Auditor-General to access Cabinet submissions and measures for managing these documents.

While we were not consulted on the PFAA bill, the provisions proposed in the original bill would provide effective, open access to Cabinet submissions, by request, that are required for the Auditor-General's legislative audit obligations. They also cover the security and confidentiality of Cabinet submissions.

Under the PFAA bill a Cabinet submission is defined as a final version of a Cabinet submission signed by the relevant Minister and lodged for Cabinet, and includes any attachments. Other key provisions are provided in Appendix 1. They address fundamental aspects of accessing Cabinet submissions:

- relevant purpose
- advice of request
- protecting individuals
- secure storage
- disclosure conditions.

The PFAA bill passed without amendment in the Legislative Council on 17 May 2023. The Government did not support it.

The PFAA bill was introduced in the House of Assembly on 18 May 2023. The Government has said it opposes the PFAA bill, with this position recorded in Hansard:

This government values deeply the importance of cabinet solidarity and confidentiality and the only people in South Australia who are entitled to cabinet documents are members of cabinet themselves. The confidentiality of cabinet deliberations is a fundamental principle of our system of government—a fundamental principle of the Westminster system of government—and it remains a cornerstone throughout these systems around the world. The government opposes this bill and will continue to operate under exactly the same framework as the previous Liberal government. We will not be supporting this bill.

7.1 Observations on the PFAA bill

If the PFAA bill was passed, the Auditor-General would have express authority to request, and expect to receive, Cabinet submissions considered relevant for audit purposes and would be required to comply with provisions for their security and disclosure.

The provisions of the bill that protect individuals who provide Cabinet submissions in good faith are very important. While the Auditor-General currently has coercive powers to obtain information under section 34 of the PFAA, a person with a reasonable excuse does not have to comply with the Auditor-General's request. Arguably, the coercive powers cannot compel the production of documents that would otherwise be subject to public interest immunity. The PFAA bill overcomes this difficulty. This is discussed further in section 9.1.

Given the current circumstances and legislative arrangements, I support the provisions of the PFAA bill as a way of resolving this long-standing matter.

8 Principles and standards safeguarding and enhancing auditor independence

To exercise audit and inspection functions effectively, Auditors-General must have comprehensive statutory rights to access documents, information, premises, systems and people relating to the entities that they audit.

These rights are critical for holding public sector entities to account for their use of public resources. For this reason, it is crucial that the Auditor-General can exercise their access rights without obstructions that can delay or impede an audit and drive up audit costs.

Principles and standards that support this discussion of access to Cabinet submissions as audit evidence are well established nationally and internationally. Two are discussed in this section:

- the International Organization of Supreme Audit Institutions (INTOSAI) independence principles
- Australian auditing standards.

8.1 Independence principles for effective public sector auditing – International Organization of Supreme Audit Institutions

INTOSAI¹⁶ is a non-governmental organisation with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. INTOSAI is an autonomous, independent and non-political organisation. Its purpose includes acting as a recognised global voice and setting standards for public sector auditing.

INTOSAI has defined principles and guiding criteria for the independent and effective functioning of external government audit.

The principles for safeguarding and enhancing the independence of Supreme Audit Institutions (SAI) are outlined in INTOSAI's *Mexico Declaration on SAI Independence*.¹⁷

Principle 4 relates to unrestricted access to information. It expects a SAI to have adequate powers to obtain timely, unfettered, direct and free access to relevant documents and information. Under this principle, it is expected that:

- a SAI can access documents or information relevant to its work

¹⁶ At present, INTOSAI has 195 full members, five associate members and two affiliate members. The Australian National Audit Office is Australia's representative and is a full member.

¹⁷ International Organization of Supreme Audit Institutions (2019), 'Mexico Declaration on SAI Independence', International Organization of Supreme Audit Institutions website, https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf, viewed 2 August 2023.

- a SAI can call people to produce documents or give evidence
- a SAI can access premises to examine or copy documents
- evidence received by a SAI is protected from inappropriate disclosure.

By emphasising unrestricted access to information, Principle 4 recognises the critical role of SAIs in conducting thorough and independent audits, promoting transparency and accountability, and contributing to effective governance. It reinforces the need for SAIs to have the authority and freedom to obtain the information necessary for their work, ultimately strengthening public trust in the integrity of government processes and financial management.

Principle 6 relates to the freedom to decide the content and timing of audit reports and to publish and disseminate them. Under this principle, it is expected that:

- a SAI is free to decide the content of its audit reports
- a SAI is free to make observations and recommendations in its audit reports, taking into consideration the views of the audited entity
- legislation specifies minimum audit reporting requirements of a SAI and specific matters that should be subject to a formal audit opinion or certificate
- a SAI is free to decide on the timing of its audit reports, except where specific reporting requirements are prescribed by law
- a SAI may accommodate specific requests for investigations or audits by the legislature or the government
- a SAI is free to publish and disseminate its reports, once they have been formally tabled or delivered to the appropriate authority as required by law.

Principle 6 plays a vital role in upholding the independence, transparency and accountability of SAIs, ensuring their reports reach the intended audiences and contribute to effective oversight and governance of public resources.

Consistent with these principles, the PFAA bill provisions enhance the independence of the Auditor-General regarding access to Cabinet submissions.

The PFAA bill also establishes conditions for disclosure, and importantly allows the Auditor-General to decide whether to refer to a Cabinet decision in a report.

We exercise our disclosure powers responsibly. All of our reporting is subject to procedural fairness before we decide the final form and content of our reports.

8.2 Australian auditing standards

The Auditing and Assurance Standards Board (AUASB) is an independent, non-corporate Commonwealth entity of the Australian Government. It is responsible for developing, issuing and maintaining auditing and assurance standards.

Audit evidence receives particular attention throughout audit standards. There are two fundamental requirements:

- In undertaking an audit, an auditor must obtain sufficient audit evidence.
- If the auditor is unable to obtain sufficient appropriate audit evidence, the auditor shall express a qualified opinion or disclaim an opinion on the financial report.

These evidence requirements must be applied to all aspects of the Auditor-General's statutory obligations to the Parliament. The relevant requirements from the auditing standards are provided in Appendix 4.

9 Access to information under the *Public Finance and Audit Act 1987*

The Auditor-General has broad powers to obtain information under the PFAA. Consistent with the SAI principles and AUASB standards, Parliament has empowered the Auditor General to meet a high standard of evidence by providing coercive powers to compel a person to provide information for a statutory purpose.

However, the PFAA does not expressly provide the Auditor-General with the power to demand Cabinet documents or documents to which public interest immunity attaches.

9.1 Auditor-General's powers to obtain information

Division 3 of the PFAA provides that the Auditor-General or an authorised officer may obtain relevant information when conducting an audit, review or examination by:

- summons, requiring the appearance of any person or the production of any relevant accounts, records or other documents
- inspecting relevant accounts, records or other documents
- requiring a person who has access to information to provide it in writing.

As discussed in section 7.1, the PFAA currently provides that a person who has a reasonable excuse does not have to comply with a request to provide information:

(2) *If a person—*

- (a) *who has been served with a summons to appear before the Auditor-General or an authorised officer fails, **without reasonable excuse**, to appear in obedience to the summons;*
- (b) *who has been served with a summons to produce relevant accounts, records or other documents fails, **without reasonable excuse**, to comply with the summons;*
- (c) *who has been required to provide information to the Auditor-General or an authorised officer—*
 - (i) *fails, **without reasonable excuse**, to do so in the form directed by the Auditor-General or authorised officer;*

The PFAA Bill proposed to deal with that as explained in section 7.

9.2 History of the Auditor-General's access to Cabinet submissions from 2015 to 2023

Figure 8.1 shows how access to Cabinet submissions has changed in my term as Auditor-General.¹⁸

¹⁸ I have held the role of Auditor-General since March 2015. Before that I held executive positions in the Auditor-General's Department from 1991 and was involved in many audits where access to relevant Cabinet submissions was routinely requested and granted.

Figure 8.1: Auditor-General’s access to Cabinet submissions over time

Period	Guidance	Access granted
From March 2015 (and prior) to September 2016	None	Yes, to Cabinet submissions and all attachments
From September 2016 to September 2017	Cabinet policy	No
From September 2017 to March 2019	Cabinet policy	Yes, to Cabinet decision sets only
From March 2019 to March 2022	PC 047 subject to approval by the Premier	Yes, to Cabinet submissions and attachments under PC 047
Since March 2022	PC 047 subject to approval by the Premier	No – requests declined or unresolved

Since 2016 I have been reporting to Parliament about changed access arrangements for Cabinet submissions. Prior to September 2016, when the then government introduced a new policy restricting access to Cabinet documents, confidential access to Cabinet submissions was routinely available to the Auditor-General by request, a practice that had operated for decades. After September 2016, we had significant problems accessing documentation from government agencies related to Cabinet submissions.

Because of this limited access, in August 2018 I wrote to the Premier and to Cabinet Office proposing a way forward. Cabinet Office subsequently advised me that the policy and process were being worked through. I discussed this in my 2018 annual report.¹⁹

Since March 2019 we have worked under a policy on the disclosure of Cabinet documents adopted by the previous government.

The current policy is set out in Premier and Cabinet Circular PC 047 *Disclosure of Cabinet Documents to Investigative Agencies*. PC 047 provides access to a Cabinet submission (including any attachments) of the current government where it is required for the proper exercise of the Auditor-General’s statutory functions.

Access requests are subject to the Premier’s approval.

PC 047 makes other provisions about secure storage of Cabinet documents, publishing references to Cabinet decisions and accessing former government documents. It is replicated in Appendix 2.

In 2022-23 I have made several requests for Cabinet submissions and decisions under PC 047.

At the time of this report I have not been granted access to any information in response to these requests for documentation from the government.

¹⁹ Auditor-General’s Report 5 of 2018 *Annual Report for the year ended 30 June 2018, Part A: Executive summary*, pp. 6-10.

9.3 Correspondence about access to Cabinet submissions in 2022-23

Section 9.3.1 provides a chronology of the requests I made for Cabinet submissions and related correspondence in 2022-23. This provides an insight into the operational nature of these requests. The frequency of them depends on the extent of financial activity originating from Cabinet and varies from year to year.

9.3.1 Requests made for Cabinet submissions

Requests commonly attach a list of the Cabinet submissions that are necessary evidence of approvals and conditions that agencies must comply with and act within in relation to the financial transactions and reporting in a particular financial year.

We also ask for requests to be dealt with at the earliest opportunity.

Figure 8.2: Requests for Cabinet submissions and related correspondence in 2022-23

Date	Request	Response
26 July 2022	6 Cabinet submissions	
17 August 2022	4 Cabinet submissions	
25 October 2022		The Chief Executive of DPC advised that the government declines to provide the Cabinet documents requested in July and August
14 February 2023	2 Cabinet submissions Also requested a review of the existing PC 047	
16 February 2023	4 Cabinet submissions	
13 April 2023	4 Cabinet submissions	
19 April 2023		The Chief Executive of DPC proposed an alternative approach (see section 9.3.2)
17 July 2023	12 Cabinet submissions	

Two examples of the Cabinet submissions I requested are:

- Department for Health and Wellbeing – Approval for the increased cost of the new Women’s and Children’s Hospital – required to provide evidence of appropriate approvals required in line with Treasurer’s Instructions 8 and 17

- Department for Infrastructure and Transport – North-South Corridor, Torrens to Darlington Project – required to provide evidence of appropriate approvals required in line with Treasurer’s Instructions 8 and 17 . The business case was modified in addition to several changes to the form and substance of the project. We were seeking to confirm the business case and understand the variation between the initial forecast of \$9.9 billion²⁰ to the current forecast of \$15.4 billion²¹.

As a result of the limitation in being able to access this information, at the time of this report the Auditor-General is not able to conclude that transactions associated with these two very significant projects have been undertaken properly and in accordance with law, and will need to note this limitation in any following report to the Parliament.

9.3.2 DPC proposal for an alternative approach

In April 2023, the Chief Executive of DPC (CE DPC) wrote to me, noting my view on needing access to Cabinet documents to execute my responsibilities under the PFAA.

The CE DPC advised:

Cabinet confidentiality is an underpinning principle of our Westminster system of government. Decisions about releasing Cabinet information, in any circumstance, must balance preserving longstanding conventions to protect Cabinet deliberations against broader public interest and accountability.

The CE DPC proposed an alternative approach to efficiently balance preserving longstanding conventions of Cabinet confidentiality with enabling the Auditor-General responsibilities to be fulfilled. The approach entailed the CE DPC making written representations to me about Cabinet decisions and processes in the context of my audit requests.

I acknowledged the CE DPC’s authority and intent to provide me with the information I needed to perform my audit role. However, I gave several reasons why the proposal would not satisfy my obligations as the independent auditor reporting to Parliament. This report encapsulates the key reasons.

I also requested a return to the earlier practice of receiving only the Cabinet decision sets. The decision set is the part of a Cabinet submission that shows the decisions made, any conditions that apply (eg further reporting to Cabinet, stage approval, timing etc), the Cabinet approval stamp, date and signature. It does not reveal deliberations of Cabinet, only the decisions to be implemented by public authorities. Having access to this would provide the sufficient audit evidence required for approval. However it would not address having express access to any attached operational documents and other information available in Cabinet submissions.

As agencies are our primary source of audit evidence, I also requested that the government give clear advice to agencies about access to operational documents with a view to working through current arrangements efficiently and practically.

No further correspondence occurred on these requests.

²⁰ 2022-23 State Budget, Volume 3, page 120.

²¹ 2022-23 State Budget, Volume 3, page 119.

10 Access to Cabinet documents in other Australian jurisdictions

The South Australian Auditor-General not having full and free access to Cabinet documents under the PFAA contrasts with access powers in other Australian jurisdictions. For example:

- the Australian Auditor-General has broad information gathering powers under sections 32 and 33 of the *Auditor-General Act 1997* (Cth). These powers are routinely exercised for the Auditor-General's work. They are limited with respect to the powers, privileges and immunities of each House of the Parliament; the members of each House of the Parliament; and the committees of each House of the Parliament and joint committees of both Houses of the Parliament. They are not limited by:
 - any other law, except to the extent that the other law expressly excludes the operation of section 32 or 33
 - any rule of law relating to legal professional privilege or any other privilege, or the public interest, in relation to the disclosure of information or the production of documents
- in New South Wales, the *Government Sector Audit Act 1983* and *Local Government Act 1993* both provide for full and free access to books, records or other documents relating to any entity, fund or account or government resources or related money for the purpose of exercising functions imposed on the Auditor-General by law. Access is provided despite:
 - any privilege of an entity that they might claim in a court of law, including legal, professional privilege
 - any books or records or other documents being provided or produced being or included in Cabinet information
 - any duty to secrecy or other restriction on disclosure applying to the entity or staff of the entity
- in Victoria, Part 7 of the *Audit Act 1994* details the Auditor-General's information gathering powers and duties. Section 40 of that Act states that a request for access to information or a document that is subject to Cabinet confidentiality must be complied with if it is made for:
 - a financial audit under Part 3
 - a performance audit under Part 4
 - an assurance review under Part 5
 - performing the Auditor-General's functions or powers under another Act where the other Act expressly authorises the provision of that information
- in the Australian Capital Territory, the Auditor-General can use powers under Division 3.6 of the *Auditor-General Act 1996* to obtain access to Cabinet documentation. The ACT Cabinet Handbook²² states that under the *Auditor-General Act 1996*, the Auditor-General is entitled to access Cabinet papers for the purposes of investigating a particular term of reference.

²² Australian Capital Territory 2022, *ACT Cabinet Handbook*, Australian Capital Territory, Chief Minister, Treasury and Economic Development Directorate website, accessed 14 July 2023.

11 Practice and culture are critical to information access

Auditor-General powers of unrestricted access to information can in practice be threatened when officials or audited entities frustrate attempts to gather information. This can happen in many ways, from uncertainty, caution, inadvertently or otherwise. It can 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 that the Auditor-General knows exist or should exist.

I note that the importance of access to information not being constrained by practice and culture was recognised by Dr David Solomon AM in his report²³ on Queensland's freedom of information laws, where he stated:

History in Queensland, as in many other jurisdictions, has proven unambiguously that there is little point legislating for access to information if there is no ongoing political will to support its effects. The corresponding public sector cultural responses in administration of FOI inevitably move to crush the original promise of open government and, with it, accountability.

This observation highlights the significance of the tone set from the top to giving effect to the spirit of any legislative or other government reform.

I have observed that Cabinet submissions may include operational information that is relevant to audits. It is important that I emphasise that since the change in government policy in September 2016, when our access to Cabinet documents was first restricted, we have had significant problems accessing operational documentation from SA Government agencies where it related to Cabinet decisions.

Agencies are understandably risk averse about what they provide in response to audit requests where they are uncertain and concerned that it is, or might be, connected to a Cabinet submission and therefore subject to confidentiality.

When access to requested information is denied or delayed, it causes, at a minimum, significant delay in completing audits, wastes time for agency and audit staff and, as the audit process is at least inefficient, is more costly to both audit and agencies as requests recur and are deliberated.

My request to the CE DPC for guidance to be provided to agencies about access sought to emphasise and address this issue to improve access and audit efficiency generally for operational documents. Based on our experience since 2016, the issue is highly likely to persist in the absence of clear guidance.

²³ Solomon D 2008, *The Right to Information: Reviewing Queensland's Freedom of Information Act*, Queensland Government's Right to Information and Information Privacy website, <https://www.rti.qld.gov.au>, accessed 14 July 2023.

12 Protecting confidentiality in public reporting

An Auditor-General seeks access to relevant Cabinet submissions to professionally and sufficiently discharge their statutory audit responsibilities.

Whenever access to Cabinet submissions was provided to us in the past, we gave our full attention to maintaining their confidentiality. We did this in recognition of the allowance the Government had made in releasing the submissions to us and with the full understanding of their information security status.

The key elements of protecting the confidentiality of Cabinet submissions are determining who has access to them, storing them securely and the disclosure of information in them in audit reports.

The following sections summarise the position we have taken on these elements to date.

12.1 Secure access

The Cabinet submissions we accessed in the past are used only by authorised audit officers in their duties. They are subject to confidentiality requirements as public servants or by specific certification.

12.2 Secure storage

We are committed to securely storing all records we obtain for statutory audit purposes. The Cabinet submissions we receive are subject to a dedicated information security protocol.

Accordingly, we support the PFAA bill provision:

- (4) The Auditor-General or authorised officer (as the case requires)—*
 - (a) must ensure that the Cabinet submission is stored securely and is distributed only to members of the Auditor-General's staff who require access to the document in order to assist the Auditor-General in the exercise of the Auditor-General's functions.*

12.3 Disclosure: the content and timing of audit reports

The information Auditors-General obtain using their information gathering powers for the proper discharge of their statutory responsibilities should be protected from inappropriate disclosure.

We seek to consistently achieve a balance of independence, impartiality and objectiveness in our reporting so the Parliament can be well informed about our work, findings and the basis of our opinions and conclusion. Confidentiality requirements from any source, including Cabinet, privileged, commercial or personal, are respected and maintained.

We perform significant procedural fairness in our work through a variety of discussions, letters and draft reviews as we consider fits the situation. This includes resolving areas of uncertainty about disclosures with agencies before we complete our reports for the Parliament.

The overriding proviso is the Auditor-General maintaining an independent position and discharging Parliament's requirements objectively. The ability to decide the content and timing of reports is an important aspect of this independence. Openness and transparency in reporting are fundamental to the Auditor-General's role in the overall integrity system.

The Auditor-General should be required to report on the outcome of their work and should also be able to report significant findings at any time. These reports should be presented directly to the Parliament and should be published. The transparency this brings to accountability forms a vital part of the overall integrity of the system of government.

To provide some protection over the publication of confidential or other sensitive information, some jurisdictions have imposed restrictions requiring the exclusion of certain information from reports.

The PFAA bill would do this by its provisions:

- (4) *The Auditor-General or authorised officer (as the case requires)—*
 - (b) *may only make reference in a report to a decision of Cabinet where such a reference is, in the opinion of the Auditor-General or authorised officer (as the case requires), necessary for the proper exercise of the Auditor-General's functions; and*
 - (c) *must ensure that a reference to a decision of Cabinet in a report is made in such a way as to not disclose any other information regarding the deliberations of Cabinet; and*
 - (d) *must ensure that a Cabinet submission is not published or annexed to, or quoted from or paraphrased in, a report.*

As I have already said, we support the PFAA bill.

13 Some recent references about increasing the accessibility of Cabinet documents

The effects of the confidentiality of Cabinet deliberations convention have elicited debate in many jurisdictions over many years. It is important to note that the convention has many supporters of its purpose and benefits, as well as those who challenge the principle or the extent of its application and its effects.

In this section I provide two examples which, I acknowledge, are about public access rather than access for audit purposes, and both put the case for increasing accessibility.

I have included them in this report because they provide context on the value of scrutinising the blanket approach to the confidentiality of Cabinet documents.

13.1 Review of culture and accountability in the Queensland public sector

In February 2022, Queensland Premier Anastacia Palaszczuk appointed Emeritus Professor Peter Coaldrake AO to undertake a four-month review into culture and accountability in the Queensland public sector. While the review considered both the accountability and integrity framework overall, particular emphasis was placed on matters of public sector culture, including whether the framework was effective in supporting an ethical public sector culture and maintained the public's trust in the decisions of the Queensland Government.

In his final report,²⁴ Professor Coaldrake stated:

It is a commonsense proposition that citizens are likely to have more trust in their governments if they know that decisions that use taxpayers' funds, and that may affect their lives quite directly, are made in the open, and are subject to scrutiny.

...

The need for Cabinet to maintain confidentiality around its deliberations, particularly in their developmental stages, is well understood and respected. However, it can mitigate against the openness that the Government espouses, and which is so necessary to maintaining public trust in the quality and impartiality of decision making.

Among the 14 recommendations made by Professor Coaldrake was a recommendation for Cabinet submissions (and their attachments), agendas and decision papers to be proactively released and published online within 30 business days of a decision. On 28 June 2023,

²⁴ Coaldrake P 2022, *Let the sunshine in: Review of culture and accountability in the Queensland Public Sector*, Queensland Government website, <https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf>, viewed 1 August 2023.

Premier Palaszczuk released a media statement²⁵ in which she stated, ‘We will accept all of his recommendations and we will implement them lock, stock and barrel.’

13.2 Royal Commission Report into the Robodebt Scheme

The rationale of public interest immunity was most recently reflected on in the Royal Commission report²⁶ into the Robodebt Scheme. In it, Commissioner Catherine Holmes AC SC made closing observations about the terms of reference for the Royal Commission and the difficulties the Commission encountered in inquiring into them. This included the Commission’s inability to gain access to Cabinet documents. The Commissioner highlighted that the efforts of the Commission and others in trying to establish the facts of the Robodebt Scheme were, in part, thwarted by the existence of public interest immunity. The Commissioner stated:

It is time to ask whether the rationale of public interest immunity – the maintenance of Cabinet solidarity and collective responsibility – really justifies the withholding of information that routinely occurs under that mantle. Nothing I have seen in ministerial briefs or material put to Cabinet suggests any tendency to give full and frank advice that might be impaired by the possibility of disclosure [sic], and the Cabinet minutes which are in evidence are sparing in detail, with a careful mode of expression revealing nothing of individual views.

...
What has happened in the case of the Scheme demonstrates the need for greater transparency of Cabinet decisionmaking.

...
As with all Government documents, there may be reasons why disclosure of Cabinet documents, or parts of those documents, would not be in the public interest. Obvious examples include documents, or parts of documents, that would prejudice national security, law enforcement or Australia’s international relations if released. Whether non-disclosure for those, or other, reasons, is warranted by the public interest would of course depend on the individual circumstances of each case.

However, the Government should end the blanket approach to confidentiality of Cabinet documents. To give effect to this, section 34 of the FOI Act²⁷ should be repealed. The wide range of class and conditional exemptions in the FOI Act is sufficient to protect the public interest in relation to Cabinet documents. The mere fact that a document is a Cabinet document should not, by itself, be regarded as justifying maintenance of its secrecy.

The full section of the closing observations about access to Cabinet documents is reproduced in the Attachment.

²⁵ Palaszczuk A 2023, ‘Lock, stock, and barrel’ Premier embraces Coaldrake Review, Queensland Government Media Statement, The Queensland Cabinet and Ministerial Directory, 28 June, <https://statements.qld.gov.au/statements/95531>, viewed 14 July 2023.

²⁶ Holmes C 2023, *Royal Commission into the Robodebt Scheme*, Australian Government, Royal Commission into the Robodebt Scheme website, <https://robodebt.royalcommission.gov.au/>, viewed 14 July 2023.

²⁷ *Freedom of Information Act 1982* (Cth).

Appendix 1 – Extracts from the Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022

Relevant purpose – the Auditor-General or an authorised officer may only request, or issue a summons to require the production of, accounts, records or other documents that are, in the opinion of the Auditor-General or authorised officer (as the case requires), relevant to an audit, review or examination.

Advice of request – before providing or producing a Cabinet submission to the Auditor-General or an authorised officer, the person must, in writing, notify the current leader of the political party of which the Premier at the time the Cabinet submission was lodged for Cabinet was a member.

Protects individuals – ensures that individuals will incur no civil or criminal liability when providing or producing Cabinet submissions in good faith to the Auditor-General, and the provision or production of the Cabinet submission is not to be regarded as a breach of any duty of secrecy or confidentiality imposed on a person by law.

Secure storage – documents must be stored securely and distributed only to members of the Auditor-General's staff who require access to the document in order to assist the Auditor-General or in the exercise of the Auditor-General's function.

Disclosure conditions – reference can only be made in a report to a decision of Cabinet where the reference is, Auditor-General's opinion, necessary for the proper exercise of the Auditor-General's functions.

Any reference to a decision of Cabinet in a report must not disclose any other information regarding the deliberations of Cabinet.

Cabinet submissions must not be published or annexed to, or quoted from or paraphrased in, a report.

Appendix 2 – Premier and Cabinet Circular PC 047 *Disclosure of Cabinet documents to investigative agencies* (February 2019)

This circular²⁸ provides guidance on the disclosure of Cabinet documents to the Auditor-General and other investigative agencies.

1 Summary

- 1.1 The confidentiality of Cabinet deliberations is a fundamental principle of our system of government. Except where there is a legal power to compel the production of information on Cabinet’s deliberations, the only body that may determine whether to disclose such information is Cabinet itself. This circular sets out the policy Cabinet has adopted with respect to the disclosure of information regarding Cabinet deliberations to investigative agencies.

4 Access to Cabinet documents of the current government by the Auditor-General

- 4.1 Where the Auditor-General certifies that access to a Cabinet submission (including the attachments to a Cabinet submission) of the current government is required for the proper exercise of the Auditor-General’s statutory functions, the Auditor-General may request the submission in writing from the Chief Executive of DPC.
- 4.2 Upon receiving a request, the Chief Executive of DPC will provide access to the Cabinet submission, subject to the approval of the Premier.
- 4.3 Notwithstanding the provisions of this circular, the Auditor-General is not permitted access to the Cabinet Office or costing comments attached to a Cabinet submission.
- 4.4 Access to a Cabinet submission (including any attachments) is provided to the Auditor-General subject to the following conditions:
 - The Auditor-General must ensure that the document is stored securely and is distributed only to members of the Auditor-General’s staff who require access to the document in order to assist the Auditor-General in the exercise of the Auditor-General’s statutory functions
 - In publishing a public report, the Auditor-General may only make reference in the report to a decision of Cabinet where such a reference is necessary for the proper exercise of the Auditor-General’s statutory functions, and
 - A reference to a Cabinet decision in a public report must be made in such a way as to not disclose any other information regarding the deliberations of Cabinet, including quoting from the document.
- 4.5 This section also applies to Cabinet documents of a former government of the same political persuasion as the current government.

²⁸ Department of the Premier and Cabinet, February 2019, Circular PC 047 *Disclosure of Cabinet documents to investigative agencies*.

Appendix 3 – Royal Commission into the Robodebt Scheme

The following is reproduced in full from the Report of Holmes C (2023), *Royal Commission into the Robodebt Scheme*.²⁹

The inability to gain access to Cabinet documents

Here a particular issue arises. There was a committed group of people trying to establish the facts of the Scheme: journalists, academics and activists. I do not propose a roll call; they know who they are and some of their names have emerged in the Commission’s hearings. They played a stalwart role. Some of them attempted to get to the bottom of how this measure had come to pass by making Freedom of Information applications. But they were, in part at least, thwarted by the existence of public interest immunity. The application of the immunity has also limited the Commission’s ability to reveal the entirety of the documentation concerning how the original proposal which became Robodebt, was passed and what was put to Cabinet thereafter. The salient points have been able to be made, but large parts of the relevant ministerial briefs, materials put before Cabinet and Cabinet minutes themselves have not been able to be revealed.

It is time to ask whether the rationale of public interest immunity – the maintenance of Cabinet solidarity and collective responsibility – really justifies the withholding of information that routinely occurs under that mantle. Nothing I have seen in ministerial briefs or material put to Cabinet suggests any tendency to give full and frank advice that might be impaired by the possibility of disclosure [*sic*], and the Cabinet minutes which are in evidence are sparing in detail, with a careful mode of expression revealing nothing of individual views.

To explain: Cabinet documents are, by virtue of section 34 of the *Freedom of Information Act 1982* (Cth) exempt as a class from disclosure. That means that the mere fact that they are documents of the kind exempts them from disclosure. The exemption applies to these documents:

- Cabinet submissions that:
 - have been submitted to Cabinet, or
 - are proposed for submission to Cabinet, or
 - were proposed to be submitted but were in fact never submitted and were brought into existence for the dominant purpose of submission for the consideration of Cabinet (s34(1)(a))
- official records of Cabinet (s34(1)(b))
- documents prepared for the dominant purpose of briefing a minister on a Cabinet submission (s 34(1)(c))

²⁹ Holmes C 2023, *Royal Commission into the Robodebt Scheme*, Australian Government, Closing observations, pp. 656-7, Royal Commission into the Robodebt Scheme website, <https://robodebt.royalcommission.gov.au>, viewed 14 July 2023.

- drafts of a Cabinet submission, official records of the Cabinet or a briefing prepared for a minister on a Cabinet submission (s 34(1)(d)).

Cabinet records are released to the public and held in the National Archives of Australia once the 'open access period' has been reached, which is 20 years for Cabinet records and documents, and 30 years for Cabinet notebooks.

What has happened in the case of the Scheme demonstrates the need for greater transparency of Cabinet decisionmaking. If the Executive Minute that was put to Mr Morrison and the NPP which was presented to Cabinet had been available for public scrutiny, it would have become apparent firstly, that there was advice that income averaging in the way it was proposed to be used could not occur without legislative change, and secondly, that Cabinet was told nothing of those things. That raises the real question of whether the protection of Cabinet documents as a class from disclosure ought to be maintained or whether, when access is sought, disclosure should be given unless there is a specific public interest in maintaining its confidentiality.

New Zealand has gone as far as requiring, not merely allowing, publication of Cabinet documents, and Queensland, having accepted the recommendation of the Coaldrake Report, seems about to do something similar.

As with all Government documents, there may be reasons why disclosure of Cabinet documents, or parts of those documents, would not be in the public interest. Obvious examples include documents, or parts of documents, that would prejudice national security, law enforcement or Australia's international relations if released. Whether non-disclosure for those, or other, reasons, is warranted by the public interest would of course depend on the individual circumstances of each case.

However, the Government should end the blanket approach to confidentiality of Cabinet documents. To give effect to this, section 34 of the FOI Act should be repealed. The wide range of class and conditional exemptions in the FOI Act is sufficient to protect the public interest in relation to Cabinet documents. The mere fact that a document is a Cabinet document should not, by itself, be regarded as justifying maintenance of its secrecy.

Section 34 of the Cth FOI Act should be repealed

The Commonwealth Cabinet Handbook should be amended so that the description of a document as a Cabinet document is no longer itself justification for maintaining the confidentiality of the document. The amendment should make clear that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason.

Appendix 4 – Extracts from relevant Australian Auditing Standards

Auditing Standard ASA 500 Audit Evidence

ASA 500 sets requirements about what constitutes sufficient audit evidence:

Objective

4. *The objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion.*

Definitions

- 5(b) *Appropriateness (of audit evidence) means the measure of the quality of audit evidence; that is, its relevance and its reliability in providing support for the conclusions on which the auditor's opinion is based.*
- 5(c) *Audit evidence means information used by the auditor in arriving at the conclusions on which the auditor's opinion is based. Audit evidence includes both information contained in the accounting records underlying the financial report and information obtained from other sources.*
- 5(f) *Sufficiency (of audit evidence) means the measure of the quantity of audit evidence. The quantity of the audit evidence needed is affected by the auditor's assessment of the risks of material misstatement and also by the quality of such audit evidence.*

Sufficient Appropriate Audit Evidence

6. *The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. (Ref: Para. A5-A29)*

Auditing Standard ASA 330 The Auditor's Responses to Assessed Risks

ASA 330 sets out the auditor's obligations when unable to obtain sufficient audit evidence:

27. *If the auditor has not obtained sufficient appropriate audit evidence related to a relevant assertion about a class of transactions, account balance or disclosure, the auditor shall attempt to obtain further audit evidence. If the auditor is unable to obtain sufficient appropriate audit evidence, the auditor shall express a qualified opinion or disclaim an opinion on the financial report.*

Standard on Assurance Engagements ASAE 3150 Assurance Engagements on Controls

The Auditor-General is required to provide Parliament with an annual opinion on controls. ASAE 3150 deals with assurance engagements conducted by an assurance practitioner to provide an assurance report on the suitability of the design of controls to achieve identified control objectives, and their implementation and operating effectiveness.

ASAE 3150 maintains the requirement for sufficient evidence for controls audits:

84. The assurance practitioner shall evaluate the sufficiency and appropriateness of the evidence obtained in the context of the engagement and, if necessary, attempt to obtain further evidence. If the assurance practitioner is unable to obtain necessary further evidence, the assurance practitioner shall consider the implications for the assurance practitioner's conclusion in accordance with ASAE 3000. The assurance practitioner shall qualify their conclusion if the possible effects of undetected misstatements, deficiencies or deviations due to an inability to obtain sufficient appropriate evidence could be material, and shall disclaim their conclusion if the possible effects could be both material and pervasive.

Standard on Assurance Engagements ASAE 3500 Performance Engagements

The Auditor-General may conduct performance audits and provide Parliament with reports on the outcome of those audits. ASAE 3500 deals with direct engagements undertaken by an assurance practitioner to provide a reasonable assurance report on an activity's performance evaluated against identified criteria.

ASAE 3500 maintains the requirement for sufficient for evidence for performance audits:

41. The assurance practitioner shall evaluate the sufficiency and appropriateness of the evidence obtained in the context of the performance engagement, and if necessary, attempt to obtain further evidence. If the assurance practitioner is unable to obtain necessary further evidence, the assurance practitioner shall consider the implications for the assurance practitioner's conclusion. The assurance practitioner shall state in their conclusion that there was not sufficient or appropriate evidence to conclude whether the activity was free of material variation, in terms of economy, efficiency and/or effectiveness, as evaluated against the identified criteria.

