

Auditor-General's Auditing Standard 6

Inquiries Carried Out by,
or on Behalf of, the Auditor-General

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Introduction

Scope of this Standard

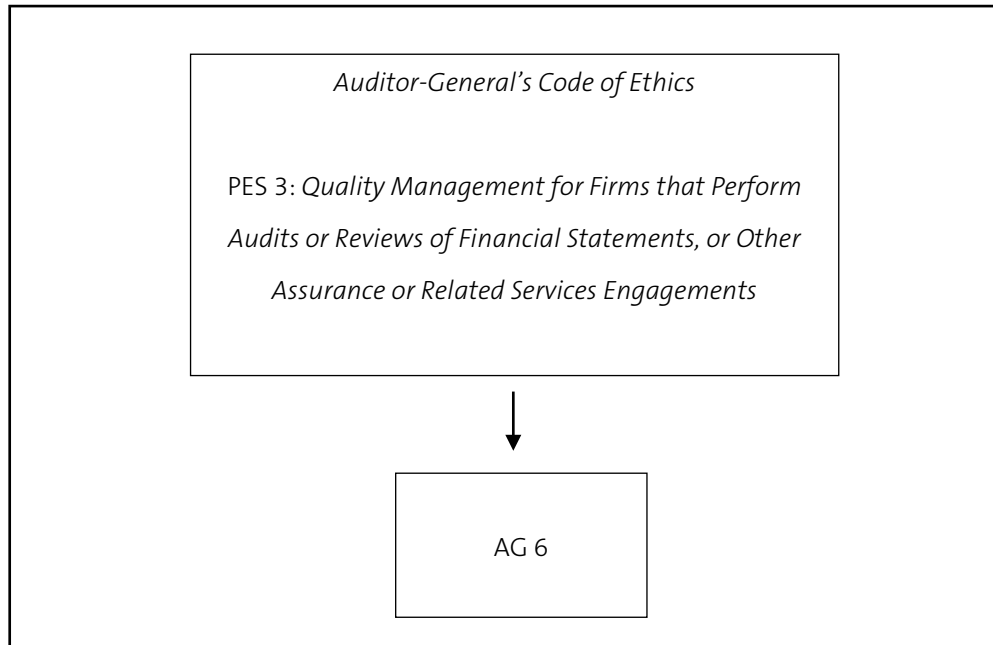
1. This Auditor-General's Auditing Standard establishes the standards the Auditor-General applies to the conduct of inquiries under section 18 of the Public Audit Act 2001.

Application

2. Compliance with this Standard is mandatory for the Auditor-General, the Deputy Auditor-General, their staff, and, where applicable, individuals and/or entities that are contracted to assist in the conduct of an inquiry.
3. Inquiries shall be carried out with regard to:
 - (a) the *Auditor-General's Code of Ethics*; and
 - (b) Professional and Ethical Standard 3: *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements* issued by the New Zealand Auditing and Assurance Standards Board.
4. The specific requirements and guidance in this Statement should be considered as additions to any professional standards that may be determined by any professional body for which the Auditor-General, the Deputy Auditor-General, their staff, and, where applicable, individuals and/or entities that are contracted to assist in the conduct of an inquiry may be members.
5. The Auditor-General, the Deputy Auditor-General, their staff, and, where applicable, individuals and/or entities that are contracted to assist in the conduct of an inquiry may also need to comply with an ethical code (or equivalent) that applies to them because they are members of a profession or occupational group other than Chartered Accountants Australia and New Zealand. Where a conflict arises, or may arise, because of a conflict between the Auditor-General's Statements in paragraph 3 and any other ethical code (or equivalent) that is required to be complied with, then the actual or perceived conflict should be raised with the individual ultimately responsible for the inquiry with a view to resolving the conflict.

The relationship between this Standard and the statements referred to above is depicted as follows:

Figure 1 – Application of the Auditor-General’s Auditing Standards



6. This Standard applies to all inquiries commenced on or after 1 April 2023.

Objectives

7. The objectives of an inquiry are to:
- (a) investigate a matter that is the subject of an inquiry as fully as necessary to form conclusions on the matters raised or on appropriate next steps;
 - (b) form conclusions based on the evidence;
 - (c) ensure that the inquiry is carried out in accordance with administrative law principles and, in particular, that any person who may be adversely affected by the inquiry’s conclusions is treated fairly; and
 - (d) where appropriate, clearly communicate any findings, conclusions, or recommendations.

Definitions

8. For the purpose of this Auditor-General's Auditing Standard, the defined term listed below has the following meaning:

Inquiry team	means any staff of the Auditor-General assisting in the conduct of an inquiry and any individuals and/or entities that are contracted to assist.
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Requirements

Administrative law principles

9. Inquiries shall be carried out in accordance with the principles of administrative law, including:
- (a) legality (Ref: Paras. A1-A10);
 - (b) fairness (Ref: Paras. A11-A19); and
 - (c) reasonableness (Ref: Paras. A20-A21).
10. In order to meet the principles of administrative law, the inquiry team shall do what is fair and reasonable in the particular circumstances to ensure that:
- (a) the conclusions arising from inquiry work are well founded; and
 - (b) the rights of those criticised are properly protected.

Application and other explanatory material

Administrative law principles (Ref: Para. 9)

Legality

- A1. The Auditor-General has several distinct obligations under the principle of legality to ensure that:
- all inquiries are carried out within the Auditor-General's *authority*;
 - all reasonable steps are taken to ensure that inquiry work is free of any *legal or factual errors*;
 - all reasonable steps are taken to ensure that all *relevant and no irrelevant matters* are considered as part of the inquiry work; and
 - all reasonable steps are taken to consider the individual facts covered by the inquiry.

- A2. All work on inquiries should be carried out with the appropriate *authority* and should be within the scope of the Auditor-General's statutory functions. The inquiry must relate to a public entity, and the issues should be within the terms of section 18 of the Public Audit Act 2001.
- A3. Section 18 of the Public Audit Act 2001 states:
- (1) *The Auditor-General may inquire, either on request or on the Auditor-General's own initiative, into any matter concerning a public entity's use of its resources.*
 - (2) *Subsection (1) does not apply to any registered bank (as defined in section 2(1) of the Banking (Prudential Supervision) Act 1989).*
 - (3) *If subsection (1) applies and there is an applicable government or local authority policy to which the public entity is required to adhere, the inquiry is to be limited to the extent to which the public entity is using its resources in a manner consistent with that policy.*
- A4. If a person is taking formal responsibility for an inquiry, they should also have an appropriate delegation from the Auditor-General.
- A5. Any use of the coercive powers in the Public Audit Act 2001, such as the power to require information to be produced or the power to take evidence, should be for a proper purpose. The powers can be exercised only by a person with delegated authority to do so and are limited to gathering information that may be relevant to a lawful inquiry.
- A6. If the inquiry decisions are based on *legal or factual errors*, they may be found to be unlawful because they involve an improper use of their powers. All those working on an inquiry should therefore take all reasonable steps to ensure that their work is free of any legal or factual errors.
- A7. Depending on the nature of the issues and evidence in the particular inquiry, appropriate steps that the inquiry team might take include:
- documenting and filing all evidence gathered, including full notes of all interviews and discussions;
 - setting out any conflicting evidence on matters of fact in the final report;
 - checking that the final report accurately reflects the evidence;
 - obtaining legal advice on any substantive legal issues, particularly if there is any debate or conflict with or between parties on what the relevant law means; and/or
 - confirming the report's factual accuracy by consulting those who are affected by the report.

- A8. When forming judgements or making decisions, the inquiry team should be clear about the considerations that are being taken into account. They should ensure that, so far as possible within the scope of the inquiry, they have considered all *relevant matters*. This means that, when gathering evidence, they should cast their net wide. The inquiry team should also look beyond the particular issues to ensure that they understand the broader context and background to the issues. Taking a narrow view of any terms of reference or the scope of the work can create risk. The inquiry team should periodically give specific thought to whether there is anything else they could or should be thinking about.
- A9. Equally, the inquiry team should make sure that they are not being swayed by considerations that are irrelevant. Risks here might include previous interactions with the individuals or entities involved in other capacities or the political context. If the inquiry team is taking account of previous work in other contexts, they should be able to explain why it is relevant and make explicit that it is a factor.
- A10. When applying any expectations, policies, or standards to the matters being assessed, the inquiry team should always consider the facts of the particular matter and whether it is right to apply the policy to these circumstances. *Rigid application of a pre-determined policy* can make a decision unlawful. The normal audit approach of establishing benchmarks at the outset and applying them to the facts once they are gathered must therefore be applied with caution. Similar caution is needed when applying precedents. Although consistency is important, the inquiry team must always look for the right answer on the particular facts.

Fairness

- A11. The Auditor-General has several distinct obligations under the principle of fairness to ensure that:
- due consideration is made to ensure that inquiries are carried out without *bias*;
 - proper procedures are carried out to ensure that any person or entity who may be criticised is treated fairly in accordance with *natural justice*;
 - *there is clear communication* about the processes that will be used to carry out an inquiry; and
 - adequate checks are made to ensure that the process or content of the inquiry is *substantively fair*.
- A12. The legal test for *bias* is whether a reasonable observer who is aware of all the circumstances would think that the impartiality of the decision-maker might be affected. This might arise because of financial interests in the issue or entity, or personal connections with those involved.

- A13. The systems for managing independence in all of the Auditor-General's work are sufficient to manage this risk. When staff are being assigned to particular pieces of inquiry work, the individual and their manager will consider whether there might be any potential independence issue. Information recording any conflicts of interest and mitigation actions, which is routinely recorded for every staff member, provides a starting point, but specific consideration also needs to be given before the start of the inquiry as to whether any other matters need to be considered.
- A14. Pre-determination is the other aspect of *bias* that should be considered. All those involved in an inquiry should be able to consider the issues with an open mind.
- A15. *Natural justice* obligations apply whenever it is proposed by the inquiry team to include a criticism in a final report or where the inquiry team's decision could in some other way be regarded as having an adverse effect on someone. These are procedural obligations to ensure that the person or entity who may be criticised is treated fairly. The detail of what steps are required to achieve a fair process in each case will vary depending on the nature of the issues and the person's interest in them. Strong criticisms that will have a major effect will probably need to be accompanied by greater procedural protections than lesser matters.
- A16. The main elements for according natural justice to those affected are:
- letting those affected know that the inquiry may result in an adverse comment and showing them the comment before the report is finalised;
 - disclosing the basis for the proposed comment (usually, this will be explained in the draft report) and, if necessary, any material being relied on to reach the conclusions;
 - giving a reasonable opportunity for the affected person to respond, including sufficient time and information, and the ability to involve a legal representative; and
 - carefully considering the response with an open mind.
- A17. These steps are built into the standard inquiry processes. However, in each case, the inquiry team should specifically consider whether fewer or more steps are required to achieve a fair process. For example, the Public Audit Act 2001 gives the Auditor-General the ability to meet the costs of legal representation for a person giving evidence in appropriate cases.
- A18. The inquiry team should be careful to ensure that they are clear to all those involved about the process being followed in the particular case. If the process is unclear, there is a risk that a person may have *legitimate expectations* about what will happen based on past practice, general statements about the process, or some other comments that may

have been made at an earlier time. If those expectations are legitimate and they are not met, then the inquiry process could be found to be unfair.

- A19. In practice, the obligation to ensure *substantive fairness* effectively requires the inquiry team to make an overall check, towards the end of their work, that there is nothing in the process or content of their work that will result in an unfair outcome for someone. It is an opportunity to pause and consider whether there is anything else that the team could or should be thinking about or doing before reporting their findings and, where appropriate, their recommendations and conclusions.

Reasonableness

- A20. The essence of good decision-making, and this administrative law obligation, is to have sound reasons for the decisions being made. Documenting and explaining the work and conclusions help to demonstrate why the decisions are reasonable. The standard consultation and internal peer review processes for inquiries are also useful procedural steps for helping to ensure that decisions are reasonable.
- A21. The courts generally recognise that there may be a range of possible decisions that would be reasonable. They will not use the “reasonableness” grounds of review to substitute the court’s judgment for that of the decision-maker. For a decision to be overturned as unreasonable usually requires quite strong facts, suggesting that the decision is irrational or arbitrary.