

TASMANIA

AUDIT BILL 2008

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Purpose of Act
4. Interpretation
5. Functions under other written laws
6. Provisions of other law to be read subject to provisions of this Act

PART 2 – AUDITOR-GENERAL AND DEPUTY AUDITOR-GENERAL

7. Auditor-General
8. Auditor-General not to be Member of Parliament
9. Appointment of Auditor-General
10. Independence of Auditor-General
11. Auditor-General's annual plan
12. Application of *State Service Act 2000* limited
13. Deputy Auditor-General

PART 3 – ACCOUNTABLE AUTHORITIES

14. State entities and audited subsidiaries of State entities to have accountable authority
15. Treasurer may determine accountable authority of State entity

PART 4 – AUDITING AND OTHER FUNCTIONS OF AUDITOR-GENERAL

Division 1 – Functions as to the State, State entities, subsidiaries and related entities

16. Auditor-General to be auditor of financial statements of Treasurer
17. Accountable authorities are required to submit financial statements to Auditor-General
18. Auditor-General to be auditor of financial statements of all State entities
19. Auditor-General's opinions on financial statements and related information as to State entities
20. Audit of State-owned companies
21. Audit of subsidiaries of State entities
22. Audits of accounts of related entities
23. Examinations and investigations
24. Audits at request of Treasurer
25. Audits at request of Public Accounts Committee
26. Audits at request of Ombudsman
27. Audit fees
28. Audits and other services by arrangement

Division 2 – Reporting to Parliament

29. Tabling of Auditor-General's reports on financial statements of State entities
30. Report on examination or investigation

PART 5 – FUNCTIONS AND POWERS OF AUDITOR-GENERAL

Division 1 – Functions and powers generally

31. Functions and powers of Auditor-General as to audits
32. Powers
33. Auditor-General may appoint person to audit
34. Delegation by Auditor-General
35. Functions and powers under other written laws

Division 2 – Information-gathering powers

- 36. Auditor-General may authorise people to perform functions
- 37. Power to obtain information
- 38. Access to accounts, information, money and property
- 39. Duty to give information overrides other duties and rights
- 40. Communication with Ministers

PART 6 – INDEPENDENT AUDIT OF FINANCIAL STATEMENTS OF AUDITOR-GENERAL

- 41. Appointment of independent auditor of financial statements of Auditor-General
- 42. Audits and opinions on financial statements and related information as to Tasmanian Audit Office
- 43. Duties of independent auditor as to audits
- 44. Periodic review of Tasmanian Audit Office

PART 7 – MISCELLANEOUS

- 45. Protection from liability
- 46. Information confidential
- 47. Compliance by certain State entities with section 17
- 48. Regulations
- 49. Administration of Act

PART 8 – TRANSITIONAL AND SAVINGS

- 50. Incumbent Auditor-General remains in office
- 51. Savings of appointments of persons to audit
- 52. Fees

PART 9 – CONSEQUENTIAL AMENDMENTS

- 53. Consequential amendments

SCHEDULE 1 – GENERAL PROVISIONS AS TO AUDITOR-GENERAL

SCHEDULE 2 – FORM OF DECLARATION

SCHEDULE 3 – CONSEQUENTIAL AMENDMENTS

AUDIT BILL 2008

(Brought in by the Premier, the Honourable David John Bartlett)

A BILL FOR

An Act to provide for the appointment of an Auditor-General, the audit of public finances and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Audit Act 2008*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Purpose of Act

The purposes of this Act are –

- (a) to ensure that the State has an Auditor-General with the necessary functions, immunities and independence; and

- (b) to provide for the independent audit of the public sector and related entities.

4. Interpretation

- (1) In this Act, unless the contrary intention appears –

“accountable authority” means the person or body determined under section 14 or 15, as the case may require;

“accounts” means –

- (a) records, however compiled, recorded or stored, of transactions in respect of money or other property expressed in monetary units or, in the case of property, expressed in monetary units or other units of measurement; and
- (b) books, documents, writing, monetary forms, abstracts, vouchers and other records of any kind from which records mentioned in paragraph (a) have been compiled;

“agency” means a Government department specified in Column 1 of Schedule 1 to the *Financial Management and Audit Act 1990*;

“the appropriate Minister”, in relation to a State entity, means the Minister for the

Audit Act 2008
Act No. of

Part 1 – Preliminary

s. 4

time being responsible for the administration of that State entity or the Minister who for the time being is able to exercise control over a State entity by virtue of ownership, solely or jointly, of shares or of other instruments of ownership of the State entity on behalf of the Crown;

“audit” includes to examine, investigate, inspect and review;

“audited subsidiary of a State entity” means a subsidiary of a State entity of which the Auditor-General is the auditor;

“Auditor-General” means a person holding the office of Auditor-General by virtue of section 9(1);

“Australian Auditing and Assurance Standards” means standards made or formulated from time to time by the Auditing and Assurance Standards Board established by the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“authorised person” has the meaning given to that term in section 36;

“financial year” means –

- (a) a period of 12 months ending on 30 June in any year; or

Audit Act 2008
Act No. of

s. 4

Part 1 – Preliminary

- (b) any other period of 12 months in respect of which a State entity is required by any written law to maintain accounts;

“functions” includes duties;

“Government Business Enterprise” means a statutory authority specified in Schedule 1 to the *Government Business Enterprises Act 1995*;

“independent auditor” has the meaning given to that term in section 41(1);

“other money” means money collected, received or held by the Crown or a State entity for, or on behalf of, a person other than the Crown or a State entity;

“other property” means property that is held by the Crown or a State entity for, or on behalf of, a person other than the Crown or a State entity;

“premises” means any land, place or vehicle;

“Public Account” means the Public Account of the State referred to in the *Public Account Act 1986*;

“Public Accounts Committee” means the Parliamentary Standing Committee of Public Accounts established under section 2(1) of the *Public Accounts Committee Act 1970*;

Audit Act 2008
Act No. of

Part 1 – Preliminary

s. 4

“public money” means money collected, received or held by any person for, or on behalf of, the Crown or a State entity;

“public property” means all property, other than public money held for, or on behalf of, the Crown or a State entity;

“related entity” has the meaning given to that expression in section 22;

“State authority” means a body or authority, whether incorporated or not, that is established or constituted under a written law or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority, but does not include an agency;

“State entity” includes –

- (a) an agency; and
- (b) a council; and
- (c) a Government Business Enterprise; and
- (d) a State-owned company; and
- (e) a State authority that is not a Government Business Enterprise; and

Audit Act 2008
Act No. of

s. 4

Part 1 – Preliminary

- (f) the council, board, trust or trustees, or other governing body (however designated) of, or for, a corporation, body of persons or institution, that is or are appointed by the Governor or a Minister of the Crown; and
- (g) a Corporation within the meaning of the *Water and Sewerage Corporations Act 2008*;

“State-owned Company” means a company incorporated under the Corporations Act which is controlled by –

- (a) the Crown; or
- (b) a State authority; or
- (c) another company which is itself controlled by the Crown or a State authority;

“subsidiary”, of a State entity, means –

- (a) a company or body formed or incorporated under the Corporations Act or formed or incorporated under equivalent laws of a place other than a State or Territory –
 - (i) in respect of which the State entity has the capacity to control decision making, directly

Audit Act 2008
Act No. of

Part 1 – Preliminary

s. 4

or indirectly, in relation to
the financial and
operating policies of the
company or body; and

- (ii) that is not itself a State
entity; or
- (b) a body, trust or other entity
formed under written law or
under equivalent laws of the
Commonwealth or a State or
Territory of the Commonwealth –
 - (i) in respect of which the
State entity has the
capacity to control
decision making, directly
or indirectly, in relation to
the financial and
operating policies of the
body, trust or other entity;
and
 - (ii) that is not itself a State
entity; or
- (c) a body that is declared under an
Act to be a subsidiary of a State
entity and is not itself a State
entity; or
- (d) a body that is determined by the
Treasurer, by written notice given
to the State entity, to be a
subsidiary of the State entity;

Audit Act 2008
Act No. of

s. 4

Part 1 – Preliminary

“Tasmanian Audit Office” means the agency referred to by that name in Schedule 1 to the *State Service Act 2000* that provides support and services to the Auditor-General;

“working day” means any day other than a Saturday, Sunday or statutory holiday as defined in the *Statutory Holidays Act 2000*;

“written authority”, in relation to an authorised person, means a written notice signed by the Auditor-General that states that the person is authorised to exercise powers under this Act;

“written law” means –

- (a) an Act passed by the Parliament of Tasmania and for the time being in force; and
 - (b) all subordinate legislation for the time being in force under any such Act; and
 - (c) any directions given under the *Financial Management and Audit Act 1990*.
- (2) If this Act uses a term that is used in the *Financial Management and Audit Act 1990*, the term has the same meaning in this Act as it has in that Act unless the contrary intention appears in this Act.

Audit Act 2008
Act No. of

Part 1 – Preliminary

s. 5

5. Functions under other written laws

- (1) A reference in this Act to the Auditor-General's functions includes a reference to functions given to the Auditor-General under other written laws.
- (2) The provisions of this Act extend to audits that the Auditor-General is authorised to carry out under other written laws.

6. Provisions of other law to be read subject to provisions of this Act

If there is an inconsistency between a provision of this Act and any other law in force in this State, being a law that makes specific provision with respect to the audit of a State entity or subsidiary of a State entity or to the Auditor-General, the provision of that law is to be read subject to the provision of this Act.

**PART 2 – AUDITOR-GENERAL AND DEPUTY
AUDITOR-GENERAL**

7. Auditor-General

There is to continue to be an office of Auditor-General for Tasmania.

8. Auditor-General not to be Member of Parliament

A person who is a member of a House of Parliament of the Commonwealth, or of a State or Territory of the Commonwealth, or a candidate for election as a member of such House of Parliament, is disqualified from being appointed to the office of Auditor-General and, if a person holding that office becomes a candidate for election as such a member, that person vacates the office of Auditor-General.

9. Appointment of Auditor-General

- (1) The Auditor-General is to be appointed by the Governor on the recommendation of the Treasurer.
- (2) The Treasurer must consult with the Public Accounts Committee and the President of the Legislative Council and the Speaker of the House of Assembly in relation to the appointment of the Auditor-General.

Audit Act 2008
Act No. of

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- (3) The Auditor-General, except as provided for in this Act, is not subject to the *State Service Act 2000*.
 - (4) Before performing the functions and exercising the powers of the Auditor-General for the first time, the Auditor-General must make a declaration in the form contained in Schedule 2 before the Governor.
 - (5) Schedule 1 has effect.

10. Independence of Auditor-General

- (1) The Auditor-General is authorised and required to act independently in relation to the performance of the functions of the Auditor-General and, subject to this Act and other written laws, has complete discretion in the performance of those functions.
- (2) In particular, the Auditor-General is not subject to direction from anyone in relation to –
 - (a) whether or not a particular audit is to be conducted; or
 - (b) the way in which a particular audit is to be conducted; or
 - (c) whether or not a particular report is to be made; or
 - (d) what is to be included in a particular report; or

Audit Act 2008
Act No. of

s. 11

Part 2 – Auditor-General and Deputy Auditor-General

- (e) the priority to be given to any particular matter.

11. Auditor-General's annual plan

- (1) The Auditor-General must, not later than 31 March in each year –
 - (a) prepare a draft annual plan describing the Auditor-General's proposed work program for the following financial year; and
 - (b) submit the draft to the Public Accounts Committee.
- (2) The Public Accounts Committee must consider the draft annual plan and may comment on it.
- (3) After considering the draft annual plan, the Public Accounts Committee must return it with any comments to the Auditor-General by not later than 31 May.
- (4) The Auditor-General must finalise the annual plan for that year after considering any comments received from the Public Accounts Committee.
- (5) The Auditor-General must indicate in the annual plan the nature of any changes suggested by the Public Accounts Committee that the Auditor-General has not adopted.

Audit Act 2008
Act No. of

Part 2 – Auditor-General and Deputy Auditor-General

s. 12

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- (6) Before the beginning of the financial year to which an annual plan relates, the Auditor-General must –
 - (a) present the annual plan to the Public Accounts Committee; and
 - (b) cause the annual plan to be sent to the President of the Legislative Council and the Speaker of the House of Assembly.
 - (7) No person is to direct the Auditor-General in relation to the content of the annual plan.

12. Application of *State Service Act 2000* limited

- (1) The office of Auditor-General is not an office under the *State Service Act 2000*.
- (2) The *State Service Act 2000* applies to and in relation to the Auditor-General to the extent, and only to the extent, that the *State Service Act 2000* confers powers or imposes functions on the Auditor-General as Head of Agency, in his or her capacity as an employing authority.

13. Deputy Auditor-General

- (1) Subject to and in accordance with the *State Service Act 2000*, a person is to be appointed or employed as Deputy Auditor-General, and the person so appointed or employed is to perform such functions as the Auditor-General directs.

Audit Act 2008
Act No. of

s. 13

Part 2 – Auditor-General and Deputy Auditor-General

(2) The Deputy Auditor-General –

- (a) is to act as Auditor-General during any illness, suspension or absence of the Auditor-General, and during any vacancy in that office; and
 - (b) while so acting, is to exercise the powers and perform the functions of the Auditor-General and receive a salary at the same rate as that payable to the Auditor-General.
- (3) Any act or thing done by the Deputy Auditor-General in the exercise of powers and performance of functions of the Auditor-General has the same effect as if it were done by the Auditor-General.
- (4) Any act or thing that is required under a written law to be done to, by reference to or in relation to the Auditor-General is taken to be effectually done if done to, by reference to or in relation to the Deputy Auditor-General when the Deputy Auditor-General is acting in the office of Auditor-General.
- (5) The Deputy Auditor-General, when acting in the office of Auditor-General, has the same immunities and independence as the Auditor-General.
- (6) Before performing the functions and exercising the powers of the Auditor-General for the first time under subsection (2), the Deputy Auditor-General must make a declaration in the form set out in Schedule 2 before the Governor.

PART 3 – ACCOUNTABLE AUTHORITIES

14. State entities and audited subsidiaries of State entities to have accountable authority

- (1) A State entity, or an audited subsidiary of a State entity, is to have an accountable authority.
- (2) The Head of Agency is the accountable authority of –
 - (a) a State entity that is an agency; and
 - (b) subject to section 15(1), any other State entity that forms part of that agency.
- (3) Subject to section 15(1), the accountable authority of a State entity, other than a State entity referred to in subsection (2), is the person or body (however described) having the general direction and control of, and the overall responsibility for, the operations of the State entity.
- (4) The accountable authority of an audited subsidiary of a State entity is the person or body (however described) having the general direction and control of, and the overall responsibility for, the operations of the audited subsidiary of the State entity.
- (5) In this section –

“Head of Agency” has the same meaning as in the *State Service Act 2000*.

15. Treasurer may determine accountable authority of State entity

- (1) If the Treasurer considers that there is, or may be, some doubt as to the application of section 14(2)(b) or section 14(3) to a particular State entity, the Treasurer may, by notice published in the *Gazette*, appoint a person or body to be the accountable authority of that State entity.
- (2) On the publication of a notice under subsection (1), the body or person appointed is to assume and perform all the functions conferred on an accountable authority under this Act.
- (3) A notice under subsection (1) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

**PART 4 – AUDITING AND OTHER FUNCTIONS OF
AUDITOR-GENERAL**

***Division 1 – Functions as to the State, State entities,
subsidiaries and related entities***

**16. Auditor-General to be auditor of financial
statements of Treasurer**

- (1) The Treasurer, before 30 September in each year, is to submit to the Auditor-General –
 - (a) statements reporting on the transactions within the Public Account during the immediately preceding financial year and the balances in the Public Account at the end of that financial year; and
 - (b) any statements required to be prepared in accordance with the requirements of any written law.
- (2) The Auditor-General is to prepare a report on the statements referred to in subsection (1) in sufficient time to enable the Treasurer to table the Treasurer's annual report in accordance with section 26C of the *Financial Management and Audit Act 1990*.

**17. Accountable authorities are required to submit
financial statements to Auditor-General**

- (1) An accountable authority other than the Auditor-General, as soon as possible and within 45 days

Audit Act 2008
Act No. of

s. 17

Part 4 – Auditing and Other Functions of Auditor-General

after the end of each financial year, is to prepare and forward to the Auditor-General a copy of the financial statements for that financial year which are complete in all material respects.

- (2) For the purposes of subsection (1), the Auditor-General is to determine whether the financial statements are complete in all material respects.
- (3) The financial statements of the Tasmanian Audit Office are to be submitted by the Auditor-General to the independent auditor as soon as possible and within 45 days after the end of each financial year.
- (4) Unless otherwise required by any other written law, the financial statements referred to in subsections (1) and (3) are to be prepared in accordance with the accounting standards and other requirements issued by the Australian Accounting Standards Board.
- (5) An accountable authority who fails to comply with a requirement under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.
- (6) In a prosecution for an offence under subsection (5) it is a defence if the person charged can show that at the relevant time the financial statements of the State entity or audited subsidiary of a State entity were not in the possession or custody of, or under the control of, that person, unless the lack of possession,

Audit Act 2008
Act No. of

custody or control arose from a wrongful act or omission on the part of the person.

(7) For the purposes of this section –

“**accountable authority**” includes the Clerk of the House of Assembly and the Clerk of the Legislative Council;

“**Australian Accounting Standards Board**” means the body of that name continued in existence under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

18. Auditor-General to be auditor of financial statements of all State entities

- (1) The Auditor-General is to audit the financial statements and any other information submitted by a State entity or an audited subsidiary of a State entity under section 17(1).
- (2) Despite subsection (1), the Auditor-General may, in respect of a particular financial year, dispense, subject to any conditions that the Auditor-General may determine, with all or any part of the audit of a particular State entity or the audits of State entities included in a category or class of State entity specified by the Auditor-General, if the Auditor-General considers that it is appropriate in the circumstances.

Audit Act 2008
Act No. of

s. 19

Part 4 – Auditing and Other Functions of Auditor-General

- (3) The Auditor-General must consult with the Treasurer before exercising the power conferred by subsection (2).
- (4) The Auditor-General may perform any of the functions and exercise any of the powers of the Auditor-General under this Act in respect of the audit of a State entity notwithstanding that the audit of that State entity has been dispensed with pursuant to subsection (2).

19. Auditor-General's opinions on financial statements and related information as to State entities

- (1) The Auditor-General is to prepare and sign an opinion on an audit carried out under section 18(1) in accordance with requirements determined by the Australian Auditing and Assurance Standards.
- (2) The Auditor-General is to provide the opinion prepared and signed under subsection (1), and any formal communication of audit findings that is required to be prepared in accordance with the Australian Auditing and Assurance Standards, to the State entity's appropriate Minister and provide a copy to the relevant accountable authority.
- (3) The Auditor-General must finalise his or her audit opinion for a State entity or an audited subsidiary of a State entity within 45 days of receiving financial statements from the accountable authority.

Audit Act 2008
Act No. of

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- (4) Where financial statements of a State entity or an audited subsidiary of a State entity are to be included in an Annual Report to be tabled in Parliament, the Auditor-General must ensure that the opinion prepared and signed under subsection (1) is provided to the relevant Minister at least 5 days prior to the requested tabling date.

20. Audit of State-owned companies

For the purposes of performing an audit of a State-owned company or an audited subsidiary of a State-owned company, the powers and functions conferred and imposed on the Auditor-General under this Act are in addition to the powers and functions conferred and imposed under the Corporations Act or any other written law in relation to the audit.

21. Audit of subsidiaries of State entities

- (1) An accountable authority responsible for the operations of a State entity is to advise the Auditor-General, in writing, before the end of the relevant financial year of all subsidiaries of the State entity.
- (2) The Auditor-General is to be the auditor of a subsidiary of a State entity unless the Auditor-General determines otherwise.

Audit Act 2008
Act No. of

s. 22

Part 4 – Auditing and Other Functions of Auditor-General

- (3) The Auditor-General may accept appointment under the Corporations Act as the auditor of a subsidiary of a State entity.
- (4) For the purposes of performing an audit of a subsidiary of a State entity, the functions and powers imposed and conferred on the Auditor-General under this Act are in addition to the functions and powers imposed and conferred under the Corporations Act or any other written law in relation to the audit.

22. Audits of accounts of related entities

If a State entity performs any of its functions –

- (a) in partnership or jointly with another person or body; or
- (b) through the instrumentality of another person or body; or
- (c) by means of a trust –

the accountable authority must give written notice of that fact to the Auditor-General, and the person, body or trust is referred to as a “**related entity**” of the State entity.

23. Examinations and investigations

The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:

Audit Act 2008
Act No. of

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- (a) examining the accounting and financial management information systems of the Treasurer, a State entity or a subsidiary of a State entity to determine their effectiveness in achieving or monitoring program results;
 - (b) investigating any matter relating to the accounts of the Treasurer, a State entity or a subsidiary of a State entity;
 - (c) investigating any matter relating to public money or other money, or to public property or other property;
 - (d) examining the compliance of a State entity or a subsidiary of a State entity with written laws or its own internal policies;
 - (e) examining the efficiency, effectiveness and economy of a State entity, a number of State entities, a part of a State entity or a subsidiary of a State entity;
 - (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –
 - (i) on behalf of the State entity; or
 - (ii) in partnership or jointly with the State entity; or
 - (iii) as the delegate or agent of the State entity.

24. Audits at request of Treasurer

- (1) The Auditor-General may carry out any audit that the Treasurer requests the Auditor-General to carry out.
- (2) Without limiting subsection (1), where a grant or advance of money is made by the Government to a person for specific purposes, the Treasurer may request the Auditor-General to audit the accounts of that person to ascertain whether the money granted or advanced has been expended in accordance with the purposes of the grant or advance.

25. Audits at request of Public Accounts Committee

The Auditor-General may carry out any audit that the Public Accounts Committee requests the Auditor-General to carry out.

26. Audits at request of Ombudsman

- (1) If the Ombudsman requests the Auditor-General to investigate any matter under section 41 of the *Public Interest Disclosures Act 2002*, the Auditor-General may carry out that investigation.
- (2) Any investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with his or her powers under this Act.

Audit Act 2008
Act No. of

27. Audit fees

- (1) The Auditor-General is to determine whether a fee is to be charged for an audit carried out by the Auditor-General under this Division and, if so –
 - (a) the amount of that fee; and
 - (b) the accountable authority liable to pay that fee.
- (2) A fee determined under subsection (1)(a) is to be paid by the person determined under subsection (1)(b).
- (3) If the amount of the fee referred to in subsection (1)(a) is disputed by the accountable authority liable to pay the fee, the accountable authority may refer the dispute to the Government Prices Oversight Commission established under section 9 of the *Government Prices Oversight Act 1995* and that Commission is to determine the amount of the fee to be paid.
- (4) Any such fee for an audit is a debt due to the Crown and may be recovered as such in a court of competent jurisdiction by the Treasurer.

28. Audits and other services by arrangement

- (1) The Auditor-General may enter into an arrangement with any person or body –
 - (a) to carry out an audit for or in relation to the person or body; or

Audit Act 2008
Act No. of

s. 29

Part 4 – Auditing and Other Functions of Auditor-General

- (b) to provide services to a person or body that are of a kind commonly performed by auditors.
- (2) The Auditor-General may carry out audits and provide services under an arrangement under subsection (1).
- (3) An arrangement under subsection (1) may provide for the payment of fees to the Auditor-General in respect of the audit or services.
- (4) Division 2 of Part 5 does not apply in relation to an audit carried out under this section.

Division 2 – Reporting to Parliament

29. Tabling of Auditor-General's reports on financial statements of State entities

- (1) The Auditor-General, on or before 31 December in each year, is to report to Parliament in writing on the audit of State entities and audited subsidiaries of State entities in respect of the preceding financial year.
- (2) A report under subsection (1) is to include details of all State entities the audits of which have been dispensed with under section 18(2) and may describe the State entities by their name or by reference to the classes or categories of State entities in which they are included.
- (3) A report under subsection (1) is to describe the basis on which audit fees are calculated.

Audit Act 2008
Act No. of

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- (4) Without limiting subsection (1), in a report under that subsection the Auditor-General –
- (a) is to draw attention to any case in which the functions of an accountable authority were not adequately and properly performed, and which the Auditor-General considers of sufficient importance to have attention drawn to it; and
 - (b) is to include particulars of any major change of approach made by the Auditor-General in relation to the extent or character of the audit function.
- (5) If the Auditor-General is unable to comply with subsection (1) by reason of the fact that either House of Parliament is not sitting, the Auditor-General is to immediately –
- (a) forward copies of the report to the Clerk of the Legislative Council or the Clerk of the House of Assembly, as the case may require; and
 - (b) make copies of the report available to the public –

and, on the next sitting-day of that House, is to cause copies of the report to be laid before that House.

- (6) The Auditor-General, in writing, is to notify the Treasurer and, in relation to a report referred to in subsection (1), any Minister responsible for the activity to which the report relates of the

Audit Act 2008
Act No. of

s. 30

Part 4 – Auditing and Other Functions of Auditor-General

Auditor-General's intention to submit the report to Parliament, at least 5 days before the report is to be submitted.

30. Report on examination or investigation

- (1) The Auditor-General may prepare and sign a report on an examination or investigation carried out under section 23 and may submit the report to –
 - (a) both Houses of Parliament; or
 - (b) the Public Accounts Committee.
- (2) Before signing a report proposed to be submitted under subsection (1), the Auditor-General must –
 - (a) give a summary of findings to the Treasurer, accountable authority or related entity of a State entity, as the case may require, and any other person who, in the Auditor-General's opinion, has a special interest in the report; and
 - (b) by written notice, invite the Treasurer, accountable authority or related entity of a State entity or that other person, as the case may require, to make submissions or comments on the content of the summary of findings before a specified day, being a day not less than 3 working days after the summary of findings is given to the Treasurer, accountable

Audit Act 2008
Act No. of

authority, related entity of a State entity or person.

- (3) The Auditor-General must include in a report prepared under subsection (1) any submissions or comments made under subsection (2) before the specified day, or a fair summary of them.
- (4) If either House of Parliament is not sitting when the Auditor-General signs a report under subsection (1), the Auditor-General may send a copy of the report to the Clerk of the House of Assembly and the Clerk of the Legislative Council.

**PART 5 – FUNCTIONS AND POWERS OF AUDITOR-
GENERAL**

Division 1 – Functions and powers generally

**31. Functions and powers of Auditor-General as to
audits**

- (1) The Auditor-General is to perform the audits required by this or any other Act in such a manner as the Auditor-General thinks fit having regard to –
 - (a) the character and effectiveness of the internal control and internal audit of the relevant State entity or audited subsidiary of a State entity; and
 - (b) the Australian Auditing and Assurance Standards.
- (2) In performing any such audit, the Auditor-General may take into account any other matter that –
 - (a) affects the efficiency, effectiveness or economy of any State entity or audited subsidiary of a State entity; or
 - (b) the Auditor-General considers appropriate.

32. Powers

The Auditor-General has all the powers that are needed for the performance of the Auditor-General's functions.

33. Auditor-General may appoint person to audit

- (1) The Auditor-General may, in writing, appoint a person employed in the Tasmanian Audit Office or some other suitable person to carry out all or a part of an audit.
- (2) A person appointed under subsection (1) must report on completion of the audit to the Auditor-General.
- (3) The fee payable to a person appointed under subsection (1) who is not a State Service officer or State Service employee is to be fixed by the Auditor-General.

34. Delegation by Auditor-General

- (1) The Auditor-General may delegate to a State Service officer or State Service employee employed in the Tasmanian Audit Office any function or power of the Auditor-General under –
 - (a) a provision of this Act, other than this section or section 29, 30 or 37; or
 - (b) another written law.

Audit Act 2008
Act No. of

s. 34

Part 5 – Functions and Powers of Auditor-General

- (2) If a person has been appointed under section 33 to carry out all or a part of an audit, the Auditor-General may delegate to that person any function or power of the Auditor-General under –
 - (a) a provision of this Act, other than this section or section 29, 30, 33 or 37; or
 - (b) another written law –in relation to that audit.
- (3) A delegation under this section must be by written notice signed by the Auditor-General.
- (4) A person to whom a function or power is delegated in accordance with this section cannot delegate that function or power.
- (5) A person performing or exercising a function or power that has been delegated to the person in accordance with this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) A function or power that has been delegated to a person in accordance with this section is, when performed or exercised by that person, taken to have been performed or exercised by the Auditor-General.
- (7) Nothing in this section limits the ability of the Auditor-General to perform a function through an agent.

35. Functions and powers under other written laws

The Auditor-General's functions and powers under this Part are in addition to the Auditor-General's functions and powers under other written laws.

Division 2 – Information-gathering powers

36. Auditor-General may authorise people to perform functions

The Auditor-General may, by written notice, authorise a person (an “**authorised person**”) to perform functions under this Division.

37. Power to obtain information

- (1) For the purpose of an audit, the Auditor-General may, by written notice, direct a person to do all or any of the following:
 - (a) to provide the Auditor-General with any information or explanation that the Auditor-General requires;
 - (b) to attend and give evidence before the Auditor-General or an authorised person;
 - (c) to produce to the Auditor-General any documents in the custody or under the control of the person.
- (2) The Auditor-General may direct that –

Audit Act 2008
Act No. of

s. 38

Part 5 – Functions and Powers of Auditor-General

- (a) the information, explanation or answers to questions be given either orally or in writing (as the Auditor-General requires); and
 - (b) the information, explanation or answers to questions be verified or given on oath or affirmation that the information or evidence the person will give will be true.
- (3) The Auditor-General or an authorised person may administer an oath or affirmation for the purposes of this section.
- (4) A person who, without reasonable excuse, fails to comply with a direction under this section within 14 days of receiving it commits an offence.

Penalty: Fine not exceeding 500 penalty units.

- (5) A person who is required under subsection (1) to attend under this section is entitled to be paid such expenses as the Auditor-General considers reasonable.

38. Access to accounts, information, money and property

- (1) For the purpose of an audit, the Auditor-General, or an authorised person, is entitled to full and free access at all reasonable times to –
 - (a) all accounts, information, documents, systems and records that the Auditor-

Audit Act 2008
Act No. of

Part 5 – Functions and Powers of Auditor-General

s. 38

General considers to be relevant to the audit; or

(b) public money or other money; or

(c) public property or other property –

that is or are in the possession of any person and the Auditor-General or an authorised person may make copies of or take extracts from any of the accounts, information, documents and records.

- (2) For the purpose of subsection (1), the Auditor-General may cause a search to be made in, and extracts to be taken from, anything in the custody of the Treasurer or in any office of any person, without paying any fee for doing so.
- (3) Subject to subsection (6), the Auditor-General or an authorised person may, at all reasonable times, enter and remain on any premises in order to exercise powers under this section.
- (4) A person who prevents the Auditor-General or an authorised person from entering premises under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 500 penalty units.
- (5) If an authorised person enters, or proposes to enter, premises under this section, the occupier must provide the authorised person with all reasonable facilities for the effective exercise of powers under this section.

Penalty: Fine not exceeding 500 penalty units.

Audit Act 2008
Act No. of

s. 39

Part 5 – Functions and Powers of Auditor-General

- (6) An authorised person is not entitled to enter or remain on premises if the authorised person fails to produce a written authority on being asked by the occupier to produce proof that the entry is authorised.

39. Duty to give information overrides other duties and rights

- (1) A person is not excused from giving information or an explanation, answering a question or producing a document under section 37 on the ground that the information, explanation or answer, or the production of the document, might tend to incriminate the person.
- (2) A person must give information or an explanation, answer a question or produce a document as required under section 37 despite any duty of secrecy or confidentiality that the person has under another written law, and the person does not commit an offence under another written law by doing so.
- (3) If a person gives information or an explanation, answers a question or produces a document under section 37, neither –
 - (a) the giving of the information or explanation, answering of the question or production of the document; or
 - (b) anything obtained as a direct or indirect result of the giving of the information or

explanation, answering of the question or
production of the document –

is admissible in evidence against that person in
any civil or criminal proceedings, except –

- (c) proceedings for an offence against this
Division; or
- (d) proceedings under Chapter XII of the
Criminal Code.

40. Communication with Ministers

The Auditor-General must notify the appropriate Minister of all matters arising out of the performance of the Auditor-General's functions and the exercise of the Auditor-General's powers under this Act or any other written law that are, in the opinion of the Auditor-General, of sufficient importance to justify doing so.

**PART 6 – INDEPENDENT AUDIT OF FINANCIAL
STATEMENTS OF AUDITOR-GENERAL**

**41. Appointment of independent auditor of financial
statements of Auditor-General**

- (1) The Governor, on the recommendation of the Treasurer, may appoint an auditor who is a registered company auditor within the meaning of the Corporations Act (the “**independent auditor**”) to conduct the annual audit of the financial statements relating to the Tasmanian Audit Office.
- (2) The Treasurer is to make his or her recommendation under subsection (1) after consultation with the Auditor-General.
- (3) The Minister, the Auditor-General or a person employed in the Tasmanian Audit Office is not to be appointed under subsection (1).

**42. Audits and opinions on financial statements and
related information as to Tasmanian Audit Office**

- (1) The independent auditor is to audit the financial statements and other information submitted by the Auditor-General under section 17(3).
- (2) The independent auditor is to prepare and sign an opinion on an audit carried out under subsection (1) in accordance with requirements determined by the Australian Auditing and Assurance Standards.

Audit Act 2008
Act No. of

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- (3) The independent auditor of the financial statements of the Tasmanian Audit Office must finalise his or her audit opinion within 45 days of receiving the financial statements from the Auditor-General.
 - (4) The independent auditor is to provide the opinion prepared and signed under subsection (2), and any formal communication of audit findings that is required to be prepared in accordance with the Australian Auditing and Assurance Standards, to the Auditor-General and to the Treasurer.
 - (5) The Auditor-General is to append to the annual report of the Tasmanian Audit Office a copy of the opinion referred to in subsection (2) issued by the independent auditor on the completion of the audit of the financial statements referred to in section 17(3).

43. Duties of independent auditor as to audits

The independent auditor is to carry out an audit under this Part in accordance with the Australian Auditing and Assurance Standards.

44. Periodic review of Tasmanian Audit Office

- (1) The Tasmanian Audit Office is to be subject to a review of the efficiency, effectiveness and economy of its operations at least once in every period of 5 years.

Audit Act 2008
Act No. of

s. 44

Part 6 – Independent Audit of Financial Statements of Auditor-General

- (2) The independent auditor may be engaged to conduct the review referred to in subsection (1).
- (3) If the independent auditor is not also engaged under subsection (2), the Treasurer is to appoint a registered company auditor within the meaning of the Corporations Act to conduct the review referred to in subsection (1).
- (4) The Treasurer is to consult with the Auditor-General in regard to the terms and conditions of an appointment under this section.
- (5) The findings of the review under this section are to be submitted to the Public Accounts Committee.
- (6) Before the findings of the review are submitted to the Public Accounts Committee, the independent auditor must –
 - (a) give a summary of findings to the Auditor-General; and
 - (b) by written notice given to the Auditor-General, invite the Auditor-General to make submissions or comments on the content of the summary of findings before a specified day, being a day not less than 3 working days after the summary of findings is given to the Auditor-General.
- (7) The independent auditor must include in the findings of the review referred to in subsection (5) any submissions or comments

Audit Act 2008
Act No. of

made under subsection (6) before the specified day, or a fair summary of them.

- (8) Audit findings, decisions or recommendations reached by the Auditor-General during the course of the conduct of an audit are not subject to review under this section.

PART 7 – MISCELLANEOUS

45. Protection from liability

- (1) No action or claim for damages lies against –
 - (a) the Auditor-General acting in good faith; or
 - (b) any person acting on behalf of, or with the authority of, the Auditor-General; or
 - (c) the independent auditor or an auditor engaged to conduct a review under section 44 –for or on account of anything done or omitted, or ordered or authorised to be done or omitted –
 - (d) under, or apparently under, this Act or any other written law; or
 - (e) for the purpose, or apparently for the purpose, of giving effect to this Act or any other written law.
- (2) Subsection (1) does not apply if it is proved that the thing was done or omitted, or ordered or authorised to be done or omitted, maliciously and without reasonable and probable cause.

46. Information confidential

- (1) Subsection (2) applies to a person who is or has been –

Audit Act 2008
Act No. of

Part 7 – Miscellaneous

s. 46

-
- (a) the Auditor-General; or
 - (b) a person employed in the Tasmanian Audit Office; or
 - (c) a person appointed to assist the Auditor-General in respect of a particular matter; or
 - (d) an authorised person; or
 - (e) the independent auditor or an auditor engaged to conduct a review under section 44.
- (2) A person to whom this subsection applies must preserve confidentiality with respect to all matters that come to the person's knowledge in the course of employment or duties under this Act or another written law and must not communicate any information as to matters of that kind to any person, except as may be required in connection with –
- (a) the administration of this Act or that other written law; or
 - (b) any proceedings under this Act, that other written law or the *Criminal Code*.

Penalty: Fine not exceeding 500 penalty units.

- (3) Subsection (2) does not apply to the communication of information to –
- (a) the Public Accounts Committee; or

Audit Act 2008
Act No. of

s. 47

Part 7 – Miscellaneous

- (b) the House of Assembly or the Legislative Council; or
 - (c) a committee, commission or other body established by either House of Parliament in order to investigate the activities of one or more State entities or subsidiaries of State entities.
- (4) A person to whom a summary of findings is given under section 30(2) must preserve confidentiality with respect to all matters that are in the summary of findings and must not –
 - (a) communicate any information as to those matters to any person; or
 - (b) copy or reproduce any part of the summary of findings, except as may be necessary in connection with making submissions or comments to the Auditor-General under that section or obtaining legal advice as to those matters.

Penalty: Fine not exceeding 500 penalty units.

47. Compliance by certain State entities with section 17

Where, before the commencement of this Act, a State entity has not been required under any Act to forward financial statements to the Auditor-General within 45 days of the end of each financial year, the State entity is to comply with section 17 of this Act from the financial year commencing after 30 June 2010.

48. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Auditor-General or any person specified in the regulations.

49. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

PART 8 – TRANSITIONAL AND SAVINGS

50. Incumbent Auditor-General remains in office

(1) In this section –

“**former office**” means the office of Auditor-General under the *Financial Management and Audit Act 1990*.

- (2) Despite section 9 and Schedule 1, if a person held the former office immediately before the commencement of this Act (other than in an acting capacity), that person is entitled to hold office as Auditor-General in accordance with the terms and conditions of his or her existing appointment and, subject to subsection (3), is eligible for reappointment.
- (3) The maximum period for which a person referred to in subsection (2) may be reappointed is a period of 10 years.
- (4) Subsection (2) does not apply if the person resigned from the former office with effect immediately before the commencement of this Act.

51. Savings of appointments of persons to audit

An appointment made under a written law or by the Auditor-General under the *Financial Management and Audit Act 1990*, and subsisting immediately before the commencement of this

Audit Act 2008
Act No. of

Part 8 – Transitional and Savings

s. 52

Act, of a person to carry out all or part of an audit is to be regarded as having been made by the Auditor-General under section 33.

52. Fees

Any fee determined by the Treasurer under section 56 of the *Financial Management and Audit Act 1990* is taken to be a fee determined by the Auditor-General under section 27 of this Act.

Audit Act 2008
Act No. of

s. 53

Part 9 – Consequential Amendments

PART 9 – CONSEQUENTIAL AMENDMENTS

53. Consequential amendments

The legislation specified in Schedule 3 is amended as specified in that Schedule.

**SCHEDULE 1 – GENERAL PROVISIONS AS TO
AUDITOR-GENERAL**

Section 9

1. Term of office

- (1) Subject to this Act, a person appointed as Auditor-General holds office for a term not exceeding 10 years.
- (2) Except as provided in section 50, a person cannot be appointed as Auditor-General if the person has previously been appointed as Auditor-General under this Act or the *Financial Management and Audit Act 1990*.

2. Remuneration

- (1) The Auditor-General is to be paid a salary in respect of a financial year at a rate that is the average of the rates of salary paid to the Auditors-General in South Australia and Western Australia from the beginning of that financial year.
- (2) The salary and conditions of the Auditor-General's employment are not to be altered during the term of his or her appointment in any way to the disadvantage of the Auditor-General.
- (3) The salary of the Auditor-General is to be paid out of the Consolidated Fund which, to the necessary extent, is appropriated accordingly.

3. Other employment

The Auditor-General must not, except so far as authorised so to do by another enactment or by resolutions of both Houses of Parliament –

- (a) hold any appointment (other than that of Auditor-General) or be a member of, or of the governing body of, any State entity; or
- (b) engage in any paid employment outside the duties of his or her appointment as Auditor-General.

4. Leave and other conditions of service

- (1) In addition to the salary paid under this Act, the Auditor-General is entitled to be paid any travelling allowances and other allowances as are applicable to a Head of a State Service Agency.
- (2) The Auditor-General is entitled to the same leave of absence, whether recreation leave or leave of any other kind, as that to which the Auditor-General would be entitled under the *State Service Act 2000*, if the Auditor-General were a State Service employee, but only in the circumstances and subject to the conditions that are applicable in respect of such an employee.
- (3) A person appointed as Auditor-General is taken to be an employee for the purposes of the *Long Service Leave (State Employees) Act 1994* and

the Public Sector Superannuation Reform Act 1999.

- (4) The allowances which the Auditor-General is entitled to be paid under this clause are to be paid out of the Consolidated Fund which, to the necessary extent, is appropriated accordingly.

5. Rights preserved

- (1) A State Service officer or State Service employee appointed as Auditor-General is entitled to retain all existing and accruing rights as if the service of that person as Auditor-General were a continuation of service as a State Service officer or State Service employee.
- (2) Where a person ceases to hold office as Auditor-General and becomes a State Service officer or State Service employee, the service of that person as Auditor-General is to be regarded as service in the State Service for the purpose of determining rights as a State Service officer or State Service employee.

6. Resignation of Auditor-General

The Auditor-General may resign from office by giving the Governor a signed letter of resignation.

7. Removal and suspension from office

- (1) The Auditor-General is not to be removed from office as Auditor-General unless a resolution for that removal is passed by both Houses of Parliament.
- (2) At any time when Parliament is not sitting the Governor may suspend the Auditor-General from office as Auditor-General for incapacity, incompetence or misbehaviour, in which case the person holding office as Deputy Auditor-General is to act in the office of Auditor-General.
- (3) Where the Governor suspends the Auditor-General from office, the Governor is to cause to be laid before each House of Parliament, within the next 7 sitting-days of that House after that suspension, a full statement of the reason for that suspension.
- (4) If a resolution is presented to the Governor by either House of Parliament, within 20 sitting-days of that House after a statement under subclause (3) is laid before it, requesting that the Auditor-General be restored to that office, the Auditor-General is to be restored accordingly.
- (5) If no such resolution is so presented, the Governor, within 30 days of the expiration of the period mentioned in subclause (4), is to confirm the suspension, and declare the office of Auditor-General to be vacant, and that office becomes vacant.

SCHEDULE 2 – FORM OF DECLARATION

Sections 9(4) and 13(6)

I,, sincerely
promise and declare that, according to the best
of my skill and ability, I will faithfully,
impartially and truly execute the office and
perform the functions and exercise the powers
of Auditor-General according to law.

.....
(Signature of declarant) (Date)

SCHEDULE 3 – CONSEQUENTIAL AMENDMENTS

Section 53

Financial Management and Audit Act 1990

1. The long title is amended by omitting “for the audit of public finances.”.
2. Section 3 is amended as follows:
 - (a) by omitting “writings,” from the definition of “accounts”;
 - (b) by omitting “or public body” twice occurring from the definition of “the appropriate Minister”;
 - (c) by omitting “section 31(1) or 68(2)” from the definition of “Auditor-General” and substituting “section 7 of the *Audit Act 2008*”;
 - (d) by omitting the definition of “public body”;
 - (e) by omitting the definitions of “State authority” and “State-owned company”.
3. Section 26B is repealed.
4. Section 28 is repealed.

Audit Act 2008
Act No. of

sch. 3

- 5.** Part 3 is repealed.
- 6.** Division 2 of Part 4 is repealed.