Inquiry into the operations and application of the *Financial Management Act 2016*

1. Introduction

- 1.1 The Tasmanian Audit Office (Office) welcomes the opportunity to make a submission to the Legislative Council Government Administration Committee A inquiry into the operations and application of the *Financial Management Act 2016* (the Act).
- 1.2 The Act provides for the management of the public finances of the State of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices. The Act is aimed at ensuring higher levels of accountability and transparency for the Tasmanian Government, and a contemporary financial governance relationship between Tasmania's Parliament, the Executive Government and public sector entities.
- 1.3 The Office notes the terms of reference for the Inquiry are:
 - to review and report upon the Act, with particular reference to the: operation; application; efficacy; financial decision making; and timeliness and regularity of disclosures under the Act
 - the ability of Parliament to undertake regular and timely scrutiny of Public Non-Financial Corporations (PNFC's)
 - any other matter incidental thereto.
- 1.4 The Office has undertaken a review of the Act with particular reference to the Inquiry terms of reference and the scope and role of the Auditor-General as set in the *Audit Act 2008* (Audit Act).
- 1.5 In our view, there is a need for the Act to continue and, fundamentally, the Act is considered to be robust and fit for purpose.
- 1.6 We have identified opportunities for review or further enhancement of the Act, and other matters, as outlined this submission.
- 1.7 This submission does not discuss all matters associated with the Act, only those we consider require comment.

2. Opportunities for reform

It is recommended the inquiry consider opportunities to improve accountability and transparency as summarised below:

Long title

2.1 Add 'ethical' to the 'economical, efficient and effective' considerations for the management of public finance to reinforce the importance of ethics in government financial management and decision-making.

Part 1 – Preliminary

2.2 Additional accountability mechanisms for Government Business Enterprises (GBEs) and State Owned Companies (SOCs) would need to be established outside of the Act.

Part 2 – Accounts

2.3 Increased transparency on the purpose of the Specific Purpose Accounts and Agency Trust Accounts and the components and reasons for the retention of revenue in the accounts (including for what purpose those funds are to be spent).

Part 3 – Funds Management

- 2.4 Inclusion of an annual reconciliation on the use of the Treasurer's Reserve and the inclusion of that reconciliation in the Supplementary Estimates report prepared under section 24 of the Act.
- 2.5 Inclusion of additional information on the reasons for transfers, additional funding and rollovers for each agency in the Supplementary Estimates report.

Part 4 – Accountable Authorities

2.6 Move the Tasmanian Audit Office from part 1 to part 2 of Schedule 1, so as to remove the Auditor-General from being subject to Ministerial oversight for the financial management of Office, thereby negating potential conflicts and enhancing the independence of the Auditor-General.

Part 5 – Reports

- 2.7 Determine whether reports, in addition to the Treasurer's annual financial report and financial statements of agencies, prepared under Part 5 of the Act, should be subject to reasonable or limited assurance e.g. independent audit or review opinions.
- 2.8 Determine whether reporting by agencies should be subject to assurance reporting in respect to the reporting of their key performance measures or internal controls.
- 2.9 Determine whether agencies should be required to report on progress in implementing recommendations made in Auditor-General performance audit reports in their annual reports.

Part 6 – Miscellaneous

2.10 Provide increased guidance in relation to identifying ex-gratia payments, as provided for in section 55, in the Treasurer's Instruction FC-13 *Ex-gratia Payments*.

3. Background to Financial Management Act 2016

3.1 The Act was introduced following a review of Tasmania's financial management framework, which reflected the financial administration and budgeting practices of the late 1980s. The Act replaced the *Public Accounts Act 1986* and the remaining financial management provisions of the *Financial Management and Audit Act 1990*.

- 3.2 The main areas of reform included:
 - broadening the scope of Tasmania's financial management framework by bringing all General Government Sector entities under a single, cohesive framework, and enhancing accountability and transparency
 - combining the then Consolidated Fund and Special Deposits and Trust Fund (SDTF) into a single Public Account and the separation of funds held in trust from the Public Account
 - providing a simplified and capped calculation of the Treasurer's Reserve amount
 - simplifying the agency appropriation carry forward arrangements
 - establishing the Treasurer's powers and obligations in relation to borrowing, guarantees and indemnities on behalf of the Crown
 - consistent with the Audit Act, defining those ultimately responsible for the financial management of an agency as an Accountable Authority
 - increased frequency in financial reporting by the Treasurer and establishing reporting obligations for agencies that are abolished
 - providing for the authorisation and making of ex-gratia payments, and providing for the recovery of payments in the event that any conditions of payment are breached.

4. Long title – ethical considerations

- 4.1 The long title of the Act states it provides for the management of the public finances of the State of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices and to make provision for, and with respect to, the Public Account of the State.
- 4.2 In contrast, the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) requires Accountable Authorities of Commonwealth entities to govern their entities in a way that promotes the proper use and management of public resources.

The PGPA Act defines 'proper', in relation to the use and management of public resources, means 'efficient, effective, economical and ethical'. 'Proper use and management' recognises that the public resources used and managed by Commonwealth entities are, in a broad sense, not theirs, but rather belong to the people of Australia and are provided to entities so that they can do things for the people of Australia. The term 'use' is related to the expenditure of relevant money, the commitment of appropriations, and the application of public resources generally to achieve a public purpose. The term 'management' is broader and encompasses the decisions, systems and controls around the custody and use of, and accountability for, public resources.

4.3 The importance of ethics in government financial management has been highlighted in recent public sector audits, particularly in procurement and grants administration.

A theme identified across a number of audits is one of transparency in respect of a lack of adequate documentation and records to support the rationale for decisions made and actions undertaken. Although public sector entities may be technically compliant with the rules and policy framework, behaviour sometimes falls short of meeting the intent behind such frameworks. Lack of proper documentation of decision-making processes makes it difficult for public sector entities to be assured that the activity was undertaken with integrity and without improper influence or consideration of inappropriate factors.

4.4 Greater accountability and transparency in this area will help ensure that the public sector is looking beyond technical compliance and operating in line with the intent of established rules and frameworks, alongside community expectations of integrity.

5. Part 1 - Preliminary

- 5.1 There are no overall concerns with Part 1 of the Act.
- 5.2 Part 1 of the Act allows the Treasurer, by order, to determine that the Act or elements of the Act may not apply to an agency or part of an agency listed in Schedule 1. It also allows the Act or parts of an Act to be applied to other entities not in Schedule 1, but specifically excludes GBEs and SOCs.
- 5.3 Orders are made public by Gazettal. Orders have been made for 5 entities listed in Schedule 1 being:
 - TasTAFE
 - Royal Tasmanian Botanical Gardens (RTBG)
 - Inland Fisheries
 - Marine and Safety Authority
 - State Fire Commission

The intention of the above Orders was to remove these 5 entities from operating within the Public Account, to include them in the Public Account reporting processes.

- 5.4 The main elements of the Act that these 5 entities were excluded from were:
 - the Public Account, account management requirements in Part 2 of the Act
 - funds management requirements in Part 3, particularly sections 23 (Rollovers), 25 (expenditure authority) and 26 (Advances from Public Account), except for RTGB who are fully exempt from all funds management requirements in Part 3
 - the majority of Accountable Authority requirements in Part 4
 - differing exceptions under Part 6 but mainly section 56 write-offs.
- 5.5 In addition to the these similar elements across the 5 entities, the Orders also provided:
 - Marine and Safety Authority and Inland Fisheries the power to invest
 - State Fire Commission the power to borrow.

- 5.6 As indicated above, application of the Act specifically excludes GBEs and SOCs. Financial management of these entities is through their principal acts and the *Government Business Enterprises Act 1995* (GBE Act) where applicable. Any accountability mechanisms for these entities will need to be considered outside of the Act.
- 5.7 In addition to the Treasurer's powers under section 6 to apply the Act to entities not in Schedule 1, section 8 provides for the Governor to make amendments to Schedule 1. Amendments are usually made as a result of machinery of government changes from time to time.

6. Part 2 – Accounts

- 6.1 There are no major concerns with Part 2 of the Act.
- 6.2 Part 2 creates the Public Account, outlines the financial transactions that must be transacted through the Public Account and the accounting for those transactions.
- 6.3 Section 17 provides for the creation of Specific Purpose Accounts (SPA) (that are part of the Public Account) and section 18 provides for the creation of Agency Trust Accounts (that do not form part of the Public Account).
- 6.4 Part 2 provides for the creation and approval of physical bank accounts to transact the financial transactions through, and any terms or conditions on the use of those accounts (including approvals for overdrafts). The transactions that go through these accounts are all accounted for on a cash basis.
- 6.5 In accordance with section 14, the Treasurer must approve any overdraft for an agency's bank account. Agency bank accounts are effectively run as imprest accounts and are intended to balance out to zero each day. As an agency draws down an appropriation, the Department of Treasury and Finance (Treasury) ensures, through the Westpac banking system, that there is cash in the agency's bank account to support the intended expenditure.
- 6.6 We are aware there are occasions, due to timing issues or errors, these accounts become overdrawn. This give rise to a technical breach of the Act for that individual account.
- 6.7 We understand that from an operational aspect, agency accounts are pooled as part of the overarching financial management activities of Treasury and are incorporated into the whole of government financial management arrangements.
- 6.8 In regards to SPA and trust accounts established under sections 17 and 18, we do not have and concerns with the provisions of the Act. However, outside of the agency, there is limited information provided publically on the purpose of the accounts and any other conditions that are applicable to those accounts to determine if the funds in these accounts are only used for the purposes of that account. General information available is restricted to the title of the SPA or trust account.
- 6.9 Similarly, the balance of a SPA may be made up of a number of elements. These balances can be quite significant and there is no publically available information on

why the funds are being retained within the SPA and the purpose of the individual elements that comprise the SPA.

- 6.10 We note section 16 requires Agencies to set up accounting records and financial systems to be able to record the transactions and balances in accordance with the Act. Agencies should therefore be able to componentise what makes up the balances of the SPA accounts and why the funds are being held.
- 6.11 Having some public reporting on the components and purposes of retained funds in SPA accounts may assist with greater transparency on funds being managed by agencies. There may be some benefits also when machinery of government changes occur.
- 6.12 This could be facilitated through the model financial statements required by the Treasurer's Instructions.

7. Part 3 – Funds Management

- 7.1 This Part deals with funds management of the Public Account.
- 7.2 The general mechanisms for funds management, in respect of each financial year, are robust and have appropriate approval processes in place with sufficient flexibility for agencies to independently manage their financial obligations for their services and activities.

Treasurer's Reserve

- 7.3 The Act provides for certain powers and roles for the Treasurer to amend agency appropriations each year after the appropriation bills introduced on budget day come into force.
- 7.4 Section 21(1) of the Act provides for the Treasurer to, in any financial year, issue and apply from the Public Account, for expenditure, the need for which could not, in the opinion of the Treasurer, reasonably have been foreseen and which is necessary for efficient financial administration
 - (a) an amount that is contingently appropriated by an Appropriation Act for the relevant financial year; and
 - (b) if receipts, additional to the total estimated receipts specified in a statement accompanying an Appropriation Act, are generated within that financial year – the amount of those additional receipts less any amount of Commonwealth money received by the State.
- 7.5 Section 21(2) provides that the amount that may be issued and applied from the Public Account under subsection (1) may not, in total, exceed 2.5% of the total appropriation in the Appropriation Act for that financial year.
- 7.6 The Treasurer's authority to issue and apply funding from the Treasurer's Reserve is limited by section 21(3) to expenditure that is for a purpose mentioned in an appropriation act then in force, unless the Governor has, in writing, approved that expenditure.

- 7.7 Two recent Parliamentary inquiries into the use of the Treasurer's Reserve for unforeseen and necessary expenditure include:
 - Parliamentary Standing Committee of Public Accounts, <u>Tasmanian</u> <u>Government's Spending Unallocated COVID-19 Funding</u>, 21 March 2023
 - Parliamentary Standing Committee of Public Accounts, Tasmanian Government's use of provisions of the *Financial Management Act 2016* to fund election commitments in 2021, <u>transcript of evidence of the Honourable</u> <u>Michael Ferguson MP, Deputy Premier and Treasurer and Mr Tony Ferrall,</u> <u>Secretary, Department of Treasury and Finance</u>, 28 November 2022.
- 7.8 We note in both inquiries, the Parliamentary Standing Committee of Public Accounts inquired into how the Treasurer had determined whether the use of the Treasurer's Reserve was 'necessary for efficient financial administration'.
- 7.9 Although use of the Treasurer's Reserve is disclosed in supplementary estimates and reported to Parliament through the Preliminary Outcomes Report and the Treasurer's Annual Financial Report, we believe transparency could be improved by providing a reconciliation of the amount available within the Treasurer's Reserve with greater detail on how appropriations from the reserve have been expended. An example of reconciliation is provided below:

Capacity of Treasurer's Reserve

Appropriated amount (section 21(1)(a))

+ Additional receipts (section 21(2)(b))

Total amount available in Treasurer's Reserve (this total must be less than the 2.5% cap in section 21(2))

Expenditure authorised from the Treasurer's Reserve:

Department A

Purpose A

Purpose B

•••

Total Department A

•••••

Department Z

Purpose A

Purpose B

•••

Total Department Z

Total expenditure authorised from the Treasurer's Reserve

Balance of Treasurer's Reserve

- 7.10 Such a reconciliation would provide more and transparent information than is currently available in the Supplementary Estimates prepared, audited and tabled under section 24 and would provide an enhanced acquittal back to Parliament, not just which agency received the additional funding. The reconciliation could form part of the Supplementary Estimates document.
- 7.11 We have been auditing the Supplementary Estimates prepared under section 24 since the Act commenced and have not had any major concerns with access to relevant supporting documentation to support the audit process.
- 7.12 We note the Supplementary Estimates prepared under section 24 does not provide details as to the reasons for transfers, additional funding and rollovers. The Supplementary Estimates may be enhanced by the inclusion of additional details for these approvals.

Rollover of unexpended balance of an appropriation

- 7.13 Section 23 of the Act authorises the Treasurer to 'roll over' an amount of unexpended appropriation for an agency, not exceeding five per cent of the agency's appropriation, to be issued and applied from the Public Account in the following financial year.
- 7.14 The rollover provision effectively provides for automatic appropriation in the next year. For example, in the Appropriation Act (No. 1) 2022, in respect of the 2022-23 budget, the appropriation for the Department of Health was \$1,812,837,000. The amount of revenue from appropriation for the Department of Health as disclosed in the Budget Paper No 2 Volume 1 was \$1,831,161,000. The difference between the two amounts, \$18,324,000, was the rollover of the unexpended 2021-22 appropriation approved under section 23.
- 7.15 Notwithstanding the 'automatic appropriation' in the following year, rollovers usually reflect a commitment or requirement that moves from one financial year into the next financial year.

Authority for expenditure

- 7.16 Under section 25 of the Act, an Accountable Authority of an agency can only draw money from the Public Account in accordance with a Treasurer's Expenditure Control Authority, estimated expenditure approved by the Treasurer pursuant to section 17(10) or (11) of the Act or any other written law.
- 7.17 The estimated expenditure approved by the Treasurer pursuant to section 17(10) or (11) of the Act represents the estimated expenditure from SPAs approved by the Treasurer as part of the development of the annual Appropriation Act, or as subsequently approved by the Treasurer as a variation of expenditure in relation to a SPA.

Governor's authority for emergency expenditure

7.18 We advise that the Governor's approval, under section 30, for emergency expenditure required, but not approved, by Parliament has not been used to date.

8. Part 4 – Accountable Authorities

- 8.1 There are no major concerns with Part 4.
- 8.2 One question is whether the Office, as the vehicle for assisting the Auditor-General undertake his statutory duties, should be included in Part 2 of Schedule 1 rather than Part 1, so as to negating potential conflicts and preserve the independence of the Auditor-General and not make them subject to Ministerial direction for the financial management of the Office, as currently required under section 32(1) of the Act.

9. Part 5 – Reports

Division 1 – Treasurer's Reports

- 9.1 Division 1 of Part 5 of the Act requires the Treasurer to publish a range of reports with financial results for the General Government Sector and the Public Account, including quarterly reports. The Act also requires the Treasurer to publish revised estimates for the current Budget year and the Forward Estimates period, a report on preliminary results for the previous financial year (under certain circumstances) and an annual financial report.
- 9.2 With the exception of the Treasurer's annual financial report, none of the Treasurer's reports are subject to independent audit or review so as to provide a degree of assurance to Parliament. This is in contrast to some other Australian jurisdictions where such reports are subject to a limited level of assurance. For example, in Victoria, the Auditor-General reviews the estimated financial statements for the Victorian General Government Sector and expresses an opinion on them to the members of the Parliament of Victoria. In South Australia, the Auditor-General receives various Treasurer's Statements (including budget estimates and forecasts) and provides a report on any matter worthy of bringing to the attention of the Parliament and Government.
- 9.3 Section 40 of the Act requires the Treasurer to prepare an annual financial report and outlines the information which it is to contain. The Treasurer's annual financial report also includes whole of government financial statements (total state sector financial statements) prepared in accordance with Australian Accounting Standard AASB 1049 (Whole of Government and General Government Sector Financial Reporting).

Division 2 – Annual Reports by Agencies

- 9.4 Section 42 of the Act requires an Accountable Authority of an agency to prepare annual financial statements for the agency. Section 17(1) of the Audit Act also requires an Accountable Authority of an agency, other than the Auditor-General, as soon as possible and within 45 days after the end of each financial year, 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.
- 9.5 Some Agencies are also required to prepare and submit to their Minister for tabling in Parliament, an annual report which includes the audited financial statements and the

Auditor-General's report thereon. Currently, the Budget Framework provides for the State's Output Based Budgeting and Financial Reporting Framework (the Framework) as part of annual reporting requirements.

Reporting service performance

- 9.6 The <u>Report of the Auditor-General No. 12 of 2016-17 Volume 4 State entities 30 June</u> <u>and 31 December 2016</u> highlighted various shortcomings in performance measures used in agency annual reports, and in their inconsistency in reporting in budget papers and annual reports. Of significance was the absence of useful effectiveness and efficiency measures, which are key to making informed decisions about the allocation of resources and budgetary control, both at the entity and whole of government level.In the report we also noted the output focus and approach to Parliamentary scrutiny processes in five other jurisdictions. The Commonwealth, for example, has a well-developed measurement and reporting and assurance process established under the PGPA Act, which includes the audit of annual performance statements of Australian government entities.
- 9.7 We note in jurisdictions with established performance and service delivery reporting, there is a higher level of active reporting. For example in Victoria, on the VAGO website, performance measures and service delivery reports are presented in the form of various data dashboards, which include the raw data for quality, timeliness, cost and quantity. The Western Australia, section 15 the *Auditor General Act 2006* requires the Auditor General to prepare and sign an opinion on an audit carried out on an agency's key performance indicators stating whether, in the Auditor General's opinion, the key performance indicators are relevant and appropriate to assist users to assess the agency's performance and fairly represent indicated performance for the period under review.
- 9.8 It is also noteworthy that the Australian Accounting Standards Board, in alignment with international developments, currently has a project underway on Reporting Service Performance Information by not-for-profit entities. While multiple concerns were highlighted by respondents in a recent exposure draft of a potential future standard, it did propose a mandatory implementation requirement.

Reporting the adequacy of internal controls

9.9 In some Australian jurisdictions there is a requirement for the Auditor-General to also express an opinion on whether the controls exercised by the agency are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions.

Tracking progress of implementation of Auditor-General recommendations

9.10 In the Australian Capital Territory, Directorates (Agencies) are required to provide details in their annual reports on progress against commitments made in response to recommendations made by the Auditor-General, during the reporting year. This requirement also encompasses recommendations from the Ombudsman or a

Legislative Assembly Committee. The authority for this is through a Direction under the Annual Reports (Government Agencies) Act 2004 (ACT)¹.

9.11 There is currently no reporting requirement in Tasmania, although this could be implemented by inserting it as a requirement in Treasurer's Instruction *FR 4 - Annual Reports*.

Division 3 – Reporting on abolition of Agencies

9.12 Prior to the introduction of the Act, there were no provisions in Tasmania's legislation directed at ensuring that appropriate final financial reports were prepared in the event of a government entity being abolished. Under Division 3 of the Act, if an agency is abolished, the Treasurer will appoint a reporting officer to prepare and submit financial reports in accordance with the section 42 of the Act and in accordance with section 17 of the Audit Act. The Act provides that the reporting officer is entitled to reasonable assistance and facilities to undertake the preparation of a final financial report. This Division was recently applied in respect of the abolition of the Department of Communities Tasmania.

10. Part 6 – Miscellaneous

- 10.1 Given the nature of this Part, we will comment by exception on certain matters.
- 10.2 Treasurers Instructions issued under section 51 of the Act have the force of law. There are a number of principles based instructions that have been issued with supporting fact sheets and other guidance. These Treasurer's Instructions only apply to the General Government Sector agencies in Schedule 1 Part 1 and do not apply to entities in Schedule 1 Part 2. Section 6 would enable these instructions to be applied to other entities (see discussion under Part 1 above). As per the discussion above on section 6, there is no mechanism to apply these to GBEs and SOCs unless otherwise required to do so by their principal acts.
- 10.3 We are aware some elements of the Treasurer's Instructions that may not be complied with. For example, we are aware some Agencies have not complied with the requirement in Treasurer's Instruction *FC-3 Finance Manual* to review the agency's finance manual every two years and to ensure it documents all of the agency's current financial management policies and guidelines.
- 10.4 Another area that has come to our attention is in regard to Ex-Gratia payments under section 55 of the Act and Treasurer's Instruction *FC-13 Ex-gratia Payments*. Referrals made to us suggest payments being made where there is no contractual basis for the payment, for example, discretionary payments made to avoid obligations under contractual or non-contractual arrangements. We consider that this may be occurring due to a lack of understanding as to what constitutes an ex-gratia payment and

¹ Refer to <u>Annual Reports (Government Agencies) Directions 2022, Part 2 – Annual Report</u> <u>Requirements, Part B. Organisational Overview and Performance, Scrutiny</u>

consider that there should be more guidance to support the Treasurer's Instruction as to what constitutes an ex gratia payment, with the inclusion of some examples.

- 10.5 We have a positive working relationship with Treasury in regard to the drafting and interpretation of Treasurer's Instructions. Recent examples of cooperation between the Office and Treasury include FC-16 Contributions to Entities in the Public Non-Financial Corporations and Public Financial Corporations Sector and FC-19 Leases as a result of revised financial reporting requirements, and FC-2 Internal Audit incorporating some recommendations from <u>Report of the Auditor-General No. 1 of 2020-21 Effectiveness of Internal Audit</u>.
- 10.6 We note there are currently no Regulations for the Act.

11. Ability of Parliament to scrutinise PNFC and PFCs

- 11.1 The Act specifically excludes GBEs and SOCs from the operation of the Act in Section 6 of the Act.
- 11.2 The GBE Act, *Corporations Act 2001* (where applicable), and various principal acts of the entities govern their financial reporting and accountability frameworks.
- 11.3 The GBE Act has the provision to issue Treasurer's Instructions to GBEs. In addition the principal acts of the SOCs also require them to comply with the Treasurer's Instructions in the GBE Act.
- 11.4 The *Tasmanian Government Businesses Governance Framework Guide* (Framework Guide), issued in October 2008, outlines the governance frameworks for GBEs and SOCs including the Government's role as Owner, and details the:
 - accountability framework
 - role of Parliament
 - role of the Treasurer and portfolio minister
 - role of Treasury
 - role of the portfolio department.
- 11.5 Accountability is generally through reporting to the Board and the portfolio minister, and to the Parliament through a scrutiny committee. If Parliament requires increased scrutiny of GBEs and SOCs then mechanisms will need to be considered outside of the Act.
- 11.6 In regard to subsidiaries of GBEs, the reporting frameworks are not clear. The Office has been in discussion with Treasury as to whether Tier 1 financial statements are required and any associated audit requirements for subsidiaries of GBEs.
- 11.7 The Framework Guide indicates that any changes to constitutions will need to be tabled by the relevant portfolio minister, but I note a footnote indicating that this may not be the case for all SOCs.

Thank you again for the opportunity to provide input into this Inquiry on an important piece of legislation that provides a key component of Tasmania's accountability framework.

MM

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24 April 2023 Hobart