



New South Wales

Rural Lands Protection Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make various amendments to the *Rural Lands Protection Act 1998* (*the Principal Act*) relating to the accounting, auditing and annual reporting obligations of:

- (a) rural lands protection boards (*RLP Boards*), and
- (b) the State Council of Rural Lands Protection Boards (*the State Council*).

The various amendments are detailed in the Outline of provisions below.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Rural Lands Protection Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the other legislation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Amendments relating to accounting, auditing and reporting obligations of rural lands protection boards

Currently, RLP Boards are “statutory bodies” within the meaning of the *Public Finance and Audit Act 1983*. As such, RLP Boards are subject to the requirements of that Act relating, among other things, to accounting, auditing and financial reporting. Such statutory bodies are also subject to the *Annual Reports (Statutory Bodies) Act 1984*.

Schedule 2.2 amends Schedule 2 to the *Public Finance and Audit Act 1983* to remove RLP Boards from the operation of that Act.

Schedule 1 [10] inserts proposed Divisions 4A and 4B into Part 6 of the Principal Act to make specific provision for RLP Boards in relation to the keeping of accounting records, the preparation of financial reports and the auditing of those records and reports.

Proposed Division 4A (Accounting records, financial reports and auditing) contains proposed sections 55A to 55F.

Proposed section 55A provides that a RLP Board must keep accounting records to correctly record and explain its financial transactions and its financial position.

Proposed section 55B provides that a RLP Board must prepare an annual financial report. The proposed section also sets out what must be included in RLP Board financial reports.

Proposed section 55C provides that a RLP Board’s auditor must audit the RLP Board’s financial report as soon as practicable after the report is referred for audit. The proposed section also deals with how the audit is to be undertaken.

Proposed section 55D sets out the times within which a RLP Board’s financial reports must be prepared and audited.

Proposed section 55E deals with the reports that must be prepared by a RLP Board’s auditor and what must be contained in those reports.

Proposed section 55F provides that a RLP Board’s auditor may, at any time during an audit, prepare an interim report to the State Council on any matter relating to the RLP Board’s report or to the conduct of the audit. The auditor must give the RLP Board a copy of any report made to the State Council under the proposed section.

Proposed Division 4B (Auditors) contains proposed sections 55G to 55L and deals with auditors for RLP Boards.

Proposed section 55G provides that a RLP Board must appoint an auditor and sets out who is qualified to be an auditor. Such an appointment (or a reappointment) must be approved by the State Council.

Proposed section 55H provides that certain persons may not be appointed as an auditor for a RLP Board. For example, a person may not be appointed as a RLP Board's auditor, in the case of an individual, if he or she is a *disqualified person*, being a person:

- (a) who is a director of the RLP Board, or
- (b) who is a member of staff of the Rural Lands Protection Boards Division of the Government Service, or
- (c) who is in debt to the RLP Board otherwise than for rates or charges owed by the person as a ratepayer, or
- (d) who has a contractual arrangement with the RLP Board that (if the person were the RLP Board's auditor) might reasonably be seen to give rise to a conflict between the person's duties as an auditor and the person's interests under the arrangement.

Proposed section 55I sets out an auditor's term of office and the circumstances under which that office falls vacant.

Proposed section 55J gives a RLP Board's auditor power to inspect the RLP Board's accounting and other records.

Proposed section 55K deals with other powers granted to auditors to enable them to carry out their functions.

Proposed section 55L provides that the Auditor-General is authorised to audit a RLP Board's annual financial report if the RLP Board fails to appoint an auditor or during any vacancy in the office of auditor. The proposed section also provides that the Auditor-General may, at any time, and must, if requested to do so by the Minister for Primary Industries on the recommendation of the State Council, conduct a special audit of a RLP Board's accounts.

Section 53 (Financial year of board) of the Principal Act provides that the financial year of a RLP Board is the year commencing on 1 January. The *Public Finance and Audit Act 1983* empowers the Treasurer to determine a different financial year for statutory bodies. **Schedule 1 [8]** inserts proposed section 53 (2) into the Principal Act to provide that the Minister for Primary Industries, on the recommendation of the State Council, may, by order published in the Gazette, determine a different financial year for all RLP Boards. **Schedule 1 [7]** removes a note to section 53 of the Principal Act as a consequential amendment.

Schedule 1 [1] makes a consequential amendment to section 25 of the Principal Act.

Schedule 1 [9] omits section 54 (Audit of financial statements) as a consequential amendment.

Schedule 1 [12] inserts proposed section 57A into the Principal Act to provide that a RLP Board must prepare an annual report (in accordance with the guidelines issued by the State Council) in each financial year concerning its activities during the previous year and submit it to the State Council. **Schedule 1 [2] and [3]** make consequential amendments to section 36 of the Principal Act.

Schedule 1 [11] makes a consequential amendment to the definition of *publicly available document* in section 56 (1) of the Principal Act to take account of the insertion of proposed section 57A and proposed Division 4A of Part 6 into that Act. The *Public Authorities (Financial Arrangements) Act 1987 (the PAFA Act)* gives certain powers in relation to financial arrangements (including investments) to public authorities specified in that Act or in the regulations made under that Act, including “statutory bodies” within the meaning of the *Public Finance and Audit Act 1983*. **Schedule 2.1 [1] and [2]** amend the *Public Authorities (Financial Arrangements) Regulation 2005* as a consequence of the amendment to the *Public Finance and Audit Act 1983* removing RLP Boards from the definition of “statutory bodies”. The amendments preserve the application of the PAFA Act to RLP Boards in the same way as it applied before the amendments made by the proposed Act. The amendments also remove the exclusion of Forbes Rural Lands Protection Board from the application of the PAFA Act.

Amendments relating to State Council

Under the *Annual Reports (Statutory Bodies) Act 1984*, the annual reports of bodies such as the State Council are required to be prepared and submitted to the appropriate Minister (and, if required, the Treasurer), within the period of 4 months after the end of the financial year. **Schedule 1 [4]** inserts proposed section 36 (4) into the Principal Act to provide that, despite the *Annual Reports (Statutory Bodies) Act 1984*, the State Council is to prepare its annual report and submit it to the Minister for Primary Industries and the Treasurer, within the period of 8 months after the end of the financial year.

Schedule 1 [5] inserts proposed section 36A into the Principal Act to provide that the State Council is to prepare a report as to whether the auditing of RLP Boards’ financial reports for each financial year has been satisfactorily carried out, and is to submit the report to the Minister for Primary Industries and the Treasurer, within the period of 8 months after the end of the financial year.

Miscellaneous amendments

Section 52 (Investment) of the Principal Act currently provides that if the *Public Authorities (Financial Arrangements) Act 1987* does not confer power on a RLP Board to invest the money in its fund in an authorised manner, the RLP Board may invest money in accordance with the *Trustee Act 1925* or in any other manner approved by the Minister for Primary Industries with the concurrence of the Treasurer.

Schedule 1 [6] substitutes section 52 (b) of the Principal Act to remove the power of such RLP Boards to invest in accordance with the *Trustee Act 1925*. Consequently, such RLP Boards will only be able to invest in the manner approved by the Minister for Primary Industries with the concurrence of the Treasurer.

Schedule 1 [13] amends clause 1 of Schedule 7 to the Principal Act to enable regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

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Explanatory note

Schedule 1 [14] inserts proposed Part 5 (proposed clause 37) into Schedule 7 to the Principal Act to make it clear that the amendments made by the proposed Act apply to the preparation of RLP Boards' financial reports, and the auditing of those reports, for the 2006 financial year and the following years.

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No. , 2006

A Bill for

An Act to amend the *Rural Lands Protection Act 1998* to make further provision in relation to the accounting, auditing and financial obligations of the State Council of Rural Lands Protection Boards and the rural lands protection boards; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Rural Lands Protection Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Rural Lands Protection Act 1998 No 143	6
The <i>Rural Lands Protection Act 1998</i> is amended as set out in Schedule 1.	7 8
4 Amendment of other legislation	9
The <i>Public Authorities (Financial Arrangements) Regulation 2005</i> and the <i>Public Finance and Audit Act 1983</i> are amended as set out in Schedule 2.	10 11 12
5 Repeal of Act	13
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17

Schedule 1 Amendment of Rural Lands Protection Act 1998

	(Section 3)	3
[1] Section 25 Guidelines		4
Omit section 25 (1). Insert instead:		5
(1) The State Council may issue guidelines that are not inconsistent with this Act or any other law with respect to:		6
(a) the exercise of any function of a board, and		7
(b) financial reports of boards and the auditing of those reports.		8
(1A) Any such guidelines may adopt a standard or other document as in force from time to time.		9
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[2] Section 36 Annual reports		11
Omit section 36 (1) and (2).		12
[3] Section 36 (3)		13
Omit “this section”. Insert instead “section 57A”.		14
[4] Section 36 (4)		15
Insert after section 36 (3):		16
(4) Despite sections 8 and 10 of the <i>Annual Reports (Statutory Bodies) Act 1984</i> , the State Council is to prepare the report of its operations for each financial year, and is to submit its annual report to the Minister and the Treasurer, within the period of 8 months after the end of the financial year.		17
Note. Sections 8 and 10 of the <i>Annual Reports (Statutory Bodies) Act 1984</i> provide that statutory bodies (within the meaning of that Act) are to prepare reports of their operations for each financial year, and are to submit annual reports to the appropriate Minister (and, if required, the Treasurer), within the period of 4 months after the end of the financial year. This provision extends that period to 8 months in relation to the State Council.		18
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[5] Section 36A	1
Insert after section 36:	2
36A State Council report relating to auditing of boards	3
The State Council is to prepare a report as to whether the auditing of boards' financial reports for each financial year has been satisfactorily carried out, and is to submit the report to the Minister and the Treasurer, within the period of 8 months after the end of the financial year.	4 5 6 7 8
[6] Section 52 Investment	9
Omit section 52 (b). Insert instead:	10
(b) if that Act does not confer power on the board to invest the money—in any manner approved by the Minister with the concurrence of the Treasurer.	11 12 13
[7] Section 53 Financial year of board	14
Omit the note to the section.	15
[8] Section 53 (2)	16
Insert at the end of section 53:	17
(2) Despite subsection (1), the Minister, on the recommendation of the State Council, may, by order published in the Gazette, determine a different financial year for all boards.	18 19 20
[9] Section 54 Audit of financial statements	21
Omit the section.	22
[10] Part 6, Divisions 4A and 4B	23
Insert after Division 4:	24
Division 4A Accounting records, financial reports and auditing	25 26
55A Accounting records	27
(1) A board must keep such accounting records as are necessary to correctly record and explain its financial transactions and its financial position.	28 29 30
(2) In particular, a board must keep its accounting records in a manner and form that facilitate:	31 32

(a)	the preparation of financial reports that present fairly its financial position and the results of its operations, and	1 2
(b)	the convenient and proper auditing of those reports.	3
55B	Preparation of financial reports	4
(1)	A board must prepare a financial report for each financial year, and must refer the report for audit as soon as practicable (having regard to the requirements of section 55D (1)) after the end of that financial year.	5 6 7 8
	Note. Under section 55D (1), a board's financial report for a year must be prepared and submitted to its auditor within the period of 3 months after the end of that financial year.	9 10 11
(2)	A board's financial report must include:	12
(a)	a general purpose financial report, which is to include the following:	13 14
(i)	a balance sheet as at the end of the year,	15
(ii)	an income statement for the year,	16
(iii)	a cash flow statement for the year,	17
(iv)	a statement on changes in equity for the year,	18
(v)	such notes as are proper and necessary to explain the statements or other documents referred to in subparagraphs (i)–(iv), and	19 20 21
(b)	any other matter prescribed by the regulations, and	22
(c)	any other matter required to be included in the report by the guidelines issued by the State Council.	23 24
(3)	The general purpose financial report must be prepared in accordance with this Act and the regulations and the requirements of:	25 26 27
(a)	the <i>Australian Accounting Standards</i> issued by the Australian Accounting Standards Board, as in force for the time being, subject to the regulations, and	28 29 30
(b)	such other standards as may be prescribed by the regulations or adopted by the guidelines.	31 32
55C	Auditing of financial reports	33
(1)	A board's auditor must audit the board's financial report as soon as practicable (having regard to the requirements of section 55D (2)) after the report is referred for audit.	34 35 36

- (2) A board's financial report must be audited in accordance with the requirements of:
 - (a) the *AUASB Standards and Pronouncements* issued by the Auditing and Assurance Standards Board, as in force for the time being, subject to the regulations, and
 - (b) such other standards as may be prescribed by the regulations or adopted by the guidelines.
- (3) The regulations may prescribe, and the guidelines may set out, matters that an auditor must consider and provide comment on in auditing a board's financial report.

55D Time for preparation and auditing of financial reports

- (1) A board must prepare its financial report for a financial year and (subject to this section) submit the report to its auditor within the period of 3 months after the end of that financial year.
- (2) An auditor for a board must (subject to this section) audit the board's financial report for a financial year within the period of 6 weeks after the report has been submitted to the auditor.
- (3) A board may, at any time within the period of 3 months after the end of the financial year, apply to the State Council for an extension of the period referred to in subsection (1).
- (4) An auditor may, at any time within the period of 6 weeks after a board's financial report has been submitted to the auditor, apply to the State Council for an extension of the period referred to in subsection (2) in relation to that report.
- (5) An application under subsection (3) or (4) must include detailed reasons and other relevant information in support of the application.
- (6) Before deciding whether or not to grant an extension, the State Council may require the board or auditor to give reasons, additional to those set out in the application, as to why the extension should be granted.
- (7) The State Council may grant an extension of such period as, in the opinion of the State Council, is necessary in the particular circumstances of the case.
- (8) A board must notify its auditor of any application for an extension made under this section and of the outcome of the application.

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| (9) | An auditor must notify the relevant board of any application for an extension made under this section and of the outcome of the application. | 1
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| (10) | The State Council must notify both the board and auditor concerned of any extension granted under this section. | 4
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| (11) | If the State Council extends a period referred to in subsection (1) or (2), the board or auditor must comply with the subsection within the extended period. | 6
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| 55E | Auditor's reports | 9 |
| (1) | A board's auditor must prepare the following reports: | 10 |
| (a) | a report on the general purpose financial report prepared in accordance with the <i>AUASB Standards and Pronouncements</i> issued by the Auditing and Assurance Standards Board, as in force for the time being, subject to the regulations, | 11
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| (b) | a report on the conduct of the audit. | 16 |
| (2) | The report on the board's financial report must include: | 17 |
| (a) | a statement as to whether, in the opinion of the auditor, the board's accounting records have been kept in accordance with the requirements imposed by or under this Act, and | 18
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| (b) | a statement as to whether, in the opinion of the auditor, the board's financial report: | 21
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| (i) | has been prepared in accordance with the requirements imposed by or under this Act, and | 23
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| (ii) | is consistent with the board's accounting records, and | 25
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| (iii) | presents fairly the board's financial position and the results of its operations, and | 27
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| (c) | a statement setting out particulars of any material deficiency in the accounting records or financial reports that has come to light in the course of the audit. | 29
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| (3) | The report on the conduct of the audit: | 32 |
| (a) | must contain a statement as to whether, in the opinion of the auditor, any information relevant to the conduct of the audit has been unobtainable by the auditor, and | 33
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| (b) | may contain such statements, comments and recommendations as to the conduct of the audit of the board's financial report as the auditor considers appropriate to include in the report. | 36
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- (4) As soon as practicable after completing the audit, the auditor must send a copy of the auditor's reports to the State Council and to the board. 1
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- (5) The board must, within the period of 2 weeks after receiving the auditor's reports, send a copy of the auditor's reports, together with a copy of the board's audited financial report, to the State Council. 4
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55F Interim reports 8

- (1) A board's auditor may, at any time during the audit of a board's financial report, report to the State Council on any matter relating to that report or to the conduct of the audit. 9
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- (2) The auditor must give the board a copy of any report made to the State Council under this section. 12
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Division 4B Auditors 14

55G Appointment of auditors 15

- (1) A board must appoint a person as its auditor. 16
- (2) A board's auditor may be: 17
 - (a) an individual who is a registered company auditor, or 18
 - (b) a partnership whose members or employees include a registered company auditor, or 19
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 - (c) a corporation whose employees include a registered company auditor. 21
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- (3) If the board's auditor is a partnership, any member or employee of the partnership may act as the board's auditor as long as he or she is a registered company auditor. 23
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- (4) If the board's auditor is a corporation, any employee of the corporation may act as the board's auditor as long as he or she is a registered company auditor. 26
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- (5) An appointment or reappointment of an auditor is to be made in accordance with any restrictions or procedures set out in the guidelines. 29
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- (6) An auditor may not be appointed or reappointed unless the appointment or reappointment has been approved by the State Council. 32
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- (7) In this section, *registered company auditor* has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth and includes the Auditor-General. 35
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55H	Disqualified persons	1
(1)	A person may not be appointed as a board's auditor:	2
(a)	in the case of an individual, if he or she is a disqualified person, or	3 4
(b)	in the case of a partnership, if any member or employee of the partnership is a disqualified person, or	5 6
(c)	in the case of a corporation, if the corporation or any employee of the corporation is a disqualified person.	7 8
(2)	In this section, <i>disqualified person</i> means a person:	9
(a)	who is a director of the board, or	10
(b)	who is a member of staff of the Rural Lands Protection Boards Division of the Government Service, or	11 12
(c)	who is in debt to the board otherwise than for rates or charges owed by the person as a ratepayer, or	13 14
(d)	who has a contractual arrangement with the board that (if the person were the board's auditor) might reasonably be seen to give rise to a conflict between the person's duties as an auditor and the person's interests under the arrangement.	15 16 17 18 19
55I	Auditor's term of office	20
(1)	A board's auditor holds office for 4 years and, if otherwise qualified, is eligible for reappointment subject to this section.	21 22
(2)	The office of auditor becomes vacant if the auditor:	23
(a)	dies, or	24
(b)	completes a term of office and is not reappointed, or	25
(c)	ceases to be qualified to hold office as an auditor or becomes a disqualified person within the meaning of section 55H, or	26 27 28
(d)	resigns office by notice in writing addressed to the board, or	29 30
(e)	becomes a mentally incapacitated person, or	31
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	32 33 34 35

(g)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	1 2 3 4 5
(h)	is removed by the board in accordance with this section.	6
(3)	The board may remove an auditor from office only with the consent of the State Council.	7 8
(4)	Without limiting subsection (3), the board, with the consent of the State Council, may remove an auditor from office for a failure by the auditor to comply with a requirement placed on the auditor by Division 4A.	9 10 11 12
(5)	If the office of auditor becomes vacant, the board must, in accordance with sections 55G and 55H, appoint a qualified person to fill the vacancy.	13 14 15
55J	Auditor may exercise general power of inspecting accounting records	16 17
(1)	A board's auditor, for the purpose of forming an opinion as to whether the requirements of this Act and the regulations are being complied with:	18 19 20
(a)	may inspect the board's accounting records and other records necessary in order to carry out the auditor's functions at any time, and	21 22 23
(b)	must inspect those records at such periods as may be prescribed by the regulations or set out in the guidelines.	24 25
(2)	The auditor may report to the board or to the State Council on the results of the inspection.	26 27
(3)	Such a report may deal with such matters concerning the board's accounting and other records as, in the auditor's opinion, should be dealt with by the report.	28 29 30
(4)	The auditor must give the board a copy of any report made under this section to the State Council.	31 32
55K	Powers of auditor	33
(1)	When exercising the functions conferred on a board's auditor by this Part, a board's auditor is entitled at all reasonable times to full and free access to the board's accounting records and other records necessary in order to carry out the auditor's functions and may direct a director of the board or a member of staff of the	34 35 36 37 38

Rural Lands Protection Boards Division of the Government Service:	1
(a) to produce to the auditor any document relating to those records that is in that person's custody or under that person's control, or	2
(b) to grant to the auditor such authorities as may be necessary to enable the auditor to gain access to any document relating to those records that is in the custody or control of any authorised deposit-taking institution, or	3
(c) to answer any question,	4
being a document or question that, in the opinion of the auditor, is relevant to the carrying out of the auditor's functions.	5
(2) An auditor may make copies of or take extracts from any document to which the auditor gains access under this section.	6
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55L Role of Auditor-General	15
(1) The Auditor-General is authorised to audit a board's financial report for a financial year:	16
(a) if the board fails to appoint an auditor, or	17
(b) during any other vacancy in the office of auditor.	18
(2) The Auditor-General:	19
(a) may, at any time, and	20
(b) must, if requested to do so by the Minister on the recommendation of the State Council,	21
conduct a special inspection and audit of a board's financial reports and accounting records.	22
(3) The costs certified by the Auditor-General as having been incurred by the Auditor-General in auditing a board's financial report, or conducting a special inspection and audit of a board's financial reports and accounting records, in accordance with this section must be paid by the board.	23
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[11] Section 56 What information is publicly available?	31
Omit paragraphs (a) and (b) of the definition of <i>publicly available document</i> in section 56 (1).	32
Insert instead:	33
(a) any annual report prepared by the board under section 57A,	34
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Schedule 1 Amendment of Rural Lands Protection Act 1998

	(b) any financial report of a board and any accompanying auditor's reports as referred to in Division 4A,	1 2
[12]	Section 57A	3
	Insert after section 57:	4
	57A Annual reports	5
	A board must prepare a report in accordance with the guidelines in each financial year concerning its activities during the previous year and submit it to the State Council.	6 7 8
[13]	Schedule 7 Savings and transitional provisions	9
	Insert at the end of clause 1 (1):	10
	<i>Rural Lands Protection Amendment Act 2006</i>	11
[14]	Schedule 7, Part 5	12
	Insert after Part 4 of Schedule 7:	13
	Part 5 Provisions consequent on enactment of Rural Lands Protection Amendment Act 2006	14 15 16
	37 Financial reports	17
	This Act, as amended by the <i>Rural Lands Protection Amendment Act 2006</i> , applies to the preparation of boards' financial reports, and the auditing of those reports, for the 2006 financial year and each financial year after that.	18 19 20 21

Schedule 2	Amendment of other legislation	1
	(Section 4)	2
2.1	Public Authorities (Financial Arrangements) Regulation 2005	3
		4
[1]	Schedule 1 Definitions of “authority” and “controlled entity”	5
	Insert in appropriate order in Part 1 of Schedule 1:	6
	Rural lands protection boards constituted under the <i>Rural Lands Protection Act 1998</i> , but not for the purposes of Part 2C of the Act.	7
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[2]	Schedule 1, Part 2	10
	Omit:	11
	Rural lands protection board constituted under the <i>Rural Lands Protection Act 1998</i> , but:	12
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	(a) only for the purposes of Part 2C of the Act, and	14
	(b) in relation to Forbes Rural Lands Protection Board, only on and from 1 May 2006.	15
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2.2	Public Finance and Audit Act 1983 No 152	17
	Schedule 2 Statutory bodies	18
	Omit “A rural lands protection board constituted under the <i>Rural Lands Protection Act 1998</i> ”.	19
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