

[Act 2001 No 90]



New South Wales

## Public Finance and Audit Amendment (Auditor-General) Bill 2001

### Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Public Finance and Audit Act 1983*:

- (a) to extend the Parliamentary reporting powers of the Auditor-General, and
- (b) to make a number of other miscellaneous changes relating to the role of the Auditor-General.

The amendments relate to matters raised by the Auditor-General in correspondence set out in Attachment Five to the Auditor-General's report to Parliament (2001 Vol Three).

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\* Amended in committee—see table at end of volume.

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## 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 giving effect to the amendments to the *Public Finance and Audit Act 1983* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 2.

## Schedule 1 Amendments

**Schedule 1 [1]** inserts proposed section 27B into the Principal Act to make general provisions relating to the office of Auditor-General. The proposed section:

- (a) declares that there is to be an Auditor-General for the State, and
- (b) sets out the functions of the Auditor-General, including:
  - (i) the existing function of auditing the public and other accounts, and
  - (ii) a new function of providing audit or audit-related services to Parliament at the joint request of both Houses of Parliament, and
  - (iii) a new function of providing audit or audit-related services to the Treasurer at the request of the Treasurer, and
  - (iv) the existing function of reporting to Parliament, and
  - (v) a new function of doing anything that is incidental to the exercise of the Auditor-General's functions, and
- (c) requires the Auditor-General to have regard to recognised professional standards and practices (as is currently the case with respect to audits) and to comply with relevant legal requirements, and
- (d) re-states generally the existing restriction relating to reports on performance audits and protected disclosures that precludes the Auditor-General from questioning the merits of Government policy.

**Schedule 1 [2]** omits section 34 of the Principal Act (which relates to the audit of the public and other accounts) consequent on the transfer of its provisions to proposed section 27B.

**Schedule 1 [3]** amends section 35 of the Principal Act (which deals with the power of the Auditor-General to inspect, examine, audit and report on the books and accounts of accounting and other officers) to require the employer of any such officer to defray the costs and expenses of any such inspection, examination, audit and report.

**Schedule 1 [4]** and **[5]** amend section 38 of the Principal Act to enable the Auditor-General to disclose confidential information for the purposes of any due diligence process relating to the sale of a government undertaking.

**Schedule 1 [6]** amends Division 2A of Part 3 of the Principal Act to rename a special audit into the activities of an authority under that Division as a performance audit.

**Schedule 1 [7]** omits section 38B (1A) of the Principal Act (which deals with the investigation by the Auditor-General of certain protected disclosures relating to the alleged waste of public money) consequent on the transfer of its provisions to proposed Division 7 of Part 3 of the Act.

**Schedule 1 [8]** inserts section 38B (3) into the Principal Act to enable the Auditor-General to undertake a single performance audit of the activities of more than one authority.

**Schedule 1 [9]** amends section 38C of the Principal Act to require the Auditor-General to provide a draft of a report on a performance audit to the Treasurer as well as the responsible Minister and the head of the relevant authority.

**Schedule 1 [10]** inserts section 38C (2A) into the Principal Act to enable the Auditor-General to reduce the minimum 28-day period for which a draft report is to be made available if the head of the relevant authority has made any submissions or comments he or she wishes to make.

**Schedule 1 [11]** inserts section 38C (6) into the Principal Act to enable the Auditor-General to request the Treasurer to determine, in the case of a performance audit into the activities of several authorities, the head of a single authority and a single responsible Minister to whom the Auditor-General is to provide a draft report of a performance audit for comment.

**Schedule 1 [12]** omits section 38D of the Principal Act (which precludes the Auditor-General from questioning the merits of Government policy in connection with a performance audit) consequent on the transfer of its provisions to proposed section 27B.

**Schedule 1 [13]** amends section 52 of the Principal Act to replace the power of the Auditor-General to report on any matter “arising from” audit with a wider power to report on any matter “that arises from or relates to” the exercise of the audit or other functions of the Auditor-General.

**Schedule 1 [14]** inserts Division 7 into Part 3 of the Principal Act to transfer to a separate Division the provisions with respect to protected disclosures about alleged waste of public money. At present the Auditor-General is required to deal with such a protected disclosure under the provisions relating to performance audits. The new provisions specifically authorise the Auditor-General to deal with a complaint about waste of public money by conducting an inspection, examination or audit under the Principal Act or in any other manner the Auditor-General considers appropriate. Detailed provision is also made, along the lines applicable to performance audits, for the preparation of reports by the Auditor-General into such complaints and their presentation to Parliament. Special provision is included to require reports on complaints about the head of an authority to be made to the responsible Minister and on complaints about a Minister to be made to the Premier.

**Schedule 1 [15]** amends section 63D of the Principal Act to ensure that the protection from personal liability afforded to the Auditor-General by that section extends to omissions as well as acts.

**Schedule 1 [16]** inserts section 65 into the Principal Act, which is a formal provision giving effect to proposed Schedule 4 (Savings, transitional and other provisions).

**Schedule 1 [17]** inserts Schedule 4 into the Principal Act to enact savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule:

- (a) authorises the making of savings and transitional regulations, and
- (b) validates anything done by the Auditor-General that would have been valid if the proposed Act had been in force when the thing was done.

## **Schedule 2 Consequential amendments of other Acts**

**Schedule 2** makes consequential amendments to the following Acts:

*Defamation Act 1974*

*Legal Profession Act 1987*

*Rural Lands Protection Act 1998*