

# Public Finance and Audit Act 1983 No 152

[1983-152]



New South Wales

## Status Information

### Currency of version

Historical version for 1 May 2006 to 19 June 2006 (accessed 6 October 2024 at 9:00)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

*Transport Administration Act 1988 No 109* (amended by *Transport Administration Amendment (Public Transport Ticketing Corporation) Act 2006 No 5*) (not commenced)

*Veterinary Practice Act 2003 No 87* (not commenced)

*Sydney 2009 World Masters Games Organising Committee Act 2005 No 65*, Sch 3.1 (not commenced — to commence on 30.6.2010)

*National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005 No 83* (not commenced)

*Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005 No 97* (not commenced — to commence on 1.7.2006)

*Building Professionals Act 2005 No 115* (not commenced)

*State Property Authority Act 2006 No 40* (not commenced)

- **See also**

*Statute Law (Miscellaneous Provisions) Bill 2006*

*State Revenue and Other Legislation Amendment (Budget Measures) Bill 2006*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Public Finance and Audit Act 1983 No 152



New South Wales

An Act to make provision with respect to the administration and audit of public finances and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Public Finance and Audit Act 1983*.

### 2 Commencement

- (1) Part 1, Divisions 1 and 4 of Part 2, section 34 and Division 5 of Part 3 shall be deemed to have commenced on 1 July 1983.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**accounting manual**, in relation to an authority, means the accounting manual of the authority referred to in section 11 (3).

**accounting officer** means:

- (a) a person who by any law, regulation or appointment is charged with the duty of collecting or receiving, or who actually collects or receives, or who is charged with the duty of disbursing, or who actually disburses, any public money,
- (b) a person who by any law, regulation or appointment is authorised to commit or incur the expenditure of public money,
- (c) a person who by any law, regulation or appointment is charged with a duty



relating to the keeping of accounts with respect to public money, or

- (d) a person who by any law, regulation or appointment is charged with a duty relating to the purchase, receipt, issue, sale, custody, control, management or disposal of, or the accounting for, public property or who actually purchases, receives, issues, sells, keeps in custody, controls, manages, disposes of, or accounts for, public property.

**Audit Office** means the Audit Office of New South Wales established by this Act.

**auditor** means a person appointed to be an auditor pursuant to section 35.

**Australian Accounting Standards** means the standards issued by the Australian Accounting Standards Board as in force for the time being.

**authority** means:

- (a) a Department within the meaning of section 4 (1) of the [Public Service Act 1979](#),  
(b) the Teaching Service,  
(c) a statutory authority, or  
(d) a person, group of persons or body prescribed for the purposes of this definition.

**Budget Papers** means the Budget Papers of the Government tabled in Parliament in connection with annual Appropriation Bills.

**Consolidated Fund** means the fund formed as referred to in section 39 of the [Constitution Act 1902](#).

**Financial Agreement** means the Financial Agreement set forth in the Schedule to the [Financial Agreement Act 1994](#) as amended by any subsequent agreement approved by Parliament.

**financial report** means:

- (a) in respect of the Total State Sector—the Total State Sector Accounts, and  
(b) in respect of a statutory body—a financial report referred to in section 41A, and  
(c) in respect of a Department—a financial report referred to in section 45D.

**financial year**, in relation to:

- (a) the Total State Sector Accounts, means the period from 1 July to the next following 30 June,  
(b) a statutory authority, means:

- (i) except as provided by subparagraph (iii), the period specified as the financial year of the statutory authority in or pursuant to the Act by or under which the statutory authority is appointed, constituted or regulated,
  - (ii) except as provided by subparagraph (iii), where no period is specified as referred to in subparagraph (i), the period from 1 July to the next following 30 June, or
  - (iii) where the Treasurer, pursuant to subsection (1A), determines the financial year of the statutory authority, the financial year so determined, or
- (c) a Department referred to in Division 4A of Part 3, means:
- (i) except as provided by subparagraph (ii), the period from 1 July to the next following 30 June, or
  - (ii) where the Treasurer, pursuant to subsection (1A), determines the financial year of the Department, the financial year so determined.

**general government sector** has the same meaning as in the [Fiscal Responsibility Act 2005](#).

**GFS** means Government Finance Statistics as reported by the Australian Bureau of Statistics.

**Head of an authority** means:

- (a) in relation to a Department within the meaning of section 4 (1) of the [Public Service Act 1979](#)—the appropriate Department Head within the meaning of that subsection,
- (b) in relation to the Teaching Service—the Director-General of the Department of Education and Training,
- (c) in relation to a statutory authority:
  - (i) where the statutory authority is an individual or a corporation sole—the individual or corporation sole, or
  - (ii) in any other case—the chief executive officer of the statutory authority or the person who exercises the functions of a chief executive officer in relation to the statutory authority, or
- (d) in relation to a person, group of persons or body prescribed for the purposes of the definition of **authority** in this section—such person as is prescribed for the purposes of this definition in relation to the person, group of persons or body.

**loan Act** includes the Financial Agreement, but does not include a prescribed enactment.

**money** includes any instrument ordering or authorising the payment of money, being an instrument of a kind which may be lodged with a bank, building society or credit union for the purpose of enabling the bank, building society or credit union to collect money so payable and credit that money to an account with that bank, building society or credit union, and any bill of exchange, postal order, money order and promissory note.

**officer of an authority** means:

- (a) in relation to a Department within the meaning of section 4 (1) of the *Public Service Act 1979*—an officer within the meaning of that subsection or a temporary employee within the meaning of that subsection,
- (b) in relation to the Teaching Service—an officer or temporary employee of that Service,
- (c) in relation to a statutory authority—a member of the statutory authority or a person appointed to or by or employed within the statutory authority, or
- (d) in relation to a person, group of persons or body prescribed for the purposes of the definition of **authority** in this section—such person as is prescribed for the purposes of this definition in relation to the persons, group of persons or body,

and includes, in relation to an authority referred to in paragraph (a), (b) or (c), such other persons as may be prescribed for the purposes of this definition in relation to the authority.

**other money** means money or securities of any kind for the payment of money, collected, received or held by the Treasurer or an officer of an authority in the course of the official duties of the Treasurer or officer, not being public money.

**other property** means property, other than money, held by the Treasurer or an officer of an authority in the course of the official duties of the Treasurer or officer, not being public property.

**prescribed requirements**, in relation to an authority, means requirements prescribed by or under this Act or any other law applying to the authority, Treasurer's directions applying to the authority or the accounting manual of the authority.

**public money** includes:

- (a) securities and all revenue, loans and other money whatever, collected, received or held by, for, or on account of the State, and
- (b) without limiting the generality of paragraph (a):
  - (i) money which, pursuant to any Act, is directed to be paid to or expressed to form part of the Consolidated Fund or the Special Deposits Account, and

- (ii) such money, or money of such class or description of money, as is prescribed for the purposes of this definition.

**public property** means all property, other than public money, held by any person for or on behalf of the State.

**regulation** means a regulation made under this Act.

**Special Deposits Account** means:

- (a) an account of funds which the Treasurer is, by statutory or other authority, required to hold otherwise than for or on account of the Consolidated Fund,
- (b) an account of money directed to be paid to the Special Deposits Account by or under this or any other Act, or
- (c) an account of such other money, not directed by or under this or any other Act to be placed to the credit of another account, which the Treasurer directs to be carried to the Special Deposits Account.

**statutory authority** means:

- (a) a statutory body representing the Crown, or
- (b) a person, group of persons or body (whether or not being a statutory body representing the Crown) to which Division 3 of Part 3 applies.

**the Total State Sector Accounts** means the financial report prepared by the Treasurer under section 6 (1).

**Treasurer's direction** means a direction issued under section 9.

**Treasurer's expenditure control authority** means a Treasurer's expenditure control authority issued under section 10.

- (1A) The Treasurer may, by notice in writing to a statutory authority or a Department Head, determine the financial year of the statutory authority or the Department, as the case may be.
- (2) In this Act, a reference to the Crown is a reference to the Crown in right of the State.
- (3) In this Act, a reference to:
  - (a) a function includes a reference to a power, authority and duty, and
  - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (4) Notes included in this Act do not form part of this Act.

#### 4A Relationship with Corporations legislation

- (1) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
  - (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
  - (b) a specified provision of that legislation, or
  - (c) that legislation other than a specified provision, or
  - (d) that legislation otherwise than to a specified extent.

**Note—**

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, then any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply in the State concerned to the extent necessary to avoid the inconsistency.

- (3) In this section:

**matter** includes act, omission, body, person or thing.

**relevant provision** of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

## Part 2 Public finance administration

### Division 1 Public accounts

#### 5 Treasurer's accounts

- (1) The Treasurer shall cause to be kept accounts relating to the Consolidated Fund, the Special Deposits Account and such other money as the Treasurer may determine under such separate heads as the Treasurer may direct.
- (2) In spite of any other Act or law, the Treasurer is not required to cause any account in, or relating to, the Consolidated Fund or the Special Deposits Account to be kept in the Treasury.
- (3) An account referred to in any Act or law relating to the Consolidated Fund or the Special Deposits Account, and in or at the Treasury immediately before the date of the commencement of this subsection, is from that date to be caused to be kept by the Treasurer in accordance with subsection (1), either in the Treasury or outside the Treasury.

#### 6 Preparation of the Total State Sector Accounts

- (1) As soon as practicable after the end of each financial year, the Treasurer is to prepare a consolidated financial report for the Total State Sector as at 30 June in that year.
- (2) The report referred to in subsection (1) is to be prepared in accordance with Australian Accounting Standards.
- (3) The Treasurer may combine, include or amalgamate with, or present together with, in such form or manner as the Treasurer may determine, or attach to, the Total State Sector Accounts such other reports as the Treasurer may determine. These reports may include accounts prepared on a GFS basis and a report on the budget result for the financial year.
- (4) On or before 15 September, the Treasurer is to transmit the Total State Sector Accounts prepared in relation to the preceding financial year to the Auditor-General.

#### 7, 7A (Repealed)

#### 8 Monthly statements and half-yearly reviews

- (1) The Treasurer is to publicly release a statement for each month (**a monthly statement**), by the end of the following month, setting out the budget time projections and year-to-date balances for the major GFS aggregates disclosed in the Budget.
- (2) The Treasurer may delay the release of a monthly statement if, at or near the time at which the statement would otherwise be released, other key reporting documents are

(or are to be) released, such as the Budget, the half-yearly review (referred to in subsection (3)) and the Total State Sector Accounts.

- (3) The Treasurer is to publicly release a statement (***the half-yearly review***) by 31 December in each year containing:
  - (a) revised GFS projections for the current financial year and an explanation of any significant variation in those revised GFS projections from the original budget time projections, and
  - (b) revised forward estimates, for major GFS aggregates, over 3 years, and
  - (c) the latest economic projections for the current financial year and an explanation of any significant variation from the budget time projections contained in the Budget Papers.
- (4) The half-yearly review is to be based on actual results as at the end of the previous October.
- (5) The Treasurer may determine to change the presentation in a monthly statement or the half-yearly review from that adopted in the preceding Budget.
- (6) The Treasurer is to present a copy of a determination made under subsection (5) to the Legislative Assembly on a day within 14 days after making the determination, if the Legislative Assembly is sitting on that day.
- (7) If at the time when the Treasurer seeks to present a copy of a determination to the Legislative Assembly the Legislative Assembly is not sitting, the Treasurer is to present a copy of the determination to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.
- (8) The Treasurer may include such other matters in a monthly statement or the half-yearly review as the Treasurer determines.

## **Division 2 Accounting arrangements**

### **9 Treasurer's directions**

- (1) The Treasurer may, from time to time, issue directions to accounting officers and officers of an authority with respect to the principles, practices and procedures to be observed in the administration of the financial affairs of the State and may, at any time, amend, vary or cancel a direction so issued.
- (2) Without limiting the generality of subsection (1), the Treasurer may issue directions relating to:
  - (a) the accounting for receipts and payments of money,

- (b) money recoverable by the State,
  - (c) the recording, issue and control of public property and other property,
  - (d) the sale and disposition of public property and other property,
  - (e) banking arrangements,
  - (f) the writing off of debts,
  - (g) the preparation of the Total State Sector Accounts and other financial reports,
  - (h) the preparation of estimates,
  - (i) the commitment of expenditure,
  - (j) the control and management of budget allocations,
  - (k) program budgeting and accounting,
  - (k1) the establishment and operation of working accounts within the Special Deposits Account,
  - (l) the insurance and protection of public property and other property,
  - (m) controls for computer-based accounting systems,
  - (n) the form and content of financial reports and the accounting policies to be observed in preparing those reports,
  - (o) the payment, into an account in the Special Deposits Account for an authority, of a percentage (not being less than 50 per cent) of the proceeds of a sale or lease of a surplus asset vested in, used by or under the control of the authority,
  - (p) the purposes for which an authority may expend proceeds referred to in paragraph (o), being purposes in connection with the acquisition or maintenance of capital assets, and
  - (q) the transfer of funds, for the settlement of a claim by one authority against another authority, between accounts maintained by the Treasury for the purposes of those authorities, notwithstanding any Act relating to the appropriation of those funds.
- (3) A provision of a direction issued under this section may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or



(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body,

or may do any combination of those things.

(4) A direction issued under this section shall not apply to or in respect of:

(a) (Repealed)

(b) a university, or

(c) a person, group of persons or body prescribed for the purposes of this section.

#### **10 Treasurer's expenditure control authority**

(1) The Treasurer may, from time to time, issue a Treasurer's expenditure control authority regulating the expenditure of money from the Consolidated Fund.

(2) A Treasurer's expenditure control authority may:

(a) be a standing authority regulating the expenditure of money in general terms,

(b) be limited as to the period during which it may operate to regulate the expenditure of money,

(c) be limited as to the nature of the transactions in respect of which money may be expended,

(d) be limited to a particular transaction or series of transactions, or

(e) be contained in the Treasurer's directions or in a separate instrument.

(3) A reference in this section to the regulation of the expenditure of money includes a reference to the commitment of money for expenditure.

#### **11 Internal control and audit**

(1) The Head of an authority shall ensure that there is an effective system of internal control over the financial and related operations of the authority, including:

(a) management policies and requirements made by the provisions of this Act and the prescribed requirements,

(b) sound practices for the efficient, effective and economical management of functions by each organisational branch or section within the authority,

(c) a system of authorisation and recording and procedures adequate to provide accounting control in relation to assets, liabilities, receipts and expenses,

(d) proper segregation of functional responsibilities, and

- (e) procedures to review the adequacies of and compliance with the system of internal control.
- (2) Wherever practicable, the Head of an authority shall establish and maintain an effective internal audit organisation which shall be responsible to the Head of an authority for:
  - (a) the regular appraisal of the adequacy of and compliance with the system of internal control,
  - (b) the review of operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned, and
  - (c) the reporting directly at regular intervals to the Head of the authority as to the result of any appraisal, inspection, investigation, examination or review made by the internal audit organisation.
- (3) The Head of an authority shall supervise the preparation and maintenance of an accounting manual for use within the authority.
- (4) To the extent of any inconsistency between the provisions of the regulations or the Treasurer's directions and the provisions of an accounting manual, the provisions of the regulations or the Treasurer's directions, as the case may require, shall, to the extent of the inconsistency, prevail.

## **12 Commitment etc of expenditure**

- (1) Expenditure shall be committed or incurred by an officer of an authority only within the limits of a delegation in writing conferred on the officer by a person entitled to make the delegation.
- (2) An officer of an authority who commits or incurs expenditure shall be responsible for the exercise of due economy.
- (3) An officer of an authority must not, without the authorisation of the Treasurer, incur any liability that would result in a payment out of the Consolidated Fund in excess of the amount to be provided out of the Consolidated Fund in accordance with an Appropriation Act or this Act.

## **13 Payment of accounts**

An officer of an authority shall not authorise the payment of an account:

- (a) unless the account has been approved for payment by a person to whom the power to authorise the payment has been delegated under section 12 (1), or
- (b) otherwise than in accordance with the Treasurer's directions.

### **13A Working accounts**

- (1) The Treasurer may establish a working account for an authority within the Special Deposits Account.
- (2) Despite the provisions of any other Act, the Treasurer may authorise an authority to retain in a working account money received by it from the following:
  - (a) the provision of goods or services (or both),
  - (b) donations and contributions,
  - (c) any other sources authorised by the Treasurer,instead of paying it into the Consolidated Fund.

### **14 Unclaimed money**

- (1) This section does not apply to or in respect of an authority:
  - (a) to which the *Unclaimed Money Act 1995* applies, or
  - (b) in respect of which, by or under any Act by which the authority is appointed, constituted or regulated, provision is made for the regulation, payment or appropriation of unclaimed money.
- (2) Except in so far as the regulations may otherwise provide, money which, by virtue of the office or employment of an officer of an authority, has come into the possession or under the control of the officer for or on account of or for the use or benefit of a person other than the authority and:
  - (a) which has been unclaimed for a period of 3 months, or
  - (b) in respect of which a claim has been made but is not, on the expiration of a period of 2 years after the money came into the possession of or under the control of the officer being proceeded with,shall be paid into the Consolidated Fund.
- (3) (Repealed)
- (4) Where the Treasurer is satisfied that a person is entitled to money which has been paid into the Consolidated Fund pursuant to subsection (2), the money is, by virtue of this subsection, appropriated from the Consolidated Fund for the purpose of enabling its payment to the person and the Treasurer may withdraw the money from the Consolidated Fund and pay the money to the person accordingly.

## **Division 3 Public banking and investment arrangements**

### **15 Agreement with bank, building society or credit union**

- (1) The Treasurer may agree with any bank, building society or credit union upon such terms and conditions as the Treasurer may think fit for:
  - (a) the receipt, custody, payment and transmission of public money,
  - (b) the inscription, management and payment of interest on the public debt within or without New South Wales,
  - (c) the making of advances, the charges relating to advances and the interest payable by or to the bank, building society or credit union upon balances or advances, and
  - (d) the conduct of the banking business of the State generally.
- (2) An agreement referred to in subsection (1) shall not be made to have effect within New South Wales for more than 1 year unless it contains a provision that it may be terminated at any time on the giving of 6 months' notice.

### **16 Accounts to be kept in banks, building societies or credit unions**

- (1) Authorities may open such accounts in such banks, building societies and credit unions and on such terms as the Treasurer determines for the banking of public money.
- (2) Money of authorities that is in such accounts with a bank, building society or credit union is, if the accounts are accounts of the kind referred to in section 5 (1), subject to any arrangement between the bank, building society or credit union and the Treasurer under which the bank, building society or credit union is authorised to set off, in accordance with the agreement, the credit and debit balances in the accounts. This subsection applies despite any Act or law.

### **17 Official account not to be opened without authority**

- (1) An accounting officer shall not, without the authorisation in writing of the Treasurer, open an account with a bank, building society or credit union for the payment or receipt of public money.
- (2) A bank, building society or credit union shall not, without the authorisation in writing of the Treasurer, permit an accounting officer to open an account referred to in subsection (1), or to have an overdraft on such an account.
- (3) The Treasurer may permit a statutory body (being a person, group of persons or body specified in Schedule 2) to operate and keep funds in an account referred to in subsection (1).

- (4) If permission is given under subsection (3), the Treasurer may:
- (a) close any account within the Special Deposits Account established in relation to the statutory body, and
  - (b) transfer any balance in that account to the account referred to in subsection (3).
- (5) Subsections (3) and (4) have effect notwithstanding the provisions of any other Act.

### **18 Banking of public money**

An accounting officer collecting or receiving public money is to bank the money collected or received in accordance with this Act, the regulations and any directions of the Treasurer.

### **19 Interest on accounts**

The several accounts of the Treasurer in any one bank, building society or credit union shall, for interest purposes, be considered as one account.

### **20 Investment of funds**

Without limiting any authority granted by or under any other Act to invest public money, any such money may be invested:

- (a) on deposit with a bank and on deposit with, or by way of withdrawable shares in, a building society or credit union,
- (b) in the purchase of a bill of exchange that is drawn, accepted or endorsed by a bank, building society or credit union,
- (c) in a loan to a person who is a dealer in the short term money market and in relation to whom, at the time the loan is made, the Reserve Bank of Australia stands as lender of last resort,
- (d) in the purchase of securities, the repayment of which is guaranteed by the Government of New South Wales or of the Commonwealth, or
- (e) in any prescribed investment.

## **Division 4 Appropriation provisions**

### **21 Money not to be paid out unless authorised**

Money shall not be drawn from:

- (a) the Consolidated Fund, except under the authority of an Act of Parliament, or
- (b) an account within the Special Deposits Account, except for the purposes of the account and under such authority as may be applicable to the constitution of the

account.

### **21A Special appropriations**

- (1) A provision of any Act which appropriates money from the Consolidated Fund for a specified purpose operates only to the extent necessary to meet any shortfall in the cost of meeting that purpose after the application of money for that purpose from a working account established under section 13A.
- (2) A provision of any Act (other than an Appropriation Act) which appropriates money from the Consolidated Fund for a specified purpose shown in the Estimates of the Consolidated Fund operates only to the extent necessary to meet any shortfall in the cost of meeting that purpose after the appropriation of money for that purpose under an Appropriation Act.
- (3) In this section:

**Appropriation Act** means an Act with the object of appropriating sums of money for the ordinary annual services of the Government or capital works and services of the Government, or both.

### **22 Expenditure for certain services or works**

- (1) Notwithstanding section 21, where, after an Act is passed in respect of a financial year appropriating money out of the Consolidated Fund to meet the requirements of that financial year, the exigencies of Government so require, the Treasurer may, with the approval of the Governor, determine that there shall be paid from the Consolidated Fund, in anticipation of appropriation by Parliament, such additional sums as may be necessary in the public interest to provide for expenditure of a recurrent nature or for capital works and services.
- (2) Details of the sums paid from the Consolidated Fund pursuant to a determination under subsection (1) shall be included in any Bill introduced with the object of appropriating sums of money for the ordinary annual services of the Government or capital works and services of the Government during the financial year next succeeding the financial year in respect of which the sums were paid from the Consolidated Fund pursuant to the determination.

### **22A The Revenue Equalisation Account**

- (1) The Treasurer may establish a Revenue Equalisation Account within the Special Deposits Account.
- (2) The Treasurer may, with the approval of the Governor, transfer from the Consolidated Fund to the Revenue Equalisation Account such sums as the Treasurer may determine.
- (3) The sums that may be transferred from the Consolidated Fund to the Revenue Equalisation Account pursuant to this section are in addition to any sums that may be

so transferred pursuant to any Act appropriating money from the Consolidated Fund.

- (4) Details of the sums transferred from the Consolidated Fund to the Revenue Equalisation Account pursuant to this section shall be included in any Bill introduced with the object of appropriating sums of money for the ordinary annual services of the Government or capital works and services of the Government during the financial year next succeeding that in which the transfer occurs.
- (5) Money shall not be drawn from the Revenue Equalisation Account otherwise than by way of transfer from that Account to the Consolidated Fund.

### **23 Lapsing of appropriation of revenue**

- (1) Except as provided by subsection (2), every appropriation out of the Consolidated Fund for any financial year shall lapse and cease to have any effect for any purpose at the close of that year.
- (2) Where, in relation to any appropriation for salaries or wages or payments in the nature of salaries or wages, an amount, not exceeding:
  - (a) the total of the sums required to meet so much of those salaries, wages or payments as is chargeable in respect of that part of the pay period current at 30 June in any year which terminates on that day, and
  - (b) the total of the sums required to meet so much of those salaries, wages or payments as is, pursuant to a lawful determination made on or before 30 June in any such year, required to meet salaries, wages or payments for that pay period or any pay period occurring before that pay period, or both,

is transferred to the credit of a suspense account within the Special Deposits Account, and the amount so transferred is thereafter applied in or towards meeting those salaries, wages or payments for that pay period or those pay periods, as the case may require, the amount so transferred shall, for the purposes of this section, be deemed to have been applied during the financial year in relation to which the appropriation was made.

### **23A Transfers in relation to commitments**

- (1) If:
  - (a) goods or services chargeable to an appropriation out of the Consolidated Fund for any financial year have not been paid by 30 June in that year, and
  - (b) the Treasurer or a person specified for the time being in a Treasurer's direction is of the opinion that the goods or services might reasonably have been expected to be paid for by that date,

the Treasurer or person may approve the transfer of the amount involved to the credit

of a suspense account within the Special Deposits Account, and the amount so transferred shall thereafter, except as provided by subsection (3), be applied in or towards meeting the cost of the goods or services.

- (2) Any amount transferred under subsection (1) shall, notwithstanding section 23 (1), be deemed to have been applied during the preceding financial year.
- (3) Any amounts or portions of amounts transferred under subsection (1) which have not been applied for the purpose required by 30 September first occurring after that financial year shall be repaid to the Consolidated Fund.
- (4) The Treasurer shall, as soon as practicable, after 30 June in each year, prepare, for inclusion in the Total State Sector Accounts, a statement accounting for transfers made under subsection (1) during the preceding financial year.

#### **24 Transfer of functions between Departments etc**

- (1) Notwithstanding the provisions of any Appropriation Act, where, after the passing of an Appropriation Act for any financial year the responsibility for a service or function for which an appropriation is made in the Appropriation Act for that year is transferred, the appropriation shall not lapse and may be issued and applied, in accordance with such determination as may be made by the Treasurer, for or towards the service or function the responsibility for which is transferred.
- (2) The Treasurer shall lay or cause to be laid before the Legislative Assembly, within 6 sitting days after the determination is made under subsection (1), details of the appropriation the subject of the determination.
- (3) If the Legislative Assembly passes a resolution, of which notice has been given within 6 sitting days of the Legislative Assembly after the details of an appropriation the subject of a determination under subsection (1) have been laid before it, disallowing the appropriation or any part thereof, the appropriation or part thereof ceases to have effect.
- (4) For the purposes of this section, sitting days shall be counted whether or not they occur in the same session.
- (5) Where the Treasurer has made a determination under subsection (1) in relation to an appropriation, the Treasurer shall prepare the Total State Sector Accounts for the financial year in relation to which the determination is made as if the whole of the appropriation in respect of which the determination is made had been applied in accordance with the determination as from the beginning of that financial year.

#### **25 Payments authorised on lapse of appropriation**

If, before the close of any financial year, no Act is passed appropriating money out of the Consolidated Fund to meet the requirements of the next succeeding financial year, the



Treasurer may pay such sums as may be necessary to meet those requirements, subject to the following provisions:

- (a) the authority of the Treasurer under this section shall cease upon the passing of the Appropriation Act for the next succeeding financial year, and shall not extend beyond the period of the first 3 months of that succeeding financial year,
- (b) upon the passing of the Appropriation Act, all payments made under the authority of this section shall be regarded and treated for all purposes as payments made out of the money appropriated by that Act,
- (c) the payments made under the authority of this section shall not exceed, in total, such amount as would be equivalent to one quarter of the amount appropriated under the Appropriation Act for the immediately preceding financial year, adjusted by two-thirds of the percentage change in:
  - (i) except as provided by subparagraph (ii)—the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician, or
  - (ii) where some other group of numbers or of amounts relating to the price of goods and services, which is issued by the Australian Statistician, is prescribed for the purposes of this subparagraph—the group of numbers or of amounts so prescribed,for the quarter of that year commencing on and including 1 January and ending on and including the next succeeding 31 March from the corresponding quarter of the previous year,
- (d) when the estimates of expenditure for that succeeding financial year have been presented to Parliament, and the rate of expenditure in those estimates is, in any case, lower than the rate of expenditure authorised in the Appropriation Act for the last preceding financial year, the payments made under the authority of this section shall not exceed those lower rates.

## **26 Power to vary the annual appropriation**

- (1) If the Commonwealth, in any financial year:
  - (a) provides for the making of a specific purpose payment not included in the receipts and payments estimates of the State for the financial year,
  - (b) provides for an increase in the amount of a specific purpose payment in excess of the amount shown in the receipts and payments estimates of the State for the financial year, or
  - (c) does not provide the whole of the amount of a specific purpose payment as shown in the receipts and payments estimates of the State for the financial year,

the Treasurer may amend the appropriate receipts and payments estimates of the State for that year as if the Treasurer had received advice from the Commonwealth, at the time those estimates were presented to Parliament, that:

(d) the specific purpose payment or the increase in the amount of the specific purpose payment would have been provided to the State by the Commonwealth in that year, or

(e) the whole of the amount of the specific purpose payment would not have been provided to the State by the Commonwealth in that year,

as the case requires.

- (2) Where, under subsection (1), the Treasurer amends the appropriate receipts and payments estimates of the State for a financial year to provide for the making of a specific purpose payment or an increase or decrease in the amount of a specific purpose payment, appropriations for that year for the purpose of the specific purpose payment may, as the case may require, be made, increased or decreased accordingly.
- (3) The Treasurer shall lay or cause to be laid before the Legislative Assembly, within 6 sitting days of the day on which the estimates are amended under subsection (1), a copy of the estimates as so amended.
- (4) For the purposes of this section, sitting days shall be counted, whether or not they occur in the same session.

## **27 Loan money to be carried to Consolidated Fund**

- (1) All money borrowed under the authority of any loan Act, except money borrowed by way of overdraft under the authority of clause 5 of Part I of the Financial Agreement solely for temporary purposes, shall be carried to the Consolidated Fund.
- (2) Money borrowed by way of overdraft under the authority of clause 5 of Part I of the Financial Agreement solely for temporary purposes shall not be expended except in accordance with the provisions of this or any other Act.
- (3) In this section, **Financial Agreement** means the Financial Agreement set forth in the Schedule to the *Financial Agreement Ratification Act 1928* as varied from time to time.

## **27A Budget presentation**

- (1) The Budget is to be presented on a basis that covers the general government sector.
- (2) The Budget is to be presented in a format that accords with GFS principles of the Australian Bureau of Statistics and Australian Accounting Standards.
- (3) The Treasurer may determine that the principles or standards referred to in subsection

(2) should be departed from if the Treasurer is of the opinion that the departure is necessary in a particular case to present an accurate view of the financial position of the Budget.

- (4) The Treasurer is to prepare a report on any such departure containing details of, and reasons for, the departure and the report is to be tabled in each House of Parliament with the Budget Papers.
- (5) Before preparing a report required under subsection (4) on any such departure, the Treasurer may consult with the Treasurer's Accounting Advisory Panel, consisting of senior members of the accounting profession and the Auditor-General, concerning the departure.

### **27AA Budget content**

- (1) The budget GFS aggregates relating to the general government sector are to be for a 6-year period comprising the Budget year, the 2 prior years and the 3 forward years.
- (2) The Budget Papers are to include the following:
  - (a) a Budget policy statement that includes information on the following matters:
    - (i) an assessment of progress achieved against the fiscal targets and fiscal principles of the *Fiscal Responsibility Act 2005*,
    - (ii) a projection of the ability to achieve those fiscal targets in the future and to progress the achievement of those fiscal principles,
    - (iii) 4-year projections (being for the Budget year and 3 forward years) of all major economic and financial variables,
  - (b) revised estimates for the year prior to the budget year, and an explanation of any significant variations in major GFS aggregates from the Budget estimates for that year, for the general government sector,
  - (c) outcomes, outputs and total expenses for each program for the Budget year and the prior year,
  - (d) financial statements prepared in accordance with the Uniform Presentation Framework,
  - (e) primary financial statements in accordance with Australian Accounting Standards,
  - (f) primary financial statements in accordance with GFS principles.
- (3) The Budget Papers may include any other matters.
- (4) In this section, **Uniform Presentation Framework** means the framework for financial reporting:

- (a) that is based on reporting conventions for the time being of the Australian Bureau of Statistics for its GFS reporting, and
- (b) that is agreed by the Australian Loan Council from time to time.

**27AB Time at which Budget is to be presented to Parliament**

- (1) The Budget Papers for a budget year are to be tabled in the Legislative Assembly before the end of the prior financial year, except as provided by this section.
- (2) If:
  - (a) the Legislative Assembly is not sitting in the last 2 months of the financial year prior to the budget year, or
  - (b) there is a State election in the financial year prior to the budget year,the Budget Papers may be tabled in the Legislative Assembly as soon as possible within the budget year.

**Part 3 Audit**

**Division 1 The Auditor-General**

**27B The Auditor-General**

- (1) There is to be an Auditor-General for the State.
- (2) The Auditor-General has the functions conferred or imposed on the Auditor-General by law.
- (3) The Auditor-General's functions include the following:
  - (a) to audit the Total State Sector Accounts and any other financial reports that the Auditor-General is required or authorised to audit by law,
  - (b) to provide any particular audit or audit-related service to Parliament at the joint request of both Houses of Parliament,
  - (c) to provide any particular audit or audit-related service to the Treasurer at the request of the Treasurer or to any other Minister at the request of that other Minister,
  - (d) to report to Parliament as required or authorised by law,
  - (e) to do anything that is incidental to the exercise of the Auditor-General's functions.
- (4) The Auditor-General may exercise his or her functions in such manner as the Auditor-General thinks fit. However, the Auditor-General is required:

- (a) to have regard to recognised professional standards and practices, and
  - (b) to comply with any relevant requirements imposed by law.
- (5) The Auditor-General may, in the exercise of his or her functions, have regard to whether there has been:
- (a) any wastage of public resources, or
  - (b) any lack of probity or financial prudence in the management or application of public resources.
- (6) Nothing in this Act entitles the Auditor-General to question the merits of policy objectives of the Government, including:
- (a) any policy objective of the Government contained in a record of a policy decision of Cabinet, and
  - (b) a policy direction of a Minister, and
  - (c) a policy statement in any Budget Paper or other document evidencing a policy direction of the Cabinet or a Minister.
- (7) In this section, **by law** means by or under this or any other Act or law.

## **28 Appointment etc**

- (1) The Auditor-General is to be appointed by the Governor for a term of 7 years and is not eligible for re-appointment, including re-appointment after the end of that term.
- (2) Part 1 of Schedule 1 has effect.

## **28A Veto of proposed appointment of Auditor-General**

- (1) A person is not to be appointed as Auditor-General until:
  - (a) a proposal that the person be appointed has been referred to the Public Accounts Committee under section 57A, and
  - (b) either the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Treasurer that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.

## **29 Declaration of office**

- (1) The Auditor-General, on being appointed under this Act, shall, before exercising the powers or performing the duties conferred or imposed on the Auditor-General by this

Act, make and subscribe, before one of the Judges of the Supreme Court, a declaration in the form of Part 2 of Schedule 1.

- (2) The declaration made and subscribed pursuant to subsection (1) shall be kept among the records of the Supreme Court.

### **30 Deputy Auditor-General**

- (1) A Deputy Auditor-General may be appointed by the Governor to act in the office of the Auditor-General at any time while the Auditor-General is absent from office through illness or any other cause or while there is a vacancy in the office of the Auditor-General.
- (2) An appointment under subsection (1) may be made whether or not, at the time at which the appointment is made, the Auditor-General is absent from office as referred to in that subsection or there is a vacancy in the office of Auditor-General as so referred to.
- (3) Section 29 applies to and in respect of the Deputy Auditor-General in the same way as it applies to and in respect of the Auditor-General.
- (4) The Deputy Auditor-General, while acting as referred to in subsection (1), shall be deemed to be the Auditor-General and shall have and may exercise the functions of the Auditor-General.
- (5) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of the Auditor-General, and all things done or omitted to be done by that person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted to be done by the Auditor-General.

### **31 Auditor-General shall communicate with Treasurer**

- (1) The Auditor-General shall communicate with the Treasurer upon all matters arising under this Act or the prescribed requirements and which, in the opinion of the Auditor-General, are sufficiently significant to be brought to the Treasurer's attention.
- (2) The Auditor-General shall transmit to the Treasurer the name of any person failing to comply with any of the provisions of this Act or the prescribed requirements.
- (3) Upon the name of a person being transmitted to the Treasurer under subsection (2) and until the failure of that person is made good to the satisfaction of the Auditor-General, the payment of any salary or money due or to become due to that person may, subject to and in accordance with the regulations, be withheld.

### **32 Search in public books**

The Auditor-General may cause a search to be made in and any extracts to be taken from

any book, document or record, in any public office, without paying any fee therefor.

### **33 Auditor-General may obtain opinion of law officer**

The Auditor-General shall be entitled to lay before the Attorney General or Crown Solicitor a case in writing as to any question regarding the interpretation of this Act, the [Constitution Act 1902](#), or any other Act, or the prescribed requirements concerning the functions of the Auditor-General and the Attorney General or Crown Solicitor, as the case may be, shall give a written opinion on the case.

## **Division 1A The Audit Office**

### **33A Establishment of Audit Office**

- (1) The Audit Office of New South Wales is established by this Act.
- (2) The Audit Office consists of those persons who are for the time being appointed by the Auditor-General under section 33B.
- (3) The Auditor-General is not a member of the Audit Office but is taken, for all purposes, to be the person who exercises the functions of chief executive officer in relation to the Audit Office.

### **33B Staff of Audit Office**

- (1) The Auditor-General may appoint, as members of staff of the Audit Office, such persons as may be necessary to enable the Auditor-General to exercise the Auditor-General's functions.
- (2) Those persons are taken to be employed by the Government of New South Wales in the service of the Crown, except as provided by section 33E.
- (3) Each person who is appointed as a member of staff of the Audit Office continues, subject to the provisions of this Division and the terms of the person's appointment, to be employed in the Audit Office at the discretion of the Auditor-General.
- (4) Chapter 2 of the [Public Sector Employment and Management Act 2002](#) does not apply to the appointment or employment of a person as a member of staff of the Audit Office.

### **33C Auditor-General may determine employment conditions**

- (1) The Auditor-General may from time to time make determinations fixing the conditions and benefits of employment of the members of staff of the Audit Office and their salary, wages and other remuneration. Such a determination can provide for redundancy and severance payments and for remuneration packaging.
- (2) The conditions, benefits, salary, wages and other remuneration of a member of staff

of the Audit Office are, except in so far as provision is otherwise made by law, such as may be fixed by a determination made under this section.

- (3) A member of staff may sue for and recover the amount of remuneration of the member that is determined under this section. For that purpose, the determination is taken to be a State industrial instrument.

### **33D Auditor-General may enter into agreements**

- (1) The Auditor-General may enter into an agreement with any association or organisation representing a group or class of staff of the Audit Office with respect to industrial matters.
- (2) Any such agreement binds all persons in the class or group affected by the agreement, and no such person (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (3) An agreement under this section is not an enterprise agreement within the meaning of the [Industrial Relations Act 1996](#). However, the Auditor-General may enter into such an enterprise agreement as the employer of the members of staff concerned.

### **33E Role of Auditor-General in industrial proceedings**

The Auditor-General is, for the purposes of any proceedings relating to members of staff of the Audit Office held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of the staff.

### **33F Executive officers**

- (1) In this section:

**employment** of an executive officer means:

- (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
- (b) the removal, retirement, termination of employment or other cessation of office of the executive officer, or
- (c) any disciplinary proceedings or disciplinary action taken against the executive officer, or
- (d) the remuneration or conditions of employment of the executive officer.

**executive officer** means a person holding an executive position.

**executive position** means a position in the Audit Office that:

- (a) has a salary greater than the maximum salary applicable to a grade 12 clerk's



position in the Public Service, and

(b) is designated by the Auditor-General as an executive position.

- (2) The contract of employment of an executive officer may provide for the payment of compensation to the officer on the removal or termination of employment of the executive officer.
- (3) The Auditor-General may remove an executive officer from an executive position at any time for any or no reason and without notice. The person is not, except as may be provided in the person's contract of employment, entitled to any compensation for the removal from office.
- (4) The employment of an executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*. This subsection applies whether or not any person has been appointed to a vacant executive position.
- (5) Part 6 (Unfair dismissals) and Part 9 (Unfair contracts) of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of an executive officer.
- (6) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive officers.
- (7) Subsection (6) does not prevent the Auditor-General from applying the provisions of an award or industrial agreement (including a determination under section 33C) to the employment of an executive officer.
- (8) An appeal does not lie to the Government and Related Employees Appeal Tribunal in relation to the employment of an executive officer.
- (9) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (10) This section prevails over any inconsistent provision of any other Act or law or of the terms of appointment of, or contract of employment with, an executive officer.

### **33G Delegation of functions**

The Auditor-General may delegate any of the Auditor-General's functions under this Division (other than this power of delegation) to a member of staff of the Audit Office.

## **Division 2 Audit—generally**

### **34 (Repealed)**

### **35 Inspection and audit of books and records of accounting officers**

- (1) The Auditor-General may appoint, in writing, a person (whether or not that person is an officer of an authority) or a firm to be an auditor for the purposes of this Act.
- (2) The Auditor-General:
  - (a) may, whenever the Auditor-General thinks fit, and
  - (b) shall, whenever required by the Treasurer so to do,  
  
inspect, examine and audit, or cause an auditor to inspect, examine and audit, the books and records of any accounting officer and of any other person who is subject to the provisions of this Act or the prescribed requirements of whose financial report the Auditor-General is authorised or required to audit and into whose possession or under whose control any public money, other money, public property or other property has come.
- (3) An auditor who has made an inspection, examination and audit under subsection (2) shall, as soon as practicable after the inspection, examination and audit, make and sign a report and forward it to the Auditor-General.
- (4) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General shall, as soon as practicable after any inspection, examination and audit under this section, forward a report of the results of the inspection, examination and audit to the Treasurer.
- (5) Towards defraying the costs and expenses of any inspection, examination or audit and report under this section, the employer of the accounting officer or other person concerned is to pay the Auditor-General (from any funds under the control or administration of the employer) such amounts, at such times, as the Treasurer decides.

### **36 Access to records, information etc**

- (1) The Auditor-General, an auditor or a person authorised by the Auditor-General:
  - (a) for the purposes of any inspection or audit authorised or required to be carried out by the Auditor-General pursuant to this Act or any other law in relation to any person, group of persons, body, fund or account, or
  - (b) for the purpose of exercising any other function conferred or imposed on the Auditor-General pursuant to this Act or any other law,is entitled at all reasonable times to full and free access to the books, records,

documents and papers of or relating to the person, group of persons, body, fund or account or relating to public money, other money, public property or other property and may make copies thereof or take extracts therefrom.

- (2) The Auditor-General, an auditor or a person authorised by the Auditor-General may require an officer of an authority to furnish to the Auditor-General, auditor or authorised person within 14 days after the date on which the requirement is made such information in the possession of the officer or to which the officer has access as the Auditor-General, auditor or authorised person considers necessary for any of the purposes referred to in subsection (1) (a) or (b).
- (3) The Auditor-General may, by notice in writing signed by the Auditor-General, require a person named in the notice to appear personally before the Auditor-General at a time and place specified in the notice and to produce to the Auditor-General such books, records, documents or papers in the possession or under the control of that person as appear to the Auditor-General to be necessary for the purposes of an audit authorised or required to be made by the Auditor-General by or under this Act or any other Act or law.
- (4) A person of whom a requirement under subsection (2) or (3) is made shall not fail to comply with the requirement.
- (5) The Auditor-General, an auditor or a person authorised by the Auditor-General is entitled to exercise functions under this section despite:
  - (a) any rule of law which, in proceedings in a court of law, might justify an objection to access to books, records, documents or papers or information on grounds of public interest, or
  - (b) any privilege of an authority which the authority might claim in a court of law, other than a claim based on legal professional privilege, or
  - (c) any duty of secrecy or other restriction on disclosure applying to an authority or to an officer of an authority.
- (6) Nothing in this section entitles the Auditor-General, an auditor or a person authorised by the Auditor-General to have access to a cabinet document that is an exempt document under the [Freedom of Information Act 1989](#).
- (7) In subsection (5), **authority** means an authority, or other body, whose financial report is subject to audit by the Auditor-General under this Act or any other Act.

### **37 Access to records of bank, building society or credit union**

Where an account for the banking of money (whether public money or other money) of an authority is kept with a bank, building society or credit union, the bank, building society or credit union concerned or a person in charge of the account shall, whenever requested to

do so by the Auditor-General, an auditor or a person authorised by the Auditor-General:

- (a) furnish to the Auditor-General, auditor or authorised person, in accordance with the request, a statement of the account or a certificate as to the balance of the account, and
- (b) produce to the Auditor-General, auditor or authorised person any book, account, record or document relating to the authority and under the custody or control of the bank, building society or credit union or person in charge.

### **38 Secrecy**

- (1) The Auditor-General, an auditor and an authorised person shall preserve and aid in preserving secrecy with respect to all matters and things that come to the knowledge of the Auditor-General, auditor or authorised person in the exercise of the functions of the Auditor-General, auditor or authorised person under this Act and the prescribed requirements and shall not communicate to any person any such matter or thing.
- (2) Nothing in subsection (1) applies to or in respect of:
  - (a) the conduct of any matter necessary for the proper administration of this Act or the prescribed requirements, or
  - (b) proceedings for an offence relating to public money, other money, public property or other property or for the recovery of public money, other money, public property or other property, or
  - (c) disciplinary proceedings brought against an officer of an authority, or
  - (d) a report or communication authorised or required to be made by or under this Act or the prescribed requirements, or
  - (e) a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of a due diligence or similar process relating to the sale of any government undertaking.

## **Division 2A Performance audits of activities**

### **38A Definitions**

In this Division:

**audit** includes examination and inspection.

**authority** means an authority, or other body, whose financial report is subject to audit by the Auditor-General under this Act or any other Act.

**responsible Minister** means:

- (a) in the case of a Department—the Minister responsible for the Department, or
- (b) in any other case—the Minister having the administration of the Act by or under which the authority concerned is appointed, constituted or regulated.

**performance audit** means an audit under this Division.

### **38B Performance audit by Auditor-General**

- (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of an authority to determine whether the authority is carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.
  - (1A) (Repealed)
- (2) A performance audit is separate from, and does not affect, any other audit required or authorised by or under this Act or any other Act.
- (3) A single performance audit may relate to the activities of more than one authority.

### **38C Report of performance audit**

- (1) The Auditor-General is to report to the Head of the authority, the responsible Minister and the Treasurer as to the result of any performance audit and as to such other matters as in the judgment of the Auditor-General call for special notice.
- (2) The Auditor-General must not make a report of a performance audit under this section unless, at least 28 days before making the report, the Auditor-General has given the Head of the authority, the responsible Minister and the Treasurer a summary of findings and proposed recommendations in relation to the audit.
  - (2A) The Auditor-General may make a report of a performance audit under this section before the expiration of that 28-day period if the Head of the authority has provided to the Auditor-General any submissions or comments he or she wishes to make.
- (3) The Auditor-General is to include in the report of a performance audit under this section any submissions or comments made by the Head of the authority or a summary, in an agreed form, of any such submissions or comments.
- (4) The Auditor-General, in a report of a performance audit under this section:
  - (a) may include such information as he or she thinks desirable in relation to the activities that are the subject of the audit, and
  - (b) is to set out the reasons for opinions expressed in the report, and
  - (c) may include such recommendations arising out of the audit as the Auditor-General thinks fit to make.

- (5) The Auditor-General may include the report in any other report of the Auditor-General.
- (6) If a single performance audit relates to the activities of more than one authority, the Treasurer may, at the request of the Auditor-General, determine the Head of an appropriate authority and responsible Minister to whom the Auditor-General is to report under this section. In that case, a reference in this section to the Head of the authority or the responsible Minister is to be construed accordingly.

**38D (Repealed)**

**38E Tabling etc of reports under sec 38C**

- (1) The Auditor-General is, as soon as practicable after making a report under section 38C, to present the report to each House of Parliament, if that House is then sitting.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.
- (3) The Auditor-General may include the report in any other report of the Auditor-General to the House of Parliament concerned.

**Division 3 General audit of statutory bodies**

**39 Application and interpretation**

- (1) A reference in this Division to a statutory body is a reference to:
  - (a) a person, group of persons or body specified in Schedule 2, and
  - (b) a person, group of persons or body (not being a person, group of persons or body specified in Schedule 3) whose funds are held in an account within the Special Deposits Account.
- (1A) A reference in this Division to a statutory body also includes a reference to an entity of which the statutory body has control as defined in Australian Accounting Standards.
- (1B) A reference in this Division to a statutory body does not include a reference to a person, group of persons, body or entity who or which is, by a regulation made for the purposes of this subsection, declared not to be a statutory body for the purposes of this Division.
- (2) A reference in this Division to a Minister, in relation to a statutory body, is a reference to the Minister having the administration of the Act by or under which the statutory body is appointed, constituted or regulated.
- (2A) A reference in this Division to the Auditor-General shall, where, in relation to a statutory body, not being the Audit Office or an entity referred to in subsection (1A),

an Act authorises or enables the appointment by the statutory body of an auditor other than the Auditor-General to be the sole auditor in respect of the statutory body, be read and construed as a reference to that auditor.

- (3) The provisions of this Division are in addition to any other statutory provisions relating to the financial report, books, records or audit of a statutory body but, in the event of any inconsistency between the provisions of this Division and any other such statutory provisions, the provisions of this Division shall, to the extent of the inconsistency, prevail.
- (4) Nothing in this Division limits or derogates from the provisions of Division 2.

#### **40 Amendment of Schedule 2**

- (1) The Governor may, by proclamation published in the Gazette, amend Schedule 2:
  - (a) by inserting therein the name of a person, group of persons or body appointed, constituted or regulated by or under an Act,
  - (b) where, pursuant to an Act, the name of any such person, group of persons or body is altered or other matter relating to any such person, group of persons or body is altered, by altering that name or that other matter, or
  - (c) where, pursuant to an Act, any such person, group of persons or body ceases to be constituted or regulated by or under an Act or, in the case of a body, is abolished or dissolved, by omitting therefrom the name of the person, group of persons or body.
- (2) Notwithstanding subsection (1), the Governor may, by regulation, amend Schedule 2 by omitting therefrom the name of a person, group of persons or body.

#### **41 Keeping of books and records**

- (1) A statutory body shall cause to be kept proper books and records in relation to all of its operations.
- (2) Without limiting the generality of subsection (1), a statutory body, being the Senate or Council of a university, shall cause to be kept proper books and records in relation to the funds of the university.
- (3)-(8) (Repealed)

#### **41A Preparation of financial report**

- (1) A statutory body (other than the Audit Office) shall, within the period of 6 weeks after the end of each financial year of the statutory body, prepare and submit:
  - (a) to the Minister, and

(b) to the Auditor-General,

a financial report for the financial year then ended.

(2) The Auditor-General is, within the period of 6 weeks after the end of each financial year of the Audit Office, to prepare and submit to the auditor appointed under section 47 the Audit Office's financial report for the financial year then ended.

#### **41B Nature of financial reports**

(1) A statutory body's financial report:

(a) shall be prepared in accordance with Australian Accounting Standards,

(b) (Repealed)

(c) is to include:

(i)-(v) (Repealed)

(va) a statement of all exemptions, omissions, modifications and variations made by the Treasurer under section 41BA which apply to the statutory body, and a summary of the reasons for them, and

(vi) such other information, if any, or particulars, if any, as may be prescribed,

(d) shall be accompanied by:

(i) a summary of the land owned or occupied by the statutory body classified according to the actual use of the land, and

(ii) where it is appropriate to value the land and the value can readily be established, a statement of the value of the land within each classification, or otherwise, a statement giving the reasons why it is inappropriate to value the land or why the value cannot readily be established,

(e) shall exhibit a true and fair view of the financial position and financial performance of the statutory body and, in the case of a statutory body being the Senate or Council of a university, of the financial position and financial performance of the university, and

(f) (Repealed)

(g) shall be prepared in such manner, if any, and such form, if any, as may be prescribed.

(2)-(5) (Repealed)



**41BA Variation of requirements**

- (1) If, after consulting the Auditor-General, the Treasurer is satisfied that compliance with a provision of this Act or the regulations which relates to the form or content of financial reports:
  - (a) would render a financial report of a statutory body misleading, or
  - (b) would be inappropriate to the circumstances of a statutory body, or
  - (c) would impose unreasonable burdens on a statutory body,the Treasurer may, by notice in writing, exempt the statutory body from compliance with the provision or declare that the provision applies to it as if omitted, or modified or varied in a specified manner.
- (2) An exemption, omission, modification or variation under this section:
  - (a) may be specific or general, and
  - (b) may be made in respect of a single statutory body or a class of them, and
  - (c) may be made on such terms and conditions as the Treasurer thinks fit, and
  - (d) may be revoked or varied by the Treasurer in relation to a statutory body by notice in writing.

**41C Auditing etc of financial report**

- (1) The Auditor-General is to audit a statutory body's financial report for a financial year within 10 weeks of its receipt by the Auditor-General.
- (1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is, within that 10-week period to furnish an opinion:
  - (a) stating that the Auditor-General has audited the financial report of the statutory body for that financial year, and
  - (b) indicating whether the financial report complies with section 41B, and
  - (c) setting forth any qualifications subject to which the opinion is given.
- (1B) An opinion in relation to the financial report of a statutory body is not to be furnished under subsection (1A) unless the Auditor-General has received a statement made in accordance with a resolution of the statutory body and:
  - (a) stating whether, in the opinion of the person or persons by whom the statement is signed:
    - (i) the financial report exhibits a true and fair view of the financial position and

financial performance of the statutory body, or

(ii) if the statutory body is the Senate, Council or Board of Governors of a university, the financial report exhibits a true and fair view of the financial position and financial performance of the university, and

(b) including such matters as are prescribed by the regulations for the purposes of this subsection.

(1C) The statement referred to in subsection (1B) is to be signed:

(a) in the case of a statutory body that has a governing body—by at least 2 members of the governing body, or

(b) in the case of a statutory body that does not have a governing body—by the chief executive officer of the statutory body or the person who exercises the functions of a chief executive officer in relation to the statutory body, or

(c) by a person prescribed by the regulations in respect of the statutory body.

(1D) For the purposes of subsection (1C), a member of the governing body of a statutory body includes, where the statutory body is the Senate, Council or Board of Governors of a university, a member of the Senate, Council or Board of Governors.

(2) Nothing in this section prevents the alteration of a statutory body's financial report, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Minister.

(3) (Repealed)

#### **41D Return of audited financial report etc to statutory body**

The Auditor-General or a person authorised by the Auditor-General shall, after all the functions conferred by section 41C in relation to the financial report of a statutory body have been performed, submit the financial report and the opinion under that section to the statutory body for submission to the Minister.

#### **42 Application for extension**

(1) A statutory body may, at any time within the period of 6 weeks after the end of the financial year of the body, apply to the Treasurer for an extension of the period within which it is required to comply with section 41A.

(2) An application under subsection (1) shall include detailed reasons and other relevant information in support of the application.

(3) The Treasurer may, after consultation with the appropriate Minister and the Auditor-General, extend a period within which a statutory body is required to comply with section 41A or any requirement of that section.

- (4) Where, in relation to a statutory body, the Treasurer extends a period within which a statutory body is required to comply with section 41A or any requirement of that section, the body shall comply with section 41A or the requirement, as the case may require, within the extended period.

#### **43 Inspection and audit of financial reports, books and records of statutory bodies**

- (1) The financial reports, books and records of financial transactions of or relating to a statutory body (other than the Audit Office), and the records of or relating to assets of or in the custody of the body or the liabilities of the body, shall be inspected and audited by the Auditor-General.
- (2) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General shall report to the statutory body, the Minister and the Treasurer as to the result of any such inspection and audit and as to such irregularities or other matters as in the judgment of the Auditor-General or authorised person call for special notice.
- (3) Towards defraying the costs and expenses of any such inspection and audit, the statutory body shall pay to the Auditor-General such amounts, at such times, as the Treasurer decides.

#### **43A General audit of former statutory bodies**

- (1) This section applies where a statutory body ceases to be a statutory body because it is abolished or dissolved or its name is removed from Schedule 2. The statutory body is referred to in this section as **the body**.
- (2) Unless other provision is made by or under any Act:
  - (a) a financial report for the portion of the financial year ending when the body ceased to be such a statutory body (and for any previous financial year) is to be prepared and submitted, and
  - (b) the financial report is to be audited,in the same way that it would have been required to be prepared, submitted and audited if the financial year had ended on that day and the body had not ceased to be such a statutory body.
- (3) The financial report may be prepared and submitted by any person or persons who could have done so had the body not ceased to be a statutory body or by any successor to or continuation of the body.
- (4) The Auditor-General may make such arrangements, and enter such agreements, as may be appropriate or necessary for the purposes of this section. An arrangement or agreement may provide for the affairs of the body and of any successor to be treated in a composite way.

- (5) The Treasurer may direct that this section is not to apply to the body if, in the opinion of the Treasurer, it is unnecessary or inappropriate for it to apply.

## **Division 4 Particular audit of statutory bodies, funds and accounts**

### **44 Application and interpretation**

- (1) A reference in this Division to a statutory body is a reference to:
- (a) a person, group of persons or body prescribed for the purposes of this Division, or
  - (b) a person, group of persons or body having the control or management of a fund or account, being a fund or account which is prescribed for the purposes of this Division.
- (2) A reference in this Division to a Minister, in relation to a statutory body, is a reference to the Minister having the administration of the Act by or under which the statutory body is appointed, constituted or regulated.
- (3) Nothing in this Division limits or derogates from the provisions of Division 2.

### **45 Particular audit**

- (1) In accordance with the request of the Treasurer, a Minister or a person prescribed for the purposes of this section in relation to a statutory body, the Auditor-General is to inspect and audit:
- (a) in the case of a statutory body to which section 44 (1) (a) applies—the financial report of the statutory body and the books and records of financial transactions of or relating to:
    - (i) the statutory body, and
    - (ii) assets of or in the custody of the body, and
  - (b) in the case of a statutory body to which section 44 (1) (b) applies—the financial report of the statutory body and the books and records of financial transactions of or relating to the fund or account under the control or management of the statutory body.
- (2) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General shall report to the statutory body, the Minister, the Treasurer and any person prescribed for the purposes of this section in relation to the statutory body as to the result of any such inspection and audit and as to such irregularities or other matters as in the judgment of the Auditor-General or authorised person call for special notice.
- (2A) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1).

- (3) Towards defraying the costs and expenses of any such inspection and audit, the statutory body shall pay to the Auditor-General such amounts, at such times, as the Treasurer decides.

## **Division 4A General audit of Departments**

### **45A Application and interpretation**

- (1) A reference in this Division to a Department is a reference to a person, group of persons or body specified in Column 1 of Schedule 3.
- (1A) A reference in this Division to a Department also includes a reference to an entity of which the Department (or the Minister responsible for, or an officer of, the Department) has control as defined in Australian Accounting Standards.
- (1B) A reference in this Division to a Department does not include a reference to a person, group of persons, body or entity who or which is, by a regulation made for the purposes of this subsection, declared not to be a Department for the purposes of this Division.
- (2) A reference in this Division to a Minister, in relation to a Department, is a reference to the Minister responsible for the Department.
- (3) A reference in this Division to a Department Head, in relation to a Department, is a reference to the person holding the position specified in Column 2 of Schedule 3 opposite the name or description of the Department.
- (4) The provisions of this Division are in addition to any other statutory provisions relating to the financial report, books, records or audit of a Department but, in the event of any inconsistency between the provisions of this Division and any other such statutory provisions, the provisions of this Division shall, to the extent of the inconsistency, prevail.
- (5) Nothing in this Division limits or derogates from the provisions of Division 2.

### **45B Amendment of Schedule 3**

- (1) The Governor may, by proclamation published in the Gazette, amend Schedule 3:
- (a) by inserting:
- (i) in Column 1 the name of a person, group of persons or body appointed, constituted or regulated by or under an Act, and
- (ii) in Column 2 opposite the name of a person, group of persons or body referred to in subparagraph (i) the title or other description of the position of the person, the position of a person within the group of persons or a position within the body, as the case requires,

- (b) where, pursuant to an Act, the name of any such person, group of persons, body or position is altered or other matter relating to any such person, group of persons, body or position is altered, by altering that name or that other matter, or
  - (c) where, pursuant to an Act, any such person, group of persons, body or position ceases to be appointed, constituted or regulated by or under an Act or, in the case of a body or position, is abolished or dissolved, by omitting therefrom the name of the person, group of persons, body or position.
- (2) The Governor may, by regulation, omit Schedule 3 and insert instead a Schedule containing in Column 1 the names of persons, groups of persons or bodies appointed, constituted or regulated by or under an Act and containing in Column 2 the titles or other descriptions of positions of those persons, positions of persons within those groups of persons or positions within those bodies, as the case requires.
- (3) Notwithstanding subsection (1), the Governor may, by regulation, amend Schedule 3 by omitting:
- (a) from Column 1 the name of a person, group of persons or body, and
  - (b) from Column 2 opposite the name of the person, group of persons or body referred to in paragraph (a) the title or other description of the position of the person, the position of a person within the group of persons or a position within the body, as the case requires.

#### **45C Keeping of books**

A Department Head shall cause to be kept proper books and records in relation to all the operations of the Department.

#### **45D Preparation of financial reports**

- (1) A Department Head shall, within the period of 6 weeks after the end of each financial year of the Department, prepare and submit:
- (a) to the Minister, and
  - (b) to the Auditor-General,
- a financial report for the financial year then ended.
- (2) (Repealed)

#### **45E Nature of financial reports**

- (1) A Department's financial report:
- (a) is to be prepared in accordance with Australian Accounting Standards, and
  - (b) is to comply with any written directions of the Treasurer as to form and content,

and

(c) is to exhibit a true and fair view of the financial position and financial performance of the Department.

(2) Before giving a direction referred to in subsection (1) (b), the Treasurer is to consult the Auditor-General.

(3) Such a direction may be given subject to conditions.

#### **45EA Variation of requirements**

(1) If, after consulting the Auditor-General, the Treasurer is satisfied that compliance with a provision of this Act or the regulations which relates to the form or content of a financial report:

(a) would render a financial report of a Department misleading, or

(b) would be inappropriate to the circumstances of a Department, or

(c) would impose unreasonable burdens on a Department,

the Treasurer may, by notice in writing, exempt the Department from compliance with the provision or declare that the provision applies to it as if omitted, or modified or varied in a specified manner.

(2) An exemption, omission, modification or variation under this section:

(a) may be specific or general, and

(b) may be made in respect of a single Department or a class of them, and

(c) may be made on such terms and conditions as the Treasurer thinks fit, and

(d) may be revoked or varied by the Treasurer in relation to a Department by notice in writing.

#### **45F Auditing etc of financial reports**

(1) The Auditor-General is to audit a Department's financial report for a financial year within 10 weeks of its receipt by the Auditor-General.

(1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is to furnish an opinion:

(a) stating that the Auditor-General has audited the financial report of the Department Head for that financial year, and

(b) indicating whether the financial report complies with section 45E, and

(c) setting forth any qualifications subject to which the opinion is given.

(1B) An opinion in relation to the financial report of a Department is not to be furnished under subsection (1A) unless the Auditor-General has received a statement:

(a) stating whether, in the opinion of the Department Head, the financial report exhibits a true and fair view of the financial position and financial performance of the Department, and

(b) including such matters as are prescribed by the regulations for the purposes of this subsection.

(1C) The statement is to be signed by the Department Head.

(2) Nothing in this section prevents the alteration of a Department's financial report, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Minister.

(3) (Repealed)

#### **45G Return of audited financial report etc to Department Head**

The Auditor-General or a person authorised by the Auditor-General shall, after all the functions conferred by section 45F in relation to the financial report of a Department have been performed, submit the financial report and the opinion under that section to the Department Head for submission to the Minister.

#### **45H Application for extension**

(1) A Department Head may, at any time within the period of 6 weeks after the end of the financial year of the Department, apply to the Treasurer for an extension of the period within which the Department Head is required to comply with section 45D or any requirement of that section.

(2) An application under subsection (1) shall include detailed reasons and other relevant information in support of the application.

(3) The Treasurer may, after consultation with the appropriate Minister and the Auditor-General, extend a period within which a Department Head is required to comply with section 45D or any requirement of that section.

(4) Where the Treasurer extends a period within which a Department Head is required to comply with section 45D or any requirement of that section, the Department Head shall comply with that section or requirement, as the case may require, within the extended period.

#### **45I Inspection and audit of financial reports, books and records of Departments**

(1) The financial reports, books and records of financial transactions of or relating to a



Department, and the records of or relating to assets of or in the custody of the Department or the liabilities of the Department, shall be inspected and audited by the Auditor-General.

- (2) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General shall report to the Department Head, the Minister and the Treasurer as to the result of any such inspection and audit and as to such irregularities or other matters as in the judgment of the Auditor-General or authorised person call for special notice.
- (3) Towards defraying the costs and expenses of any such inspection and audit, the Department Head shall, from funds subject to the administration of the Department Head, pay to the Auditor-General such amounts, at such times, as the Treasurer decides.

## **Division 5 Audit and review of the Audit Office**

### **46 Definition**

In this Division, **auditor** means the auditor appointed for the time being by the Governor under section 47 (1).

### **47 Appointment and functions of auditor**

- (1) The Governor may, in relation to a financial year, appoint a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth to inspect and audit the Audit Office's financial report and the books and records relating to the administration, during the financial year, of the Audit Office.
- (2) For the purposes of subsection (1), the auditor shall have and may exercise, in relation to the Audit Office, the same functions as the Auditor-General has under this Act in relation to an audit of public money.

### **48 Auditing of financial report and records**

- (1) The auditor shall inspect and audit the Audit Office's financial report and the books and records relating to the administration, during the financial year in respect of which the auditor is appointed, of the Audit Office.
- (2) On completion of the audit, the auditor shall furnish an opinion in respect of the audit to the Auditor-General and shall furnish a copy of the opinion to the Treasurer.
- (3) (Repealed)

### **48A Review of Audit Office**

- (1) A review of the Audit Office is to be conducted under this section at least once every 3 years.

- (2) The review is to examine the auditing practices and standards of the Auditor-General and to determine whether the Auditor-General is complying with those practices and standards in the carrying out of the Auditor-General's functions under this Act.
- (3) The review is to be conducted by a person (***the reviewer***) appointed by the Public Accounts Committee for the time being constituted under Part 4.
- (4) The reviewer:
  - (a) is to be appointed on such terms and conditions and is entitled to such remuneration (if any) as are determined by the Public Accounts Committee, and
  - (b) in conducting a review under this section, must comply with any directions as to the review given by the Committee.
- (5) The remuneration payable to the reviewer is to be paid from money appropriated by Parliament for the purpose.
- (6) Sections 36, 37 and 38 apply in relation to the reviewer as if references in those sections to the Auditor-General were references to the reviewer.
- (7) The reviewer is to report to the Auditor-General as to the result of any such review and as to such other matters as in the judgment of the reviewer call for special notice.
- (8) The reviewer must not make a report of a review conducted under this section unless, at least 28 days before making the report, the reviewer has given the Auditor-General a summary of findings and proposed recommendations in relation to the review.
- (9) The reviewer must include in the report any written submissions or comments made by the Auditor-General or a summary, in an agreed form, of any such submissions or comments.
- (10) The reviewer, in a report of a review under this section:
  - (a) may include such information as he or she thinks desirable in relation to matters that are the subject of the review, and
  - (b) must set out the reasons for opinions expressed in the report, and
  - (c) may include such recommendations arising out of the review as he or she thinks fit to make.
- (11) The Auditor-General is to forward a report prepared under this section to the Public Accounts Committee within 2 months of receipt of the report.
- (12) The Chairman of the Public Accounts Committee is, on receipt of such a report, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

- (13) If at the time at which the Chairman seeks, in accordance with this section, to present the report to the Legislative Assembly the Legislative Assembly is not sitting, the Chairman is to present the report to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.

## **Division 6 Auditor-General's annual report etc**

### **49 Examination by Auditor-General of the Total State Sector Accounts**

- (1) The Auditor-General shall examine the Total State Sector Accounts transmitted to the Auditor-General by the Treasurer in accordance with section 6 (4) and shall prepare and sign an opinion stating whether the Total State Sector Accounts are properly drawn up in accordance with this Act and accord with the books and records of the Treasurer.
- (2) On or before 22 October after receiving the Total State Sector Accounts from the Treasurer, the Auditor-General is to transmit the Total State Sector Accounts and the opinion prepared under this section to the Treasurer.
- (3) Nothing in this section prevents the alteration of the Total State Sector Accounts, with the approval of the Auditor-General, after being received by the Auditor-General and before being transmitted to the Treasurer.
- (4) (Repealed)

### **50 (Repealed)**

### **51 Total State Sector Accounts and opinion to be presented to Legislative Assembly**

- (1) The Treasurer, not later than 31 October in the year following that to which the Total State Sector Accounts relate, is to present the audited Total State Sector Accounts and the opinion of the Auditor-General to the Legislative Assembly.
- (2) If, at the time at which the Treasurer seeks to present the audited Total State Sector Accounts and the opinion of the Auditor-General to the Legislative Assembly the Legislative Assembly is not sitting, the Treasurer is to present the audited Total State Sector Accounts and the opinion to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.

### **52 Auditor-General's reports**

- (1) After examining the Total State Sector Accounts transmitted to the Auditor-General by the Treasurer in accordance with section 6 (4), the Auditor-General shall prepare and sign a report that shall include full particulars in every case in which the provisions of this or any other Act or the prescribed requirements have not been carried out or adopted or have in any manner been varied or departed from and which, in the opinion of the Auditor-General, are sufficiently material to the financial position

disclosed in the Total State Sector Accounts as to be brought to the attention of Parliament.

- (2) The Auditor-General shall annex or append to the report prepared under subsection (1) a copy of every case laid by the Auditor-General before the Attorney-General or the Crown Solicitor for an opinion under section 33, together with a copy of the opinion given on the case.
- (3) The Auditor-General may, in the report of the Auditor-General prepared under subsection (1) or in any special report which the Auditor-General may at any time think fit to make, recommend any plans and make any suggestions for the better collection and payment of public money, and for more effectually and economically auditing and examining the Total State Sector Accounts and the financial reports of statutory bodies to which Division 3 or 4 applies, and may report on any matter that arises from or relates to the exercise of the audit or other functions of the Auditor-General and that in the opinion of the Auditor-General should be brought to the attention of Parliament.
- (4) The Auditor-General may give a summary of the proposed report (or of the relevant part) to the Head of each authority to which it relates or which, in the opinion of the Auditor-General, has a special interest in it. The Auditor-General may include in the report any submissions or comments made by the Head of an authority or a summary, in an agreed form, of any such submissions or comments.

#### **52A Auditor-General's report to be presented to Parliament**

- (1) The Auditor-General must, not later than 31 October in the year following that to which the report relates, present the report prepared under section 52 (1) to each House of Parliament, if that House is then sitting, accompanied by copies of such opinions, if any, as are directed to be annexed or appended to the Auditor-General's report under section 52 (2).
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report and any copies of such opinions to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.

#### **52B Tabling etc of special reports**

- (1) The Auditor-General is, as soon as practicable after making a special report under section 52 (3), to present the report to each House of Parliament, if that House is then sitting.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.

## Division 7 Protected disclosures to Auditor-General

### 52C Definitions

In this Division:

**authority** means an authority, or other body, whose financial report is subject to audit, examination or inspection by the Auditor-General under this Act or any other Act.

**public official** means a public official within the meaning of the [Protected Disclosures Act 1994](#).

**responsible Minister** has the same meaning as in section 38A.

### 52D Complaints about waste of public money

- (1) A public official may complain to the Auditor-General that there has been a serious and substantial waste of public money by an authority or an officer of an authority.
- (2) A complaint to the Auditor-General may be made orally or in writing.
- (3) The Auditor-General may deal with the complaint:
  - (a) by conducting an inspection, examination or audit under this Act into the matter, or
  - (b) in such other manner as the Auditor-General considers appropriate.

### 52E Reports by Auditor-General

- (1) The Auditor-General may, if of the opinion that it is appropriate to do so, make a report on a complaint:
  - (a) to the head of the authority, except as provided by paragraphs (b) and (c), or
  - (b) if the complaint relates to the conduct of the head of the authority—to the responsible Minister, or
  - (c) if the complaint relates to the conduct of a Minister—to the Premier.

The Auditor-General is to give the responsible Minister and the Treasurer a copy of a report made to the head of the authority.

- (2) The Auditor-General must not make a report under this section unless, at least 28 days before making the report, the Auditor-General has given the person to whom the report is to be made a summary of the proposed report. The Auditor-General may make any such report before the expiration of that 28-day period if that person has provided to the Auditor-General any submissions or comments he or she wishes to make.

- (3) The Auditor-General is to include in a report under this section any submissions or comments made by the person or a summary, in an agreed form, of any such submissions or comments.
- (4) The Auditor-General, in a report under this section:
  - (a) may include such information as he or she thinks desirable in relation to the activity the subject of the complaint, and
  - (b) is to set out the reasons for opinions expressed in the report, and
  - (c) may include such recommendations arising out of the complaint as the Auditor-General thinks fit to make.
- (5) The Auditor-General may include a report under this section in any other report of the Auditor-General.

#### **52F Presentation of reports to Parliament**

- (1) The Auditor-General may, if of the opinion that a report on a complaint under this Division should be brought to the attention of Parliament, present the report to each House of Parliament, if that House is then sitting. The Auditor-General may include the report in any other report of the Auditor-General to the House of Parliament concerned.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.

### **Part 4 The Public Accounts Committee**

#### **53 Definitions**

In this Part:

**authority of the State** means:

- (a) a statutory body representing the Crown, or
- (b) a person, group of persons or body appointed, constituted or regulated by or under an Act the financial report of which is, pursuant to this Act or any other law, required or authorised to be audited by the Auditor-General or an auditor appointed under section 47 (1) or to be laid before the Legislative Assembly.

**Chairman** means the Chairman of the Committee.

**Committee** means the Public Accounts Committee for the time being constituted under this Part.

**Vice-Chairman** means the Vice-Chairman of the Committee.

#### **54 Constitution of Public Accounts Committee**

- (1) As soon as practicable after the commencement of the first session of each Parliament, a committee of members of the Legislative Assembly, to be known as the Public Accounts Committee, shall be appointed.
- (2) The Committee shall consist of 6 members.
- (3) The appointment of members of the Committee shall be in accordance with the practice of the Legislative Assembly with respect to the appointment of members to serve on select committees of the Legislative Assembly.
- (4) A member of the Legislative Assembly is not eligible for appointment as a member of the Committee if the member is a Minister of the Crown or a Parliamentary Secretary.
- (5) A member of the Committee ceases to hold office:
  - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time,
  - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary,
  - (c) if the member ceases to be a member of the Legislative Assembly,
  - (d) if the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
  - (e) if the member is discharged from office by the Legislative Assembly.
- (6) The Legislative Assembly may appoint one of its members (not being a Minister of the Crown or a Parliamentary Secretary) to fill a vacancy in the office of a member of the Committee.
- (7) Any act or proceeding of the Committee is, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was:
  - (a) a vacancy in the office of a member of the Committee, or
  - (b) any defect in the appointment, or any disqualification, of a member of the Committee,as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

#### **55 Chairman and Vice-Chairman of Committee**

- (1) There shall be a Chairman and a Vice-Chairman of the Committee who shall be elected by and from the members of the Committee.

- (2) A member of the Committee ceases to hold office as Chairman or Vice-Chairman if:
  - (a) the member ceases to be a member of the Committee,
  - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
  - (c) the member is discharged from the office by the Committee.
- (3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of the office of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Act or under the *Parliamentary Evidence Act 1901*.

## **56 Procedure of Committee**

- (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Part, be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly shall call the first meeting of the Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Committee, 4 members constitute a quorum.
- (4) The Chairman or, in the absence of the Chairman, the Vice-Chairman or, in the absence of both the Chairman and Vice-Chairman, a member of the Committee elected as chairman for the meeting by the members present shall preside at a meeting of the Committee.
- (5) The Vice-Chairman or other member presiding at a meeting of the Committee shall, in relation to the meeting, have all the functions and powers of the Chairman.
- (6) The Chairman, Vice-Chairman or other member presiding at a meeting of the Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- (7) A question arising at a meeting of the Committee shall be determined by a majority of the votes of the members present and voting.
- (8) The Committee may sit and transact business notwithstanding any prorogation or adjournment of the Legislative Assembly.
- (9) The Committee may sit and transact business on a sitting day of the Legislative Assembly during the time of the sitting.

## **57 Functions of Committee**

- (1) The functions of the Committee are:



- (a) to examine the Total State Sector Accounts transmitted to the Legislative Assembly by the Treasurer,
  - (b) to examine the financial reports of authorities of the State, being financial reports that have been:
    - (i) audited by the Auditor-General or an auditor appointed under section 47 (1), or
    - (ii) laid before the Legislative Assembly by a Minister of the Crown,
  - (c) to examine the opinion or any report of the Auditor-General transmitted with the Total State Sector Accounts or laid before the Legislative Assembly with the financial report of an authority of the State (including any documents annexed or appended to any such opinion or report),
  - (c1) to examine any report of the Auditor-General laid before the Legislative Assembly,
  - (d) to report to the Legislative Assembly from time to time upon any item in, or any circumstances connected with, those financial reports, reports or documents which the Committee considers ought to be brought to the notice of the Legislative Assembly,
  - (e) to report to the Legislative Assembly from time to time any alteration which the Committee thinks desirable in the form of those financial reports or in the method of keeping them or in the method of receipt, expenditure or control of money relating to those financial reports,
  - (f) to inquire into, and report to the Legislative Assembly upon, any question in connection with those financial reports which is referred to it by the Legislative Assembly, a Minister of the Crown or the Auditor-General, and
  - (g) to inquire into expenditure by a Minister of the Crown made without Parliamentary sanction or appropriation or otherwise than in accordance with the provisions of this Act or any other Act and report to the Legislative Assembly from time to time upon any matter connected with that expenditure which the Committee considers ought to be brought to the notice of the Legislative Assembly.
- (2) The functions of the Committee extend to an examination of, inquiry into or report upon a matter of Government policy if and only if the matter has been specifically referred to the Committee under subsection (1) (f) by the Legislative Assembly or a Minister of the Crown.
- (3) The functions of the Committee do not extend to an examination of, inquiry into or report upon the estimates of any proposed expenditure by the State or by an authority of the State.

- (4) If, at the time at which the Committee seeks to report to the Legislative Assembly in accordance with subsection (1), the Legislative Assembly is not sitting, the Committee shall present its report to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.
- (5) (Repealed)

#### **57A Power to veto proposed appointment of Auditor-General**

- (1) The Treasurer is to refer a proposal to appoint a person as Auditor-General to the Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Treasurer may withdraw a referral at any time.
- (2) The Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Treasurer within that 14 days that it requires more time to consider the matter.
- (3) The Committee is to notify the Treasurer, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.

#### **58 Evidence**

- (1) Subject to this section, the Committee shall take all evidence in public.
- (2) Where, in the opinion of the Committee, any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or producing the document shall:
  - (a) take the evidence in private, or
  - (b) direct that the document, or the part of the document, be treated as confidential.
- (2A) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Committee relates to the proposed appointment of a person as Auditor-General, the Committee must (despite any other provision of this section):
  - (a) take the evidence in private, or
  - (b) direct that the document, or the part of the document, be treated as confidential.
- (2B) Despite any other provision of this section except subsection (7), the Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2A) applies.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (2C) Despite any other provision of this section except subsection (7), the Committee (including a member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 57A (3), disclose whether or not the Committee or any member of the Committee has vetoed, or proposes to veto, the proposed appointment of a person as Auditor-General.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (3) Where a direction under subsection (2) is applicable in respect of a document, or a part of a document, produced in evidence to the Committee, the contents of the document or part shall, for the purposes of this section, be deemed to be evidence given by the person producing the document and taken by the Committee in private.

- (4) Where, at the request of a witness, evidence is taken by the Committee in private:

(a) the Committee shall not, without the consent in writing of the witness, and

(b) a person (including a member of the Committee) shall not, without the consent in writing of the witness and the authority of the Committee under subsection (6),

disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for a term not exceeding 3 months.

- (5) Where evidence is taken by the Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) shall not, without the authority of the Committee under subsection (6), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for a term not exceeding 3 months.

- (6) The Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairman, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (4).

- (7) Nothing in this section prohibits:

(a) the disclosure or publication of evidence that has already been lawfully published,  
or

(b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Committee.

- (8) This section has effect notwithstanding section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (9) If evidence taken by the Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

**Note—**

The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

- (10) Where the Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken that evidence.
- (11) The production of documents to the Committee shall be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

## Part 4A Payment of tax-equivalents

### 58A Definitions

In this Part:

**Intergovernmental Agreement** means the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (as set out in Schedule 1 to the *Intergovernmental Agreement Implementation (GST) Act 2000*).

**National tax-equivalent regime** means the arrangements between the Commonwealth and the States and Territories relating to income tax equivalent payments to be made by government businesses under a National Tax Equivalent Regime, as referred to in clause 24 of the Intergovernmental Agreement and given effect to from time to time by a memorandum of understanding between the Commonwealth, the Commissioner of Taxation of the Commonwealth and the States and Territories.

**State tax-equivalent regime** means the arrangements approved from time to time by the Treasurer relating to income tax equivalent payments to be made by government

businesses that are not subject to the National tax-equivalent regime, as reflected in any policy or guidelines from time to time published by the Treasury.

**statutory body** means a person, group of persons or body specified in Schedule 2.

**58B Treasurer may direct statutory bodies to pay tax-equivalents**

- (1) The Treasurer may at any time direct a statutory body:
  - (a) to pay amounts to the Treasurer under the National tax-equivalent regime, or
  - (b) to pay amounts to the Treasurer under the State tax-equivalent regime.
- (2) The Treasurer may at any time:
  - (a) direct a statutory body to cease making payments to the Treasurer under the National tax-equivalent regime or the State tax-equivalent regime, or
  - (b) grant an exemption from payment of any amount under this Part in respect of any period.
- (3) Amounts that a statutory body is required to pay to the Treasurer under this Part are referred to in this Part as **tax-equivalents**.

**58C Assessment of tax-equivalents—National scheme**

- (1) A statutory body that is directed by the Treasurer to pay tax-equivalents under the National tax-equivalent regime must pay to the Treasurer such amounts as the Tax Assessor determines, in accordance with the National tax-equivalent regime, to be payable by the statutory body as a tax-equivalent.
- (2) Payments are to be made on such terms as the Tax Assessor determines, in accordance with the National tax-equivalent regime, to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment) if the statutory body were liable to pay corresponding taxes under the law of the Commonwealth.
- (3) A statutory body and the Treasurer may enter into agreements regarding the amounts to be paid under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (2).
- (4) The determinations of the Tax Assessor under this section are to be made in such a way as to give effect to any such agreements.
- (5) Any such determination of the Tax Assessor is final, and the Treasurer and the statutory body are required to make all the necessary payments and refunds to give effect to the determination.
- (6) A statutory body is not required to make payments under this section:

- (a) to the extent that it is or becomes liable to pay the Commonwealth taxes referred to in subsection (2), or
  - (b) if it is directed by the Treasurer to cease making payments under the National tax-equivalent regime or is granted an exemption from payment in respect of a period.
- (7) The Treasurer may nominate any person or persons to be the Tax Assessor for any one or more statutory bodies, and may revoke any such nomination.
- (8) In this section:

**Tax Assessor**, in relation to a statutory body, means the person nominated for the time being under subsection (7) as the Tax Assessor for the statutory body.

**Note—**

Commonwealth taxation officers generally exercise the functions of Tax Assessor under the National tax-equivalent regime.

**58D Assessment of tax-equivalents—State scheme**

- (1) A statutory body that is directed by the Treasurer to pay tax-equivalents under the State tax-equivalent regime must pay to the Treasurer such amounts as the Chief Commissioner of State Revenue determines, in accordance with the State tax-equivalent regime, to be payable by the statutory body as a tax-equivalent.
- (2) The Chief Commissioner of State Revenue may require a statutory body to prepare and submit to the Chief Commissioner such accounting statements (if any), required for the determination of tax-equivalents payable by the statutory body, in such manner (if any) and such form (if any) as the Chief Commissioner determines.
- (3) A statutory body must comply with a requirement made in respect of it by the Chief Commissioner of State Revenue under this section.
- (4) The Treasurer may approve arrangements for the review of determinations made by the Chief Commissioner of State Revenue under this section. Determinations of the Chief Commissioner are reviewable in accordance with those arrangements.
- (5) A statutory body is not required to make payments under this section:
  - (a) to the extent that it is or becomes liable to pay the Commonwealth taxes that are the subject of the State tax-equivalent regime, or
  - (b) if it is directed by the Treasurer to cease making payments under the State tax-equivalent regime or is granted an exemption from payment in respect of a particular period.

**58E Tax-equivalents to be credited to Consolidated Fund**

- (1) Amounts paid by a statutory body as tax-equivalents under this Part are to be

credited to the Consolidated Fund.

- (2) Despite any other Act, the Treasurer may, in relation to a payment by a statutory body under this Part, make any one or more of the following determinations:
  - (a) that the payment is taken to be payment or part payment of another amount, specified by the Treasurer, which the statutory body is required to pay to the Treasurer,
  - (b) that the payment is to be paid in addition to any other amount which the statutory body is required to pay to the Treasurer,
  - (c) that the payment is taken to be an obligation of the statutory body under the Act by which the statutory body is constituted.
- (3) Subject to subsection (2), the Treasurer, or the Chief Commissioner of State Revenue, may refund any amount paid in excess of a statutory body's liability to pay a tax-equivalent. The Consolidated Fund is appropriated to the extent necessary to enable such refunds.

## **Part 5 Miscellaneous**

### **59 Form of books, records etc**

- (1) A book or record that is required by this Act or the prescribed requirements to be kept or prepared may be kept or prepared:
  - (a) by making entries in a bound or looseleaf book,
  - (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device, or
  - (c) in any other manner approved by the Treasurer.
- (2) Subsection (1) does not authorise a book or record to be kept or prepared by a mechanical, electronic or other device unless:
  - (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form or another form approved by the Treasurer, or
  - (b) a reproduction of those matters is kept in a written form approved by the Treasurer.
- (3) An authority shall take all reasonable precautions, including such precautions (if any) as are specified in the prescribed requirements, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or record or part of a book or record required by this Act or the prescribed requirements to be kept or prepared by the authority.

- (4) Where an authority records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act or the prescribed requirements to make a book or record containing those matters available for inspection or to provide copies of the whole or part of a book or record containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.
- (5) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is established, be deemed to be a reproduction of those matters.

#### **59A Treasury Fire Risks Account**

- (1) Funds in credit in the Treasury Fire Risks Account in the Special Deposits Account may be utilised from time to time by the Treasurer, at the discretion of the Treasurer, for the purpose of:
  - (a) whole or partial payment for, replacement of, or repair to, Government property lost or damaged by fire or lightning, or by both,
  - (b) defraying the expenses incidental to the assessment of loss or damage referred to in paragraph (a), or
  - (c) providing security devices for the prevention or detection of fires in any building or part of a building owned or leased by the Crown.
- (2) Interest at a rate to be determined from time to time by the Treasurer shall be allowed on funds in credit in the Treasury Fire Risks Account.
- (3) Any portion of funds in credit in the Treasury Fire Risks Account may be invested in accordance with section 20.
- (4) Interest allowed on funds in credit in the Treasury Fire Risks Account, together with interest earned on any investments therefrom, shall from time to time be paid to the credit of that Account and to the credit of the Consolidated Fund in such proportions as the Treasurer may determine.
- (5) Nothing in this section shall be deemed to constitute insurance within the meaning of any clause, condition or stipulation of any policy of insurance.
- (6) All or any funds in credit in the Treasury Fire Risks Account (including investments) may be transferred by the Treasurer, at the discretion of the Treasurer, to the Managed Fund for Public Sector Insurances to add to that Fund's solvency reserve.

#### **59B Payment of certain amounts by statutory authority to Consolidated Fund**

- (1) In this section, ***dividend***, in relation to a statutory authority, means an amount



calculated by applying a rate, determined by the Treasurer, to the assets, or some portion of the assets, of the statutory authority.

- (2) Notwithstanding any other Act, the Treasurer may at any time require a prescribed statutory authority to pay to the credit of the Consolidated Fund, at such times and in such manner as the Treasurer directs, such amount by way of dividend as the Treasurer may determine and notify to the statutory authority.
- (3) The Treasurer may require a statutory authority to prepare and submit to the Treasurer such accounting statements (if any), required for the determination of dividends payable by the statutory authority, in such manner (if any) and such form (if any) as the Treasurer determines.
- (4) A statutory authority shall comply with a requirement made in respect of it by the Treasurer under this section.
- (5) Notwithstanding any other Act, the Treasurer may, in relation to a payment by a statutory authority under this section, make any one or more of the following determinations:
  - (a) that the payment shall be deemed to be payment or part payment of another amount, specified by the Treasurer, which the statutory authority is required to pay to the Treasurer,
  - (b) that the payment shall be paid in addition to any other amount which the statutory authority is required to pay to the Treasurer,
  - (c) that the payment shall be deemed to be an obligation of the statutory authority under the Act by which the statutory authority is constituted.

## **60 Recovery of money and value of property**

- (1) Where there occurs a loss of or deficiency in:
  - (a) public money or other money that has been advanced to an officer of an authority, or
  - (b) public money or other money while that money is under the control of an officer of an authority,that loss or deficiency shall be a debt due to the Crown or the authority, as the case may require, and may be recovered from the officer in a court of competent jurisdiction.
- (2) Where an officer of an authority defends an action brought under subsection (1), the plaintiff is entitled to judgment if, in the absence of proof to the contrary, the plaintiff proves:

- (a) that the defendant was an officer of the authority,
  - (b) that the money the subject of the action was under the control of the defendant, and
  - (c) that the defendant converted the money to the defendant's own use or was guilty, by act or omission, of culpable negligence or misconduct in relation to the control the defendant exercised over the money.
- (3) Where loss or destruction of or damage to public property or other property occurs while the property is in the care of an authority, the value of the property lost or destroyed or, as the case may be, the cost of replacing or repairing the damage to that property shall be a debt due to the Crown or the authority, as the case may require, and may be recovered in a court of competent jurisdiction by action brought against:
- (a) the officer of the authority in whose care the property was at the material time, or
  - (b) another officer of the authority who by culpable negligence or misconduct caused or contributed to the loss or destruction of or damage to the property.
- (4) Where an officer of an authority defends an action brought under subsection (3), the plaintiff is entitled to judgment if, in the absence of proof to the contrary, the plaintiff proves:
- (a) that the defendant was an officer of the authority, and
  - (b) that the defendant converted the property the subject of the action to the defendant's own use or by culpable negligence or misconduct caused or contributed to the loss or destruction of or damage to the property.
- (5) Where the negligence or misconduct of an officer of an authority was not the sole cause of the loss or destruction of or damage to the property the subject of an action under subsection (3), the Crown or the authority, as the case may require, may recover from the officer so much only of the cost of, or the cost of replacing or repairing, the loss, destruction or damage as is just and equitable having regard to the contribution made by the officer to that loss, destruction or damage as determined by the court.
- (6) In this section a reference to an officer of an authority includes a reference to a person who has been such an officer.
- (7) For the purposes of this section:
- (a) public money or other money shall be taken to be under the control of an officer of an authority if the money has been collected or received by or has come into the custody of the officer but has not been paid to another person or to the credit of an account with a bank, building society or credit union as required by the

provisions of this Act or the prescribed requirements, and

(b) public property or other property shall be taken to be in the care of an officer of an authority if the property:

(i) has been delivered to the officer, and

(ii) has not been returned to a person or delivered to another person entitled to receive it on behalf of the Crown or the authority, as the case may require.

(8) The provisions of this section do not affect a right of the Crown or an authority to recover an amount from an officer of an authority otherwise than under this section but the Crown or the authority, as the case may require, shall not recover amounts from the one officer both under this section and otherwise than under this section, in respect of the same loss, deficiency, destruction or damage.

### **61 Misappropriation of money or property**

(1) An officer of an authority shall not:

(a) misapply, improperly dispose of or improperly use, any public money, other money, public property or other property, or

(b) pay any public money or other money into an account other than the account into which the money is required to be paid.

(2) An officer of an authority shall not wilfully and unlawfully damage or destroy any public property or other property.

(3) In a prosecution for an offence against subsection (1) (a), it is not necessary to prove the misapplication, improper disposal or improper use of any specific sum of money or property if there is proof of a general deficiency on the examination of the books, records or entries kept or made by the defendant or otherwise and the court or jury is satisfied that the defendant misapplied, improperly disposed of or improperly used all or any of the deficient money or all or any of the deficient property.

### **61A Disclosure of information or documents relating to Treasury costing of election promises**

(1) This section applies to any of the following information and documents:

(a) information or documents provided to the Secretary of the Treasury by a person on behalf of the Government or the Opposition for the purposes of the Treasury costing any election commitments or proposals,

(b) information or documents prepared by the Treasury for the purposes of that costing.

(2) The Secretary of the Treasury or other member of staff of the Treasury must not

disclose any such information or document except to:

- (a) the representative of the Government or the Opposition who requested the costing (or to any person authorised by that representative), or
- (b) a member of staff of the Treasury.

Maximum penalty: 20 penalty units.

(3) This section does not apply to any information or document:

- (a) if the information or document has already been lawfully published, or
- (b) if the person disclosing the information or document became aware of the information or obtained the document otherwise than in the course of Treasury costing any election commitments or proposals.

(4) This section applies to a disclosure made after the commencement of this section even though the request for the Treasury costing was made before that commencement.

(5) In this section, **Treasury costing** of an election commitment or proposal means a costing for the purposes of a general election of the Legislative Assembly that is undertaken by the Treasury in accordance with arrangements made by the Secretary of the Treasury.

## **62 Offences—generally**

A person who contravenes or fails to comply with any provision of this Act or the prescribed requirements is guilty of an offence and liable, where a penalty is not otherwise expressly provided, to a penalty not exceeding 20 penalty units.

## **63 Proceedings for offences**

- (1) Proceedings for an offence against a provision of this Act or the prescribed requirements shall be disposed of in a Local Court constituted by a Magistrate sitting alone.
- (2) A penalty incurred under this Act or the prescribed requirements, when paid or recovered, shall be paid into the Consolidated Fund.

## **63A Reference of matters to Public Accounts Committee**

(1) In this section:

**Public Accounts Committee** means the Public Accounts Committee for the time being constituted under Part 4.

**statutory body** means a statutory body to which Division 3 of Part 3 applies.

- (2) The Treasurer may refer any matter relating to the financial report of a statutory body to the Public Accounts Committee for examination and report to the Treasurer.
- (3) The Treasurer shall refer to the Public Accounts Committee for examination and report to the Treasurer any proposal to amend Division 3 of Part 3 or make a regulation relating to the financial report of a statutory body, other than a proposal made by the Public Accounts Committee.
- (4) Nothing in subsection (3) requires the Treasurer to refer a proposal to the Public Accounts Committee if, at the time the Treasurer formulates or receives the proposal:
  - (a) no members have been appointed to the Committee, or
  - (b) the members of the Committee have ceased to hold office.
- (5) Nothing in subsection (2) or (3) prevents the Public Accounts Committee, after the Committee has reported to the Treasurer, from reporting to the Legislative Assembly on any matter referred to it by the Treasurer under subsection (2) or (3).
- (6) The provisions of section 57 (4) apply to and in respect of a report under subsection (5) in the same way as those provisions apply to and in respect of a report in accordance with section 57 (1).

### **63B Notification of controlled entities**

- (1) Within 1 month after an entity becomes an entity referred to in section 45A (1A), the appropriate Department Head must notify the Auditor-General and the Treasurer in writing of that fact.
- (2) Within 1 month after an entity becomes an entity referred to in section 39 (1A), the appropriate statutory body must notify the Auditor-General and the Treasurer in writing of that fact.
- (3) A Department or statutory body must take such steps as are appropriate to ensure that an entity referred to in section 45A (1A) or 39 (1A) which is controlled by the Department or statutory body is audited by the Auditor-General.

### **63C Documents presented to Clerk of House of Parliament**

A document which is presented to the Clerk of a House of Parliament in accordance with a provision of this Act:

- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
- (b) is to be printed by authority of the Clerk of the House, and
- (c) is, for all purposes, taken to be a document published by order or under the authority of the House, and

(d) is to be recorded:

- (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
- (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

### **63D Personal liability**

- (1) A matter or thing done or omitted to be done by the Auditor-General or a member of staff of the Audit Office does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the Auditor-General or member personally to any action, liability, claim or demand.
- (2) For the purpose of determining whether the Crown is vicariously liable for any matter or thing done or omitted to be done by the Auditor-General or a member of staff of the Audit Office, it is declared for the avoidance of doubt that the Auditor-General and any such member is in the service of the Crown.

### **63E Delegation of Treasurer's functions**

- (1) The Treasurer may delegate to an authorised person any of the functions of the Treasurer under this Act, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Treasurer under this section if the delegate is authorised in writing to do so by the Treasurer.
- (3) In this section, **authorised person** means a member of the staff of the Treasury or a person of a class prescribed by the regulations or approved by the Treasurer.

### **63F Status of Workers Compensation Insurance Fund**

The Workers Compensation Insurance Fund established under the [Workers Compensation Act 1987](#) is not part of (and the assets and liabilities of that Fund are not part of):

- (a) the Total State Sector for the purposes of the preparation of the Total State Sector Accounts under this Act, or
- (b) the general government sector for the purposes of this Act or the [Fiscal Responsibility Act 2005](#).

## **64 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is

necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (1A) Without limiting subsection (1), a regulation may shorten the time for compliance with a provision of section 6 (4), 41A (1) or (2), 41C (1) or (1A), 45D (1), 45F (1), 49 (2), 51 (1) or 52A (1), despite the provision.
- (2) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, group of persons or body,
- or may do any combination of those things.

## **65 Savings, transitional and other provisions**

Schedule 4 has effect.

## **Schedule 1 The Auditor-General**

(Section 28 (2))

### **Part 1 Appointment and terms of office**

#### **1 (Repealed)**

#### **1A Auditor-General to continue in office**

The person holding office as Auditor-General immediately before the commencement of Schedule 2 (1) to the *Public Finance and Audit (Auditor-General) Amendment Act 1991*:

- (a) is, on that commencement, taken to be appointed to that office, in accordance with section 28 (1), for a term expiring 7 years from that commencement or when the person attains the age of 65 years, whichever occurs first, and
- (b) is not eligible for re-appointment, including re-appointment after the end of that term.

#### **2 Disabilities**

- (1) The Auditor-General shall not, during continuance in office as Auditor-General, be capable of being a member of the Executive Council or of the Parliament of the Commonwealth or of a State of the Commonwealth.
- (2) The Auditor-General is not to hold any other position in the public sector during his or her term of office as Auditor-General or after the expiration of that term, except with the consent of the Governor.

### **3 (Repealed)**

### **4 Public Service Act 1979 not to apply**

The provisions of the *Public Service Act 1979* do not apply to or in respect of the appointment of the Auditor-General and the Auditor-General is not, as the Auditor-General, subject to the provisions of that Act.

### **4A Resignation of Auditor-General**

The office of Auditor-General becomes vacant if the Auditor-General resigns the office by instrument in writing addressed to the Governor.

### **5 Removal from office**

The Governor may remove the Auditor-General from office upon the address of both Houses of the Legislature.

### **6 Suspension from office**

(1) The Governor may suspend the Auditor-General from office:

- (a) for misbehaviour,
- (b) for incapacity,
- (c) if the Auditor-General directly or indirectly engages in any paid employment outside the duties of the office of Auditor-General, or in any trade or business,
- (d) if the Auditor-General 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
- (e) if the Auditor-General is absent from duty for a period in excess of his or her leave entitlement as approved by the Governor unless the absence is caused by illness or other unavoidable cause.

(2) The Minister shall lay or cause to be laid before each House of Parliament, within 7 sitting days of that House after the Auditor-General has been suspended from office, a full statement of the grounds for the suspension.

(3) The suspension shall be lifted unless each House of Parliament, within 21 sitting days from the time when the statement was laid before it, declares by resolution that the Auditor-General ought to be removed from office.

(4) If each House does so declare within that period, the Auditor-General shall be removed from office by the Governor.

(5) For the purposes of this section, sitting days shall be counted whether or not they



occur in the same session.

## **7 Preservation of rights of Auditor-General previously public servant etc**

(1) In this clause:

**statutory body** means any body declared under subclause (6) to be a statutory body for the purposes of this clause.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of appointment, where the Auditor-General was, immediately before being appointed as Auditor-General:

(a) an officer of the Public Service or the Teaching Service,

(b) a contributor to a superannuation scheme,

(c) an officer employed by a statutory body, or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she:

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person,

(f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Auditor-General, and

(g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as Auditor-General, and:

(h) his or her service as Auditor-General shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred, and

(i) he or she shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be the employer, for the purpose of the superannuation scheme to which he or she is entitled to contribute under this section.

- (3) If the Auditor-General would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he or she shall not be so entitled upon becoming (whether upon appointment as Auditor-General or at any later time while holding office as Auditor-General) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her and the Government of New South Wales in any case where he or she becomes a contributor to such another superannuation scheme.
- (4) Subclause (3) does not prevent the payment to the Auditor-General upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.
- (5) The Auditor-General shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.
- (6) The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this clause.

## Part 2 Auditor-General's declaration

(Section 29 (1))

I, \_\_\_\_\_, do solemnly and 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 duties of Auditor-General according to law.

(Signature)

## Schedule 2 Statutory bodies

(Section 39 (1))

Aboriginal Housing Office  
Agricultural industry services committee constituted by the [Agricultural Industry Services Act 1998](#)  
Art Gallery of New South Wales Trust  
The Audit Office of New South Wales  
Australian Museum Trust  
Banana Industry Committee  
Board of Governors of the Charles Sturt University  
Board of Trustees of the University of Western Sydney  
Board of Surveying and Spatial Information  
Board of Veterinary Surgeons of New South Wales  
Building and Construction Industry Long Service Payments Corporation  
Building Insurers' Guarantee Corporation  
Bursary Endowment Board  
Cancer Institute (NSW)  
A catchment management authority under the [Catchment Management Authorities Act 2003](#)

Centennial Park Trust  
Chief Investigator of the Office of Transport Safety Investigations  
Chiropractors Registration Board  
Chipping Norton Lake Authority  
Cobar Water Board  
A corporation constituted under the [Growth Centres \(Development Corporations\) Act 1974](#)  
Council of the Macquarie University  
Council of the Southern Cross University  
Council of the University of New England  
Council of the University of New South Wales  
Council of the University of Newcastle  
Council of the University of Technology, Sydney  
Council of the University of Wollongong  
Dams Safety Committee  
Dental Board  
Dental Technicians Registration Board  
Election Funding Authority of New South Wales  
Electricity Tariff Equalisation Ministerial Corporation  
Energy Corporation of New South Wales  
Environment Protection Authority  
Environmental Trust  
Fair Trading Administration Corporation  
Forestry Commission of New South Wales  
Game Council of New South Wales  
Greyhound and Harness Racing Regulatory Authority  
Health Care Complaints Commission  
Historic Houses Trust of New South Wales  
Home Care Service of New South Wales  
Independent Pricing and Regulatory Tribunal  
Independent Transport Safety and Reliability Regulator  
Infrastructure Implementation Corporation  
Internal Audit Bureau of New South Wales  
Jenolan Caves Reserve Trust  
Lake Illawarra Authority  
Legal Aid Commission of New South Wales  
Legal Practitioners Admission Board constituted by the [Legal Profession Act 1987](#)  
Liability Management Ministerial Corporation  
Library Council of New South Wales  
Lord Howe Island Board  
Luna Park Reserve Trust  
A marketing board constituted under the [Marketing of Primary Products Act 1983](#)  
A marketing committee constituted under the [Marketing of Primary Products Act 1983](#)  
Mine Subsidence Board  
Motor Accidents Authority of New South Wales  
Motor Vehicle Repair Industry Authority  
Natural Resources Commission  
New South Wales Aboriginal Land Council  
New South Wales Board of Vocational Education and Training

New South Wales Casino Control Authority  
New South Wales Coal Compensation Board  
New South Wales Commercial Fishing Advisory Council  
New South Wales Film and Television Office  
New South Wales Government Telecommunications Authority  
New South Wales Grains Board  
New South Wales Institute of Psychiatry  
New South Wales Institute of Sport  
New South Wales Land and Housing Corporation  
New South Wales Medical Board  
New South Wales Rural Assistance Authority  
New South Wales Treasury Corporation  
Newcastle International Sports Centre Trust  
Newcastle Showground and Exhibition Centre Trust  
NSW Architects Registration Board  
NSW Food Authority  
NSW Institute of Teachers  
NSW Self Insurance Corporation  
Nurses and Midwives Board  
Optical Dispensers Licensing Board  
Optometrists Registration Board  
Osteopaths Registration Board  
Parramatta Park Trust  
Parramatta Stadium Trust  
Pharmacy Board of New South Wales  
Physiotherapists Registration Board  
Podiatrists Registration Board  
Protective Commissioner  
Psychologists Registration Board  
Public Trustee  
Redfern-Waterloo Authority  
Rental Bond Board  
Residual Business Management Corporation  
Roads and Traffic Authority of New South Wales  
Royal Botanic Gardens and Domain Trust  
A rural lands protection board constituted under the [Rural Lands Protection Act 1998](#)  
SAS Trustee Corporation  
Senate of the University of Sydney  
Sporting Injuries Committee  
State Council of Rural Lands Protection Boards constituted under the [Rural Lands Protection Act 1998](#)  
State Rail Authority of New South Wales  
State Records Authority  
State Sports Centre Trust  
State Transit Authority of New South Wales  
Statutory Trustees or a Statutory Trustee of a Fund within the meaning of the [Technical Education Trust Funds Act 1967](#)  
Sydney Catchment Authority  
Sydney Cricket and Sports Ground Trust

Sydney Harbour Foreshore Authority  
 Sydney Olympic Park Authority  
 Sydney Opera House Trust  
 Sydney 2009 World Masters Games Organising Committee  
 Teacher Housing Authority of New South Wales  
 Tow Truck Authority  
 Trustees of the Anzac Memorial Building  
 Trustees of the Museum of Applied Arts and Sciences  
 Trustees of the Parliamentary Contributory Superannuation Fund  
 Upper Parramatta River Catchment Trust  
 Vocational Education and Training Accreditation Board  
 Waterways Authority  
 Wentworth Park Sporting Complex Trust  
 Wild Dog Destruction Board  
 Wollongong Sportsground Trust  
 WorkCover Authority  
 Workers' Compensation (Dust Diseases) Board  
 Zoological Parks Board of New South Wales.

### Schedule 3 Departments

(Sections 45A, 45B)

<b>Column 1</b>	<b>Column 2</b>
<b>Department</b>	<b>Department Head</b>
Department of Aboriginal Affairs	Director-General of the Department
Department of Ageing, Disability and Home Care	Director-General of the Department
Department of the Arts, Sport and Recreation	Director-General of the Department
Attorney General's Department	Director-General of the Department
Office of the Board of Studies	General Manager of the Office
Cabinet Office	Director-General of the Office
Commission for Children and Young People	Commissioner for the Commission for Children and Young People
Office of the Children's Guardian	Children's Guardian
Department of Commerce	Director-General of the Department
Department of Community Services	Director-General of the Department
Department of Corrective Services	Commissioner of Corrective Services
Office of the Director of Public Prosecutions	Director of Public Prosecutions
Department of Education and Training (including TAFE Commission)	Director-General of the Department and Managing Director of the Commission

Department of Energy, Utilities and Sustainability	Director-General of the Department
Department of Environment and Conservation	Director-General of the Department
Community Relations Commission	Chairperson of the Commission
Department of Health	Director-General of the Department
Department of Housing	Director-General of the Department
Independent Commission Against Corruption	Commissioner for the Commission
Judicial Commission	Chief Executive of the Commission
Department of Juvenile Justice	Director-General of the Department
Department of Lands	Director-General of the Department
Liquor Administration Board	Secretary of the Board
Department of Local Government	Director-General of the Department
Department of Natural Resources	Director-General of the Department
NSWbusinesslink	Managing Director, NSWbusinesslink
New South Wales Crime Commission	Commissioner of the New South Wales Crime Commission
New South Wales Fire Brigades	Commissioner of New South Wales Fire Brigades
NSW Police	Commissioner for Police
Ombudsman's Office	Ombudsman
Department of Planning	Director-General of the Department
Ministry for Police	Director-General of the Ministry
Police Integrity Commission	Commissioner for the Police Integrity Commission
Premier's Department	Director-General of the Department
Department of Primary Industries	Director-General of the Department
Department of Rural Fire Service	Commissioner of the NSW Rural Fire Service
Department of State and Regional Development	Director-General of the Department
State Electoral Office	Electoral Commissioner
State Emergency Service	Director-General of the Service
Ministry of Transport	Director-General of the Ministry
The Treasury	Secretary of the Treasury

## Schedule 4 Savings, transitional and other provisions

(Section 65)

### Part 1 Savings or transitional regulations

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Public Finance and Audit Amendment (Auditor-General) Act 2001*

*Public Finance and Audit Amendment (Budgeting and Financial Reporting) Act 2002*

*Statute Law (Miscellaneous Provisions) Act (No 2) 2004*, but only to the extent that it amends this Act

*State Revenue Legislation Amendment Act 2005*

*Statute Law (Miscellaneous Provisions) Act 2005*, but only to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of **Public Finance and Audit Amendment (Auditor-General) Act 2001**

#### 2 Definition

In this Part:

**Amending Act** means the *Public Finance and Audit Amendment (Auditor-General) Act 2001*.

### 3 Validation with respect to exercise of functions of Auditor-General

- (1) Anything done by or on behalf of the Auditor-General before the commencement of any amendment made by the Amending Act that would have been validly done if the Amending Act had been in force when it was done is, to the extent of any invalidity, validated.
- (2) In this clause, a reference to anything done includes a reference to anything omitted to be done.

### 4 Protection from liability of Auditor-General—application of amendment to section 63D to previous omissions

The amendment made to section 63D by the Amending Act extends to anything omitted to be done before the commencement of that amendment.

### 5 Existing protected disclosures

A complaint made under section 38B (1A) before the repeal of that provision by the Amending Act that has not been finally dealt with on that repeal is taken to be a complaint under Division 7 of Part 3, as inserted by the Amending Act, and may be dealt with accordingly.

## Part 3 Provisions consequent on enactment of **Public Finance and Audit Amendment (Budgeting and Financial Reporting) Act 2002**

### 6 Budget presentation for 2002-03

Sections 27A and 27AA, as inserted by the *Public Finance and Audit Amendment (Budgeting and Financial Reporting) Act 2002*, do not apply to the budget for the financial year commencing on 1 July 2002.

## Part 4 Provisions consequent on enactment of **Statute Law (Miscellaneous Provisions) Act (No 2) 2004**

### 7 Definitions

In this Part:

**Audit Office** means the Audit Office established by this Act.

**executive position** has the same meaning as in section 33F.

**former Department** means the group of staff comprising The Audit Office (as a Department of the Public Service) immediately before 1 January 2005.

### 8 Abolition of The Audit Office as a Department

The Department of the Public Service with the name of The Audit Office of New South



Wales is abolished.

### **9 Transfer of staff of former Department to the Audit Office**

- (1) Each person who, immediately before 1 January 2005, was a member of staff of the former Department is entitled, on that date, to be appointed to a position in the Audit Office at a salary not less than the salary which the person was paid immediately before that date.
- (2) Any such person who, pursuant to subclause (1), becomes a member of staff of the Audit Office:
  - (a) retains any rights to leave (including annual leave, extended leave and sick leave) accrued or accruing to the person as a member of staff of the former Department, and
  - (b) is, until such time as provision is otherwise made under any Act or law, to continue to be employed in accordance with any State industrial instrument or determination that applied to the person as a member of staff of the former Department.

### **10 Appointment of incumbent officers to executive positions**

- (1) If a position in the Audit Office is designated by the Auditor-General, as at 1 January 2005 or on any subsequent date, as an executive position, the person (if any) holding the position is to continue to hold that position until the person or some other person is duly appointed to the position.
- (2) While the person continues to hold the position, the conditions of employment (including remuneration) of the person are to be the same as those which applied to the person immediately before the position was designated as an executive position.
- (3) The person who continues to hold the position may be appointed to the position without the vacancy being advertised.
- (4) If the person who continues to hold the position is not appointed to the position or to another executive position and the person was a member of staff of the former Department immediately before 1 January 2005, the following provisions apply:
  - (a) if the person is an existing non-SES officer—the person is entitled to continue to be employed in some other position in the Audit Office at a salary not less than the person's existing salary,
  - (b) if the person is an existing SES officer who made an election, as referred to in clause 11 of Schedule 4 to the *Public Sector Employment and Management Act 2002*, to retain a right of return to the public sector—the person is entitled to an engagement in the public sector as provided by that clause,

(c) if the person is an existing SES officer who did not make such an election—the person is entitled to compensation under section 78 of the *Public Sector Employment and Management Act 2002* as if the person were an executive officer to whom that section applies.

(5) In subclause (4):

**existing non-SES officer** means a member of staff of the former Department who, immediately before 1 January 2005, held a position in the former Department other than a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002*.

**existing SES officer** means a member of staff of the former Department who, immediately before 1 January 2005, held a senior executive position (within the meaning of the *Public Sector Employment and Management Act 2002*) in the former Department.

#### **11 Position no longer designated as executive position**

If a position in the Audit Office ceases to be designated as an executive position, the person (if any) holding the position continues to be employed in that position, subject to and in accordance with the relevant provisions applying to the staff (other than executive officers) of the Audit Office, for the balance of the person's term of office.

#### **12 Construction of certain references**

A reference in any Act (other than this Act), or in any instrument made under any Act, or in any other instrument, or in any contract or agreement, to the Auditor-General's Office or to The Audit Office (as a Department of the Public Service) is to be construed as a reference to the Audit Office.

### **Part 5 Provisions consequent on enactment of *State Revenue Legislation Amendment Act 2005***

#### **13 Validation for tax-equivalent payments**

- (1) Anything done or omitted to be done that would have been validly done or omitted if Part 4A of this Act, and section 5 of the *Taxation Administration Act 1996*, as inserted by the *State Revenue Legislation Amendment Act 2005* had been in force at the time that it was done or omitted is validated.
- (2) Any direction given by, or nomination made by, the Treasurer before the commencement of this clause that could have been given or made under Part 4A, had that Part been in force at the time that it was given or made, is taken to have been given or made under that Part.
- (3) Any determination made by the Chief Commissioner of State Revenue before the

commencement of this clause in respect of the liability of a statutory body to make payments under the State tax-equivalent regime that could have been made under Part 4A, had that Part been in force at the time that it was made, is taken to have been made under that Part.