

Government Sector Audit Act 1983 No 152

[1983-152]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Previously named**
Public Finance and Audit Act 1983
- **Does not include amendments by**
[Modern Slavery Act 2018 No 30](#) (not commenced)
- **See also**
[Public Finance and Audit Amendment \(Northern Beaches Hospital\) Bill 2019](#) [Non-government Bill: the Hon Walt Secord, MLC]
[Public Interest Disclosures Bill 2021](#)
[ICAC and Other Independent Commissions Legislation Amendment \(Independent Funding\) Bill 2021 \(No 2\)](#) [Non-government Bill— the Hon Robert Borsak, MLC]

Authorisation

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Government Sector Audit Act 1983 No 152



New South Wales

An Act to make provision with respect to the audit of government sector finances and the establishment and functions of the Public Accounts Committee; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Government Sector 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 Principal objects of Act

The principal objects of this Act are—

- (a) to recognise that the Auditor-General is an independent and accountable statutory officer responsible for providing independent audit and audit-related services, and
- (b) to establish the Audit Office of New South Wales to assist the Auditor-General in the exercise of the Auditor-General's functions.

4 Definitions

(1) In this Act—

accountable authority, in relation to an auditable entity, means—

- (a) for a GSF agency—the accountable authority for the GSF agency within the meaning of the *Government Sector Finance Act 2018*, or
- (b) for a university or any of its controlled entities—the accountable authority for the university or its controlled entities within the meaning of the *Government Sector*

Finance Act 2018, or

- (c) for any other entity—the person who is the chief executive officer (however described) of the entity or otherwise responsible for the entity’s day to day management or any other person prescribed by the regulations.

annual GSF financial statements for a reporting GSF agency has the same meaning as in the *Government Sector Finance Act 2018*.

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

auditable entity means each of the following—

- (a) a GSF agency (whether or not a reporting GSF agency),
- (b) a university or any of its controlled entities (within the meaning of the *Government Sector Finance Act 2018*),
- (c) any other entity—
- (i) the financial reports or statements of which are subject to audit by the Auditor-General under this Act, the *Government Sector Finance Act 2018* or any other Act, or
- (ii) that is prescribed by the regulations to be an auditable entity.

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

Australian Auditing Standards means the standards issued by the Auditing and Assurance Standards Board, as in force from time to time.

banking account and **banking service** have the same meanings as in the *Government Sector Finance Act 2018*.

Consolidated State Financial Statements has the same meaning as in the *Government Sector Finance Act 2018*.

controlled entity has the same meaning as in the *Government Sector Finance Act 2018*.

entity has the same meaning as in the *Government Sector Finance Act 2018*.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

General Government Sector Financial Statements means the statements referred to in section 7.17 (1) (b) of the *Government Sector Finance Act 2018*.

GSF agency has the same meaning as in the *Government Sector Finance Act 2018*.

government money has the same meaning as in the *Government Sector Finance Act 2018*, and includes anything that was public money within the meaning of this Act immediately before the definition of **public money** was omitted by the substitution of this section by the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018*.

government officer has the same meaning as in the *Government Sector Finance Act 2018*.

government property has the same meaning as in the *Government Sector Finance Act 2018*.

government resources has the same meaning as in the *Government Sector Finance Act 2018*.

money includes—

- (a) any instrument ordering or authorising the payment of money if it is an instrument of a kind that may be lodged with an authorised deposit-taking institution for the purpose of enabling it to collect money so payable and credit that money to a banking account with it, and
- (b) a bill of exchange, postal order, money order and promissory note.

prescribed requirements, in relation to a GSF agency, means—

- (a) requirements prescribed by or under this Act, the *Government Sector Finance Act 2018* or any other law applying to the agency, and
- (b) any Treasurer's directions applying to the agency.

related money has the same meaning as in the *Government Sector Finance Act 2018*.

reporting GSF agency has the same meaning as in the *Government Sector Finance Act 2018*.

responsible Minister, in relation to auditable entity, means—

- (a) for a GSF agency—the responsible Minister for the GSF agency within the meaning of the *Government Sector Finance Act 2018*, or
- (b) for a university or any of its controlled entities (within the meaning of the *Government Sector Finance Act 2018*)—the Minister administering the Act under which the university is established, or
- (c) for any other entity—the Minister having the administration of the Act by or under which the entity is appointed, constituted or regulated or any other Minister that is prescribed by the regulations.

Special Deposits Account has the same meaning as in the *Government Sector Finance Act 2018*.

Treasurer's directions has the same meaning as in the *Government Sector Finance Act 2018*.

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) 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

Secs 5-27AB (Repealed)

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 Consolidated State Financial Statements, the General Government Sector Financial Statements 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,
 - (c1) to provide any other auditing, audit-related or reporting services that the Auditor-General is required or authorised to provide by law,
 - (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.

(6A) Towards defraying the costs and expenses of any particular audit or audit-related service provided at the request of both Houses of Parliament or of a Minister under subsection (3), there is payable to the Auditor-General, out of funds available for the expenditure of Parliament or of the Minister (as the case requires), such amounts at such times as the Treasurer decides.

(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 8 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) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to 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), Part 7 (Public sector promotion and disciplinary appeals) 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) (Repealed)
 - (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 Auditor-General's functions

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

Division 2 Audit—generally

33H Definitions

In this Division—

auditable entity does not include a local council.

authorised person means—

- (a) the Auditor-General, or
- (b) an auditor, or
- (c) any other person authorised by the Auditor-General.

34 Reports on audits and audit-related functions for purposes of [Government Sector Finance Act 2018](#)

- (1) This section applies to any of the following statements and reports given to the Auditor-General under the [Government Sector Finance Act 2018](#) for auditing or audit-related services—
 - (a) any annual GSF financial statements for a reporting GSF agency under section 7.6 of that Act,
 - (b) any final annual GSF financial statements for a former reporting GSF agency under section 7.7 of that Act,
 - (c) an SDA account financial report for an account in the Special Deposits Account under section 7.8 of that Act,
 - (d) a special purpose financial report for a GSF agency under section 7.9 of that Act,
 - (e) Consolidated State Financial Statements under section 7.17 of that Act.
- (2) The Auditor-General (or, if authorised by the Auditor-General, the Deputy Auditor-General or an auditor) must prepare within the relevant auditing period after the statements or reports are given to the Auditor-General—
 - (a) for statements or reports provided for auditing—an audit report, or
 - (b) for statements or reports provided for audit-related services—a report on the results from performing those services.
- (3) The **relevant auditing period** is—
 - (a) in the case of Consolidated State Financial Statements—as soon as practicable after the Auditor-General is given the statements, or
 - (b) in any other case—the period specified by the [Government Sector Finance Act](#)

2018 or the Treasurer's directions for the statement or report concerned.

- (4) An audit report must state—
 - (a) for annual GSF financial statements or final annual GSF financial statements—whether in the Auditor-General's opinion they comply with section 7.6 (3) of the *Government Sector Finance Act 2018*, or
 - (b) for Consolidated State Financial Statements—whether in the Auditor-General's opinion they comply with section 7.17 (3) of the *Government Sector Finance Act 2018*.
- (5) An audit report may include such information as is required or permitted by the Australian Auditing Standards.
- (6) The Auditor-General (or, if authorised by the Auditor-General, the Deputy Auditor-General or an auditor) must report to the accountable authority for the GSF agency concerned, the responsible Minister for the agency and the Treasurer as to the result of any audit or audit-related service for the purposes of this section and as to any irregularities or other matters that, in the judgment of the Auditor-General or authorised person, call for special notice.

35 Inspection, examination and audit of accounts and records of auditable entities

- (1) The Auditor-General may appoint, in writing, a person (whether or not a government officer) or a firm to be an auditor for the purposes of this Act.
- (2) The Auditor-General may inspect, examine and audit (or cause an auditor to inspect, examine and audit) the accounts and records of an auditable entity for the purpose of—
 - (a) determining whether they properly record and explain the entity's transactions, cash flows, financial position and financial performance, or
 - (b) auditing or providing audit-related services in connection with the entity's financial statements or financial reports.
- (3) The Auditor-General may exercise functions under subsection (2) whenever the Auditor-General thinks fit, but must do so if required by the Treasurer.
- (4) An auditor who has conducted an inspection, examination and audit under this section must, as soon as practicable after doing so, prepare and sign a report and forward it to the Auditor-General.
- (5) The Auditor-General (or, if authorised by the Auditor-General, the Deputy Auditor-General or an auditor) must, as soon as practicable after an inspection, examination and audit is conducted under this section, forward a report of the results of it—

- (a) for a report on a GSF agency or on a university or its controlled entity—
 - (i) to the accountable authority for the agency, and
 - (ii) to the Treasurer, and
 - (iii) to the responsible Minister for the agency, or
 - (b) for a report on any other auditable entity—to the accountable authority for the agency and the Treasurer.
- (6) The Auditor-General may require an auditable entity to pay to the Auditor-General (and the auditable entity must pay) such amounts, at such times, as the Treasurer decides towards defraying the costs and expenses of any inspection, examination or audit and report under this section.

36 Access to documents and information

- (1) An authorised person is entitled at all reasonable times to full and free access to the books, records or other documents of or relating to any entity, fund or account or government resources or related money for the purposes of—
- (a) any inspection, examination, audit or audit-related services that the Auditor-General is authorised or required to perform by or under this Act or any other law, or
 - (b) exercising any other function conferred or imposed on the Auditor-General by or under this Act or any other law.
- (2) An authorised person is also entitled to make copies of, or take extracts from, any books, records or other documents to which the authorised person is entitled to access under subsection (1).
- (3) An authorised person may require a relevant person in relation to the entity, fund or account or government resources or related money concerned to provide to the authorised person, within 14 days, such information in the relevant person's possession, or to which the relevant person has access, as the authorised person considers necessary for any of the purposes referred to in subsection (1) (a) or (b).
- (4) The Auditor-General may, by notice in writing signed by the Auditor-General, require a person named in the notice—
- (a) to appear personally before the Auditor-General at a time and place specified in the notice, and
 - (b) to produce to the Auditor-General such books, records or other documents in the person's possession or under the person's control as appear to the Auditor-General to be necessary for the purposes of an audit that the Auditor-General is authorised

or required to perform by or under this Act or any other law.

- (5) A person must comply with a requirement made of the person under subsection (3) or (4).

Maximum penalty—20 penalty units.

- (6) An authorised person 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 information on grounds of public interest, or
 - (b) any privilege of an entity that the entity 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 auditable entity or an officer or employee of an auditable entity (including a government officer).
- (7) A person who complies with a requirement made of the person under subsection (3) or (4) does not incur civil or criminal liability under any other law because of that compliance.
- (8) Nothing in this section entitles an authorised person to have access to information that is Cabinet information under the [Government Information \(Public Access\) Act 2009](#).
- (9) In this section—

relevant person, in relation to an entity, fund or account or government resources or related money, means an officer, employee or other person exercising functions in relation to that entity, fund, account, resources or money.

37 Access to banking information about auditable entities

- (1) An authorised person may require the provider of a banking service (including a banking account) to an auditable entity to do any of the following—
- (a) provide the authorised person with banking information, in accordance with the requirement, about the entity,
 - (b) without limiting paragraph (a), produce to the authorised person any book, account, record or document relating to the entity and under the custody or control of the provider.
- (2) A provider of a banking service must comply with a requirement made of the provider under subsection (1).

Maximum penalty—20 penalty units.

(3) In this section—

banking information about an auditable entity means—

- (a) any information about banking services the entity receives (including information about the entity's banking accounts), and
- (b) any statements or reports about banking services the entity receives.

provider of a banking service means the authorised deposit-taking institution or other entity that provides the service to the auditable entity concerned (whether under a State financial service agreement within the meaning of the *Government Sector Finance Act 2018* or otherwise).

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 government resources or related money or for the recovery of such resources or money, or
 - (c) disciplinary proceedings brought against a government officer or accountable authority for a GSF agency, 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, lease or disposal of any government undertaking (or following such a sale, lease or disposal).

Division 2A Performance audits of activities

38A Definitions

In this Division—

audit includes examination and inspection.

auditable entity does not include a local council.

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 auditable entity to determine whether the auditable entity 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 auditable entity.

38C Report of performance audit

- (1) The Auditor-General is to report to the accountable authority for the auditable entity, 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 accountable authority for the auditable entity, 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 accountable authority for the auditable entity 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 accountable authority for the auditable entity 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 auditable entity, the Treasurer may, at the request of the Auditor-General, determine the accountable authority for an appropriate auditable entity and responsible Minister to whom the Auditor-General is to report under this section. In that case, a reference in this section to the accountable authority for the auditable entity 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

Secs 39-43A (Repealed)

Division 4 Particular audits of prescribed entities

44 Application and interpretation

- (1) In this Division—

authorised person means—

- (a) the Auditor-General, or
- (b) the Deputy Auditor-General, or an auditor, authorised by the Auditor-General.

prescribed entity means—

- (a) an entity (or entity of a kind) prescribed by the regulations as an entity to which this Division applies, or
- (b) an entity having the control or management of a fund or account (or fund or

account of a kind) prescribed by the regulations as a fund or account to which this Division applies.

prescribed requester, in relation to a prescribed entity, means a person prescribed by the regulations as a person who can make a request under section 45 in relation to the entity.

responsible Minister, in relation to a prescribed entity, means the Minister who administers the Act under which the entity is appointed, constituted or regulated.

(2) Nothing in this Division limits the operation of Division 2.

45 Particular audit

- (1) In accordance with a request of the Treasurer or a responsible Minister or prescribed requester in relation to a prescribed entity, the Auditor-General is to inspect and audit—
 - (a) for an entity (or entity of a kind) prescribed by the regulations as an entity to which this Division applies—the financial report of the entity and the books and records of financial transactions of or relating to—
 - (i) the entity, and
 - (ii) assets of or in the custody of the entity, or
 - (b) for an entity having the control or management of a fund or account (or fund or account of a kind) prescribed by the regulations as a fund or account to which this Division applies—the financial report of the entity and the books and records of financial transactions of or relating to the fund or account under the control or management of the entity.
- (2) An authorised person must report to the prescribed entity, the Treasurer and the responsible Minister and any prescribed requester in relation to the entity as to the result of the inspection and audit and as to any irregularities or other matters that, in the judgment of the authorised person, call for special notice.
- (3) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1).
- (4) The prescribed entity must pay to the Auditor-General such amounts, at such times, as the Treasurer decides towards defraying the costs and expenses of any such inspection and audit.

Division 4A

Secs 45A–45I (Repealed)

Division 5 Audit and review of the Audit Office

46 Definitions

In this Division—

annual reporting period for the Audit Office means its annual reporting period for the purposes of the *Government Sector Finance Act 2018*.

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 an annual reporting period for the Audit Office, 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 annual reporting period, 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 government 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 annual reporting period for the Audit Office 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 4 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 Chair 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 Chair seeks, in accordance with this section, to present the report to the Legislative Assembly the Legislative Assembly is not sitting, the Chair 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 of Consolidated State Financial Statements and General Government

Sector Financial Statements

- (1) The Auditor-General—
 - (a) is to examine the Consolidated State Financial Statements and General Government Sector Financial Statements given to the Auditor-General by the Treasurer in accordance with section 7.17 of the *Government Sector Finance Act 2018*, and
 - (b) is to prepare and sign an opinion, in relation to each of those statements, as to whether the statements are properly drawn up in accordance with this Act.
- (2) If the Consolidated State Financial Statements and General Government Sector Financial Statements are presented in a single report, the Auditor-General may prepare and sign a single opinion in relation to that report.
- (3) On or before 22 October after receiving the Consolidated State Financial Statements and General Government Sector Financial Statements from the Treasurer, the Auditor-General is to transmit the statements and the opinion or opinions prepared under this section to the Treasurer.
- (4) Nothing in this section prevents the alteration of the Consolidated State Financial Statements or General Government Sector Financial Statements, with the approval of the Auditor-General, after being received by the Auditor-General and before being transmitted to the Treasurer.

50 (Repealed)

51 Presentation of financial statements and opinions to Legislative Assembly

- (1) The Treasurer, not later than 31 October in the year following that to which the Consolidated State Financial Statements and General Government Sector Financial Statements relate, is to present those statements as audited by the Auditor-General, and the opinion or opinions of the Auditor-General as to those statements, to the Legislative Assembly.
- (2) If, at the time at which the Treasurer seeks to present the audited statements and Auditor-General's opinion to the Legislative Assembly, the Legislative Assembly is not sitting, the Treasurer is to present the audited statements and 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 Consolidated State Financial Statements and General Government Sector Financial Statements given to the Auditor-General by the Treasurer in accordance with section 7.17 of the *Government Sector Finance Act 2018*, 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 statements as to be brought to the attention of Parliament.

- (2) (Repealed)
- (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 government money, and for more effectually and economically auditing and examining the Consolidated State Financial Statements, the General Government Sector Financial Statements and the financial reports of auditable entities, 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 accountable authority for each auditable entity 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 accountable authority for an auditable entity 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.
- (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.

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—

public official means a public official within the meaning of the *Public Interest Disclosures Act 1994*.

52D Complaints about waste of government money

- (1) A public official may complain to the Auditor-General that there has been a serious and substantial waste of government money by an auditable entity or an officer or employee of an auditable entity (including a government officer).
- (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.
- (4) To avoid doubt, for the purposes of this section waste of government money in relation to an auditable entity that is not a GSF agency includes waste of money of that entity even if it is not government money.

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 accountable authority for the auditable entity, except as provided by paragraphs (b) and (c), or
 - (b) if the complaint relates to the conduct of the accountable authority for the auditable entity—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 accountable authority for the auditable entity.

- (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) any entity appointed, constituted or regulated by or under an Act the financial report of which is, pursuant to this Act, the *Government Sector Finance Act 2018* 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.

Chair means the Chair of the Committee.

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

Deputy Chair means the Deputy Chair 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 Chair and Deputy Chair of Committee

- (1) There shall be a Chair and a Deputy Chair 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 Chair or Deputy Chair 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 Chair is absent from New South Wales or is, for any reason, unable to perform the duties of the office of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair 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 Chair or, in the absence of the Chair, the Deputy Chair or, in the absence of both the Chair and Deputy Chair, a member of the Committee elected to chair the meeting by the members present shall preside at a meeting of the Committee.
- (5) The Deputy Chair or other member presiding at a meeting of the Committee shall, in relation to the meeting, have all the functions and powers of the Chair.
- (6) The Chair, Deputy Chair 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 Consolidated State Financial Statements and General Government Sector Financial Statements 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 consolidated financial statements and general government sector financial statements 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 Chair, 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

58A-58E (Repealed)

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) The accountable authority for an auditable entity 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 auditable entity.
- (4) (Repealed)
- (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-62 (Repealed)

63 Nature of proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

63A, 63B (Repealed)

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 (Repealed)

63G Oversight of electricity industry restructuring

- (1) Schedule 1A has effect.
- (2) Expressions used in Schedule 1A have the same meanings as in the Bill for the *Electricity Industry Restructuring Act 2008* as introduced in the Legislative Assembly on 4 June 2008.

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 49 (2), 51 (1) or 52A (1), despite the provision.
- (2) (Repealed)

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 Auditor-General a statutory officer and not Public Service employee

The office of Auditor-General is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office.

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 1A Oversight of electricity industry restructuring

(Section 63G)

1 Review of Government's overall program for restructuring

- (1) The Auditor-General is to review and report to Parliament on the Government's overall program for the authorised restructuring.
- (2) The review is to be a review of the following—
 - (a) the appropriateness of the Government's strategy for the transfer of assets to the private sector for maximising financial value for taxpayers, taking into account the following—
 - (i) the proposed method of effecting transactions,
 - (ii) the proposed timing of transactions, including the impact of external factors,
 - (iii) any contingent liabilities that will accrue to the State,
 - (iv) the impact of the proposed national emissions trading scheme (including current hedging and coal contracts of State electricity corporations),
 - (v) the sale price of the assets that is reasonably expected having regard to professional advice and the Government's preliminary estimates,
 - (vi) the impact of increased debt over the past 5 years in relation to the assets,
 - (vii) any relevant Commonwealth legislation regarding competition or foreign ownership,
 - (viii) any other factors that may impact on the potential sale price of the assets,
 - (b) the financial impact of the proposed community safety net proposed for the authorised restructuring, in particular the protections for workers, pensioners and low-income earners, including an assessment of the consistency of those benefits with previous transactions involving the transfer of assets to the private sector.
- (3) The review of the appropriateness of the Government's strategy for the transfer of

assets to the private sector is to be conducted on the basis of a statement of that strategy as provided to the Auditor-General by the Treasurer for the purposes of the review.

2 Report to Parliament

- (1) The Auditor-General is to report to each House of Parliament on the results of the review conducted by the Auditor-General under this Schedule as soon as practicable after the review is completed.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present the report, the Auditor-General is to present the report to the Clerk of the House concerned.

3 Supplementary powers

- (1) The Treasurer is to ensure that the Auditor-General has access to such information and resources as may be necessary to enable the Auditor-General to exercise the functions conferred by this Schedule.
- (2) For the purposes of this Schedule, the Auditor-General may—
 - (a) exercise investigatory powers conferred on the Auditor-General under this Act, and
 - (b) engage any person or body with financial expertise to examine arrangements made or proposed for the purposes of the authorised restructuring and to advise the Auditor-General on those arrangements.
- (3) The functions conferred by this Schedule are in addition to, and do not derogate from, any other function of the Auditor-General.

Schedules 2, 3 (Repealed)

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

State Revenue and Other Legislation Amendment (Budget Measures) Act 2006, but only to the extent that it amends this Act or the *Public Finance and Audit Regulation 2005*

State Revenue and Other Legislation Amendment (Budget) Act 2008

Regulatory Reform and Other Legislative Repeals Act 2015 (but only to the extent that it repeals the *Internal Audit Bureau Act 1992* or amends this Act)

any other Act that 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.

Part 6 Provisions consequent on enactment of State Revenue and

Other Legislation Amendment (Budget) Act 2008

14 Application of amendments

- (1) The amendments made to this Act by the *State Revenue and Other Legislation Amendment (Budget) Act 2008* apply only in respect of the Budget Papers, consolidated financial statements and general government sector financial statements for the financial year commencing on 1 July 2008 and the following financial years.
- (2) This Act, as in force immediately before the amendments made by the *State Revenue and Other Legislation Amendment (Budget) Act 2008*, continues to apply in respect of the Total State Sector Accounts for the financial year commencing 1 July 2007.
- (3) The amendments made to section 8 of this Act by the *State Revenue and Other Legislation Amendment (Budget) Act 2008* do not apply in respect of a monthly statement referred to in that section for a month before July 2008.

Part 7 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2013

15 Term of appointment of Auditor-General

The amendment made to section 28 by the *Statute Law (Miscellaneous Provisions) Act 2013* does not apply in respect of an appointment made before the commencement of that amendment.

Part 8 Provisions consequent on repeal of Internal Audit Bureau Act 1992 by Regulatory Reform and Other Legislative Repeals Act 2015

16 Definitions

In this Part—

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

dissolution day means the day on which the *Internal Audit Bureau Act 1992* is repealed.

IAB means the Internal Audit Bureau of New South Wales constituted by the *Internal Audit Bureau Act 1992*, as in force immediately before its repeal by the *Regulatory Reform and Other Legislative Repeals Act 2015*.

instrument means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any

judgment, order, process or other instrument issued by a court or tribunal.

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

17 Dissolution of Internal Audit Bureau

IAB is dissolved on the dissolution day.

18 Transfer of assets, rights and liabilities

- (1) On the dissolution day, any assets, rights and liabilities of IAB immediately before its dissolution by this Part are transferred to the Crown.
- (2) On and from the dissolution day, the following provisions have effect in relation to the transfer—
 - (a) the transferred assets vest in the Crown by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the transferred rights and liabilities become, by virtue of this clause, the rights and liabilities of the Crown,
 - (c) all proceedings relating to the transferred assets, rights or liabilities commenced before the dissolution day by or against IAB pending immediately before the dissolution day are taken to be proceedings pending by or against the Crown,
 - (d) any act, matter or thing done or omitted to be done in relation to the transferred assets, rights or liabilities before the dissolution day by, to or in respect of IAB is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Crown,
 - (e) the Crown has all the entitlements and obligations of IAB in relation to the transferred assets, rights and liabilities that IAB would have had but for the dissolution of IAB, whether or not those entitlements and obligations were actual or potential at the time the dissolution took effect.

19 Internal Audit Bureau of New South Wales Fund

On the dissolution day—

- (a) the Internal Audit Bureau of New South Wales Fund in the Special Deposits Account is closed, and
- (b) any balance standing to the credit of the Fund is transferred to the Crown.

20 Board of Management members to vacate office

A person who, immediately before the dissolution day, held office as a member of the Board of Management established under section 6 of the *Internal Audit Bureau Act 1992*—

- (a) ceases to hold that office on the dissolution day, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

21 Chief Executive of Internal Audit Bureau

The person who, immediately before the dissolution day, held office as the Chief Executive of IAB or as acting Chief Executive—

- (a) ceases to hold that office on the dissolution day, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

22 Other staff

- (1) On the dissolution day, the staff of IAB are transferred to The Treasury.
- (2) A transfer under this clause does not require the consent of the person transferred.
- (3) A person who is transferred under this clause is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained a member of staff of IAB.

23 Effect of this Part on contracts, instruments and other matters

The operation of this Part is not to be regarded as—

- (a) a breach of contract, trust or confidence or otherwise as a civil wrong, or
- (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of, or exercise of rights under, any instrument, or
- (d) an event of default under any contract or other instrument.

24 Final annual report

The annual report for the year ending 30 June 2016 may be included in the annual report of The Treasury for that year.

25 References to Internal Audit Bureau

Subject to the regulations, a reference in any other Act or instrument made under any

other Act or in any instrument of any kind to IAB is (to the extent that it relates to the assets, rights and liabilities transferred to the Crown) to be read on and from the dissolution day as being a reference to the Crown.

Part 9 Provisions consequent on enactment of [Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018](#)

26 Definition

In this Part—

amending Act means the [Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018](#).

27 Completion of pending audits or audit-related services

- (1) The Auditor-General may, despite the commencement of the amending Act, complete any audit or audit-related service that the Auditor-General was requested or required to undertake before that commencement.
- (2) Subject to the regulations, the provisions of this Act and the regulations, as in force immediately before the commencement of the amending Act, continue to apply in relation to any such audit or audit-related service.