

Western Australia

## **Auditor General Act 2006**

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# Auditor General Act 2006

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Western Australia

## **Auditor General Act 2006**

**An Act to provide for the appointment of an Auditor General, to set out the Auditor General's functions, and for related purposes.**

## **Part 1 — Preliminary**

**1. Short title**

This is the *Auditor General Act 2006*.

**2. Commencement**

This Act comes into operation on the day on which the *Financial Management Act 2006* comes into operation <sup>1</sup>.

*[3-5. Have not come into operation <sup>2</sup>.]*

*[Parts 2-7 have not come into operation <sup>2</sup>.]*

*[Schedules 1 and 2 have not come into operation <sup>2</sup>.]*

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## Notes

<sup>1</sup> This is a compilation of the *Auditor General Act 2006*. The following table contains information about that Act <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Auditor General Act 2006</i> s. 1-2	75 of 2006	21 Dec 2006	21 Dec 2006

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Auditor General Act 2006</i> s. 3-5, Pt. 2-7 and Sch. 1 and 2 <sup>2</sup>	75 of 2006	21 Dec 2006	Operative on commencement of the <i>Financial Management Act 2006</i> (see s. 2)

<sup>2</sup> On the date as at which this compilation was prepared, the *Auditor General Act 2006* s. 3-5, Pt. 2-7 and Sch. 1 and 2 had not come into operation. They read as follows:

“

#### 3. Purpose

The purposes of this Act are —

- (a) to ensure that the State has an Auditor General with the necessary functions, immunities and independence; and
- (b) to provide for the independent external audit of the public sector and related entities.

#### 4. Terms used in this Act

(1) In this Act, unless the contrary intention appears —

“accounts” means —

- (a) records, however compiled, recorded or stored, of transactions in respect of moneys or other property, expressed in monetary units, or in the case of

property, expressed in monetary units or other units of measurement; and

- (b) books, documents, writings, monetary forms, abstracts, vouchers and other records of any kind from which records mentioned in paragraph (a) have been compiled;

“**audit**” includes to examine, investigate, inspect and review;

“**Auditing and Assurance Standards**” means standards made or formulated from time to time by the Auditing and Assurance Standards Board established by the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“**authorised person**” has the meaning given to that term in section 33;

“**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;

“**Estimates and Financial Operations Committee**” means the Estimates and Financial Operations Committee of the Legislative Council or such other committee determined by the Legislative Council to be the responsible committee for the purposes of this Act;

“**independent auditor**” has the meaning given to that term in section 38(2);

“**Joint Standing Committee on Audit**” means the Joint Standing Committee on Audit or, if it is renamed, that committee as renamed;

“**OAG**” means the department of the Public Service known as the Office of the Auditor General;

“**Public Accounts Committee**” means the Public Accounts Committee of the Legislative Assembly or, if it is renamed, that committee as so renamed;

“**public service officer**” has the meaning given to that term in the *Public Sector Management Act 1994* section 3(1);

“**related entity**” has the meaning given to that term in section 17(1).

- (2) If this Act uses a term that is used in the *Financial Management Act 2006*, the term has the same meaning in this Act as it has in that Act unless the contrary intention appears in this Act.

- (3) Without limiting subsection (2), in this Act —

“**accountable authority**” and “**agency**” have the meanings given to those terms in the *Financial Management Act 2006* section 3;



“**subsidiary body**”, in relation to an agency, has the meaning given to that term in the *Financial Management Act 2006* section 60(1).

**5. Functions under other written laws**

- (1) A reference in this Act to the Auditor General’s functions includes a reference to functions given to the Auditor General under other written laws.
- (2) The provisions of this Act extend to audits that the Auditor General is authorised to carry out under other written laws.

**Part 2 — The Auditor General and Deputy Auditor General**

**6. Auditor General**

- (1) There is to continue to be an office of Auditor General for Western Australia.
- (2) Whenever a vacancy occurs in the office of Auditor General, an appropriately qualified person is to be appointed to the office under Schedule 1 as soon as practicable.

**7. Status and independence of Auditor General**

- (1) The Auditor General is an independent officer of Parliament.
- (2) The functions of the Auditor General are as specified in this Act and other written laws and there are no implied functions arising from the Auditor General being an independent officer of Parliament.
- (3) The powers of Parliament to act in relation to the Auditor General are as specified in or applying under this Act and other written laws and there are no implied powers of Parliament arising from the Auditor General being an independent officer of Parliament.
- (4) In subsection (3) —  
“**Parliament**” includes —
  - (a) each House of Parliament; and
  - (b) the members of each House of Parliament; and
  - (c) the committees of each House of Parliament and joint committees of both Houses of Parliament.
- (5) The Auditor General is authorised and required to act independently in relation to the performance of the functions of the Auditor General and, subject to this Act and other written laws, has complete discretion in the performance of those functions.

- (6) In particular, the Auditor General is not subject to direction from anyone in relation to —
  - (a) whether or not a particular audit is to be conducted; or
  - (b) the way in which a particular audit is to be conducted; or
  - (c) whether or not a particular report is to be made; or
  - (d) what is to be included in a particular report; or
  - (e) the priority to be given to any particular matter.

**8. Auditor General to have regard to audit priorities of Parliament**

Despite section 7(6)(e), the Auditor General must have regard to the audit priorities of Parliament as determined by —

- (a) either House of Parliament; or
- (b) the Public Accounts Committee; or
- (c) the Estimates and Financial Operations Committee.

**9. Application of *Public Sector Management Act 1994* limited**

- (1) The office of Auditor General is not an office in the Public Service.
- (2) The *Public Sector Management Act 1994* sections 21(1)(e) and (g) to (i), 24 and 32 do not apply to or in relation to the Auditor General.
- (3) The *Public Sector Management Act 1994* Parts 3, 5 and 6 apply to and in relation to the Auditor General to the extent, and only to the extent, provided in section 4(6) of that Act.

**10. Deputy Auditor General**

- (1) In the OAG there is to be an office designated Deputy Auditor General.
- (2) The Deputy Auditor General is to perform such functions as the Auditor General directs.

**11. General provisions as to Auditor General**

Schedule 1 sets out provisions as to appointment, conditions of service, acting arrangements and other matters relating to the Auditor General.

**Part 3 — Auditing and other functions of Auditor General**

**Division 1 — Functions as to the State, agencies, subsidiary bodies and related entities**

**12. Audit of the Public Ledger**

The Auditor General is to audit the Public Ledger.

**13. Audit and opinion on Annual Report on State Finances**

- (1) The Auditor General is to audit the Annual Report on State Finances submitted by the Treasurer under the *Government Financial Responsibility Act 2000* section 14B(1).
- (2) The *Government Financial Responsibility Act 2000* section 14B(2) applies in respect of the audit carried out under subsection (1).

**14. Audits of accounts of agencies**

- (1) The Auditor General is to audit the accounts of an agency at least once in respect of each financial year.
- (2) Despite subsection (1), the Auditor General may dispense with all or any part of an audit of the accounts of an agency in respect of a financial year if the Auditor General considers that the dispensation is appropriate in the circumstances.
- (3) The Auditor General must consult with the Treasurer before exercising the power conferred by subsection (2).
- (4) If the Auditor General exercises the power conferred by subsection (2), the Auditor General must notify the Public Accounts Committee and the Estimates and Financial Operations Committee.
- (5) The power conferred by subsection (2) cannot be exercised in respect of 3 consecutive financial years of an agency.

**15. Audits and opinions on financial statements and related information as to agencies**

- (1) The Auditor General is to audit the financial statements, key performance indicators and other information submitted by agencies under the *Financial Management Act 2006* section 63(1).
- (2) Subsection (1) does not apply to an agency in respect of a financial year for which the audit of its accounts has been dispensed with under section 14(2).
- (3) The Auditor General is to prepare and sign an opinion on an audit carried out under subsection (1), and is to state whether in the Auditor General's opinion —

- (a) the financial statements are based on proper accounts and present fairly the operating results and cash flows for the period under review and the financial position at the end of that period; and
  - (b) the controls exercised by the agency are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions; and
  - (c) the key performance indicators are relevant and appropriate to assist users to assess the agency's performance and fairly represent indicated performance for the period under review.
- (4) In subsection (3)(b) —  
**“controls”** exercised by an agency means the policies and procedures that have been established for the governance and management of the agency by those charged with that governance and management and other staff of the agency.
- (5) The Auditor General is to provide the opinion prepared and signed under subsection (3) to the agency's Minister and give a copy to the accountable authority of the agency.

**16. Audits of accounts of certain subsidiary bodies**

- (1) In this section —  
**“foreign subsidiary”** means a subsidiary body that is —
- (a) a company within the meaning of the Corporations Act that is not taken to be registered in this State; or
  - (b) otherwise formed or incorporated under the law of another State or a Territory or of a place other than a State or Territory;
- “local subsidiary”** means any subsidiary body that is not a foreign subsidiary.
- (2) If an agency has a local subsidiary that has power to appoint an auditor, the agency must exercise its control over the local subsidiary so as to ensure that the local subsidiary appoints the Auditor General as its auditor.
- (3) The Auditor General is to audit the accounts and financial statements of a local subsidiary that has appointed the Auditor General as its auditor under subsection (2).
- (4) For the purposes of subsection (3) the Auditor General may accept appointment under the Corporations Act as the auditor of a local subsidiary.

- (5) For the purposes of performing an audit of a local subsidiary referred to in subsection (2), the powers and duties conferred and imposed on the Auditor General under this Act are in addition to the powers and duties conferred and imposed under the Corporations Act or any other written law in relation to the audit.
- (6) If an agency has a foreign subsidiary that has power to appoint an auditor the agency must exercise its control over the foreign subsidiary so as to ensure that —
  - (a) the foreign subsidiary appoints as its auditor a person nominated by the Auditor General; and
  - (b) the person appointed as auditor carries out such audits, and makes such reports to the accountable authority of the agency, as the Auditor General requests.
- (7) The accountable authority of the agency must transmit any report received under subsection (6)(b) to the Auditor General.

**17. Audits of accounts of related entities**

- (1) If an agency performs any of its functions in one or more of the following ways —
  - (a) in partnership or jointly with another person or body;
  - (b) through the instrumentality of another person or body;
  - (c) by means of a trust,the accountable authority of the agency must give written notice of that fact to the Auditor General, and the person, body or trust is referred to as a “**related entity**” of the agency.
- (2) The Auditor General may audit the accounts and financial statements of a related entity of an agency to the extent that they relate to functions that are being performed by the related entity —
  - (a) on behalf of the agency; or
  - (b) in partnership or jointly with the agency; or
  - (c) as the delegate or agent of the agency.
- (3) Subsection (2) does not limit the operation of section 16(3).

**18. Examinations and investigations**

- (1) In this section —

“**audited local subsidiary**” means a local subsidiary that has appointed the Auditor General as its auditor under section 16(2).
- (2) The Auditor General may at any time carry out an examination or investigation for one or more of the following purposes —

- (a) examining the accounting and financial management information systems of the Treasurer or an agency to determine their effectiveness in achieving or monitoring programme results;
- (b) investigating any matter relating to the accounts of the Treasurer, an agency or an audited local subsidiary;
- (c) investigating any matter relating to public money, other money or statutory authority money or to public property or other property;
- (d) examining an agency's compliance with legislative provisions, public sector policies or its own internal policies;
- (e) examining the efficiency and effectiveness of an agency, a number of agencies, a part of an agency or an audited local subsidiary;
- (f) examining the efficiency and effectiveness with which a related entity of an agency performs functions —
  - (i) on behalf of the agency; or
  - (ii) in partnership or jointly with the agency; or
  - (iii) as the delegate or agent of the agency.

**19. Audits at the request of the Treasurer**

- (1) The Auditor General may audit any accounts that the Treasurer requests the Auditor General to audit.
- (2) Without limiting subsection (1), where a grant or advance of moneys is made by the Government to a person for specific purposes, the Treasurer may request the Auditor General to audit the accounts of that person to ascertain whether the moneys granted or advanced have been expended in accordance with the purposes of the grant or advance.

**20. Audits at the request of committees of Parliament**

The Auditor General may carry out any audit that the Public Accounts Committee or the Estimates and Financial Operations Committee requests the Auditor General to carry out.

**21. Audit fees**

- (1) The Auditor General is to determine whether a fee is to be charged for an audit carried out by the Auditor General under this Division and, if so —
  - (a) the amount of that fee; and
  - (b) the person or body who or which is liable to pay that fee.

- (2) A fee determined under subsection (1)(a) is to be paid by the person or body determined under subsection (1)(b).

**Division 2 — Other audits, services and functions**

**22. Audits and other services by arrangement**

- (1) The Auditor General may enter into an arrangement with any person or body —
  - (a) to carry out an audit for or in relation to the person or body; or
  - (b) to provide services to a person or body that are of a kind commonly performed by auditors.
- (2) The Auditor General may carry out audits and provide services under an arrangement under subsection (1).
- (3) An arrangement under subsection (1) may provide for the payment of fees to the Auditor General in respect of the audit or services.
- (4) Section 30(b) and Part 4 Division 2 do not apply in relation to an audit carried out under this section.

**23. Provision of advice or information**

- (1) In this section —  
“**Auditor General’s responsibilities**” means —
  - (a) the Auditor General’s functions; and
  - (b) any matter that the Auditor General could consider when performing those functions.
- (2) The Auditor General may provide advice or information to a person or body relating to the Auditor General’s responsibilities if, in the Auditor General’s opinion, the provision of the information or advice —
  - (a) would be in the State’s interests; and
  - (b) would not compromise the Auditor General’s independence.
- (3) The Auditor General may determine that a fee determined by the Auditor General is payable to the Auditor General by a person or body to whom advice or information is provided under subsection (2).

**Division 3 — Reporting to Parliament**

**24. Reports on performance of functions generally**

- (1) At least once in each year the Auditor General is to prepare, sign and submit to both Houses of Parliament a report on matters arising out of the performance of the Auditor General’s functions

that are, in the opinion of the Auditor General, of such significance as to require reporting in that manner.

- (2) Without limiting subsection (1), in a report under that subsection the Auditor General —
  - (a) is to draw attention to any case in which the functions of accountable authorities were not adequately and properly performed; and
  - (b) is to include particulars of any major change of approach made by the Auditor General in relation to the extent or character of the audit function; and
  - (c) is to include an opinion as to whether a decision by a Minister not to provide information to Parliament concerning any conduct or operation of an agency is reasonable and appropriate.
- (3) Within 14 days after signing a report under subsection (1), the Auditor General is to transmit it to both Houses of Parliament if Parliament is then in session and sitting.
- (4) If Parliament is not in session and sitting when the Auditor General signs a report under subsection (1), the Auditor General is to —
  - (a) transmit a copy of the report to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council; and
  - (b) make the report available to the public,within 14 days after signing the report.

**25. Report on an examination or investigation**

- (1) The Auditor General may prepare and sign a report on an examination or investigation carried out under section 18 and may submit the report to —
  - (a) both Houses of Parliament; or
  - (b) the Public Accounts Committee and the Estimates and Financial Operations Committee.
- (2) Before signing a report proposed to be submitted under subsection (1), the Auditor General must —
  - (a) give a summary of findings to the Treasurer, agency or audited local subsidiary, as the case may be, and any other person who, in the Auditor General's opinion, has a special interest in the report; and
  - (b) by written notice, invite the Treasurer, the accountable authority of the agency, the audited local subsidiary or that other person, as the case may be, to make



submissions or comments on the content of the summary of findings before a specified day, being not more than 14 days after the summary of findings is given to the Treasurer, agency, audited local subsidiary or person.

- (3) The Auditor General must include in a report prepared under subsection (1) any submissions or comments made under subsection (2) before the specified day, or a fair summary of them.
- (4) If Parliament is not in session and sitting when the Auditor General signs a report under subsection (1), the Auditor General may transmit a copy of the report to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council.

**26. Reports transmitted to Clerks**

- (1) A copy of a report transmitted to the Clerk of a House of Parliament under section 24(4) or 25(4) is taken to have been laid before the House.
- (2) The laying of a copy of a report before a House that is taken to have occurred under subsection (1) is to be reported to the House by the Clerk, and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House after the receipt of the copy.

**Part 4 — Powers and duties of Auditor General**

**Division 1 — Powers and duties generally**

**27. Powers**

The Auditor General has all the powers that are needed for the performance of the Auditor General's functions.

**28. Duties of Auditor General as to audits**

- (1) The Auditor General is to carry out an audit in such manner as the Auditor General thinks fit having regard to —
  - (a) Auditing and Assurance Standards; and
  - (b) the character and effectiveness of the internal control and internal audit of the relevant agency, person or body.
- (2) In carrying out an audit the Auditor General is to consider whether the requirements of relevant enactments have been complied with.

**29. Auditor General may appoint person to audit**

- (1) The Auditor General may, in writing, appoint a public service officer or some other person, whether corporate or unincorporate, to carry out all or a part of an audit.

- (2) A person appointed under subsection (1) must report on completion of the audit to the Auditor General.
- (3) The fee payable to a person appointed under subsection (1) who is not a public service officer is to be fixed by the Auditor General.

**30. Power to obtain opinion**

The Auditor General is entitled to submit to the State Solicitor —

- (a) a question concerning the functions of the Auditor General; or
- (b) a question of law relating to an audit,

and the State Solicitor is to give the Auditor General a written opinion on the question.

**31. Delegation by Auditor General**

- (1) The Auditor General may delegate to a member of the staff of OAG any power or duty of the Auditor General under —
  - (a) a provision of this Act, other than this section or section 24, 25 or 34(1); or
  - (b) another written law.
- (2) If a person has been appointed under section 29(1) to carry out all or a part of an audit, the Auditor General may delegate to that person any power or duty of the Auditor General under —
  - (a) a provision of this Act, other than this section or section 24, 25, 29(1) or 34(1); or
  - (b) another written law,in relation to that audit.
- (3) A delegation under this section must be by written notice signed by the Auditor General.
- (4) A person to whom a power or duty is delegated in accordance with this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person in accordance with this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section limits the ability of the Auditor General to perform a function through an officer or agent.

**32. Powers and duties under other written laws**

The Auditor General's powers and duties under this Part are in addition to the Auditor General's powers and duties under other written laws.

**Division 2 — Information gathering powers**

**33. Auditor General may authorise people to perform functions**

The Auditor General may, by written notice, authorise a person (an “**authorised person**”) to perform functions under this Division.

**34. Power to obtain information**

- (1) For the purpose of an audit the Auditor General may, by written notice, direct a person to do all or any of the following —
  - (a) to provide the Auditor General with any information or explanation that the Auditor General requires;
  - (b) to attend and give evidence before the Auditor General or an authorised person;
  - (c) to produce to the Auditor General any documents in the custody or under the control of the person.
- (2) The Auditor General may direct that —
  - (a) the information, explanation or answers to questions be given either orally or in writing (as the Auditor General requires);
  - (b) the information, explanation or answers to questions be verified or given on oath or affirmation that the information or evidence the person will give will be true.
- (3) The Auditor General or an authorised person may administer an oath or affirmation for the purposes of this section.
- (4) A person who, without reasonable excuse, fails to comply with a direction under this section within 14 days of receiving it commits an offence.  
Penalty: a fine of \$50 000.
- (5) The regulations may prescribe scales of expenses to be allowed to persons who are required to attend under this section.

**35. Access to accounts, information, money and property**

- (1) In this section —

“**premises**” means any land or place;

“**written authority**”, in relation to an authorised person, means a written notice signed by the Auditor General that states that the person is authorised to exercise powers under this Division.
- (2) For the purpose of an audit the Auditor General, or an authorised person, is entitled to full and free access at all reasonable times to —

- (a) all accounts, information, documents, systems and records that the Auditor General considers to be relevant to the audit; or
- (b) public money, other money or statutory authority money; or
- (c) public property or other property,

that is or are in the possession of any person and the Auditor General, or an authorised person, may make copies of or take extracts from any of the accounts, information, documents and records.

- (3) For the purpose of subsection (2) the Auditor General may cause a search to be made in, and extracts to be taken from, anything in the custody of the Treasurer or in any office of an agency, without paying any fee for doing so.
- (4) Subject to subsection (6), the Auditor General or an authorised person may, at all reasonable times, enter and remain on any premises in order to exercise powers under this section.
- (5) If an authorised person enters, or proposes to enter, premises under this section, the occupier must provide the authorised person with all reasonable facilities for the effective exercise of powers under this section.  
Penalty: a fine of \$50 000.
- (6) An authorised person is not entitled to enter or remain on premises if the authorised person fails to produce a written authority on being asked by the occupier to produce proof that the entry is authorised.

**36. Duty to give information overrides other duties and rights**

- (1) A person is not excused from giving information or an explanation, answering a question or producing a document under section 34 on the ground that the information, explanation or answer, or the production of the document, might tend to incriminate the person.
- (2) A person must give information or an explanation, answer a question or produce a document as required under section 34 despite any duty of secrecy or confidentiality that the person has under another written law, and the person does not commit an offence under another written law by doing so.
- (3) If a person gives information or an explanation, answers a question or produces a document under section 34, neither —
  - (a) the giving of the information or explanation, answering of the question or production of the document; nor

- (b) anything obtained as a direct or indirect result of the giving of the information or explanation, answering of the question or production of the document,  
is admissible in evidence against that person in any civil or criminal proceedings except —
  - (c) proceedings for an offence against this Division; or
  - (d) proceedings under *The Criminal Code* Chapter XX.
- (4) Despite subsection (3), the person may, in any civil or criminal proceedings, be asked about an answer under the *Evidence Act 1906* section 21.

**37. Powers extend to confidential information**

- (1) The provisions of this Division extend to information that is the subject of a notice under the *Financial Management Act 2006* section 82(1).
- (2) If the Minister decides that it would not be in the public interest for information mentioned in subsection (1) to be disclosed and advises the Auditor General of that decision, the Auditor General is not to include the information in a report to Parliament.

**Part 5 — Independent auditing of the OAG**

**38. Appointment of independent auditor for the OAG**

- (1) The Auditor General is not to carry out audits under Part 3 Division 1 in relation to the OAG.
- (2) The Governor may appoint an auditor who is a registered company auditor under the Corporations Act (the “**independent auditor**”) to carry out audits in relation to the OAG.

**39. Audits of accounts of the OAG**

The independent auditor is to audit the accounts of the OAG at least once in respect of each financial year.

**40. Audits and opinions on financial statements and related information as to the OAG**

- (1) The independent auditor is to audit the financial statements, key performance indicators and other information submitted by the OAG under the *Financial Management Act 2006* section 63(1).
- (2) The independent auditor is to prepare and sign an opinion on an audit carried out under subsection (1), and is to state whether in the independent auditor’s opinion —
  - (a) the financial statements are based on proper accounts and present fairly the operating results and cash flows for the

period under review and the financial position at the end of that period; and

- (b) the controls exercised by the OAG are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities have been in accordance with legislative provisions; and
  - (c) the key performance indicators are relevant and appropriate to assist users to assess the OAG's performance and fairly represent indicated performance for the period under review.
- (3) In subsection (2)(b) —  
“controls” exercised by the OAG means the policies and procedures that have been established for the governance and management of the OAG by the Auditor General and other staff of the OAG.
- (4) The independent auditor is to provide the opinion prepared and signed under subsection (2) to the Auditor General.

**41. Duties of independent auditor as to audits**

The independent auditor is to carry out an audit under this Part in accordance with Auditing and Assurance Standards.

**42. Audit fees for independent auditor**

The independent auditor is entitled to receive a fee to be determined by the Treasurer for carrying out an audit under this Part.

**Part 6 — Miscellaneous**

**43. Joint Standing Committee on Audit**

The Houses of Parliament are to establish a Joint Standing Committee on Audit comprising an equal number of members appointed by each House.

**44. Recommendations by the Joint Standing Committee on Audit**

- (1) In the determination of the budget of the OAG for a financial year regard is to be had to any recommendation as to that budget made to the Treasurer by the Joint Standing Committee on Audit.
- (2) Regard is to be had to any recommendation as to organisational structure or resources of the OAG made by the Joint Standing Committee on Audit.

**45. Protection from liability**

- (1) No action or claim for damages lies against —
  - (a) the Auditor General; or
  - (b) any person acting on behalf of, or with the authority of, the Auditor General; or
  - (c) the independent auditor,  
for or on account of anything done or omitted, or ordered or authorised to be done or omitted —
    - (d) under, or apparently under, this Act or any other written law; or
    - (e) for the purpose, or apparently for the purpose, of giving effect to this Act or any other written law.
- (2) Subsection (1) does not apply if it is proved that the thing was done or omitted, or ordered or authorised to be done or omitted, maliciously and without reasonable and probable cause.

**46. Information confidential**

- (1) Subsection (2) applies to a person who is or has been —
  - (a) the Auditor General; or
  - (b) a person employed in the OAG; or
  - (c) a person appointed to assist the Auditor General in respect of a particular matter; or
  - (d) the independent auditor.
- (2) A person to whom this subsection applies must preserve confidentiality with respect to all matters that come to the person's knowledge in the course of employment or duties under this Act or another written law and must not communicate any information as to matters of that kind to any person, except as may be required in connection with —
  - (a) the administration of this Act or that other written law; or
  - (b) any proceedings under this Act, that other written law or *The Criminal Code*.

Penalty: a fine of \$50 000.
- (3) Subsection (2) does not apply to the communication of information to —
  - (a) the Joint Standing Committee on Audit; or
  - (b) the Public Accounts Committee; or
  - (c) the Estimates and Financial Operations Committee.

- (4) A person to whom a summary of findings is given under section 25 must preserve confidentiality with respect to all matters that are in the summary of findings and must not —
- (a) communicate any information as to those matters to any person; or
  - (b) copy or reproduce any part of the summary of findings,
- except as may be necessary in connection with making submissions or comments to the Auditor General under that section or obtaining legal advice as to those matters.
- Penalty: a fine of \$50 000.

**47. Regulations**

The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act.

**48. Review of Act**

- (1) The Joint Standing Committee on Audit is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after —
- (a) the fifth anniversary of its commencement; and
  - (b) the expiry of each 5 yearly interval after that anniversary.
- (2) In the course of a review under subsection (1) the Joint Standing Committee on Audit is to consider and have regard to —
- (a) whether there is a need for this Act to continue; and
  - (b) how the process for appointing an Auditor General has operated in practice; and
  - (c) whether the Auditor General's information gathering powers are adequate, particularly in relation to claims of legal professional privilege and Cabinet documents; and
  - (d) the impact of any exercise of the power to audit certain accounts of related entities; and
  - (e) the efficiency and effectiveness of the provisions for dealing with confidential information; and
  - (f) any other matters that appear to the Joint Standing Committee on Audit to be relevant to the operation and effectiveness of this Act.
- (3) For the purposes of subsection (1), the Joint Standing Committee on Audit is to appoint a suitably qualified person (the “reviewer”) to conduct a review (a “**performance and legislative review**”) as to such matters relating to —



- (a) the operation and effectiveness of this Act; and
  - (b) the performance of the Auditor General's functions by the Auditor General and the OAG,as are within the terms of reference given to the reviewer by the Joint Standing Committee on Audit.
- (4) The Joint Standing Committee on Audit is to consult with the Auditor General before appointing the reviewer and determining the terms of reference to be given to the reviewer.
- (5) The reviewer is to carry out a performance and legislative review and is to prepare a report based on that review and provide it to the Joint Standing Committee on Audit.
- (6) Before providing the report the reviewer must —
  - (a) give a summary of the findings of the performance and legislative review to the Auditor General; and
  - (b) by written notice invite the Auditor General to make submissions or comments on the summary of findings before a specified day, being —
    - (i) not more than 14 days after the summary of findings is given to the Auditor General; and
    - (ii) before the report is provided to the Joint Standing Committee on Audit.
- (7) The reviewer must include in the report any submissions or comments made under subsection (6) before the specified day, or a fair summary of them.
- (8) The Joint Standing Committee on Audit is to prepare a report based on a review under subsection (1) and, as soon as is practicable after the report is prepared, is to cause it to be laid before the Legislative Council and the Legislative Assembly.
- (9) The Joint Standing Committee on Audit may adopt the report provided to it by the reviewer, in whole or in part and with or without modifications, as part of the report under subsection (8).

### **Part 7 — Transitional and saving**

#### **49. Incumbent Auditor General remains in office**

- (1) In this section —  
“**former office**” means the office of Auditor General under the *Financial Administration and Audit Act 1985*.
- (2) Despite Schedule 1 clause 1, if a person held the former office immediately before the commencement of this Act (other than in an acting capacity), that person is entitled to hold office as Auditor

General in accordance with Schedule 1 until the person reaches 65 years of age.

- (3) Subsection (2) does not apply if the person resigned from the former office with effect immediately before the commencement of this Act.
- (4) If a person holding office under subsection (2) is able and willing to continue as Auditor General, the Governor may authorise the person to continue to hold office as Auditor General in accordance with this Part after reaching 65 years of age for a period not exceeding 12 months determined by the Governor.
- (5) The *Financial Administration and Audit Act 1985* section 73 continues to apply to a person holding office under subsection (2) or (4).

**50. Savings of appointments of persons to audit**

An appointment made under a written law or by the Auditor General under the *Financial Administration and Audit Act 1985*, and subsisting immediately before the commencement of this Act, of a person to carry out all or part of an audit is to be regarded as having been made by the Auditor General under section 29.

**Schedule 1 — General provisions as to Auditor General**

[s. 6(2), 11 and 49(2)]

**1. Appointment of Auditor General**

- (1) The Auditor General is to be appointed by the Governor on the recommendation of the Minister, and is to hold office as Auditor General in accordance with this Schedule.
- (2) Before applications are sought for appointment to the office of Auditor General, the Minister must consult with the Public Accounts Committee and the Estimates and Financial Operations Committee as to the appropriate criteria for selection for appointment.
- (3) Before making a recommendation under subclause (1), the Minister must consult with the parliamentary leader of each political party with party status within Parliament and with the Public Accounts Committee and the Estimates and Financial Operations Committee.
- (4) Subject to this Act, a person appointed as Auditor General holds office for a term of 10 years.

- (5) A person cannot be appointed as Auditor General if the person has previously been appointed as Auditor General under this Act or the *Financial Administration and Audit Act 1985*.
- (6) Before performing the functions of Auditor General for the first time, the Auditor General must make a declaration in the form in Schedule 2 before the Governor.

**2. Remuneration**

- (1) In this clause —  
“**remuneration**” has the meaning given to that term in the *Salaries and Allowances Act 1975* section 4(1).
- (2) The remuneration of the Auditor General is to be determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.
- (3) The rate of remuneration of the Auditor General must not be reduced during the term of office of the Auditor General without the Auditor General’s consent.

**3. Other employment**

The Auditor General must not, except so far as authorised so to do by another enactment or by resolutions of both Houses of Parliament —

- (a) hold any office or place referred to in the *Constitution Acts Amendment Act 1899* Schedule V Part 1 or 2 (other than the office of Auditor General) or be a member of, or of the governing body of, any commission, council, board, committee, authority, trust or other body referred to in Part 3 of that Schedule; or
- (b) engage in any paid employment outside the duties of the office of Auditor General.

**4. Leave and other conditions of service**

- (1) The Governor may determine —
  - (a) the leave of absence to which the Auditor General is entitled; and
  - (b) other terms and conditions of service that apply to the Auditor General.
- (2) Subject to any determination under subclause (1), the Auditor General is entitled to leave of absence and other conditions of service as applicable to public service officers.

**5. Rights of officers preserved**

- (1) If a person who is a public service officer is appointed as Auditor General, the person is entitled to retain any accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938*, as if service as Auditor General were a continuation of service as a public service officer.
- (2) If a person ceases to be Auditor General and becomes a public service officer, the service as Auditor General is to be regarded as service in the Public Service for the purposes of determining the person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.
- (3) If—
  - (a) a person immediately before appointment as Auditor General occupied an office under the *Public Sector Management Act 1994* Part 3; and
  - (b) the person's term of office expires by effluxion of time,the person is entitled to be appointed to an office under the *Public Sector Management Act 1994* Part 3 of at least the equivalent level of classification as the office that the person occupied immediately before appointment as Auditor General.

**6. Resignation of Auditor General**

The Auditor General may resign from office by giving the Governor a signed letter of resignation.

**7. Removal and suspension from office**

- (1) The Auditor General may, at any time, be removed or suspended from office by the Governor on addresses from both Houses of Parliament.
- (2) If the Auditor General has been suspended from office under subclause (1), the suspension has effect until the Auditor General is restored to or removed from office by the Governor on addresses from both Houses of Parliament.
- (3) Despite subclause (1), the Governor may suspend the Auditor General from office if the Governor is satisfied that the Auditor General—
  - (a) is incapable of performing the functions of the Auditor General properly; or
  - (b) has performed the functions of the Auditor General incompetently or has neglected to perform those functions; or
  - (c) has been guilty of misconduct; or

- (d) has contravened clause 3; or
  - (e) is an insolvent under administration as defined in the Corporations Act section 9.
- (4) Either House of Parliament may order the Joint Standing Committee on Audit to inquire into and report on any motion for suspension or removal of the Auditor General.
- (5) If the Auditor General has been suspended from office under subclause (3), the Auditor General is restored to office by operation of this subclause if —
- (a) by the end of the seventh sitting day of a House of Parliament following the day of the suspension, a full statement of the grounds of the suspension has not been laid before that House; or
  - (b) by the end of the relevant day for a House of Parliament, that House has not passed an address requesting the removal of the Auditor General from office.
- (6) In subclause (5)(b) —
- “**relevant day**” for a House of Parliament means —
- (a) the 30th sitting day of that House following the day on which the statement referred to in subclause (5)(a) is laid before it; or
  - (b) the last day of the session during which the statement referred to in subclause (5)(a) is laid before that House, if that session ends before the sitting day referred to in paragraph (a).
- (7) The *Interpretation Act 1984* section 52 does not apply to the office of Auditor General.

**8. Acting Auditor General**

- (1) The Governor on the recommendation of the Minister may appoint an appropriately qualified person as an Acting Auditor General to act in the office of Auditor General during a period when —
- (a) that office is vacant; or
  - (b) the Auditor General is absent from duty, suspended from that office under clause 7 or unable to perform the functions of that office for any other reason.
- (2) Before making a recommendation under subclause (1), the Minister must consult with the parliamentary leader of each political party with party status within Parliament and with the Public Accounts Committee and the Estimates and Financial Operations Committee.

- (3) Before performing the functions of Auditor General for the first time, an Acting Auditor General must make a declaration in the form in Schedule 2 before the Governor.
- (4) While an Acting Auditor General is acting in the office of Auditor General —
  - (a) the Acting Auditor General is to perform all the functions of the Auditor General and any act or thing done by the Acting Auditor General in that performance has the like effect as if it were done by the Auditor General; and
  - (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Auditor General is taken to be effectually done if done to, by reference to or in relation to the Acting Auditor General; and
  - (c) the Acting Auditor General has the same immunities and independence as the Auditor General.
- (5) Clauses 2 to 7 apply to an Acting Auditor General.

**9. Deputy Auditor General, or acting Deputy Auditor General, may act as Auditor General**

- (1) In this clause —  
“**Deputy Auditor General**” means the person holding the office referred to in section 10(1).
- (2) Subject to subclauses (3) and (4), the Deputy Auditor General is to act in the office of Auditor General during any period when —
  - (a) that office is vacant; or
  - (b) the Auditor General is absent from duty, suspended from office under clause 7 or unable to perform the functions of Auditor General for any other reason.
- (3) Subject to subclause (4), if during a period mentioned in subclause (2) —
  - (a) the office referred to in section 10(1) is vacant; or
  - (b) the Deputy Auditor General is absent from duty or unable to perform the functions of Auditor General for any other reason,  
  
the person who would otherwise act in the office referred to in section 10(1) is to act in the office of Auditor General.
- (4) If an Acting Auditor General has been appointed under clause 8 for a period mentioned in subclause (2), subclauses (2) and (3) do not apply in respect of that period unless the Acting Auditor General is absent from duty, suspended from office under clause 7

or unable to perform the functions of Auditor General for any other reason.

- (5) While a person is acting in the office of Auditor General under subclause (2) or (3) —
  - (a) the person is to perform all the functions of the Auditor General and any act or thing done by the person in that performance has the like effect as if it were done by the Auditor General; and
  - (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Auditor General is taken to be effectually done if done to, by reference to or in relation to the person; and
  - (c) the person has the same immunities and independence as the Auditor General.
- (6) Anything done by or in relation to a person purporting to act in the office of Auditor General under subclause (2) or (3) is not invalid merely because the occasion to act had not arisen or had ceased.
- (7) Before performing the functions of the Auditor General for the first time under subclause (5)(a), a person must make a declaration in the form in Schedule 2 before the Governor.

**Schedule 2 — Form of declaration**

[Sch. 1 cl. 1(6), 8(3) and 9(7)]

I, ....., 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 functions of Auditor General according to law.

.....  
(Signature of declarant)

.....  
(Date)

”