

AUSTRALIAN CAPITAL TERRITORY

Audit Ordinance 1989

No. 37 of 1989

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AUSTRALIAN CAPITAL TERRITORY

Audit Ordinance 1989

No. 37 of 1989

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 9 May 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to provide for the collection and payment of the public moneys, the audit of the public accounts and the protection and recovery of public property, and for other purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Audit Ordinance 1989*.¹

Commencement

2. (1) Section 1 and this section commence on the day on which this Ordinance is notified in the *Gazette*.

(2) Divisions 1 and 2 of Part II commence on such date as is fixed by the Minister by notice in the *Gazette*.

(3) The remaining provisions commence on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—

“accounting officer” means a person who—

- (a) is charged with the duty of collecting, receiving or accounting for, or collects, receives or accounts for, public moneys;
- (b) is charged with the duty of disbursing, or disburses, public moneys; or
- (c) is charged with the receipt, custody or disposal of, or the accounting for, stores or receives, has in his or her custody, disposes of or accounts, for stores;

“administrative unit” means—

- (a) a unit of the public service referred to in paragraph 54 (2) (a) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth; or
- (b) a prescribed authority;

“Assembly” means the Legislative Assembly;

“Auditor-General” means—

- (a) before the date of commencement of Divisions 1 and 2 of Part II—the Auditor-General for the Commonwealth; and
- (b) on and after that date—the Auditor-General for the Territory appointed under section 6;

“Australian Audit Office” means the branch of the Australian Public Service under the direct control of the Auditor-General for the Commonwealth;

“Consolidated Fund” means the Consolidated Revenue Fund;

“information storage device” means—

- (a) a computer;
- (b) papers or other materials on which there are marks, symbols, perforations or other indicators having a meaning for persons qualified to interpret them;
- (c) a disc, tape or other device on which information may be stored; or
- (d) a device, whether electronic or otherwise, capable of storing information;

“officer” means—

- (a) a public servant; or
- (b) a person who—
 - (i) constitutes, or is acting as a person constituting, a prescribed authority;
 - (ii) is, or is acting as, a member of a prescribed authority or is a deputy of such a member; or
 - (iii) is employed by a prescribed authority;

“prescribed authority” means a body, whether incorporated or not, established for a public purpose by or under a law of the Territory, being a body—

- (a) that is declared by the regulations to be a prescribed authority for the purposes of this Ordinance; or
- (b) that is included in a class of bodies so established declared by the regulations to be a class of prescribed authorities for the purposes of this Ordinance;

“public moneys” means—

- (a) revenue, loan, trust and other moneys received or held by any person for or on behalf of the Territory or a prescribed authority; and
- (b) all moneys forming part of the Consolidated Fund or the Trust Fund;

“State” includes the Northern Territory;

“stores” means chattels the property of, or in the possession or under the control of, the Territory or a prescribed authority;

“Territory authority” means a body, whether incorporated or not—

- (a) established by or under a law of the Territory; or
- (b) otherwise established by the Executive.

(2) In this Ordinance—

- (a) a reference to an Appropriation Act for a financial year shall be read as a reference to a law of the Territory authorising the issuing or spending of public moneys out of the Consolidated Fund for the service of that financial year or for specified expenditure in respect of that financial year; and
- (b) a reference to the appropriation of amounts of money is a reference to the authorisation by a law of the Territory of the issuing or spending of public moneys.

(3) For the purposes of this Ordinance, where a person collects, receives or holds a cheque or other instrument ordering or authorising the payment of moneys, being an instrument of a kind that may be lodged with a bank for the purpose of enabling the bank to collect the moneys so payable and credit those moneys to an account with the bank, the person—

- (a) shall be deemed to have collected or received, or to hold, as the case may be, an amount of moneys equal to the sum so payable; and
- (b) if the moneys so payable would, if they had been collected, received or held by the person as moneys, be public moneys, shall be deemed to have collected or received, or to hold, as the case may be, an amount of public moneys equal to the sum so payable.

(4) In this Ordinance, unless the contrary intention appears, a reference to an efficiency audit of operations of a body or person shall be read as a reference to—

- (a) an examination of the functions performed by, and the operations carried on by, the body or person for the purpose of forming an opinion concerning the extent to which those operations are being carried on in an economical and efficient manner; and
- (b) an examination of the procedures that are followed by the body or person for reviewing operations carried on by the body or person, and an evaluation of the adequacy of those procedures to enable the body

or person to assess the extent to which those operations are being carried on in an economical and efficient manner.

(5) In subsection (4), a reference to a body shall be read as including a reference to an administrative unit.

(6) For the purposes of this Ordinance—

- (a) a provision of this Ordinance authorising the Auditor-General or another person to have free access to, or to search, accounts or records shall be taken to authorise the Auditor-General or other person, in a case where accounts or records are kept by means of an information storage device, to have free access to, or to search, as the case may be, the information contained in the accounts or records, or in such extracts from the accounts or records as the Auditor-General or other person requests—
 - (i) in a form directed by the Auditor-General or other person; or
 - (ii) if the Auditor-General or other person has not given a direction for the purposes of subparagraph (i)—in a form that can be understood by sight;
- (b) a person who is entitled, by or under this Ordinance, to take a copy of, or extracts from, accounts or records is entitled, in a case where accounts or records are kept by means of an information storage device, to take a copy of, or extract from, the information contained in the accounts or records—
 - (i) in a form directed by the person; or
 - (ii) if the person has not given a direction for the purposes of subparagraph (i)—in a form that can be understood by sight;
- (c) a requirement under this Ordinance to produce accounts or records to the Auditor-General or to another person shall be taken to include a requirement to produce, in a case where accounts or records are kept by means of an information storage device, the information contained in the accounts or records, or in such extracts from the accounts or records as the Auditor-General or other person requests—
 - (i) in a form directed by the Auditor-General or other person; or
 - (ii) if the Auditor-General or other person has not given a direction for the purposes of subparagraph (i)—in a form that can be understood by sight; and

- (d) a provision of this Ordinance authorising or requiring the Auditor-General to inspect, examine or audit accounts or records shall, in a case where the accounts or records are kept by means of an information storage device, be taken to include a requirement authorising or requiring the Auditor-General to be provided with the information contained in the accounts or records, or in such extracts from the accounts or records as the Auditor-General requests—
 - (i) in a form directed by the Auditor-General; or
 - (ii) if the Auditor-General has not given a direction for the purposes of subparagraph (i)—in a form that can be understood by sight.

(7) Without limiting the powers of the Auditor-General, or of a person authorised by the Auditor-General, under any other provision of this Ordinance, where the Auditor-General, or a person authorised by the Auditor-General, is entitled, under another provision of this Ordinance, to inspect, examine or audit any accounts or records and those accounts or records are kept by means of an information storage device, the Auditor-General or person so authorised is entitled to be provided with such reasonable facilities for access to that information storage device as he or she deems necessary for the performance of his or her functions under this Ordinance.

Amounts deducted or set off deemed to be received or paid

4. (1) This section applies in relation to the Consolidated Fund and the Trust Fund.

(2) Where an amount payable out of a Fund in relation to which this section applies has been lawfully deducted from, or set off against, an amount payable into that Fund or the other Fund in relation to which this section applies and, by reason of the deduction or set-off, an amount paid into the second-mentioned Fund is less than it would otherwise have been—

- (a) the amount paid into the second-mentioned Fund shall, for the purposes of this Ordinance, be deemed to be the amount that, but for the deduction or set-off, would have been so paid; and
- (b) the amount deducted or set off shall, for the purposes of this Ordinance, be deemed to have been paid out of the first-mentioned Fund for the purpose for which it was so deducted or set off and to have been so paid at the same time as the amount was paid into the second-mentioned Fund.

(3) Where an amount payable into a Fund in relation to which this section applies has been lawfully deducted from, or set off against, an amount payable out of that Fund or the other Fund in relation to which this section applies and, by reason of the deduction or set-off, an amount paid out of the second-mentioned Fund is less than it would otherwise have been—

- (a) the amount paid out of the second-mentioned Fund shall, for the purposes of this Ordinance, be deemed to be the amount that, but for the deduction or set-off, would have been so paid; and
- (b) the amount deducted or set off shall, for the purposes of this Ordinance, be deemed to have been paid into the first-mentioned Fund for the purpose for which it was so deducted or set off and to have been so paid at the same time as the amount was paid out of the second-mentioned Fund.

(4) Where—

- (a) an amount payable out of or into a Fund in relation to which this section applies has been lawfully set off against an amount payable into or out of that Fund or the other Fund in relation to which this section applies; and
- (b) by reason of the set-off, no amounts are payable out of or into those Funds;

the amounts that, but for the set-off, would have been paid out of or into those Funds, shall, for the purposes of this Ordinance, be deemed to have been so paid at the time when the set-off took place.

Responsibility of Head of Administration

5. (1) The Head of Administration in control of an administrative unit is responsible for making appropriate arrangements for implementing the provisions of this Ordinance, the regulations and any direction given under this Ordinance or the regulations in relation to that unit.

(2) In subsection (1)—

“Head of Administration” includes an Associate Head of Administration.

PART II—ADMINISTRATION

Division 1—Appointment of Auditor-General

Auditor-General

6. (1) For the purposes of this Ordinance, there shall be an Auditor-General for the Territory.

(2) The Executive shall appoint a person to be the Auditor-General for the Territory.

Term of office

7. (1) A person appointed under section 6 holds office, subject to this Ordinance, for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for reappointment.

(2) A person who has attained the age of 65 years shall not be appointed as Auditor-General and a person shall not be appointed as Auditor-General for a period that extends beyond the day on which the person will attain the age of 65 years.

Remuneration and allowances

8. (1) The Auditor-General shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Auditor-General; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Auditor-General.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal.

Leave of absence

9. The Minister may grant leave of absence to the Auditor-General on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

10. The Auditor-General may resign from office by signed notice given to the Minister.

Retirement

11. The Minister may, with the consent of the Auditor-General, retire the Auditor-General on the ground of physical or mental incapacity.

Suspension and removal from office

12. (1) The Executive may remove the Auditor-General from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Executive by the Assembly.

(2) The Executive may suspend the Auditor-General from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Executive suspends the Auditor-General from office, the Minister shall cause a statement of the grounds of the suspension to be laid before the Assembly within 7 sitting days after the suspension.

(4) Where a statement has been laid before the Assembly under subsection (3), the Assembly may, within 15 sitting days after the day on which the statement has been laid before it, by resolution, declare that the Auditor-General should be removed from office and, if the Assembly so passes such a resolution, the Executive shall remove the Auditor-General from office.

(5) If, at the end of 15 sitting days of the Assembly after the day on which the statement has been laid before it, the Assembly has not passed such a resolution, the suspension terminates.

(6) 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, the Executive shall remove the Auditor-General from office.

(7) If the Auditor-General is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months, the Executive may remove the Auditor-General from office.

(8) The Auditor-General shall not be removed or suspended from office except as provided by this section.

(9) The suspension of the Auditor-General from office does not affect any entitlement of the Auditor-General to be paid remuneration and allowances.

Terms and conditions generally

13. The Auditor-General holds office on such terms and conditions (if any) in relation to matters not provided for by this Ordinance as are prescribed.

Acting appointment

14. (1) The Executive may appoint a person to act as Auditor-General—

- (a) during a vacancy in the office of Auditor-General (whether or not an appointment has previously been made to that office); or
- (b) during any period, or during all periods, when the Auditor-General is or is expected to be absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act in the office of Auditor-General is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Division 2—Staff

Staff

15. The staff required to assist the Auditor-General in the performance of his or her functions shall be public servants.

Division 3—Powers and functions of Auditor-General

Appointment of persons to carry out audits

16. (1) The Auditor-General may, by instrument, appoint a person—

- (a) to inspect, examine and audit any accounts, records or stores that are required by this Ordinance, or by any other Ordinance, to be inspected, examined or audited by the Auditor-General, and to report

the results of an inspection, examination or audit carried out under the appointment to the Auditor-General; or

- (b) to inspect, examine and audit the accounts, records or stores specified in the instrument (being accounts, records or stores that are required by this Ordinance, or by any other Ordinance, to be inspected, examined or audited by the Auditor-General) and to report the results of the inspection, examination or audit to the Auditor-General;

and a person so appointed has, by virtue of the appointment, power to inspect any accounts, records or stores that are required to be so inspected, examined or audited by the Auditor-General or to inspect the accounts, records or stores specified in the instrument, as the case may be.

- (2) The Auditor-General may, by instrument, appoint a person—

- (a) to carry out any efficiency audits of operations of relevant bodies that the Auditor-General is required by this Ordinance, or by any other Ordinance, to carry out, and to report the results of an efficiency audit carried out under the appointment to the Auditor-General;
- (b) to carry out an efficiency audit of the operations, or specified operations, of a specified relevant body, and to report the results of the audit to the Auditor-General;
- (c) to examine the operations or procedures of any relevant body for the purposes of an efficiency audit of the operations of the body that is being, or is to be, carried out by the Auditor-General, and to report the results of the examination to the Auditor-General; or
- (d) to examine, for the purposes of an efficiency audit of the operations of a specified relevant body that is being, or is to be, carried out by the Auditor-General, specified operations or procedures of the body, and to report the results of the examination to the Auditor-General.

- (3) In subsection (2)—

“relevant body” has the same meaning as in Division 2 of Part V.

Reports by Auditor-General to Minister

17. (1) The Auditor-General shall draw to the attention of the Minister such matters arising out of the exercise of his or her powers and the performances of his or her functions under this Ordinance or the regulations (other than the Auditor-General's powers and functions under Division 2 of Part

V) as are, in the opinion of the Auditor-General, of sufficient importance to justify his or her so doing.

(2) Where the Auditor-General is of the opinion that a matter arising out of the exercise of his or her powers or the performance of his or her functions under Division 2 of Part V is of sufficient importance to justify doing so, the Auditor-General shall—

- (a) if the matter arises in connection with the carrying out of an efficiency audit of operations of an administrative unit—draw the matter to the attention of—
 - (i) the Chief Minister;
 - (ii) the Minister; and
 - (iii) the Minister who has responsibility for the administrative unit; or
- (b) if the matter arises in connection with the carrying out of an efficiency audit of operations of another relevant body—draw the matter to the attention of—
 - (i) the Chief Minister;
 - (ii) the Minister; and
 - (iii) the Minister who has responsibility for the administrative unit that is responsible for the matter.

(3) In paragraph (2) (b)—

“relevant body” has the same meaning as in Division 2 of Part V.

Power to require production of records

18. (1) The Auditor-General may, by notice in writing, require a person to attend before the Auditor-General at a reasonable time and place specified in the notice and there to produce such accounts and records in the person's possession or under the person's control as appear to the Auditor-General to be necessary for the purposes of the carrying out of an examination, inspection or audit by the Auditor-General.

(2) The Auditor-General may, without payment of a fee, cause a search to be made in, an inspection or copies to be made of, and extracts to be taken from, any records in the custody of the Minister or in any public office.

Auditor-General may administer oath

19. Where the Auditor-General reasonably believes that a person is able to give information relating to—

- (a) the receipt or expenditure of moneys or the receipt, custody or disposal of stores for a purpose connected with this Ordinance; or
- (b) any other matter or thing to enable the Auditor-General to properly exercise or perform any of the powers, functions or duties of the Auditor-General;

the Auditor-General may examine the person upon oath for that purpose and may, for the purpose, administer an oath.

Persons in relation to whom certain powers may be exercised

20. The Auditor-General may exercise a power under section 18 or 19 in relation to a person whether or not the person—

- (a) is an accounting officer; or
- (b) is employed by the Territory or a Territory authority;

if the Auditor-General is satisfied that it is necessary to exercise that power for the proper performance of a function or duty of the Auditor-General.

Auditor-General to have access to accounts and records

21. (1) Without prejudice to the powers conferred by any other provision of this Ordinance, the Auditor-General or an authorised officer—

- (a) is entitled to have full and free access, at all reasonable times, to all accounts and records in the possession of, or under the control of—
 - (i) any authority established or appointed under a law of the Territory;
 - (ii) any officer or employee under the control of any such authority; or
 - (iii) any other person;

being accounts or records that deal with, form the basis of, or are relevant directly or indirectly to, the receipt or expenditure of any public moneys, the receipt, custody or disposal of stores or an approval for the expenditure of any such moneys; and

- (b) may make copies of, or take extracts from, any such accounts or records.

(2) An authority, officer, employee or person referred to in subsection (1) shall, in accordance with a request in writing of the Auditor-General or an authorised officer, produce to him or her all such accounts or records as are specified or described in the request or are relevant to any matter so specified or described.

Penalty—

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

(3) In this section—

“authorised officer” means—

- (a) an officer;
- (b) a person, being an officer or employee within the meaning of the *Public Service Act 1922* of the Commonwealth; or
- (c) any other person;

authorised by the Auditor-General to act under this section.

Secrecy

22. (1) The operation of sections 18, 19, 20, 21, 54 and 66 shall not be limited by any provision (including a provision relating to secrecy) contained in any other law of the Territory (whether made before or after the commencement of this section) except to the extent to which any such other law expressly excludes the operation of any of those sections.

(2) Notwithstanding anything contained in any other law of the Territory, and notwithstanding the making of an oath or declaration of secrecy, a person shall not be guilty of any offence by reason of anything done by the person for the purposes of section 16, 18, 19, 21, 54 or 66.

(3) The Auditor-General or any other person shall not divulge or communicate, except, in the course of duty, to another person performing duties under this Ordinance, any information that has come to his or her knowledge by reason directly or indirectly of section 16, 18, 19, 21, 54 or 66, in any case in which the person from whom the information was obtained under that section, or from whose custody the accounts or records from which the information was derived were produced, could not, but for the provisions of this Ordinance,

lawfully have divulged that information to the Auditor-General or authorised officer.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(4) Subsection (3) does not prevent the making, divulging or communicating, in any report of the Auditor-General, of conclusions, observations or recommendations that are based on information obtained pursuant to section 16, 18, 19, 21, 54 or 66.

Auditor-General may obtain opinion

23. The Auditor-General may present to the Chief Minister a case in writing as to any question concerning the powers, functions or duties of the Auditor-General and the Chief Minister shall give the Auditor-General a written opinion on that case.

Division 4—Accounting officers

Duties

24. Every accounting officer—

- (a) is subject to the provisions of this Ordinance and the regulations; and
- (b) shall perform such duties, keep such records and render such accounts—
 - (i) as are prescribed; or
 - (ii) as the Minister directs in writing.

Overdrafts

25. An overdraft on a public account at a bank shall not be arranged without the written authority of the Minister.

PART III—COLLECTION OF MONEYS AND SECURITIES

Agreement for conduct of banking business of the Territory

26. (1) The Chief Minister may enter into an agreement with any bank, upon such terms and conditions as the Chief Minister thinks fit, for—

- (a) the receipt, custody, payment and transmission of public moneys within or without the Territory;
- (b) the making of advances to the Territory and for the payment of charges in respect of the advances;

- (c) the payment of interest by or to the bank upon balances or advances, respectively; and
- (d) any other matter relating to the conduct of the banking business of the Territory.

(2) An agreement shall not be entered into under subsection (1) for a period exceeding 1 year unless it contains a provision that it may be terminated by either party at any time upon the giving of a notice in writing specifying the period, not exceeding 6 months, within which the termination is to take effect.

(3) An account for the receipt, custody, payment or transmission of public moneys shall not be opened otherwise than in accordance with an agreement under this section.

Territory Public Account

27. (1) The Minister—

- (a) shall, in accordance with section 26, open and maintain, with such banks as the Minister determines, such accounts as the Minister thinks fit; and
- (b) may, in accordance with section 26, open and maintain, with such banks as the Minister determines, such other accounts as the Minister thinks fit.

(2) An account referred to in paragraph (1) (a) shall bear the designation “Territory Public Account”.

(3) An account referred to in paragraph (1) (b) shall bear a designation that describes the purpose or purposes of the account.

(4) All moneys paid into a bank to the credit of an account maintained in accordance with subsection (1) shall be deemed to be public moneys and the property of the Territory and to be moneys lent by the Territory to the bank.

(5) A reference to the Territory Public Account in this Ordinance, the regulations or an instrument (including directions) under this Ordinance or the regulations is, unless the contrary intention appears, a reference to the accounts for the time being maintained in accordance with paragraph (1) (a).

Investment of moneys in Territory Public Account

28. Moneys standing to the credit of the Territory Public Account (not being moneys standing to the credit of the Trust Fund) may be invested by the Minister as if they were moneys to which section 86 applies and that section applies as if the moneys so invested were invested under that section.

Payment of moneys received by accounting officers

29. (1) Except as otherwise provided by this Ordinance, every accounting officer shall, in accordance with directions of the Minister, transmit or pay, daily or at such other intervals as the Minister directs, all public moneys collected or received by the officer—

- (a) to the Minister;
- (b) to such other person as the Minister directs;
- (c) into the Territory Public Account; or
- (d) to the credit of another account with a bank as directed by the Minister.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(2) A direction under this section shall be given by instrument.

Payment of moneys received by Minister

30. The Minister shall daily pay into the Territory Public Account all public moneys received by him or her.

Statements to be furnished by accounting officers

31. (1) Where money is transmitted or paid by an accounting officer to the Minister or another person in accordance with section 29, the officer shall, upon transmission or payment of the money, give to the Minister or that other person, as the case requires, a statement signed by the officer—

- (a) specifying—
 - (i) the days of the month on which; and
 - (ii) the particular heads of receipt under which;
the money came to the officer's possession or control; and
- (b) containing such other particulars as are prescribed.

(2) Where money is paid by an accounting officer into the Territory Public Account—

- (a) the manager or other person in charge of the bank at which the Account is maintained shall, upon payment of the money, give to the officer an accountable receipt in duplicate for that money; and
- (b) the accounting officer shall, forthwith after being given the receipt, give to the Minister or a person appointed, in writing, by the Minister for the purposes of this subsection—
 - (i) one copy of the receipt; and
 - (ii) a statement in accordance with subsection (3).

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) A statement referred to in subsection (2) relating to the payment of money by an accounting officer into the Territory Public Account—

- (a) shall be signed by the accounting officer;
- (b) shall specify—
 - (i) the days of the month on which; and
 - (ii) the particular heads of receipt under which;the money came to the officer's possession or control; and
- (c) shall contain such other particulars as are prescribed.

Collection of private moneys by officers etc.

32. (1) Where—

- (a) moneys are, pursuant to a law of the Territory, to be paid—
 - (i) to a Minister;
 - (ii) to an officer;
 - (iii) into the Australian Capital Territory Treasury; or
 - (iv) to the credit of the Trust Fund;
- (b) a Minister or an officer who is, by virtue of his or her office, the trustee, or one of the trustees, of a trust receives moneys as the trustee, or as a trustee, of the trust; or

- (c) moneys are otherwise received by a Minister or an officer in the course of performing the duties of his or her office;

and the moneys are to be held otherwise than on account of, or for the use or benefit of, the Territory, the moneys are moneys to which this section applies.

(2) Moneys to which this section applies form part of the Trust Fund.

(3) Where the Minister is of the opinion that, having regard to the terms on which any moneys to which this section applies are required to be held, it would not be appropriate for those moneys to form part of the Trust Fund, the Minister—

- (a) may direct, in writing, that the moneys shall not form part of the Trust Fund; and
- (b) may, from time to time while a direction under paragraph (a) is in force, give further directions, in writing, as to the manner in which those moneys are to be dealt with.

(4) Where, by virtue of a direction given by the Minister under subsection (3), moneys to which this section applies do not form part of the Trust Fund, a person shall not fail to comply with a direction given by the Minister under that subsection as to the manner in which those moneys are to be dealt with.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(5) Where, by virtue of subsection (2), moneys have become part of the Trust Fund and—

- (a) those moneys have, for a continuous period of not less than 6 years, stood to the credit of the Trust Fund without—
 - (i) any portion of those moneys having been expended for the purpose for which those moneys are held; or
 - (ii) any claim having been made by a person entitled to those moneys; or
- (b) the purpose for which those moneys are held is no longer capable of being fulfilled;

those moneys shall be paid to the Consolidated Fund and, where interest on those moneys has been paid to the Trust Fund in accordance with a direction of the Chief Minister given under subsection 86 (3), an amount equal to that interest shall also be paid to the Consolidated Fund.

(6) Where the Minister is satisfied that a person is entitled to any moneys paid to the Consolidated Fund pursuant to subsection (5), those moneys shall be paid to that person, and the Consolidated Fund is appropriated accordingly.

(7) Subsections (2) to (6) (inclusive) apply in relation to moneys to which this section applies, being moneys of a kind referred to in paragraph (1) (a) or (b), to the extent only to which those provisions are not inconsistent with the provisions of the law or the terms of the trust, as the case may be, applicable to those moneys.

Dealing with securities by accounting officers

33. (1) Each accounting officer shall, daily or at such other intervals as the Minister directs, transmit all bonds, debentures or other securities collected or received by the officer in the course of carrying on the duties of his or her office to the Minister or to such person as the Minister directs in such manner as the Minister directs.

(2) A direction under this section shall be given by instrument.

PART IV—PAYMENT OF MONEYS

Notional items

34. (1) Where a subdivision in a Schedule to an Appropriation Act for a financial year is not divided into items, the Minister may direct in writing that, for the purposes of this Part and of the regulations, that subdivision shall be taken to be divided into notional items set out in the direction.

(2) Where, in the opinion of the Minister, it is desirable to do so, the Minister may approve in writing the variation of a direction under subsection (1) by way of—

- (a) the reduction, by an amount specified in the approval, of the amount in one of the notional items into which a subdivision referred to in that subsection is to be taken to be divided; and
- (b) the increase, by that amount specified in the approval, of the amount in another of those notional items into which that subdivision is to be taken to be divided;

and, where the Minister approves such a variation of a direction, the direction shall, for the purposes of this Part (including this subsection) and of the regulations, be taken to be so varied.

Notional items taken to be items

35. Where, because of a direction under subsection 34 (1), a subdivision referred to in that subsection is to be taken to be divided into notional items, sections 42, 44, 47 and 48 have effect as if those notional items were items of that subdivision.

Issue of moneys

36. Money shall not be drawn from the Territory Public Account except in the manner provided by this Ordinance.

Payments by Minister from Territory Public Account

37. (1) The Minister may make payments from the Territory Public Account in accordance with an appropriation of the Consolidated Fund.

(2) The aggregate of the amounts paid under subsection (1) in relation to an appropriation shall not exceed the amount available for expenditure in accordance with the appropriation.

(3) Where it appears to the Minister that an amount, not exceeding the amount available for expenditure in respect of any services or purposes in accordance with an appropriation of the Consolidated Fund is required, or likely to be required, to be drawn from the Territory Public Account for expenditure in respect of the services or purposes, the Minister may, in writing, authorise the administrative head to draw the amount from the Territory Public Account in respect of the services or purposes.

(4) A reference in this section to an appropriation includes a reference to a contingent or conditional appropriation and, in relation to such an appropriation, a reference in this section to the amount available for expenditure in accordance with the appropriation is a reference to the amount that is, subject to the occurrence of the contingency or the fulfilment of the condition, available for expenditure in accordance with the appropriation.

(5) This section does not authorise the payment of money out of a bank account comprised in the Territory Public Account otherwise than in accordance with section 42.

Allocations by administrative head

38. (1) Where the Minister has, under subsection 37 (3), authorised the administrative head to draw an amount from the Territory Public Account in respect of any services or purposes, the administrative head may draw the amount from the Territory Public Account and make allocations from the amount in respect of the services or purposes.

(2) Money or a payment that is, under section 48, taken in reduction of expenditure from an appropriation to which an authorisation under subsection 37 (3) relates shall, for the purposes of subsection (1) of this section, also be taken to be an amount allocated to the authority of the authorisation.

(3) Where a payment is made out of a bank account comprised in the Territory Public Account, the bank is not required to ascertain whether the payment was made on the authority of an authorisation under subsection 37 (3).

Authorisation procedure to apply to transfers between accounts

39. (1) Subject to subsection (2)—

- (a) the making of a payment by means of a cheque drawn on a bank account comprised in the Territory Public Account shall, for the purposes of sections 36 and 37, be deemed to be the making of a withdrawal from the Territory Public Account notwithstanding that the amount of the cheque is credited to another such bank account; and
- (b) the making of an entry (otherwise than pursuant to the drawing or paying of a cheque) in the accounts kept for the purpose of recording transactions in relation to the Territory Public Account debiting an account shall be deemed, for the purposes of sections 36 and 37, to be the withdrawal of the amount so debited from the Territory Public Account notwithstanding that a corresponding entry is made crediting another account with that amount.

(2) Subsection (1) does not apply in relation to the making of a payment, or of an entry, of a kind referred to in that subsection if the making of the payment or entry does not have the effect of reducing the amount available for expenditure by virtue of an appropriation.

Authorisations not required for certain expenditure

40. Sections 37 and 38 do not apply in relation to moneys standing to the credit of an account comprised in the Territory Public Account that are available for expenditure by virtue of—

- (a) an appropriation of the Consolidated Fund that is to be deemed to be made by virtue of section 44; or
- (b) a payment out of the Trust Fund.

Payments relating to loans

41. (1) The Minister may make such payments as are required—

- (a) to meet the expenses incurred in connection with the raising or conversion of loans by or on behalf of the Territory; or
 - (b) for the repayment of any loan raised for or on behalf of the Territory;
- under this Ordinance or another law of the Territory, and the Consolidated Fund is appropriated accordingly.

(2) In this section—

“expenses” include charges incurred, payments made, interest paid and discounts allowed to subscribers in connection with the raising or conversion of loans by or on behalf of the Territory.

Duties of paying, authorising and certifying officers

42. (1) An accounting officer shall not cause or permit an amount to be paid out of—

- (a) a bank account comprised in the Territory Public Account; or
- (b) any other bank account opened under section 26 that is designated as a drawing account;

except by way of, or for the purposes of, a payment that has been authorised by a person appointed, by instrument, by the Chief Minister for the purposes of this subsection (in this section referred to as an “authorising officer”).

Penalty: \$5,000 or imprisonment for 2 years, or both.

(2) An authorising officer shall not authorise the payment of an amount under subsection (1) unless—

- (a) after making such checks as are prescribed or specified in directions given by the Minister under the regulations, the officer is satisfied that moneys are lawfully available for the payment of that amount;
- (b) a person (who may be the same person as the authorising officer) appointed, by instrument, by the Chief Minister for the purpose (in this section referred to as a “certifying officer”) has indicated, in a manner approved in writing by the Chief Minister, that the payment may be properly made; and
- (c) such other requirements relating to the authorisation of the payment of the amount as are prescribed, or specified in directions given by the Minister under the regulations, have been complied with.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) For the purposes of subsection (2), moneys are not lawfully available for a payment unless—

- (a) in the case of a payment from the Consolidated Fund—moneys sufficient for the payment are available from a relevant appropriation of that Fund, after allowing for payments previously made or authorised to be made in respect of that appropriation, or are available in accordance with section 47; or
- (b) in the case of a payment from the Trust Fund—moneys sufficient for the payment stand to the credit of a relevant Trust Account or head of the Trust Fund, after allowing for any payments previously authorised to be made that are to be, but have not yet been, debited to that Trust Account or head of the Trust Fund.

(4) Subject to subsection (5), a certifying officer shall not indicate under paragraph (2) (b) that the payment of an amount may properly be made unless, after any relevant provisions of the regulations and of directions given by the Minister under the regulations have been complied with, the officer is satisfied that the payment may properly be made.

(5) The regulations may provide that, in respect of payments included in a particular class of payments, a certifying officer may indicate under paragraph (2) (b) that the payment of an amount may properly be made if, after requirements prescribed by the regulations in respect of payments of that class, and any relevant directions given by the Minister under the regulations, have been complied with, the officer has no reason to believe that the payment may not properly be made.

(6) In addition to compliance with the regulations and directions given by the Minister under the regulations, a certifying officer may carry out such investigations as the officer thinks necessary before deciding whether to indicate under paragraph (2) (b) that the payment of an amount may properly be made.

Act of grace payments

43. (1) Where an authorised person is satisfied that, by reason of special circumstances, it is reasonable to do so, the person may direct in writing—

- (a) that an amount proposed to be paid to a person by the Territory; or
- (b) that amounts proposed to be paid to a person by the Territory by way of periodical payments;

be treated as properly payable notwithstanding that the amount is, or the amounts are, not payable pursuant to the law or under a legal liability, but this subsection does not authorise a payment or payments otherwise than out of moneys that are lawfully available for the purpose.

(2) A payment, or payments, to a person by virtue of a direction under subsection (1) shall be made on such terms or conditions as are determined by an authorised person before the payment is, or the payments are, made, being such terms or conditions as the authorised person considers to be appropriate.

(3) Where a payment or payments to a person by virtue of a direction under subsection (1) is or are subject to terms or conditions determined under subsection (2), in addition to those terms or conditions, that payment is, or those payments are, subject to the condition that, if any of those terms or conditions is not or are not complied with, the person will, on demand by an authorised person, pay to the Territory an amount equal to the amount of that payment.

(4) Where a person is liable to pay an amount to the Territory under subsection (3), the Territory may recover that amount as a debt due to the Territory by action in a court of competent jurisdiction.

(5) An authorised person shall not give a direction under subsection (1) in respect of an amount exceeding \$50,000 proposed to be paid to a person as a single amount, or in respect of amounts aggregating more than \$10,000 per year proposed to be paid to a person by way of periodical payments, unless the authorised person has considered a report concerning the proposed payment, or proposed periodical payments, furnished to him or her by the administrative head.

(6) In this section—

“authorised person” means—

- (a) the Minister; or
- (b) an officer appointed by the Minister to be an authorised person for the purposes of this section.

Certain amounts deemed appropriated

44. (1) Where an amount that is, or the total of amounts that are, specified in an item, subdivision or division in a Schedule to an Appropriation Act for a financial year is expressed to be—

- (a) less an amount to be provided from some other appropriation;
- (b) less an amount to be received from a head of the Trust Fund or from a Trust Account; or
- (c) less an amount to be received from some other source;

then—

- (d) an amount equal to the amount referred to in paragraph (a), (b) or (c), as the case requires, shall be deemed to have been appropriated for the purposes and services referred to in that item, subdivision or division, as the case may be; and
- (e) the Minister is authorised to issue and apply the amount first-mentioned in paragraph (d) accordingly.

(2) Where an amount that is, or the total of amounts that are, specified in an item, subdivision or division in a Schedule to an Appropriation Act for a financial year is expressed to be less amounts to be provided from more than one of the sources referred to in paragraphs (1) (a), (b) and (c), then—

- (a) an amount equal to the total of the last-mentioned amounts shall be deemed to have been appropriated for the purposes and services referred to in that item, subdivision or division, as the case may be; and
- (b) the Minister is authorised to issue and apply an amount equal to that total accordingly.

(3) Where it is provided by a Schedule to an Appropriation Act for a financial year that moneys of a specified description that are received may be credited to an item, subdivision or division in that Schedule—

- (a) an amount equal to the total of the moneys of that description received in that financial year shall be deemed to have been appropriated for the purposes and services referred to in that item, subdivision or division, as the case may be; and
- (b) the Minister is authorised to issue and apply the amount first-mentioned in paragraph (a) accordingly.

(4) Without limiting the generality of subsections (1), (2) and (3), where an amount that is, or the total of amounts that are, specified in an item, subdivision or division in a Schedule to an Appropriation Act for a financial year is expressed to be—

- (a) for payment to the credit of a Trust Account (in this subsection referred to as the “replacement Trust Account”); and
- (b) less an amount that is described as the unrequired balance, or the unrequired part of the balance, of another Trust Account (in this subsection referred to as the “superseded Trust Account”);

then—

- (c) an amount equal to the amount referred to in paragraph (b) shall be deemed to have been appropriated for the purposes of the replacement Trust Account;
- (d) the Minister is authorised to issue and apply the amount referred to in paragraph (c) accordingly; and
- (e) amounts—
 - (i) received from the sale of articles purchased or produced, or for work paid for, with amounts paid out of the superseded Trust Account for a purpose included in the purposes of that Account and in the purposes of the replacement Trust Account; or
 - (ii) paid by any person for a purpose included in the purposes of the superseded Trust Account and in the purposes of the replacement Trust Account;

shall, notwithstanding any other provision of this Ordinance, be paid to the credit of the replacement Trust Account.

Transfer of matters between administrative units

45. (1) Where the Minister is satisfied that it is necessary to do so in consequence of a matter for which an administrative unit (in this subsection referred to as the “original unit”) has responsibility becoming a matter for which another administrative unit has responsibility, the Minister may direct, in writing, that all or any of the moneys appropriated by an Appropriation Act that could, if the change of matter had not taken place, lawfully have been issued and applied for a particular purpose, being a purpose related to the performance by the original unit of that matter, may be issued and applied for the corresponding purpose related to the performance by the other administrative

unit of that matter and, where such a direction is given, the Appropriation Act has effect, in relation to the issue and application of moneys in accordance with the direction, as if it had appropriated those moneys for that corresponding purpose.

(2) An appropriation contained in an Appropriation Act under a heading referring to an administrative unit, being an appropriation for a purpose that is so expressed as to be capable of being given effect to by another administrative unit, continues to be available for that purpose, subject to any direction given under subsection (1), notwithstanding the abolition of that unit or the transfer to another administrative unit of a matter administered by that first-mentioned unit to which that purpose is related.

(3) Where—

- (a) a matter administered by an administrative unit (in this subsection referred to as the “original unit”) becomes a matter administered by another administrative unit; and
- (b) immediately before the date on which that matter becomes a matter to be administered by that other administrative unit, a power or function under this Ordinance or under the regulations could, under an appointment made under this Ordinance or under the regulations, have been exercised or performed, with respect to the matter administered by the original unit, by a particular person;

that power or function may, by virtue of this subsection, be exercised or performed by that person, on and after that date, until the person’s authority to do so is terminated under subsection (4), with respect to—

- (c) the other administrative unit; and
- (d) if the original unit continues in existence but the person’s office is abolished in consequence of the change of matters administered by the original unit—the original unit.

(4) Where a person would, but for this subsection, be authorised by subsection (3) to exercise a power or perform a function under this Ordinance or the regulations, with respect to an administrative unit, the person having power to appoint an officer to exercise that power or perform that function may, by instrument delivered to the first-mentioned person, terminate the authority conferred on the first-mentioned person by subsection (3).

(5) Where the Minister gives a direction under subsection (1), the Minister shall—

- (a) furnish a copy of the direction to the Auditor-General; and
- (b) include particulars of the direction in the statement prepared in accordance with subsection 71 (1) for the year in relation to which the direction is given.

Payments made after close of financial year

46. Every appropriation made out of the Consolidated Fund for the service of any financial year shall lapse and cease to have any effect for any purpose at the close of that year and any balance of the moneys so appropriated that may then be unexpended shall lapse and the accounts of the year shall then be closed.

Minister's advance

47. (1) Expenditure in excess of specific appropriation or not specifically provided for by appropriation may be charged to such heads as the Minister may direct provided that the total expenditure so charged in any financial year, after deduction of amounts retrieved from other specific appropriations, does not at any time exceed the amount appropriated for that year under the head "Advance to the Minister administering the *Audit Ordinance 1989*".

(2) The Minister shall, as soon as practicable after 30 June in each year, cause to be laid before the Assembly a statement setting out particulars of all expenditure that remains as a charge to the Minister's Advance for that financial year.

(3) Where the Executive is satisfied that moneys in the Consolidated Fund in a financial year will be in excess of the moneys required for the appropriations relating to that financial year, the appropriation to the Minister's Advance may be increased by an amount not exceeding—

- (a) 5 per cent of the total of appropriations provided by Appropriation Acts for that financial year; or
- (b) the amount of the excess;

whichever is the lesser, and the Consolidated Fund is appropriated accordingly.

(4) Where an increase in the appropriation to the Minister's Advance has been made under subsection (3), the Chief Minister shall cause to be laid before the Assembly within 6 sitting days a statement setting out—

- (a) the facts upon which the Executive was satisfied that additional moneys would be available;

- (b) the amount by which the Minister's Advance has been increased; and
- (c) the purpose for which the additional appropriation is proposed to be charged.

Application of repayments of expenditure

48. (1) Money received in a financial year in repayment of expenditure made within that year from an annual appropriation in respect of that year shall be taken in reduction of the expenditure from that appropriation.

(2) Money received in any financial year in repayment of expenditure from a special appropriation under a law of the Territory shall be taken in reduction of expenditure from that appropriation in respect of the year in which the repayment is made.

Power to vary annual appropriation

49. (1) If the exigencies of the public service render it necessary to alter the proportions assigned to the particular items comprised under any subdivision in the annual Appropriation Act, the Executive may direct, in writing, that there shall be applied in aid of any item that may be deficient a further limited sum out of any surplus arising on any other item under the same subdivision.

(2) The Chief Minister shall, within 7 days after a direction has been given under subsection (1), forward a copy of the direction to the Auditor-General.

(3) Nothing in this section authorises a direction to be given for the application of any item in augmentation of or as an addition to any salary specifically appropriated by the Assembly.

Refunds from Consolidated Fund

50. Where—

- (a) an amount has been paid into the Consolidated Fund; and
- (b) the repayment of that amount, or of a part of that amount, to a person is required or permitted by or under a law of the Territory but no appropriation of the Consolidated Fund to enable the repayment to be made is, apart from this section, made by any such law;

the Consolidated Fund is, by force of this section, appropriated to the extent necessary to make the repayment.

Authorisation of payments without production of probate or letters of administration**51. (1) Where—**

- (a) a person died, whether before or after the commencement of this section; and
- (b) an amount was, or amounts were, owing by the Territory to the deceased person at the time of his or her death, being an amount not exceeding, or amounts not exceeding in the aggregate, such amount as is prescribed;

the Chief Minister may, without production of probate of the will, or letters of administration of the estate, of the deceased person, authorise payment of that amount or those amounts to the person to whom the Chief Minister thinks it proper that the payment should be made.

(2) In determining the person to whom an amount is to be paid under this section, the Minister shall have regard to the persons who are entitled to the property of the deceased person under his or her will or under the law relating to the disposition of the property of deceased persons, as the case requires.

(3) Where any amount is paid pursuant to this section, the Territory is discharged from all further liability in respect of payment of that amount, but nothing in this section operates to relieve a person to whom any money is paid pursuant to this section from liability to account for, or deal with, that money in accordance with law.

PART V—AUDIT AND INSPECTION***Division 1—Audit and inspection of accounts*****Production of banking records by banker**

52. The manager or other person in charge of a bank into which public moneys are paid shall—

- (a) at such times as the Minister by instrument directs, send to the Minister, or to a person appointed by the Minister by instrument for the purposes of this section a statement showing the debits and credits to the account in which those moneys are kept, other than any debits or credits as to which a statement has previously been sent to the Minister or to a person so appointed, together with a certificate setting out the balance to the debit or credit of that account; and

- (b) at any time when the manager or other person is requested to do so by instrument by the Auditor-General or by a person appointed by the Auditor-General by instrument for the purposes of this section, send to the Auditor-General, or to the person so appointed, a statement showing the debits and credits to the account in which those moneys are kept, other than any debits or credits as to which a statement has previously been sent to the Auditor-General or to a person so appointed, together with a certificate setting out the balance to the debit or credit of that account.

Accounts and records

53. The Minister shall cause to be kept proper accounts and records of receipts of, and payments out of, public moneys complying with the provisions of this Ordinance and of the regulations concerning the manner in which those accounts and records are to be kept.

Audit

54. (1) The Auditor-General shall audit the accounts and records kept in accordance with section 53 and shall ascertain whether—

- (a) the moneys shown in those accounts and records to have been disbursed were lawfully available for expenditure in respect of the service or purpose to which they have been applied or charged; and
- (b) there has been compliance with—
 - (i) the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;
 - (ii) the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth; and
 - (iii) this Ordinance and any other law of the Territory relating to public moneys.

(2) The Minister shall cause to be made available to the Auditor-General such records as the Auditor-General requires for the purpose of carrying out an audit under subsection (1).

Examination of accounts of revenue by Auditor-General

55. The Auditor-General shall examine the accounts of—

- (a) the receipts of revenue and other moneys by each administrative unit; and

- (b) each receiver of moneys that are by law payable to the Territory or a prescribed authority.

Examination of accounts of expenditure by Auditor-General

56. The Auditor-General shall—

- (a) examine the accounts of each administrative unit in relation to expenditure; and
- (b) shall take such steps as the Auditor-General thinks fit to satisfy himself or herself—
 - (i) that those accounts are faithfully and properly kept; and
 - (ii) that the moneys expended have been properly applied.

Examination of accounts of stores by Auditor-General

57. The Auditor-General shall—

- (a) examine the accounts of the stores of each administrative unit; and
- (b) shall take such steps as the Auditor-General thinks fit to satisfy himself or herself—
 - (i) that the stores have been properly accounted for; and
 - (ii) that the regulations, directions and any instructions issued by the administrative head in respect of the control and stocktaking of the stores have been duly observed.

Special operations of administrative units

58. (1) An administrative unit shall, if so required by the Minister, keep such accounts and prepare such financial statements in respect of such of its operations, and in such form, as the Minister determines, in writing.

(2) An administrative unit in respect of which a requirement under subsection (1) has been made shall, as soon as practicable after each 30 June, prepare and submit to the appropriate Minister a report of its operations, being operations to which the determination of the Minister under subsection (1) relates, during the year ending on that day, together with financial statements in respect of the year in such form as the Minister approves, in writing.

(3) An administrative unit shall, before submitting the financial statements to the appropriate Minister under subsection (2), submit the statements to the Auditor-General, who shall report to the appropriate Minister—

- (a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the opinion of the Auditor-General, show fairly the financial transactions and state of affairs of those operations; and
- (c) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the appropriate Minister.

(4) The appropriate Minister shall cause a copy of the report and financial statements, together with a copy of the report of the Auditor-General, to be laid before the Assembly within 15 sitting days after their receipt by the appropriate Minister.

(5) The provisions of this section shall be read as in addition to and not in derogation from the other provisions of this Ordinance.

(6) Where a requirement is made of an administrative unit under subsection (1) before 30 June 1989, the first report of the administrative unit shall be a report of the operations of the unit for the period commencing on the date the requirement was made and ending at the expiration of 30 June 1990.

(7) In this section—

“appropriate Minister”, in relation to an administrative unit, means the Minister who has responsibility for the unit.

Production of accounts and furnishing of information to Auditor-General

59. (1) The Auditor-General may, by notice in writing, require a person—

- (a) within 14 days after receiving the notice; or
- (b) within such longer period as the Auditor-General, by notice in writing given to the person before the expiration of that period of 14 days, allows;

to produce such accounts or records, or to furnish such information or explanations, as the Auditor-General thinks necessary for the purpose of exercising his or her powers or performing his or her functions under this Ordinance.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under subsection (1).

Penalty: \$500.

Power to admit certain accounts

60. Where the Auditor-General is satisfied—

- (a) that any accounts of receipts, expenditure or stores indicate that the relevant vouchers have been completely checked, examined and certified as correct in every respect; and
- (b) that they have been allowed and passed by the proper officers;

the Auditor-General may admit them as satisfactory evidence in support of the charges or credits to which they relate.

Auditor-General may dispense with detailed audit

61. The Auditor-General may dispense with the detailed audit of any accounts or any part of such an audit.

Division 2—Efficiency audits

Interpretation

62. In this Division, unless the contrary intention appears—

“eligible incorporated company” means an incorporated company over which the Territory is in a position to exercise control;

“public authority of the Territory” means—

- (a) an authority or other body that, or a person holding, or performing the duties of, an office or appointment who, is a public authority of the Territory for the purposes of this Division by virtue of section 63; or
- (b) the Australian Capital Territory Teaching Service;

“relevant body” means—

- (a) an administrative unit;
- (b) a public authority of the Territory;
- (c) an eligible incorporated company with which an arrangement has been made under subsection 64 (2);
- (d) a body referred to in subsection 64 (4);
- (e) a body responsible for the administration of a fund referred to in subsection 64 (6);

- (f) a body referred to in subsection 64 (7); or
- (g) a person or persons (not being a person who constitutes, or persons who constitute, a public authority of the Territory)—
 - (i) responsible for the administration of a fund referred to in subsection 64 (6); or
 - (ii) referred to in subsection 64 (7).

Public authorities of the Territory

63. (1) Subject to this section, where—

- (a) the accounts and records of financial transactions of an authority or other body established for a public purpose by, or in accordance with the provisions of, a law of the Territory are audited by the Auditor-General, whether in pursuance of such a law or otherwise; or
- (b) the staff required for the purposes of that authority or other body are public servants;

the authority or other body is a public authority of the Territory for the purposes of this Division.

(2) Subsection (1) does not apply to an unincorporated body, being a Board, Council, Committee, Sub-Committee or other body established for the purpose of assisting, or performing functions connected with, an administrative unit or public authority of the Territory, but the operations of the Board, Council, Committee, Sub-Committee or other body shall, for the purposes of this Division, be deemed to be the operations of that administrative unit or public authority of the Territory.

(3) Subject to this section, a person—

- (a) holding, or performing the duties of, an office or appointment established by a law of the Territory (not being an office in the Public Service); or
- (b) holding, or performing the duties of, an appointment, being an appointment made by the Executive or a Minister, otherwise than under a law of the Territory;

is a public authority of the Territory for the purposes of this Division.

(4) Subsection (3) does not apply in relation to—

- (a) a person who holds an office of—

- (i) Minister;
 - (ii) President, Deputy President or other member of the Australian Capital Territory Administrative Appeals Tribunal; or
 - (iii) member of the Assembly; or
- (b) a person required or authorised by the Executive, by instrument, to inquire into and report upon any matter.
- (5) Subsection (3) does not apply in relation to—
- (a) an office of member of an authority or other body; or
 - (b) an office established by a law of the Territory for the purposes of a public authority of the Territory;

but any operation carried on by or on behalf of the holder of the office, being an operation included within the functions of the office, shall, for the purposes of this Division, be deemed to have been carried on by that authority or other body, as the case may be.

(6) Where a person who holds an office or appointment referred to in subsection (3) also holds an office in an administrative unit and performs the functions of the first-mentioned office, or of the appointment, in association with the person's functions as the holder of that office in that unit, subsection (3) does not apply in relation to the person, but any operations carried on by the person within the functions of the first-mentioned office, or of the appointment, shall, for the purposes of this Division, be deemed to have been carried on by that unit.

Auditor-General to carry out efficiency audits

64. (1) The Auditor-General may carry out, at such intervals as the Auditor-General thinks fit, an efficiency audit of all or any of the operations of—

- (a) an administrative unit; or
- (b) a public authority of the Territory.

(2) A Minister may, in writing, request, or the Assembly may, by resolution, request, the Auditor-General to carry out efficiency audits of all the operations, or of specified operations, of an eligible incorporated company and, where such a request is made, the Auditor-General—

- (a) may make arrangements with the company for the carrying out by him or her of efficiency audits of all the operations of the company, or of the operations of the company so specified, as the case requires; and
 - (b) may, in accordance with arrangements so made, carry out, at such intervals as the Auditor-General thinks fit, an efficiency audit of all or any of the operations of the company to which the arrangement relates.
- (3)** An arrangement made by the Auditor-General with an eligible incorporated company may be varied or revoked by the Auditor-General or the company—
- (a) in the case of an arrangement made at the request of a Minister—with the approval of a Minister; or
 - (b) in the case of an arrangement made at the request of the Assembly—with the approval of the Assembly given by resolution.
- (4)** A Minister may, subject to subsection (5), by instrument, request the Auditor-General to carry out efficiency audits of the operations of a body (not being a public authority of the Territory) established by, or in accordance with the provisions of—
- (a) an agreement between the Territory and the Commonwealth; or
 - (b) an agreement between—
 - (i) the Territory and a State; or
 - (ii) the Territory and 2 or more States;
- and the Auditor-General may then carry out, while the instrument is in force and at such intervals as the Auditor-General thinks fit, an efficiency audit of all or any of the operations of the body.
- (5)** A Minister shall not request the Auditor-General to carry out efficiency audits of the operations of a body referred to in subsection (4) unless the Commonwealth or the State or States concerned, as the case requires, has or have consented to the Auditor-General carrying out those audits.
- (6)** Where the Auditor-General audits the accounts and records of a fund established by or under a law of the Territory, not being a fund administered by, or established for the purposes of, a public authority of the Territory—
- (a) if the Auditor-General is required to audit those accounts and records by a law of the Territory—the Auditor-General may carry out, at such

intervals as he or she thinks fit, an efficiency audit of all or any of the operations of the body or persons responsible for the administration of the fund, being operations related to the administration of the fund; or

- (b) in any other case—a Minister may, by instrument, request the Auditor-General to carry out efficiency audits of the operations of the body or persons responsible for the administration of the fund, being operations related to the administration of the fund, and the Auditor-General may then carry out, while the instrument is in force and at such intervals as he or she thinks fit, an efficiency audit of all or any of those operations.

(7) Where the Territory, or a public authority of the Territory, pays money—

- (a) to a body, not being—
 - (i) the Commonwealth;
 - (ii) a State;
 - (iii) a public authority of the Commonwealth;
 - (iv) a public authority of the Territory; or
 - (v) an authority of a State; or
- (b) to a person;

by way of financial assistance to the body or person, a Minister may, with the consent of the body or person, request the Auditor-General, by instrument, to carry out efficiency audits of the operations of the body or person in the carrying out of which those moneys have been, are being or are to be applied, and the Auditor-General may then carry out, while the instrument is in force and at such intervals as he or she thinks fit, an efficiency audit of all or any of those operations.

(8) For the purposes of subsection (7), where a body or person accepts any moneys paid to it or the person by the Territory, or by a public authority of the Territory, by way of financial assistance, on condition that the body or person will permit the Auditor-General to carry out efficiency audits of the operations of the body or person in the carrying out of which those moneys have been, are being or are to be applied, the body or person shall be deemed to have given its or his or her consent to the carrying out by the Auditor-General of efficiency audits of all or any of those operations.

Efficiency audit extends to examination of certain procedures

65. Where moneys are paid in accordance with a law of the Territory by the Territory to a body, other than a public authority of the Territory, by way of financial assistance, on condition that the body will apply the moneys for a purpose specified by that law, an efficiency audit of the operations of the administrative unit or public authority of the Territory responsible for the administration of the grant of that financial assistance may include an examination of the procedures that are being followed by that unit or authority for the purpose of assessing the extent to which the operations in the carrying on of which the moneys are required to be applied are being carried on in an economical and efficient manner.

Investigations and access to premises and records

66. (1) An efficiency audit of operations of a relevant body shall be conducted by the Auditor-General, subject to this Ordinance, in such manner as the Auditor-General thinks fit.

(2) Without limiting the generality of subsection (1)—

- (a) an efficiency audit of operations of a relevant body may be carried out in conjunction with, and as part of, an inspection and audit of the accounts of the body that is being carried out by the Auditor-General under this Ordinance or another law of the Territory; and
- (b) any information obtained by the Auditor-General, in the course of carrying out an inspection and audit of the accounts of a relevant body, whether as a result of inspecting the accounts or records of the body or otherwise, may, whether or not the Auditor-General was at the same time carrying out an efficiency audit of operations of that body, be treated as having been obtained for the purposes of carrying out such an audit.

(3) Without prejudice to the powers conferred on the Auditor-General by any other provision of this Ordinance, the Auditor-General or an authorised person—

- (a) shall, at all reasonable times, have full and free access to all records in the possession of—
 - (i) a relevant body;
 - (ii) a person employed by, or under the control of, a relevant body;or

(iii) any other person;

being records relating, directly or indirectly, to operations that have been, or are being, carried on by a relevant body or to procedures that have been, or that are being, followed by a relevant body for reviewing any such operations; and

(b) may make a copy of, or take extracts from, any such records.

(4) For the purposes of an efficiency audit of operations of a relevant body that is being carried out under this Ordinance—

(a) the Auditor-General, or an authorised person, may, at any reasonable time, enter any place occupied by the body and carry out an examination of the operations of the body at the place; and

(b) the Auditor-General, or an authorised person, is entitled to inspect, at a reasonable time arranged with the principal officer of the body, any records relating to the operations of the body that are kept at premises entered by the Auditor-General or authorised person under this section, and to take copies of, or extracts from, any such records.

(5) Nothing in this section shall be taken to restrict the operation of any other section of this Ordinance in relation to efficiency audits of operations of a relevant body.

Reports concerning efficiency audits

67. (1) Where the Auditor-General carries out an efficiency audit of operations of a relevant body under this Ordinance, the Auditor-General shall prepare and sign a report of the results of the audit.

(2) A report of the results of an efficiency audit of operations of a relevant body carried out by the Auditor-General—

(a) may include such information as the Auditor-General thinks desirable in relation to matters referred to in the report;

(b) shall set out reasons for opinions expressed in the report; and

(c) may include any recommendations arising out of the audit that the Auditor-General thinks fit to make.

(3) Where the Auditor-General prepares a report that he or she proposes to make with respect to the results of an efficiency audit of operations of a relevant body carried out by him or her under this Ordinance, the Auditor-General shall, before signing the proposed report, furnish a copy of the

proposed report to the body in order that the body may furnish to the Auditor-General any comments on the proposed report that it desires to make.

(4) Where a copy of a proposed report of the results of an efficiency audit of operations of a relevant body has been furnished to the body under subsection (3) and—

- (a) the Auditor-General has received comments from the body on the proposed report and has considered those comments; or
- (b) a period of not less than 28 days has elapsed from the date on which the copy of the proposed report was furnished to the body and the Auditor-General has not received any comments from the body;

the proposed report, or that report amended in such manner as the Auditor-General thinks fit having regard to any comments furnished to the Auditor-General by the body, may be signed by the Auditor-General as his or her report of the results of that efficiency audit.

(5) The Chief Minister may issue to the Auditor-General a certificate certifying that the disclosure of information concerning a specified matter, or the disclosure of the contents of a specified document, would be contrary to the public interest—

- (a) by reason that the disclosure would involve the disclosure of deliberations or decisions of the Executive;
- (b) by reason that the disclosure would prejudice relations—
 - (i) between the Territory and the Commonwealth; or
 - (ii) between the Territory and a State;
- (c) by reason that the disclosure would divulge any information or matter communicated in confidence—
 - (i) by or on behalf of the Executive to the Government of the Commonwealth, to the Government of a State or to a person receiving the communication on behalf of the Government of the Commonwealth or the Government of a State; or
 - (ii) by or on behalf of the Government of the Commonwealth or the Government of a State to the Executive or to a person receiving the communication on behalf of the Executive;
- (d) by reason that the disclosure would be prejudicial to the commercial interests of a public authority of the Territory or other body; or

- (e) for any other reason specified in the certificate that could form the basis for a claim by the Territory in a judicial proceeding that the information or the contents of the document should not be disclosed.

(6) Where information, or the contents of a document, to which a certificate under subsection (5) applies is disclosed to the Auditor-General in the course of the carrying out of an efficiency audit of operations of a relevant body—

- (a) the Auditor-General may include any of the information, or any of the contents of the document, in a restricted report of the results of the audit prepared by him or her; and
- (b) if the Auditor-General does so, he or she shall also prepare and sign a separate report of the results of the audit that does not include any of the information or any of the contents of the document.

(7) Where the Auditor-General prepares a restricted report of the results of an efficiency audit of operations of a relevant body, the Auditor-General shall forward a copy of the report to—

- (a) the Chief Minister;
- (b) the Minister; and
- (c) the relevant Minister for the body.

(8) Where the Auditor-General prepares a report (other than a restricted report) of the results of an efficiency audit of operations of a relevant body, the Auditor-General—

- (a) may include the report in the next report made by him or her under section 75 that includes his or her report with respect to the accounts, or financial statements, of that body;
- (b) may include the report in a report made by him or her, otherwise than under section 75, with respect to the financial statements of the body, being a report a copy of which is required by a law of the Territory to be laid before the Assembly; or
- (c) may treat the report as a special report and transmit a signed copy of the report to the Assembly.

(9) Subsection (8) does not apply to a relevant body (not being an administrative unit)—

- (a) that is specified in the regulations as a relevant body to which subsection (8) does not apply; or
- (b) that is included in a class of relevant bodies specified in the regulations as a class of relevant bodies to which subsection (8) does not apply.

(10) Where the Auditor-General prepares a report (other than a restricted report) of the results of an efficiency audit of operations of a relevant body carried out by him or her, being a relevant body to which, by virtue of regulations in force under subsection (9), subsection (8) does not apply, the Auditor-General shall furnish copies of the report to—

- (a) the body;
- (b) the relevant Minister for the body; and
- (c) the Head of Administration.

(11) In this section—

- (a) a reference to a restricted report of the results of an efficiency audit of operations of a relevant body carried out by the Auditor-General shall be read as a reference to a report of the results of such an audit that includes any information, or any of the contents of a document, to which a certificate under subsection (5) applies; and
- (b) a reference to the relevant Minister for a relevant body shall be read as a reference—
 - (i) if the body is an administrative unit—to the Minister who has responsibility for the unit; and
 - (ii) if the body is not an administrative unit—to the Minister who has responsibility for the administrative unit that is responsible for matters relating to that body.

Annual report concerning efficiency audit

68. (1) The Auditor-General shall, as soon as practicable after 30 June in each year, prepare a general report concerning the efficiency audits of operations of relevant bodies carried out by him or her during the year ended on that date, together with particulars of the costs incurred by the Auditor-General in the carrying out of those audits and the benefits that have, in the Auditor-General's opinion, been derived from the carrying out of those audits.

(2) Where the Auditor-General prepares a report pursuant to subsection (1) in respect of a year, the Auditor-General—

- (a) may include the report in a report made by him or her under section 75 in respect of that year; or
- (b) may sign a copy of the report and transmit it to the Assembly.

(3) The first report to be prepared by the Auditor-General under this section shall be a report relating to efficiency audits of operations of relevant bodies carried out during the period commencing on the date of commencement of this section and ending at the expiration of 30 June 1990.

PART VI—STATEMENTS AND THEIR AUDIT

Interpretation

69. In this Part, unless the contrary intention appears—

“aggregate financial statement” means a financial statement prepared in accordance with subsection 73 (1);

“declared administrative unit” means an administrative unit in relation to which the Chief Minister has made a declaration for the purposes of subsection 75 (2);

“financial statements guidelines” means guidelines in force under section 72;

“unitary financial statement” means a financial statement prepared in accordance with subsection 71 (2).

Statement of Financial Transactions

70. (1) The Minister shall, as soon as practicable after the expiration of each quarter, publish a Statement of Financial Transactions, in accordance with a form approved by the Minister, containing financial information with respect to—

- (a) receipts and expenditure of the Territory Public Account during that quarter, and during the year up to the end of that quarter; and
- (b) financing transactions showing, among other things, the manner in which—
 - (i) the surplus for that quarter was applied or the deficit for that quarter was financed; and

- (ii) the surplus for the year up to the end of that quarter was applied or the deficit for the year up to the end of that quarter was financed.

(2) In this section—

“quarter” means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in any year.

Unitary financial statements

71. (1) As soon as practicable after the end of each financial year, the Head of Administration in control of an administrative unit shall submit to the Auditor-General a financial statement for that unit in respect of the financial year.

(2) The financial statement shall be prepared in accordance with the financial statements guidelines and shall set out—

- (a) particulars of the receipts and expenditures of the Consolidated Fund and the Trust Fund during the financial year in respect of the administrative unit; and
- (b) such other information (if any) relating to the financial year as is required by the financial statements guidelines to be included in the statement.

(3) In this section—

“Head of Administration” includes an Associate Head of Administration.

Financial statements guidelines

72. For the purposes of section 71, the Minister may, by writing, make guidelines—

- (a) relating to the provision, in unitary financial statements, of particulars of the receipts and expenditures of the Consolidated Fund and the Trust Fund in respect of administrative units; and
- (b) requiring the inclusion, in unitary financial statements, of such other information as the Minister thinks fit.

Aggregate financial statements

73. (1) As soon as practicable after the end of each financial year, the Minister shall cause to be prepared a financial statement providing—

- (a) particulars of the total receipts and expenditures, during the financial year, of the Consolidated Fund and the Trust Fund; and
- (b) such other information (if any) relating to the financial year as is required by the financial statements guidelines to be included in the statement.

(2) As soon as practicable after the preparation of an aggregate financial statement, the Chief Minister shall submit the statement to the Auditor-General.

(3) The first financial statement to be prepared under this section shall be a statement for the period commencing on the date of commencement of this section and ending at the expiration of 30 June 1990.

Statement of amounts to next higher or lower dollar

74. (1) For the purposes of—

- (a) an aggregate financial statement; or
- (b) any part of a unitary financial statement that relates to matters referred to in paragraph 71 (2) (a);

the statement of an amount to the next lower, or next higher, dollar is a sufficient statement of the amount.

(2) For the purposes of any part of a unitary financial statement that relates to matters referred to in paragraph 71 (2) (b), the question of whether the statement of an amount to the next lower, or next higher, dollar is a sufficient statement of the amount shall be determined by reference to the financial statements guidelines.

Auditor-General to audit and report

75. (1) As soon as practicable after the Auditor-General receives a unitary financial statement, or an aggregate financial statement, the Auditor-General shall examine the statement and shall prepare and sign a report concerning the statement—

- (a) stating whether, in the opinion of the Auditor-General, the statement agrees with, or differs from, the accounts and records kept in accordance with section 53;
- (b) stating whether, in the opinion of the Auditor-General, the statement was prepared in accordance with the financial statements guidelines;
- (c) setting out particulars of cases in which, in the opinion of the Auditor-General, the provisions of—

- (i) the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;
- (ii) the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth; or
- (iii) any law of the Territory;

have not been carried out unless, in the opinion of the Auditor-General, the cases are not of sufficient importance to justify his or her so doing; and

- (d) containing such other information relating to such explanations of and such comments on the statement as the Auditor-General thinks desirable.

(2) Subsection (1) does not apply in relation to so much of a unitary financial statement as is included in the statement in compliance with paragraph 71 (2) (b) unless the Minister has, by writing, declared that unitary financial statements of the administrative unit concerned are to be subject to full examination.

(3) Before making a declaration for the purposes of subsection (2), the Minister shall have regard to any advice given to the Minister by the Auditor-General as to the making of such a declaration.

(4) The Auditor-General may, if the Auditor-General considers it expedient to do so, discharge an obligation under this section to prepare and sign a report by preparing and signing a report and later, but as soon as practicable, a report or reports supplementary to the first-mentioned report.

Information in respect of audits

76. The Auditor-General shall include in any report made by the Auditor-General under this Ordinance, such information as he or she thinks desirable in relation to audits, examinations and inspections carried out by the Auditor-General pursuant to this Ordinance or another law of the Territory.

Certain material to be included in Auditor-General's Report

77. (1) The Auditor-General shall include in a report under section 75 that relates to an aggregate financial statement—

- (a) a copy of each direction given under subsection 49 (1); and

- (b) a copy of each case or statement of facts presented by the Auditor-General to the Chief Minister for an opinion together with a copy of the relevant opinion.

(2) Where a case or statement of facts presented by the Auditor-General to the Chief Minister for an opinion relates to an efficiency audit, the Auditor-General may, instead of including the case or statement, together with a copy of the relevant opinion, in a report under section 75, include the report in a report prepared by the Auditor-General in accordance with Division 2 of Part V.

Certain reports to be forwarded to Assembly

78. (1) After preparing and signing a report under section 75 that relates to an aggregate financial statement, the Auditor-General shall forward a signed copy of the report to the Assembly within 15 sitting days.

(2) If the Assembly is not in session when the Auditor-General signs a report referred to in subsection (1), the Auditor-General shall, within 14 days after signing the report, forward a signed copy of the report to the Minister.

(3) A copy of the report forwarded to the Assembly or to the Minister under this section shall be accompanied by—

- (a) if the report is a report other than a supplementary report—a copy of the aggregate financial statement to which the report relates; and
- (b) any copies referred to in section 77 that are relevant to the report.

(4) The Minister shall, within 14 days after receiving a report and any accompanying documents under this section, publish them as a public document.

Certain reports to be given to relevant Minister

79. After preparing and signing a report under section 75 that relates to a unitary financial statement, the Auditor-General shall give a signed copy of the report to the Minister who has responsibility for the administrative unit in relation to which the statement was prepared.

Suggestions by Auditor-General

80. (1) The Auditor-General may, in a report under section 75, or in any special report that the Auditor-General may at any time think fit to make—

- (a) recommend a procedure, or make a suggestion, for the better collection and payment of the public moneys;

- (b) recommend or suggest an improvement in the manner of keeping the public accounts; or
- (c) generally report upon any matter relating to the public accounts, public moneys and stores.

(2) The Minister shall have regard to any recommendations or suggestions made under subsection (1).

PART VII—THE CONSOLIDATED REVENUE FUND

Consolidated Revenue Fund

81. (1) There is established by this Ordinance a fund to be called the Consolidated Revenue Fund.

(2) There shall be credited to the Consolidated Revenue Fund all public moneys of the Territory except moneys required or permitted by this Ordinance or another law of the Territory to be credited into a Trust Account established under section 85.

(3) The Consolidated Revenue Fund may be appropriated by law for the purposes of the Territory.

PART VIII—THE TRUST FUND

Trust Fund

82. A separate account, to be called the Trust Fund, shall be kept of all moneys that are placed to the credit of that Fund under such separate heads as may be directed by the Minister.

Trust Fund expenditure

83. The Chief Minister may not expend any moneys standing to the credit of the Trust Fund except for the purposes of that Fund or under the authority of an Ordinance.

Application of provisions to Trust Fund

84. (1) The provisions of this Ordinance relating to the issue and expenditure of public moneys and the authority for such issue and expenditure apply to the issue and expenditure of moneys standing to the credit of the Trust Fund, and the Executive has the same authority with respect to such moneys and the expenditure of such moneys as it has with respect to moneys standing to the credit of the Consolidated Fund.

(2) Subsection (1) has effect subject to section 38.

(3) The provisions of this Ordinance relating to—

- (a) the collection and receipt of moneys and the audit of the public accounts;
- (b) the powers and duties of the Auditor-General with respect to the expenditure of public moneys; and
- (c) the duties and liabilities of accounting officers and other persons;

apply in like manner to moneys collected, received or expended on account of the Trust Fund.

Trust Accounts

85. (1) There is established by this Ordinance a Trust Account the purpose of which is to make provision for the general administration of the Territory.

(2) The Minister may establish other Trust Accounts and define the purposes for which they are established.

(3) All moneys standing to the credit of an account that is a Trust Account established under this section or established under any other Ordinance as a Trust Account for the purposes, or within the meaning, of this section, shall be deemed to be moneys standing to the credit of the Trust Fund.

(4) The Minister may direct that any Trust Account shall be closed and, after all liabilities of the Account have been met, the Account shall be closed accordingly.

(5) The Minister may direct that any moneys standing to the credit of any Trust Account that are not required for the purposes of that Account and the balance of moneys standing to the credit of a Trust Account closed under subsection (4) shall be paid to the Consolidated Fund.

(6) The following moneys may be paid to the credit of the Trust Account to which they relate:

- (a) moneys appropriated by law for the purposes of any Trust Account;
- (b) moneys received from the sale to any person or administrative unit of any articles purchased or produced, or for work or services paid for, with moneys standing to the credit of a Trust Account;
- (c) moneys paid by any person for the purpose of any Trust Account.

(7) Upon the payment of an amount into the Consolidated Fund pursuant to subsection 17 (2) or (3) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth, that amount shall, by force of this subsection, be taken to be transferred to the Trust Account referred to in subsection (1), and the Consolidated Fund is appropriated accordingly.

(8) Where an amount is paid to the Territory—

- (a) under the authority of a law of the Territory; or
- (b) under an agreement entered into or an understanding reached by the Territory or by a Territory authority;

that amount shall, so long as the Trust Account referred to in subsection (1) continues to be maintained, be paid into that Trust Account.

(9) Nothing in this Ordinance shall be taken to imply—

- (a) that the purpose of the Trust Account referred to in subsection (1) shall not include the payment, from time to time, of money to another Trust Account established under this section for purposes connected with the making of provision for the general administration of the Territory; or
- (b) that that other Trust Account shall not receive money from the first-mentioned Trust Account.

(10) Moneys standing to the credit of a Trust Account may be expended for the purposes of the Account.

(11) Where—

- (a) an amount has been paid to the credit of the Trust Fund; and
- (b) the repayment of that amount, or of a part of that amount, to any person is required or permitted by or under any Ordinance or otherwise by law;

the repayment may be made from moneys standing to the credit of the Trust Fund.

Investment of moneys standing to credit of Trust Fund

86. (1) Moneys standing to the credit of the Trust Fund may be invested by the Chief Minister—

- (a) in any securities of, or guaranteed by, the Territory or the Government of the Commonwealth or of a State;

- (b) in any securities of a government authority;
- (c) on loan to an authorised dealer;
- (d) on deposit in a bank;
- (e) in certificates of deposit issued by a savings bank or a trading bank;
- (f) in clean bills of exchange; or
- (g) in any other form of investment approved by the Chief Minister for the purposes of this subsection.

(2) A deposit receipt for moneys deposited under this section for a fixed period with a bank shall, for the purposes of this Ordinance, be deemed to be a security.

(3) Interest received from the investment of any moneys standing to the credit of the Trust Fund shall be dealt with—

- (a) in accordance with any Ordinance making provision with respect to that interest; or
- (b) if paragraph (a) is not applicable—
 - (i) in a case where the Chief Minister has directed the manner in which that interest is to be dealt with—in accordance with that direction; or
 - (ii) in any other case—by payment to the Consolidated Fund.

(4) In this section—

“authorised dealer” means a corporation that is an authorised dealer in the short-term money market as defined by subregulation 5 (1) of the Banking (Savings Banks) Regulations as amended and in force from time to time under the *Banking Act 1959* of the Commonwealth;

“clean bill of exchange” means a bill of exchange that—

- (a) has been accepted by a trading bank;
- (b) has been indorsed by a trading bank or trading banks; and
- (c) has not been indorsed by any person other than a trading bank;

“government authority” means—

- (a) a public authority constituted by or under a law of the Territory, the Commonwealth or a State; and

- (b) a municipal corporation or other local government body.

PART IX—FINANCIAL PROVISIONS RELATING TO PUBLIC AUTHORITIES AND CERTAIN OTHER BODIES

Division 1—General

Interpretation

87. (1) In this Part, unless the contrary intention appears—

“appropriate Minister”, in relation to an authority, means the Minister responsible for administering the provisions of the law of the Territory under which that authority is established.

(2) A reference in a Division of this Part to an authority shall be read as a reference to a body corporate declared by a law of the Territory, or by regulations made under this Ordinance, to be a public authority to which that Division applies.

Application

88. (1) Where an Ordinance declares a body corporate incorporated for a public purpose by that law to be a public authority to which a Division of this Part (being Division 2 or 3) applies, the provisions of that Division apply in relation to the body corporate subject to such modifications (if any) as are made to those provisions by that Ordinance.

(2) Regulations made under this Ordinance may declare a specified body corporate incorporated for a public purpose by regulations made under another Ordinance to be a public authority to which a Division of this Part (being Division 2 or 3) applies, and the provisions of that Division apply to and in relation to a body corporate so declared subject to such modifications (if any) as are made to those provisions by regulations made under this Ordinance.

Division 2—Public authorities required to keep accounts in accordance with commercial practice

Bank accounts

89. (1) The authority may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The authority shall pay all moneys received by it into an account referred to in this section.

(3) In this section—

“approved bank”, in relation to an authority, means—

- (a) a trading bank as defined in subsection 5 (1) of the *Banking Act 1959* of the Commonwealth; or
- (b) another bank declared by the Chief Minister or a person authorised by the Chief Minister to give approvals under this section to be an approved bank in relation to that authority.

Investment of moneys

90. (1) Moneys of the authority not immediately required for the purposes of the authority may be invested—

- (a) on deposit with an approved bank;
- (b) in Territory or Commonwealth securities; or
- (c) in any other manner approved by the Chief Minister.

(2) In subsection (1)—

“approved bank”, in relation to an authority, means—

- (a) a trading bank as defined in subsection 5 (1) of the *Banking Act 1959* of the Commonwealth; or
- (b) another bank declared by the Chief Minister or a person authorised by the Chief Minister to give approvals under this section to be an approved bank in relation to that authority.

Proper accounts to be kept

91. The authority—

- (a) shall cause to be kept proper accounts and records of the transactions and affairs of the authority in accordance with the accounting principles generally applied in commercial practice; and
- (b) shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the authority and over the incurring of liabilities by the authority.

Penalty: \$10,000.

Audit

92. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the authority and records relating to assets of, or in the custody of, the authority, and shall forthwith draw the attention of the appropriate Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his or her so doing.

(2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

(3) The Auditor-General shall, at least once in each year, report to the appropriate Minister the results of the inspection and audit carried out under subsection (1).

(4) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to all accounts and records of the authority relating directly or indirectly to the receipt or payment of moneys by the authority or to the acquisition, receipt, custody or disposal of assets by the authority.

(5) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from, any accounts or records referred to in subsection (4).

(6) The Auditor-General or a person authorised by the Auditor-General may require any person to furnish him or her with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Division.

(7) A person shall not refuse or fail to comply with a requirement under subsection (6) to the extent that the person is capable of complying with it.

Penalty—

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

(8) A person shall not, in purported compliance with a requirement under subsection (6), knowingly furnish information that is false or misleading in a material particular.

Penalty—

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

(9) A person is not excused from furnishing information in pursuance of a requirement under subsection (6) on the ground that the information may tend to incriminate the person, but any information furnished in pursuance of such a requirement is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (7) or (8).

Annual report and financial statements

93. (1) The authority shall, as soon as practicable after 30 June in each year, prepare and submit to the appropriate Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister approves.

(2) Before submitting financial statements to the appropriate Minister under subsection (1), the authority shall submit them to the Auditor-General, who shall report to the appropriate Minister—

- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and the state of the affairs of the authority;
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the authority during the year have been in accordance with the enactment establishing the authority; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the appropriate Minister.

(3) The appropriate Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General to be laid before the Assembly within 15 sitting days after their receipt by the appropriate Minister.

(4) The first report to be prepared under this section shall be a report for the period commencing on the date of commencement of this section and ending at the expiration of 30 June 1990.

Division 3—Public authorities not required to keep accounts in accordance with commercial practice

Bank accounts

94. (1) The authority may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The authority shall pay all moneys received by it into an account referred to in this section.

(3) In this section—

“approved bank”, in relation to an authority, means—

- (a) the Reserve Bank of Australia; or
- (b) another bank for the time being declared by the Chief Minister or a person authorised by the Chief Minister to give approvals under this section to be an approved bank in relation to that authority.

Proper accounts to be kept

95. The authority—

- (a) shall cause to be kept proper accounts and records of the transactions and affairs of the authority; and
- (b) shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the authority and over the incurring of liabilities by the authority.

Penalty: \$10,000.

Audit

96. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the authority and records relating to assets of, or in the custody of, the authority, and shall forthwith draw the attention of the appropriate Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his or her so doing.

(2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

(3) The Auditor-General shall, at least once in each year, report to the appropriate Minister the results of the inspection and audit carried out under subsection (1).

(4) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to all accounts and records of the authority relating directly or indirectly to the receipt or payment of moneys by the authority or to the acquisition, receipt, custody or disposal of assets by the authority.

(5) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from, any accounts or records referred to in subsection (4).

(6) The Auditor-General or a person authorised by the Auditor-General may require any person to furnish him or her with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Division.

(7) A person shall not refuse or fail to comply with a requirement under subsection (6) to the extent that the person is capable of complying with it.

Penalty—

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

(8) A person shall not, in purported compliance with a requirement under subsection (6), knowingly furnish information that is false or misleading in a material particular.

Penalty—

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

(9) A person is not excused from furnishing information in pursuance of a requirement under subsection (6) on the ground that the information may tend

to incriminate the person, but any information furnished in pursuance of such a requirement is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (7) or (8).

Annual report and financial statements

97. (1) The authority shall, as soon as practicable after 30 June in each year, prepare and submit to the appropriate Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister approves.

(2) Before submitting financial statements to the appropriate Minister under subsection (1), the authority shall submit them to the Auditor-General, who shall report to the appropriate Minister—

- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the authority during the year have been in accordance with the enactment establishing the authority; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the appropriate Minister.

(3) The appropriate Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General to be laid before the Assembly within 15 sitting days after their receipt by the appropriate Minister.

(4) The first report to be prepared under this section shall be a report for the period commencing on the date of commencement of this section and ending at the expiration of 30 June 1990.

Division 4—Public authorities audited by company auditors

Interpretation

98. (1) In this Division, unless the contrary intention appears—

“appropriate Minister”, in relation to a privately audited body, means the Minister responsible for administering the provision of the law of the Territory under which that body is established;

“company auditor” means a firm carrying on the business of auditing accounts;

“privately audited body” means a body corporate whose accounts, records and financial statements are, in accordance with the law of the Territory under which that body is established, subject to inspection and audit by a company auditor.

(2) A reference in this Division to a law of the Territory under which a body is established includes a reference to a law of the Territory continuing a body in existence, but does not include a reference to a law relating to companies.

Discretionary power to report on company auditor

99. (1) The Auditor-General shall, by notice published in the Gazette, set auditing standards to be complied with by company auditors when inspecting and auditing the accounts and records, or reporting on the financial statements, of privately audited bodies.

(2) In relation to a privately audited body, the Auditor-General may, at any time, report to the appropriate Minister—

- (a) whether, in the Auditor-General’s opinion, the company auditor has complied with auditing standards set under subsection (1);
- (b) on the results and quality of the inspection and audit by the company auditor; and
- (c) as to such other matters arising out of the audit, or the report on the financial statements, by the company auditor as the Auditor-General considers should be reported.

(3) The appropriate Minister shall cause a copy of a report by the Auditor-General under subsection (2) to be laid before the Assembly within 15 sitting days after its receipt by the appropriate Minister.

Discretionary audit of accounts and records by Auditor-General

100. (1) The Auditor-General may, at any time, inspect and audit the accounts and records of financial transactions of a privately audited body and records relating to assets of, or in the custody of, the body and may draw the attention of the appropriate Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his or her so doing.

(2) An inspection and audit by the Auditor-General of accounts and records referred to in subsection (1) may relate to all or any part of such accounts and records.

(3) The Auditor-General may report to the appropriate Minister the results of the inspection and audit carried out under subsection (1).

Discretionary report by Auditor-General on financial statements

101. (1) Where, whether under this Part or otherwise, a privately audited body is required to submit to the appropriate Minister a report of its operations during a particular period, together with financial statements in respect of that period, the body shall, when submitting the financial statements to the Minister, submit copies of the statements to the Auditor-General.

(2) After considering the financial statements submitted by a body under subsection (1), the Auditor-General shall—

- (a)** report to the appropriate Minister that the Auditor-General does not intend to report on the financial statements; or
- (b)** report to the appropriate Minister—
 - (i)** whether, in the Auditor-General's opinion, the statements are based on proper accounts and records;
 - (ii)** whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and the state of the affairs of the body;
 - (iii)** whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the body have been in accordance with the law of the Territory under which the body is established; and
 - (iv)** as to such other matters arising out of the statements as the Auditor-General considers should be reported.

(3) The appropriate Minister shall cause a copy of a report by the Auditor-General under subsection (2) to be laid before the Assembly as soon as practicable after the copies of the report and financial statements of the body and the report of the company auditor are laid before the Assembly.

Access to documents

102. (1) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to—

- (a) all accounts and records of a privately audited body relating directly or indirectly to the receipt or payment of money by the body or to the acquisition, receipt, custody or disposal of assets by the body; and
- (b) all papers (including working papers) and reports of the company auditor relating to the body's accounts, records, financial statements or other documents.

(2) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from, any such accounts, records, papers or reports referred to in subsection (1).

(3) The Auditor-General or a person authorised by the Auditor-General may require any person to furnish him or her with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the powers and functions of the Auditor-General under this Division.

(4) A person shall not refuse or fail to comply with a requirement under subsection (3) to the extent that the person is capable of complying with it.

Penalty—

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

(5) A person shall not, in purported compliance with a requirement under subsection (3), knowingly furnish information that is false or misleading in a material particular.

Penalty—

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

(6) A person is not excused from furnishing information in pursuance of a requirement under subsection (3) on the ground that the information may tend to incriminate the person, but any information furnished in pursuance of such a requirement is not admissible in evidence against the person in any criminal proceedings, other than proceedings for an offence against subsection (4) or (5).

Avoidance of duplication of work

103. The Auditor-General shall, in the exercise of powers and performance of functions under this Division, avoid, so far as practicable, any duplication of audit work.

Division 5—Miscellaneous

Interpretation

104. (1) In this Division—

“accounts and records of a body” mean, in the case of the trustee or trustees of a trust, the accounts and records of the trustee or trustees relating to the trust;

“body” includes—

- (a) an incorporated company—
 - (i) in which the Territory has an interest; or
 - (ii) in which a body corporate incorporated for a public purpose by a law of the Territory has an interest;
- (b) an incorporated company that is related to a company referred to in paragraph (a); and
- (c) the trustee or trustees of a trust.

(2) For the purposes of this Division—

- (a) the Territory shall be deemed to have an interest in an incorporated company—
 - (i) if any stock or shares in the capital of the company is or are beneficially owned by the Territory; or
 - (ii) in the case of a company limited by guarantee—if the Territory, or a nominee for the Territory, is a member of the company; and

- (b) a body corporate referred to in subparagraph (a) (ii) of the definition of “body” in subsection (1) shall be taken to have an interest in an incorporated company—
 - (i) if any stock or shares in the capital of the company is or are beneficially owned by that body corporate; or
 - (ii) in the case of a company limited by guarantee—if that body corporate, or a nominee for that body corporate, is a member of the company.

(3) Where an incorporated company—

- (a) is the holding company of another incorporated company;
- (b) is a subsidiary of another incorporated company; or
- (c) is a subsidiary of the holding company of another incorporated company;

the first-mentioned incorporated company and that other incorporated company shall, for the purposes of this Division, be deemed to be related to each other.

(4) Subject to subsections (5) and (7)—

- (a) an incorporated company shall be deemed to be a subsidiary of another incorporated company if that other company—
 - (i) controls the composition of the board of directors of the first-mentioned company;
 - (ii) controls more than one-half of the voting power at a general meeting of the first-mentioned company; or
 - (iii) holds more than one-half of the issued shares in the first-mentioned company (excluding any shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); and
- (b) an incorporated company shall be deemed to be a subsidiary of another incorporated company if the first-mentioned company is a subsidiary of any incorporated company that is that other company’s subsidiary (including a company that is that other company’s subsidiary by another application or other applications of this paragraph).

(5) For the purposes of subsection (4), the composition of the board of directors of an incorporated company shall be deemed to be controlled by

another incorporated company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors.

(6) For the purposes of subsection (5), an incorporated company shall be deemed to have power to make an appointment to the board of directors of another incorporated company—

- (a) if a person cannot be appointed as such a director without the exercise by that first-mentioned company of some power exercisable by it without the consent or concurrence of any other person; or
- (b) if the appointment of a person as a director of that other company necessarily follows from his or her being a director or other officer of that first-mentioned company.

(7) In determining whether an incorporated company is a subsidiary of another incorporated company—

- (a) any shares held or powers exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by a person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary that is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other company;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company, or of a trust deed for securing any such debentures, shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable solely by way of security for the purposes of a money-lending agreement.

(8) A reference in this Division to a holding company of another incorporated company shall be read as a reference to an incorporated company of which that other company is a subsidiary.

Audit by arrangement

105. (1) The functions of the Auditor-General under this Ordinance extend to the carrying out, at the discretion of the Auditor-General—

- (a) of the audit of all or any of the financial statements of a body—
 - (i) where a Minister requests the Auditor-General to carry out the audit and arranges with the body for the financial statements, and any necessary accounts and records, to be made available for the purpose; or
 - (ii) in accordance with an arrangement made under subsection (2); and
- (b) of an inspection and audit or the inspection and audit, of the accounts and records of a body—
 - (i) where a Minister requests the Auditor-General to carry out the inspection and audit or inspections and audits, as the case may be, and arranges with the body for its accounts and records to be made available for the purpose; or
 - (ii) in accordance with an arrangement made under subsection (2).

(2) The Auditor-General may, at the request of a Minister, make an arrangement with a body for the carrying out by the Auditor-General of the audit of financial statements of the body or the inspection and audit of the accounts and records of the body, and may, with the consent of a Minister, vary or revoke such an arrangement.

(3) Where, under subsection (1), the Auditor-General audits financial statements of a body, or inspects and audits accounts and records of a body, at the request of a Minister or pursuant to an arrangement entered into with the body at the request of a Minister, the Auditor-General shall report to the Minister on the audit or inspection and audit, as the case may be.

(4) Arrangements for the purposes of subparagraph (1) (a) (i) or b (i) with a body or an arrangement made under subsection (2) with a body, may include provision for the payment of a fee by the body to the Territory in respect of the carrying out of an inspection and audit to which the arrangement relates.

Audit fees**106. (1)** Where the Auditor-General—

- (a) carries out under this Ordinance, otherwise than under section 100 or 101, an inspection and audit of the accounts and records of a body—
 - (i) determined by the Minister to be a body to which this section applies; or
 - (ii) included in a class of bodies determined by the Minister to be a class of bodies to which this section applies; or
- (b) reports to the appropriate Minister concerning the financial statements of such a body;

there are payable by that body to the Territory, in respect of the inspection and audit, or of the giving of the report, fees and charges in accordance with a scale of fees and charges determined by the Auditor-General in a manner approved by the Minister, being a scale applicable to that body.

(2) The Minister may exempt a body included in a class of bodies referred to in subparagraph (1) (a) (ii) from the payment of fees and charges under subsection (1).

(3) A determination of the Minister or of the Auditor-General under this section shall be made by instrument.

Report of Auditor-General on cases of non-compliance

107. (1) The Auditor-General shall report on all cases in which, in the opinion of the Auditor-General, the receipt, expenditure or investment of money, or the acquisition or disposal of assets, by a statutory body was not in accordance with the law of the Territory by or under which the body was established unless, in the opinion of the Auditor-General, the cases are not of sufficient importance to justify his or her so doing.

(2) In this section—

“statutory body” means a body or authority established by or under a law of the Territory.

PART X—OFFENCES**Misappropriation of public moneys or stores****108. (1)** An accounting officer shall not—

- (a) misapply, improperly dispose of, or improperly use, any public moneys or stores; or
- (b) pay any public moneys into the officer's own private account at a bank.

Penalty: \$20,000 or imprisonment for 7 years, or both.

(2) An accounting officer shall not wilfully and unlawfully damage or destroy any stores.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) In a prosecution for an offence against paragraph (1) (a), it is not necessary to prove the misapplication, improper disposal or improper use of a specific sum of money or stores if—

- (a) there is proof of a general deficiency on the examination of the books of account or entries kept or made by the defendant or otherwise; and
- (b) the court is satisfied that the defendant misapplied, improperly disposed of or improperly used all or any of the deficient moneys or all or any of the deficient stores.

Misuse of Territory credit cards

109. (1) A person who uses a Territory credit card with the intention of obtaining cash, goods or services otherwise than for the Territory is guilty of an offence punishable, on conviction, by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years, or both.

(2) In this section—

“Territory credit card” means a credit card issued to the Territory to enable the Territory to obtain cash, goods or services on credit.

Forging or uttering documents

110. A person who—

- (a) forges or counterfeits or causes or procures to be forged or counterfeited or knowingly or wilfully acts or assists in forging or counterfeiting—
 - (i) the name, initials, mark or signature of any other person to any writing for or for the purposes of receiving or obtaining any public money or any money out of the Territory Public Account or any stores; or

- (ii) any writing made by any such person; or
 - (b) utters or publishes any such writing knowing it to be forged or counterfeited with an intention to defraud the Territory or any person;
- is guilty of an offence punishable, on conviction, by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 10 years, or both.

Document in place of statutory declaration

111. (1) Where the Minister is satisfied that a document signed by a person in a specified part of the Commonwealth may be accepted in place of a statutory declaration required by this Ordinance or the regulations, the Chief Minister may certify accordingly.

(2) A certificate under subsection (1)—

- (a) shall be in writing; and
- (b) shall specify the reasons for issuing the certificate.

(3) A document signed in accordance with a certificate under subsection (1) shall be accepted in place of the relevant statutory declaration.

(4) A person who signs a document for the purposes of this section knowing it to be false is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both.

Persons failing to attend to give evidence

112. (1) A person shall not fail—

- (a) to attend before the Auditor-General for the purpose of being examined;
- (b) to produce any accounts or records;
- (c) to be sworn or make a declaration or affirmation; or
- (d) to answer any lawful question;

when required to do so by the Auditor-General under this Ordinance.

Penalty: \$1,000.

(2) Where a person is required under this Ordinance to attend before the Auditor-General, the person is entitled to be paid such expenses as the Auditor-General certifies to be reasonable.

False information

113. A person shall not, knowingly or recklessly—

- (a) make or subscribe a statutory declaration or affirmation for the purposes of this Ordinance; or
- (b) give evidence in the course of being examined before the Auditor-General;

that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 5 years, or both.

PART XI—LOSS OF AND DAMAGE TO PUBLIC PROPERTY

Interpretation

114. (1) In this Part, unless the contrary intention appears—

“Head of Administration” means—

- (a) in relation to a public servant who is ordinarily performing duties in an administrative unit—the Head of Administration or Associate Head of Administration who has control of that unit;
- (b) in relation to a member of the Australian Capital Territory Teaching Service—the relevant authority under the *Teaching Service Act 1972*; or
- (c) in relation to a person included in a class of persons to whom paragraph (c) of the definition of “officer” in this subsection applies—the person holding, or performing the duties of, such office as is declared by the regulations to be, for the purposes of this Part, the office of Head of Administration in respect of that class of persons;

“officer” means—

- (a) a public servant ordinarily performing duties in an administrative unit;
- (b) a member of the Australian Capital Territory Teaching Service; or
- (c) a person employed by the Territory (other than a person referred to in paragraph (a) or (b)) who is included in a class of

persons employed by the Territory declared by the regulations to be a class of persons to whom this paragraph applies.

(2) In this Part, unless the contrary intention appears, a reference to property of the Territory shall be read as including a reference to chattels the property of, or in the possession or under the control of, the Territory or a prescribed authority.

(3) For the purposes of this Part, an officer shall be taken to have performed duties in a grossly negligent manner if the officer has displayed, in the performance of those duties, a deliberate or serious disregard of reasonable standards of care.

Liability in respect of losses

115. (1) Subject to subsection (2) and to any regulations made under subsection (12) and any other regulations made for the purposes of this section, where there occurs a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory, an officer who, by his or her misconduct or by performing any of his or her duties in a grossly negligent manner, causes or contributes to the loss, deficiency, destruction or damage is liable to pay to the Territory an amount equal to—

- (a) in the case of a loss of, or deficiency in, public moneys—the amount of the loss or deficiency;
- (b) in the case of loss or destruction of property—the value of the property lost or destroyed; or
- (c) in the case of damage to property—the expense of repairing the damage to the property or the value of the property, whichever is the less.

(2) Where the negligence or misconduct of an officer was not the sole cause of any loss of, or deficiency in, public moneys, or of any loss or destruction of, or damage to, other property of the Territory, the officer is liable under subsection (1) to pay to the Territory so much only of the amount that would, but for this subsection, be payable under subsection (1) as is just and equitable having regard to the officer's share of responsibility for the loss, deficiency, destruction or damage.

(3) Without limiting the generality of subsection (1), an officer may, under subsection (4), (5) or (8), be under a liability to the Territory in respect of a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory, notwithstanding that the officer has not caused,

or contributed to, the loss, deficiency, destruction or damage by his or her misconduct or by performing any of his or her duties in a grossly negligent manner.

(4) Where there occurs a loss of, or deficiency in, public moneys held by an officer by way of an advance, the officer is, subject to subsection (7) and to any regulations made under subsection (12), liable to pay to the Territory an amount equal to the amount of the loss or deficiency.

(5) Where a loss of, or a deficiency in, public moneys occurs while the moneys are under the control of an accounting officer as provided by subsection (6), the officer is, subject to subsection (7) and to any regulations made under subsection (12), liable to pay to the Territory an amount equal to the amount of the loss or deficiency.

(6) For the purpose of subsection (5), public moneys shall be taken to be under the control of an accounting officer if the moneys have been collected or received by the accounting officer but have not been paid to another person, or to the credit of a bank account, as required by directions in force under this Ordinance and applicable to those moneys.

(7) An officer is not liable to pay an amount to the Territory under subsection (4) or (5) in respect of a loss of, or deficiency in, public moneys held by, or under the control of, the officer if the loss or deficiency occurred notwithstanding that the officer had taken such steps as it was reasonable, in all the circumstances, for the officer to take to prevent any loss of the moneys, or the occurrence of any deficiency in the moneys, as the case may be.

(8) Where—

- (a) the loss or destruction of, or damage to, property of the Territory occurs while the property is under the control of an officer as provided by subsection (10); and
- (b) when the property was delivered to the officer, the officer was informed, in writing, and acknowledged, in writing, that the property was delivered to the officer on the express condition that the officer would, at all times, take strict care of the property;

the officer is, subject to subsection (9) and to any regulations made under subsection (12), liable to pay to the Territory an amount equal to—

- (c) in the case of the loss or destruction of the property—the value of the property; or

- (d) in the case of damage to property—the expense of repairing the damage to the property or the value of the property, whichever is the less.

(9) An officer is not liable to pay an amount to the Territory under subsection (8) in respect of the loss or destruction of, or damage to, property of the Territory if the loss, destruction or damage occurred notwithstanding that the officer had taken such steps as it was reasonable, in all the circumstances, for the officer to take to prevent the loss or destruction of, or damage to, the property, as the case may be.

(10) For the purpose of subsection (8), property of the Territory shall be taken to be under the control of an officer if the property has been delivered to the officer and has not been returned to the person entitled to receive the property on behalf of the Territory.

(11) The Territory is not entitled to recover amounts from the one officer under 2 or more subsections of this section in respect of the same loss, deficiency, destruction or damage.

(12) The regulations may make provision for and in relation to the reduction of the amount that would otherwise be the amount of the liability of the person under this section in respect of a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory.

Action in respect of losses

116. (1) Where the Head of Administration of an officer is satisfied that a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory, occurred in such circumstances as to render the officer liable under section 115 to pay an amount to the Territory in respect of the loss, deficiency, destruction or damage, the Head of Administration shall determine, in writing, that the loss, deficiency, destruction or damage so occurred and his or her assessment of the amount that the officer is liable to pay to the Territory under this Part in respect of the loss, deficiency, destruction or damage.

(2) Where, under the regulations, an investigation is required to be held into a loss of, or deficiency in, public moneys, or into the loss or destruction of, or damage to, other property of the Territory, the Head of Administration shall not make a determination under subsection (1) in respect of the loss, deficiency, destruction or damage unless the investigation has been completed and he or she has given consideration to a report of the results of the investigation.

(3) The Head of Administration shall cause notice in writing of a determination made by him or her under subsection (1) to be given to the officer concerned.

(4) A notice given under subsection (3)—

- (a) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Ordinance 1989*, an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Ordinance applies—shall include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Ordinance.

(5) The validity of a decision referred to in a notice given under subsection (3) shall not be taken to have been affected by a failure to comply with subsection (4).

(6) Subsection (1) does not authorise the making of a determination with respect to the liability of a person who was an officer when the liability was incurred by is no longer an officer.

Review of determinations

117. (1) Application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of a determination made by a Head of Administration under subsection 116 (1).

(2) An officer to whom a copy of a determination has been delivered in accordance with subsection 116 (3)—

- (a) may, if the officer has not made application to the Australian Capital Territory Administrative Appeals Tribunal for review of the determination, notify the Head of Administration, in writing, that the officer wishes his or her liability (if any), or the amount of his or her liability, or both, in respect of the loss, deficiency, destruction or damage to be determined by a court; and
- (b) shall not, after the officer has so notified the Head of Administration, make application to the Australian Capital Territory Administrative Appeals Tribunal for review of the determination.

Recovery of amount

118. (1) Where—

- (a) by virtue of a decision given by the Australian Capital Territory Administrative Appeals Tribunal, a determination made by the Head of Administration under subsection 116 (1), or another determination that is, under subsection 44 (10) of the *Administrative Appeals Tribunal Ordinance 1989* to be taken to be a determination so made is in force; and
- (b) the determination that is so in force contains an assessment of the amount that an officer is liable to pay to the Territory in respect of a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory;

the Territory may recover from the officer, by action in a court of competent jurisdiction, an amount equal to the amount so assessed as a debt due by the officer to the Territory.

(2) Where—

- (a) the Australian Capital Territory Administrative Appeals Tribunal, upon determining an application made to it for the review of a determination made by the Head of Administration under subsection 116 (1), has set aside that determination and remitted the matter for reconsideration in accordance with directions or recommendations of the Tribunal;
- (b) the matter has been reconsidered by the Head of Administration and there is in force a determination made by the Head of Administration, or another determination that is, under subsection 44 (10) of the *Administrative Appeals Tribunal Ordinance 1989* to be taken to be the determination made by the Head of Administration, upon the reconsideration of the matter; and
- (c) the determination that is so in force contains an assessment of the amount that an officer is liable to pay to the Territory in respect of a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory;

the Territory may recover from the officer, by action in a court of competent jurisdiction, an amount equal to the amount so assessed as a debt due by the officer to the Territory,

(3) Proceedings shall not be instituted in a court under subsection (1) or (2) in relation to a loss of, or deficiency in, public moneys, or the loss or destruction of, or damage to, other property of the Territory—

- (a) unless the time for appealing to the Supreme Court from the decision of the Australian Capital Territory Administrative Appeals Tribunal in relation to the loss, deficiency, destruction or damage has expired; or
- (b) if such an appeal has been instituted—unless the appeal has been determined or withdrawn.

(4) Nothing in section 116 or in subsection (1), (2) or (3) of this section shall be taken to affect the right of the Territory to recover from an officer who does not make application to the Australian Capital Territory Administrative Appeals Tribunal for review of the determination made by moneys or the loss or destruction of, or damage to, other property of the Territory, by action in a court of competent jurisdiction, the amount that the officer is liable, under section 115, to pay to the Territory in respect of the loss, deficiency, destruction or damage whether or not the officer has given a notification under subsection 117 (2).

Burden of proof

119. The burden of satisfying a court, the Australian Capital Territory Administrative Appeals Tribunal, the Head of Administration or the delegate of the Head of Administration that, by reason of subsection 115 (7) or (9) a person is not liable to pay an amount to the Territory that he or she would otherwise be liable to pay lies on the person who alleges that he or she is not so liable.

Persons not liable twice in respect of same loss

120. (1) Section 115 shall not be taken to affect any right of the Territory to recover an amount from an officer otherwise than under this Part, but the Territory shall not recover amounts from the one officer both under this Part and otherwise than under this Part in respect of the same loss, deficiency, destruction or damage.

(2) The Territory shall not recover an amount from an officer both under section 115 and under subsection 118 (1) or (2) in respect of the same loss, deficiency, destruction or damage.

(3) It is not competent for the Territory to commence, or continue, legal proceedings against a person in respect of the person's liability for a loss of, or deficiency in, public moneys, or the loss of destruction, or damage to, other property of the Territory, after the person has paid to the Territory in respect of that liability, an amount equal to the assessed amount of the loss, deficiency, destruction or damage.

(4) Subsection (3) does not prevent the Territory from continuing proceedings instituted against a person before the payment was made for the purpose only of obtaining an order in respect of the costs of the proceedings.

Application to prescribed authorities

121. Sections 115 to 120 (inclusive) apply in relation to a prescribed authority as if—

- (a) references in those sections to the Territory (except references to the property of the Territory) were references to the prescribed authority;
- (b) references in those sections to an officer were references to a person who—
 - (i) constitutes, or is acting as a person constituting, the prescribed authority;
 - (ii) is, or is acting as, a member of the prescribed authority or is a deputy of such a member; or
 - (iii) is employed by the prescribed authority;
- (c) references in those sections to the Head of Administration, in relation to an officer, were references to the person holding, or performing the duties of, such office as is prescribed for the purpose of this paragraph in respect of the prescribed authority; and
- (d) references in those sections to property of the Territory included references to the property of the prescribed authority.

Method of paying salary

122. (1) Except where the Minister otherwise determines in writing, any payment of remuneration or allowances to a Territory employee shall be made otherwise than in cash.

(2) In this section—

“Territory authority” means—

- (a) a body, whether incorporated or not, established for a public purpose by or under a law of the Territory; and
- (b) a company or other body corporate incorporated under a law of the Commonwealth, a State or Territory, being a company or other body corporate in which the Territory has a controlling interest;

“Territory employee” means—

- (a) a public servant or a person who is the holder of a statutory office under a law of the Territory;
- (b) any other person employed by the Territory or by a Territory authority, whether in a permanent capacity or otherwise; and
- (c) a person holding an office or appointment in the Australian Capital Territory Teaching Service.

PART XII—MISCELLANEOUS

Signing of reports

123. Where, under a provision of a law of the Territory, the Auditor-General is authorised or required to submit a report to a Minister in respect of an authority or other body, being an authority or body declared by the regulations to be an authority or body to which this section applies, a report, in respect of the authority or body, of a kind referred to in the provision, being a report signed by an officer authorised by the Auditor-General to do so, may be submitted to the Minister and shall, when it has been so submitted, be deemed to have been submitted to the Minister by the Auditor-General for the purposes of that provision.

Writing off, and waiver of rights to, certain moneys and stores

124. (1) The Chief Minister may write-off—

- (a) losses or deficiencies of public moneys;
- (b) irrecoverable amounts of revenue;
- (c) irrecoverable debts and overpayments;
- (d) amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Chief Minister, be uneconomical; and
- (e) the value of lost, deficient, condemned, unserviceable or obsolete stores.

(2) The Chief Minister may, on behalf of the Territory—

- (a) waive the right of the Territory—
 - (i) to the payment of an amount payable to the Territory or to the payment of an amount included in a class of amounts payable to the Territory; or

- (ii) to the recovery by the Territory of any stores or of stores included in any class of stores;
 - (b) postpone the right (whether arising under a law of the Territory or otherwise) to payment of a debt payable to the Territory in priority to another debt or to all other debts included in a class of debts; and
 - (c) allow an amount payable to the Territory to be paid in instalments.
- (3) The power conferred on the Chief Minister by subsection (2) is in addition to, and does not derogate from, any other power conferred on the Chief Minister by this Ordinance or by any other Ordinance.
- (4) The Chief Minister shall not waive the right of the Territory to the payment of an amount exceeding \$50,000 unless the Chief Minister has considered a report concerning the proposed waiver furnished to him or her by the administrative head.

Regulations

125. (1) The Minister may make regulations, not inconsistent with this Ordinance, prescribing matters—

- (a) required or permitted by this Ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

(2) Without limiting the generality of subsection (1), the regulations—

- (a) may make provision in relation to—
 - (i) the collection, receipt, custody, issue, expenditure, due accounting for and care and management of all public moneys and the guidance of all persons concerned in any such matter;
 - (ii) the more effectual recording, examination, inspection and checking of receipts and expenditure and the keeping of necessary accounts and records;
 - (iii) the necessary forms for the accounts and records required under the provisions of this Ordinance or the regulations;
 - (iv) the execution of works and the supply of services for or by the Territory;
 - (v) the purchase of chattels and other property for or by the Territory;

- (vi) the custody, issue, sale or other disposal and writing off of stores and other property of the Territory and the proper accounting for, and stocktaking of, those stores and that property; and
 - (vii) the disposal of unclaimed property found on premises, or in an aircraft, vessel, vehicle, container or receptacle, under the control of an administrative unit;
- (b) may make provision in relation to the giving of guidelines by the Minister in respect of any of the matters referred to in subparagraphs (a) (i) to (vii); and
 - (c) may prescribe, for offences against the regulations, penalties not exceeding \$500.

Directions

126. (1) The regulations may—

- (a) authorise the Minister, or administrative head, to give to officers, or to any other persons who are subject to the provisions of this Ordinance, directions for or in relation to any of the matters for and in relation to which regulations may be made under this Ordinance;
- (b) authorise a prescribed officer of an administrative unit to give to officers of, or persons employed in, that unit directions for or in relation to any of the matters referred to in paragraph (a);
- (c) authorise a prescribed person employed in the service of the Territory to give to persons included in a prescribed class of persons employed in the service of the Territory directions for or in relation to any of the matters referred to in paragraph (a); and
- (d) provide that a contravention of, or failure to comply with, a direction referred to in paragraph (a), (b) or (c) shall be deemed to be a contravention of the regulations.

(2) Directions referred to in subsection (1) shall not be inconsistent—

- (a) with this or any other Ordinance;
- (b) with regulations in force under this Ordinance or any other Ordinance;
or
- (c) in the case of directions given under paragraph (1) (b) or (c)—with directions given under paragraph (1) (a).

PART XIII—TRANSITIONAL

Accounts of public moneys

127. An account maintained in respect of public moneys relating to the Territory pursuant to subsection 20 (3) of the *Audit Act 1901* of the Commonwealth, immediately before the date of commencement of this section, continues in existence as if it had been opened pursuant to subsection 26 (3).

Bank accounts of certain authorities

128. The bank accounts maintained, immediately before the date of commencement of Part IX, by an authority to which that Part applies, under section 63D or 63J of the *Audit Act 1901* of the Commonwealth as that section applied to the authority by virtue of regulations in force under that Act (whether or not that section had been modified by such regulations) continue in existence as bank accounts of the authority as if they had been opened by the authority under section 89 or 94, as the case requires, as that section applies to the authority by virtue of the regulations (whether or not that section is modified by the regulations).

Determinations for payment of salary

129. A determination made under section 70AH of the *Audit Act 1901* of the Commonwealth and having force and effect immediately before self-government day in relation to a person who, on that day, is a Territory employee within the meaning of section 122 of this Ordinance shall, on and after that day, have force and effect in relation to that employee as if the determination had been made by the Minister under that last-mentioned section.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 10 May 1989.