

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE  
ASSEMBLY**

**AUDITOR-GENERAL BILL 1996**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
Kate Carnell MLA  
Chief Minister and Treasurer**



## ACT GOVERNMENT

### AUDITOR-GENERAL BILL 1996

#### OUTLINE

The objective of this Bill is to promote full public accountability for public sector activities and use of resources by ensuring members of the Legislative Assembly, as elected representatives of the public, are provided with accurate and complete information on the legality, efficiency and effectiveness with which public sector activities and resources are managed.

This purpose will generally be achieved, firstly by the Auditor-General conducting audits to ensure that financial reports and performance information provided to the Legislative Assembly are reliable and complete, and secondly by the Auditor-General providing reports to the Legislative Assembly which contain independent evaluation of the legality, efficiency and effectiveness with which public sector activities and resources are managed.

The Bill:

- consolidates the existing law concerning the Auditor-General;
- provides greater emphasis on the independence of the office;
- clarifies existing practices; and
- provides for the Auditor-General's office and functions.

#### DETAILS OF THE BILL

##### PART I - PRELIMINARY

##### Short title and Commencement

Clauses 1 & 2      These clauses are formal requirements. They refer to the short title of the Bill and to the commencement of the Bill, which

will be the day on which the Financial Management Bill commences.

### **Interpretation**

Clause 3                      This clause defines a number of terms used in the Bill.

### **Reports to be given to the Speaker**

Clause 4                      A report required by this Bill must be given to the Speaker. If the Speaker is unavailable, the report must be given to the Deputy Speaker. If both the Speaker and Deputy Speaker are unavailable, the report must be given to the Clerk of the Legislative Assembly.

The Speaker or Deputy Speaker is unavailable if she or he is absent from duty or if there is a vacancy in the office.

### **Controlling interest**

Clause 5                      This clause defines controlling interest to give effect to clause 11.

## **PART II - THE AUDITOR-GENERAL**

### **Auditor-General**

Clause 6                      This clause requires the existence and maintenance of the office of the Auditor-General for the Territory.

### **Appointment and terms of office**

Clause 7                      The appointment and terms of office of the Auditor-General are specified in Schedule 1 to the Bill.

The Executive shall appoint the Auditor-General for a minimum period of not less than 5 years with a maximum of 7 years.

The Auditor-General holds office subject to terms and conditions, if any, approved by resolution of the Legislative Assembly or specified in the instrument of appointment.

## **Veto by Public Accounts Committee**

- Clause 8                      The Executive must consult with the Public Accounts Committee prior to appointing an Auditor-General. The Public Accounts Committee may veto a proposed appointment.

## **PART III - FUNCTIONS AND POWERS**

### **Independence**

- Clause 9                      This clause provides that the Auditor-General is not subject to direction by the Executive or any Minister in the performance of the functions of the Auditor-General. It is intended to guarantee the Auditor-General's independence.

### **Functions**

- Clause 10                      This clause sets out the Auditor-General's functions and responsibilities in addition to those conferred on her or him by this Bill. These functions are:
- to promote public accountability in the public administration of the Territory;
  - to audit annual financial statements of the Territory, departments and Territory authorities under the Financial Management Bill;
  - to audit the accounts and records of any person, body or thing determined by regulations;
  - to conduct performance audits of any person, body or thing determined by regulations;
  - any other function conferred on the Auditor-General by or under any other law of the Territory;
  - do anything incidental or conducive to any of the Auditor-General's functions.

**Special financial audits****Clause 11**

This clause allows the Auditor-General to conduct special financial audits of public sector companies and joint ventures and trusts in which the Territory or a Territory entity has a controlling interest.

The accounts and records of the venture itself are subject to audit, not those of the other joint venturers. The same applies to trusts.

The Auditor-General will take accounts and records as they stand. Company accounts and records will need to comply with the Corporations Law. Accounts and records relating to joint ventures and trusts may or may not be subject to particular accounting requirements. Accounting standards issued pursuant to the Financial Management Bill may or may not apply. Any deficiency in accounting practices could be exposed in the Auditor-General's report.

A special audit under this clause is not an audit for the purposes of the Corporations Law. Nor will the Auditor-General automatically become the company auditor for the purposes of the Corporations Law.

Audit fees may be applied to special audits.

**Performance audits****Clause 12**

The Auditor-General may at any time conduct a performance audit in respect of a department, or Territory entity, or a joint venture or a trust in which the Territory has a controlling interest.

**Auditor under the Corporations Law****Clause 13**

This clause provides the authority for the Auditor-General to audit financial statements of Territory companies and subsidiaries where he or she has been appointed for the purposes of Corporations Law.

**Power to obtain information**

Clause 14            The Auditor-General has the power to direct a person in writing to:

- provide any information required;
- attend to give evidence before the Auditor-General or authorised person; or
- produce any documents in the custody, or under the control, of the person.

Any such directions by the Auditor-General would be expected to detail reasonable deadlines and the form in which the information is to be supplied.

**Access to premises etc.**

Clause 15            This clause is intended to allow the Auditor-General or an authorised person, when performing the functions of the Auditor-General, to enter and remain on premises occupied by the Territory or a Territory entity.

An authorised person must produce written authority by the Auditor-General.

All reasonable facilities must be provided to assist in the effective exercise of the Auditor-General's functions.

**Audit Fees**

Clause 16            This clause permits the Auditor-General to charge a fee to audit annual financial statements and conduct special financial audits.

**Reports to Legislative Assembly etc.**

Clause 17            The Auditor-General may report to the Legislative Assembly on any matter arising in connection with the performance of the Auditor-General's functions.

### **Proposed reports**

Clause 18                The Auditor-General must give a responsible chief executive the opportunity to comment on a proposed report and shall take account of these comments when finalising the report.

### **Reporting sensitive information**

Clause 19                This clause deals with the inclusion of sensitive information in reports by the Auditor-General.

The Auditor-General shall not include particular information in a report for the Legislative Assembly if:

- the Auditor-General believes that disclosure would not be in the public interest because of certain listed matters; or
- the Chief Minister has issued a certificate that disclosure is would reveal deliberations or decisions of the Executive and would be contrary to the public interest.

Where the Auditor-General omits information from a report because the Auditor-General believes that disclosure would not be in the public interest, the Auditor-General may prepare a special report including the information for the Public Accounts Committee. The report shall be taken to have been referred to the Public Accounts Committee for inquiry and such report as the Committee considers fit.

### **Legislative Assembly Secretariat**

Clause 20                Part III of the Bill applies to the Legislative Assembly Secretariat as if the Secretariat is a department and as if the Speaker is the responsible Minister and the Clerk of the Legislative Assembly is the chief executive.

## **PART IV - ADMINISTRATION**

### **Application of Financial Management Bill**

Clause 21                The position of the Auditor General and the Auditor-General's staff is equated with that of a department in relation to certain

parts of the Financial Management Act: Part II - Territory Budget and Appropriations, Part III - Financial Reports and Part V - Banking and Investment. Under the provision, a reference to the responsible Minister of the department includes the Speaker and a reference to the chief executive of the department includes the Auditor-General.

### **Proposed appropriations**

**Clause 22** Prior to the commencement of the financial year, the presiding member of the Public Accounts Committee may advise the Treasurer of the appropriation that the Committee considers should be made for the operations of the Auditor-General for the year.

The presiding member may provide the Treasurer with a draft budget in accordance with clause 12 of the Financial Management Bill for the operations of the Auditor-General for the year.

### **Staff**

**Clause 23** The staff assisting the Auditor-General shall be employed under the *Public Sector Management Act 1994* and managed in accordance with the *Public Sector Management Act 1994*.

The Auditor-General has the powers of a chief executive in relation to her or his staff.

### **Contractors**

**Clause 24** The Auditor-General may engage contractors to assist in the performance of the functions of the Auditor-General. This would include, for example, people who have skills or expertise not available in the Auditor-General's office, or suitably qualified people engaged to meet periods of peak work loads. A person who is the Independent Auditor or who was the the Independent Auditor within the 12 months preceding engagement of contractors by the Auditor-General is ineligible.



### **Arrangements with Departments**

Clause 25                      The Auditor-General may arrange with a chief executive of a department to use the services of public servants or facilities of that department.

The *Public Sector Management Act 1994* applies to public servants or facilities subject to this arrangement.

### **Delegation**

Clause 26                      The Auditor-General may delegate in writing powers to staff assisting the Auditor-General or contractors engaged under clause 24.

## **PART V - AUDIT OF AUDITOR-GENERAL'S OPERATIONS**

### **Independent Auditor**

Clause 27                      There will be an Independent Auditor who will provide the Legislative Assembly with an independent audit report on the operations of the Auditor-General's office.

There is no existing statutory requirement to appoint an Independent Auditor under the *Audit Act 1989* (although this function is carried out). Transitional provisions will allow for the continuation of the current contract of the person carrying out the functions of Independent Auditor.

The Minister will engage an Independent Auditor under a contract for a period specified in the instrument of appointment. Terms and conditions (if any) will be specified in the instrument of appointment. The Independent Auditor will receive fees, allowances and other entitlements as determined in the contract of appointment.

### **Audit of annual financial statements**

Clause 28                      The Auditor-General is required to prepare financial statements in accordance with Part III of the Financial Management Bill.

As soon as practicable after the end of the financial year, the Auditor-General will give a copy of the annual financial

statements to the Independent Auditor who is required to audit the statement in accordance with Part III of the Financial Management Bill.

The Independent Auditor will give a written report about the audit to the Speaker of the Legislative Assembly.

### **Performance audits**

**Clause 29** This clause allows the Independent Auditor to conduct a performance audit of the operations of the Auditor-General. The Independent Auditor will carry out the audit as soon as practicable after receiving a request to do so from the presiding member of the Public Accounts Committee.

### **Performance audit - proposed report**

**Clause 30** The Independent Auditor will give the Auditor-General the opportunity to comment on her or his performance audit report before it is finalised and will take account of those comments when finalising the report.

### **Performance audit - report**

**Clause 31** The Independent Auditor will submit the performance audit report to the Speaker. The report shall include the substance of the Auditor-General's comments.

The Speaker will table the report in the Legislative Assembly.

### **Ancillary powers and disclosure of information**

**Clause 32** The Independent Auditor has the same responsibilities and powers as the Auditor-General in relation to section 14 (power to obtain information), section 15 (access to premises etc), section 19 (reporting sensitive information) and section 34 (confidentiality).

## **PART VI - MISCELLANEOUS**

### **Indemnity**

- Clause 33                      The Territory indemnifies any person for any liability incurred for an act or omission in the performance in good faith of a function on behalf of the Auditor-General.

### **Confidentiality**

- Clause 34                      A person who obtains information whilst undertaking the functions of the Auditor-General must not disclose that information except in the performance of that function.

### **Regulations**

- Clause 35                      Regulations may be made by the Executive.