

FIRST PRINT

**PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL)
AMENDMENT BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Annual Reports Legislation (Amendment) Bill 1991 is cognate with this Bill. The object of this Bill is to amend the Public Finance and Audit Act 1983:

- (a) to enable the Auditor-General to carry out special audits of the activities of Departments, government administrative offices, statutory authorities and any other bodies whose accounts are subject to audit by the Auditor-General under that Act or any other Act; and
- (b) to provide for reviews of the Auditor-General's Office; and
- (c) to allow a statutory body to furnish a statement that its annual financial statements exhibit a true and fair view of its financial position after auditing but before the Auditor-General issues an opinion in relation to the audit; and
- (d) to require statutory bodies to notify the formation of subsidiary organisations to the Auditor-General and the Treasurer; and
- (e) to limit the Auditor-General's term of office to a 7-year non-renewable term; and
- (f) to constitute the Auditor-General's Office as a body corporate for the purposes only of employing staff; and
- (g) to protect the Auditor-General and the Auditor-General's staff from personal liability in the execution of that Act and any other Act; and
- (h) to more accurately reflect, and to improve, the administrative processes of the Auditor-General's Office.

The Bill also amends the following Acts as a consequence of the amendment outlined in paragraph (f) above:

Public Sector Management Act 1988

State Authorities Non-contributory Superannuation Act 1987

State Authorities Superannuation Act 1987

Superannuation Act 1916.

Public Finance and Audit (Auditor-General) Amendment 1991

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to Schedules 1–4.

Clause 4 gives effect to Schedule 5.

Clause 5 states that the explanatory matter contained in the Bill does not form part of the Bill.

Schedules 1–4 make the amendments to the Public Finance and Audit Act 1983 described above.

Schedule 5 makes the amendments to the other Acts specified above.

Each amendment is explained in detail in the explanatory note relating to the amendment concerned.

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**PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL)
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**PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL)
AMENDMENT BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Public Finance and Audit Act 1983 with respect to the auditing of Departments and statutory authorities, reporting requirements, the office of Auditor-General and in other respects; and to amend certain other Acts consequentially.

Public Finance and Audit (Auditor-General) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Finance and Audit (Auditor-General) Amendment Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 4 (1)–(5), and section 3 in its application to those provisions, are taken to have commenced on 3 February 1989.

Amendment of Public Finance and Audit Act 1983 No. 152

3. The Public Finance and Audit Act 1983 is amended in the manner set out in Schedules 1–4.

Amendment of other Acts

4. Each Act specified in Schedule 5 is amended in the manner set out in that Schedule.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in Schedules 1–5 does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING**

(Sec. 3)

**Amendment—special audits of activities of Departments and
statutory authorities etc.**

(1) Part 3, Division 2A:

After Division 2, insert:

Division 2A—Special audits of activities

Definitions

38A. In this section:

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

“**audit**” includes examination and inspection;

“**authority**” means an authority, or other body, whose accounts are subject to audit by the Auditor-General under this Act or any other Act;

“**responsible Minister**” means:

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

“**special audit**” means an audit under this Division.

Special audit by Auditor-General

38B. (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of an authority to determine whether the authority is carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.

(2) A special audit is separate from, and does not affect, any other audit required or authorised by or under this Act or any other Act.

Report of special audit

38C. (1) The Auditor-General is to report to the Head of the authority, the responsible Minister and the Treasurer as to the result of any special audit and as to such other matters as in the judgment of the Auditor-General call for special notice.

(2) The Auditor-General must not make a report of a special audit under this section unless, at least 28 days before making the report, the Auditor-General has given the Head of the authority and the responsible Minister a summary of findings and proposed recommendations in relation to the audit.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

(3) The Auditor-General is to include in the report of a special audit under this section any submissions or comments made by the Head of the authority or a summary, in an agreed form, of any such submissions or comments.

(4) The Auditor-General, in a report of a special audit under this section:

- (a) may include such information as he or she thinks desirable in relation to the activities that are the subject of the audit; and
- (b) is to set out the reasons for opinions expressed in the report; and
- (c) may include such recommendations arising out of the audit as the Auditor-General thinks fit to make.

(5) The Auditor-General may include the report in any other report of the Auditor-General.

Special audit not to question policy

38D. Nothing in this Division entitles the Auditor-General to question the merits of policy objectives of the Government including:

- (a) any policy objective of the Government contained in a record of a policy decision of Cabinet; and
- (b) a policy direction of a Minister; and
- (c) a policy statement in any Budget Paper or any other document evidencing a policy decision of the Cabinet or a Minister.

Tabling etc. of reports under s. 38C

38E. (1) The Auditor-General is, as soon as practicable after making a report under section 38C, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

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

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

(3) The Auditor-General may include the report in any other report of the Auditor-General to the Legislative Assembly.

Explanatory note

Item (1) enables the Auditor-General to carry out a special audit of the activities of an authority to determine whether it is carrying out its activities effectively, economically and efficiently. An authority includes a Department, a government administrative office, a statutory authority and any other body which is subject to audit by the Auditor-General under the Act or any other Act.

A special audit is not to question the merits of government policy objectives. The Head of the authority may make submissions and comments which are to be included in the Auditor-General's report of the audit.

The Auditor-General is required to present the report of any such audit to the Legislative Assembly but may include that report in any other report of the Auditor-General.

Amendments—financial statements of statutory bodies

(2) Section 41B (Nature of financial statements):

- (a) In section 41B (1) (e), after "university;", insert "and".
- (b) Omit section 41B (1) (f) and (5).

(3) Section 41C (Auditing etc. of financial statements):

Before section 41C (2), insert:

(1B) An opinion in relation to the financial statements of a statutory body is not to be furnished under subsection (1A) unless the Auditor-General has received a statement made in accordance with a resolution of the statutory body stating whether, in the opinion of the person or persons who are to sign the statement in accordance with subsection (1C):

- (a) the financial statements exhibit a true and fair view of the financial position and transactions of the statutory body; or
- (b) in the case of a statutory body being the Senate or Council of a university, the financial statements exhibit a true and fair view of the financial position and transactions of the university.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

- (1C) The statement is to be signed by:
- (a) 2 members of the statutory body; or
 - (b) in the case of a statutory body which is a corporation sole, by the person who constitutes the corporation sole; or
 - (c) in the case of a statutory body without members, by the chief executive officer of the body.

Explanatory note

The current provisions of the Act that require financial statements of statutory bodies to be accompanied by a signed statement as to their accuracy when submitted to the Auditor-General for auditing are removed by the amendments in item (2).

Item (3) requires instead that such a statement must be furnished after auditing but before the furnishing of the Auditor-General's opinion on the financial statements.

(Section 41C is also amended by Schedule 4 (8).)

Amendment—reports of audits of certain statutory bodies

- (4) Section 45 (**Particular audit**):

After section 45 (2), insert:

(2A) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1).

Explanatory note

Item (4) amends section 45 (which provides for the Auditor-General to carry out audits of certain statutory bodies prescribed by the regulations at the request of the Treasurer, a Minister or a prescribed person) to require the Auditor-General to include a reference to the conduct of any such audit in the Auditor-General's report to Parliament.

Amendments—Review of Auditor-General's Office

- (5) Part 3, Division 5, heading:

After "Audit", insert "and review".

- (6) Section 48A:

After section 48, insert:

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

Review of Auditor-General's Office

48A. (1) A review of the Auditor-General's Office is to be conducted under this section at least once every 3 years.

(2) The review is to examine the auditing practices and standards of the Auditor-General and to determine whether the Auditor-General is complying with those practices and standards in the carrying out of the Auditor-General's functions under this Act.

(3) The review is to be conducted by a person ("the reviewer") appointed by the Public Accounts Committee for the time being constituted under Part 4.

(4) The reviewer:

- (a) is to be appointed on such terms and conditions and is entitled to such remuneration (if any) as are determined by the Public Accounts Committee; and
- (b) in conducting a review under this section, must comply with any directions as to the review given by the Committee.

(5) The remuneration payable to the reviewer is to be paid from money appropriated by Parliament for the purpose.

(6) Sections 36, 37 and 38 apply in relation to the reviewer as if references in those sections to the Auditor-General were references to the reviewer.

(7) The reviewer is to report to the Auditor-General as to the result of any such review and as to such other matters as in the judgment of the reviewer call for special notice.

(8) The reviewer must not make a report of a review conducted under this section unless, at least 28 days before making the report, the reviewer has given the Auditor-General a summary of findings and proposed recommendations in relation to the review.

(9) The reviewer must include in the report any written submissions or comments made by the Auditor-General or a summary, in an agreed form, of any such submissions or comments.

(10) The reviewer, in a report of a review under this section:

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

- (a) may include such information as he or she thinks desirable in relation to matters that are the subject of the review; and
- (b) must set out the reasons for opinions expressed in the report; and
- (c) may include such recommendations arising out of the review as he or she thinks fit to make.

(11) The Auditor-General is to forward a report prepared under this section to the Public Accounts Committee within 2 months of receipt of the report.

(12) The Chairman of the Public Accounts Committee is, on receipt of such a report, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

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

Explanatory note

Item (6) provides for a review of the Auditor-General's Office to be carried out at least once every 3 years. The reviewer is to be appointed by the Public Accounts Committee and the report of the reviewer is to be presented to the Legislative Assembly by the Chairman of the Public Accounts Committee.

Item (5) contains a consequential amendment.

**Amendments—Presentation of documents to Clerk of
Legislative Assembly**

- (7) Sections 51 (Public Accounts and opinion to be presented to Legislative Assembly), 52A (Auditor-General's report etc. to be presented to the Legislative Assembly), 57 (Functions of Committee):

- (a) In section 51 (2), 52A (2) and 57 (4), after "Clerk of the Legislative Assembly", insert "to be dealt with in accordance with section 63C".

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

- (b) Omit sections 51 (3), 52A (3), 57 (5).
- (c) From section 57 (4), omit “transmit”, insert instead “present”.
- (8) Section 63A (**Reference of matters to Public Accounts Committee**):
From section 63A (6), omit “and (5)”.
- (9) Section 63C:
After section 63B, insert:
Documents presented to the Clerk of the Legislative Assembly
63C. A document which is presented to the Clerk of the Legislative Assembly in accordance with a provision of this Act:
 - (a) is, on presentation and for all purposes, taken to have been laid before the Legislative Assembly; and
 - (b) is to be printed by authority of the Clerk of the Legislative Assembly; and
 - (c) is, for all purposes, taken to be a document published by order or under the authority of the Legislative Assembly; and
 - (d) is to be recorded in the Votes and Proceedings of the Legislative Assembly on the first sitting day of the Legislative Assembly after receipt of the report by the Clerk of the Legislative Assembly.

Explanatory note

Item (9) inserts a general provision which specifies how documents which are required to be presented to the Clerk of the Legislative Assembly are to be treated.

The amendments in item (7) (b) delete similar provisions occurring throughout the Act.

The amendments in items (7) (a) and (c) and (8) are consequential.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

Amendment—Liability of Auditor-General etc.

(10) Section 63D:

Before section 64, insert:

Liability of Auditor-General etc.

63D. (1) A matter or thing done by the Auditor-General or a member of the Auditor-General's Office does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Auditor-General or member personally to any action, liability, claim or demand.

(2) For the purpose of determining whether the Crown is vicariously liable for any matter or thing done by the Auditor-General or a member of the Auditor-General's Office, it is declared for the avoidance of doubt that the Auditor-General and any such member is in the service of the Crown.

Explanatory note

Item (10) protects the Auditor-General and the Auditor-General's staff from personal liability for actions done in the execution of the Act or any other Act.

Doubt exists as to whether the Crown would be vicariously liable for the actions of the Auditor-General or such staff because of the independence of the Auditor-General in the exercise of the Auditor-General's statutory duties and the removal of the staff from the Public Service. The amendment will ensure that a person deprived of an action against the Auditor-General or a member of the Auditor-General's Office because of the new provisions will have an action against the Crown.

Amendment—Formation of subsidiary organisations to be notified

(11) Section 63B (Subsidiary organisations of statutory bodies):

(a) At the end of paragraph (b) of the definition of "statutory body" in section 63B (1), insert:

or

(c) a person, group of persons or body specified in Schedule 3 which is a body corporate;

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

(b) After section 63B (1), insert:

(1A) Within 1 month after a corporation, association or trust becomes a subsidiary organisation of a statutory body, the statutory body must notify the Auditor-General and the Treasurer in writing of that fact.

Explanatory note

The amendment in item (11) (b) includes a requirement in section 63B that a statutory body notify the formation of any subsidiary organisation to the Auditor-General and the Treasurer. The amendment in item (11) (a) extends the definition of statutory body for the purposes of that section to bodies listed in Schedule 3 (Departments) of the Act which are bodies corporate.

**SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL**

(Sec. 3)

(1) Section 28 (**Appointment etc.**):

Omit section 28 (1), insert instead:

(1) The Auditor-General is to be appointed by the Governor for a term of 7 years and is not eligible for re-appointment either at the end of that term or at some future time.

(2) Schedule 1 (**The Auditor-General**):

(a) Omit clause 1 (**Ineligibility by reason of age**).

(b) Before clause 2, insert:

Auditor-General to continue in office

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

(a) is, on that commencement, taken to be appointed to that office, in accordance with section 28 (1), for a term expiring 7 years from that commencement or when the person attains the age of 65 years, whichever occurs first; and

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL—*continued***

- (b) is not eligible for re-appointment either at the end of that term or at some future time.
- (c) At the end of clause 2, insert:
 - (2) The Auditor-General is not to hold any other position in the public sector during his or her term of office as Auditor-General or after the expiration of that term, except with the consent of the Governor.
- (d) Omit clause 3 (**Term of office**).
- (e) After clause 4, insert:

Resignation of Auditor-General

4A. The office of Auditor-General becomes vacant if the Auditor-General resigns the office by instrument in writing addressed to the Minister.

Explanatory note

The amendments contained in this Schedule convert the term of office of the Auditor-General to a 7-year term. The holder of the office of Auditor-General is not eligible for re-appointment at the end of that term. The Auditor-General may not hold any other position in the public sector without the consent of the Governor.

Provision is made for the current Auditor-General to continue in office until the expiration of a 7-year term or until the Auditor-General attains the age of 65 years, whichever occurs first.

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL**

(Sec. 3)

- (1) Part 3, Division 1A:

After Division 1, insert:

**Division 1A—Office and Staff of the
Auditor-General**

**Constitution of Auditor-General's Office as body
corporate for employment of staff**

33A. (1) For the purpose of employing staff under section 33B, there is constituted by this section a body corporate with the corporate name of the Auditor-General's Office.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

(2) The affairs of the Auditor-General's Office are to be managed by the Auditor-General.

(3) Any act, matter or thing done in the name of, or on behalf of, the Auditor-General's Office by the Auditor-General, or with the authority of the Auditor-General, is taken to have been done by the Auditor-General's Office.

Staff of the Auditor-General's Office

33B. (1) The Auditor-General's Office may employ such staff as may be necessary to enable the Auditor-General to exercise the Auditor-General's functions.

(2) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of any staff of the Auditor-General's Office.

(3) The Auditor-General's Office may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other provision of this Act or any other Act or law.

(4) A person employed by the Auditor-General's Office is not an employee within the meaning of the Government and Related Employees Appeal Tribunal Act 1980.

(2) Section 65:

After section 64, insert:

Savings and transitional provisions

65. Schedule 4 has effect.

(3) Schedule 4:

After Schedule 3, insert:

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 65)

PART 1—GENERAL

Savings and transitional regulations

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

Public Finance and Audit (Auditor-General) Amendment Act 1991.

Annual Reports Legislation (Amendment) Act 1991.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE
ENACTMENT OF PUBLIC FINANCE AND AUDIT
(AUDITOR-GENERAL) AMENDMENT ACT 1991**

Definitions

2. In this Schedule:

- “appointed day” means the day on which section 33A commences;
- “former office” means the group of staff comprising the Auditor-General’s Office immediately before the appointed day;
- “member of the former office” means a member of staff of the former office, other than a member employed on a temporary basis;
- “Office” means the Auditor-General’s Office constituted by section 33A.

Staff of the Office

3. Each member of the former office becomes entitled, on the appointed day, to be appointed to a position in the Office at a salary not less than the salary which the member was paid immediately before that day.

Annual leave, long service or extended leave and sick leave

4. A member of the former office who, pursuant to this Schedule, becomes an officer of the Office retains any rights to:

- (a) annual leave; and
- (b) long service or extended leave; and
- (c) sick leave,

accrued or accruing to the person as a member of the former office.

No entitlement to dual benefits

5. A member of the former office who, pursuant to this Schedule, becomes an officer of the Office is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind in respect of the same period of service.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—continued**

Public servants may re-apply for positions in the Public Service

6. (1) A member of staff of the Office who, immediately before the appointed day, was a public servant may, within the period of 3 years immediately following that day, apply for a position in the Public Service as if the person were still a public servant.

(2) A member of staff of the Office who applies for such a position, or who is appointed to or employed in such a position, is, for the purposes of:

- (a) the Public Sector Management Act 1988; and
- (b) the Government and Related Employees Appeal Tribunal Act 1980; and
- (c) the Industrial Arbitration Act 1940,

to be regarded as a public servant in relation to the application, appointment or employment.

Operation of Industrial Arbitration Act 1940

7. Nothing in this Schedule affects the operation of the Industrial Arbitration Act 1940.

Explanatory note

The amendments contained in this Schedule constitute the Auditor-General's Office as a body corporate for the purposes of employing staff. The Office will be managed by the Auditor-General and will be able to employ staff not subject to the Public Sector Management Act 1988.

Existing permanent staff of the Auditor-General are given an entitlement to appointment to positions in the Office at not less than their current salaries. As they will cease to be public servants their existing rights to superannuation and leave are preserved. Provision is also made for them to be considered as public servants for 3 years for the purposes of applying for other positions within the Public Service.

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983**

(Sec. 3)

(1) Section 39 (Application and interpretation):

In section 39 (2A), after "not being", insert "the Auditor-General's Office or".

(2) Section 41A (Preparation of financial statements):

- (a) After "statutory body" where firstly occurring, insert "(other than the Auditor-General's Office)".

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC FINANCE AND AUDIT ACT 1983—*continued*

(b) At the end of section 41A, insert:

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

(3) Section 43 (**Inspection and audit of accounts of statutory bodies**):

In section 43 (1), after "statutory body", insert "(other than the Auditor-General's Office)".

(4) Section 45A (**Application and interpretation**):

(a) From section 45A (1), omit ", other than the Auditor-General's Office".

(b) From section 45A (3), omit "(other than the Auditor-General's Office)".

(5) Section 45D (**Preparation of financial statements**):

(a) From section 45D (1), omit "(other than the Auditor-General)".

(b) Omit section 45D (2).

Explanatory note

The amendments in items (1)–(5) update the Act as a consequence of the amendment of Schedule 2 to the Act (by a proclamation published on 3 February 1989) to specify the Auditor-General's Office as a statutory body to which Division 3 (general audit of statutory bodies) of Part 3 applies.

(6) Section 41A (**Preparation of financial statements**):

From section 41A (b), omit "for verification and certification".

(7) Section 45D (**Preparation of financial statements**):

From section 45D (1) (b), omit "for verification and certification".

Explanatory note

Items (6) and (7) omit unnecessary descriptions of the functions of the Auditor-General in respect of financial statements submitted by statutory bodies and Departments. The functions of the Auditor-General are specified in sections 41C and 45F.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—continued**

(8) Section 41C (Auditing etc. of financial statements):

(a) Omit section 41C (1), insert instead:

(1) The Auditor-General is, within the period of 10 weeks after the receipt by the Auditor-General of the financial statements referred to in section 41A of a statutory body, to audit the accounts of the statutory body for the financial year to which the financial statements relate.

(1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is, within that 10-week period to furnish an opinion:

- (a) stating that the Auditor-General has audited the accounts caused to be kept by the statutory body for that financial year; and
- (b) indicating whether the financial statements comply with section 41B; and
- (c) setting forth any qualifications subject to which the opinion is given.

(b) Omit section 41C (3).

(9) Section 41D (Return of audited financial statements etc. to statutory body):

Omit "certificate", insert instead "opinion".

(10) Section 45F (Auditing etc. of financial statements):

(a) Omit section 45F (1), insert instead:

(1) The Auditor-General is, within the period of 10 weeks after the receipt by the Auditor-General of the financial statements referred to in section 45D of a Department, to audit the accounts of the Department for the financial year to which the financial statements relate.

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

- (a) stating that the Auditor-General has audited the accounts caused to be kept by the Department Head for that financial year; and
- (b) indicating whether the financial statements comply with section 45E; and

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—continued**

- (c) setting forth any qualifications subject to which the opinion is given.
 - (b) Omit section 45F (3).
- (11) **Section 45G (Return of audited financial statements etc. to Department Head):**
Omit "certificate", insert instead "opinion".
- (12) **Section 48 (Auditing of accounts):**
 - (a) From section 48 (2), omit "a certificate", insert instead "an opinion".
 - (b) From section 48 (2), omit "the certificate", insert instead "the opinion".
- Explanatory note**
The amendments in items (8)–(12) replace references to the issue of certificates relating to audit of accounts with references to opinions relating to audit of accounts. The changed terminology more accurately describes the documents concerned.
The amendments also enable the Auditor-General to authorise the Deputy Auditor-General or an auditor to furnish those opinions.
- (13) **Section 43 (Inspection and audit of accounts of statutory bodies):**
From section 43 (3), omit "Consolidated Fund", insert instead "Auditor-General".
- (14) **Section 45 (Particular audit):**
From section 45 (3), omit "Consolidated Fund", insert instead "Auditor-General".
- (15) **Section 45I (Inspection and audit of accounts of Departments):**
From section 45I (3), omit "Consolidated Fund", insert instead "Auditor-General".

Explanatory note

The amendments in items (13)–(15) are necessary because of changed administrative arrangements under which audit fees are paid to the Auditor-General.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—continued**

(16) Section 45 (Particular audit):

- (a) In section 45 (2), after “Auditor-General” where firstly occurring, insert “or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General”.
- (b) In section 45 (2), after “Auditor-General” where secondly occurring, insert “or authorised person”.

Explanatory note

The amendments in item (16) enable the Auditor-General to authorise the Deputy Auditor-General or an auditor to make reports as to the inspection and audit of the accounts and records of statutory bodies under Division 4 of Part 3.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 4)

Public Sector Management Act 1988 No. 33

(1) Schedule 2 (Administrative offices):

Omit:

Auditor-General's Office

Auditor-General.

(2) Schedule 3 (Declared authorities):

In appropriate alphabetical order, insert:

Auditor-General's Office.

State Authorities Non-contributory Superannuation Act 1987 No. 212

Schedule 1 (Employers):

At the end of Part 1, insert:

Auditor-General's Office

State Authorities Superannuation Act 1987 No. 211:

Schedule 1 (Employers):

At the end of Part 1, insert:

Auditor-General's Office

Superannuation Act 1916 No. 28:

Schedule 3 (Employers):

At the end of Part 1, insert:

Auditor-General's Office.

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Explanatory note

The Public Sector Management Act 1988 is amended to remove the Auditor-General's Office from the list of administrative offices and to make it a declared authority.

This Schedule also amends the Superannuation Acts specified in the Schedule to preserve the superannuation entitlements of existing staff of the Auditor-General's Office by including the Office as an employer for the purposes of those Acts.

SECOND PRINT

**PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL)
AMENDMENT BILL 1991 (No. 2)**

NEW SOUTH WALES



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SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC FINANCE AND
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SCHEDULE 5—AMENDMENT OF OTHER ACTS

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

Legislative Assembly

NEW SOUTH WALES



Act No. , 1991

An Act to amend the Public Finance and Audit Act 1983 with respect to the auditing of Departments and statutory authorities, reporting requirements, the office of Auditor-General and in other respects; and to amend certain other Acts consequentially.

See also Annual Reports Legislation (Amendment) Bill 1991 (No. 2).

Public Finance and Audit (Auditor-General) Amendment 1991 (No. 2)

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Finance and Audit (Auditor-General) Amendment Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 4 (1)–(5), and section 3 in its application to those provisions, are taken to have commenced on 3 February 1989.

Amendment of Public Finance and Audit Act 1983 No. 152

3. The Public Finance and Audit Act 1983 is amended in the manner set out in Schedules 1–4.

Amendment of other Acts

4. Each Act specified in Schedule 5 is amended in the manner set out in that Schedule.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in Schedules 1–5 does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING**

(Sec. 3)

**Amendment—special audits of activities of Departments and
statutory authorities etc.**

(1) Part 3, Division 2A:

After Division 2, insert:

Division 2A—Special audits of activities

Definitions

38A. In this section:

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

“**audit**” includes examination and inspection;

“**authority**” means an authority, or other body, whose accounts are subject to audit by the Auditor-General under this Act or any other Act;

“**responsible Minister**” means:

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

“**special audit**” means an audit under this Division.

Special audit by Auditor-General

38B. (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of an authority to determine whether the authority is carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.

(2) A special audit is separate from, and does not affect, any other audit required or authorised by or under this Act or any other Act.

Report of special audit

38C. (1) The Auditor-General is to report to the Head of the authority, the responsible Minister and the Treasurer as to the result of any special audit and as to such other matters as in the judgment of the Auditor-General call for special notice.

(2) The Auditor-General must not make a report of a special audit under this section unless, at least 28 days before making the report, the Auditor-General has given the Head of the authority and the responsible Minister a summary of findings and proposed recommendations in relation to the audit.

Public Finance and Audit (Auditor-General) Amendment 1991 (No. 2)

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

(3) The Auditor-General is to include in the report of a special audit under this section any submissions or comments made by the Head of the authority or a summary, in an agreed form, of any such submissions or comments.

(4) The Auditor-General, in a report of a special audit under this section:

- (a) may include such information as he or she thinks desirable in relation to the activities that are the subject of the audit; and
- (b) is to set out the reasons for opinions expressed in the report; and
- (c) may include such recommendations arising out of the audit as the Auditor-General thinks fit to make.

(5) The Auditor-General may include the report in any other report of the Auditor-General.

Special audit not to question policy

38D. Nothing in this Division entitles the Auditor-General to question the merits of policy objectives of the Government including:

- (a) any policy objective of the Government contained in a record of a policy decision of Cabinet; and
- (b) a policy direction of a Minister; and
- (c) a policy statement in any Budget Paper or any other document evidencing a policy decision of the Cabinet or a Minister.

Tabling etc. of reports under s. 38C

38E. (1) The Auditor-General is, as soon as practicable after making a report under section 38C, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

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

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

(3) The Auditor-General may include the report in any other report of the Auditor-General to the Legislative Assembly.

Explanatory note

Item (1) enables the Auditor-General to carry out a special audit of the activities of an authority to determine whether it is carrying out its activities effectively, economically and efficiently. An authority includes a Department, a government administrative office, a statutory authority and any other body which is subject to audit by the Auditor-General under the Act or any other Act.

A special audit is not to question the merits of government policy objectives. The Head of the authority may make submissions and comments which are to be included in the Auditor-General's report of the audit.

The Auditor-General is required to present the report of any such audit to the Legislative Assembly but may include that report in any other report of the Auditor-General.

Amendments—financial statements of statutory bodies

(2) Section 41B (Nature of financial statements):

- (a) In section 41B (1) (e), after “university;”, insert “and”.
- (b) Omit section 41B (1) (f) and (5).

(3) Section 41C (Auditing etc. of financial statements):

Before section 41C (2), insert:

(1B) An opinion in relation to the financial statements of a statutory body is not to be furnished under subsection (1A) unless the Auditor-General has received a statement made in accordance with a resolution of the statutory body stating whether, in the opinion of the person or persons who are to sign the statement in accordance with subsection (1C):

- (a) the financial statements exhibit a true and fair view of the financial position and transactions of the statutory body; or
- (b) in the case of a statutory body being the Senate, Council or Board of Governors of a university, the financial statements exhibit a true and fair view of the financial position and transactions of the university.

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

- (1C) The statement is to be signed by:
- (a) 2 members of the statutory body; or
 - (b) in the case of a statutory body which is a corporation sole, by the person who constitutes the corporation sole; or
 - (c) in the case of a statutory body without members, by the chief executive officer of the body.

Explanatory note

The current provisions of the Act that require financial statements of statutory bodies to be accompanied by a signed statement as to their accuracy when submitted to the Auditor-General for auditing are removed by the amendments in item (2).

Item (3) requires instead that such a statement must be furnished after auditing but before the furnishing of the Auditor-General's opinion on the financial statements.

(Section 41C is also amended by Schedule 4 (8).)

Amendment—reports of audits of certain statutory bodies

- (4) Section 45 (**Particular audit**):

After section 45 (2), insert:

(2A) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1).

Explanatory note

Item (4) amends section 45 (which provides for the Auditor-General to carry out audits of certain statutory bodies prescribed by the regulations at the request of the Treasurer, a Minister or a prescribed person) to require the Auditor-General to include a reference to the conduct of any such audit in the Auditor-General's report to Parliament.

Amendments—Review of Auditor-General's Office

- (5) Part 3, Division 5, heading:

After "Audit", insert "and review".

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

(6) Section 48A:

After section 48, insert:

Review of Auditor-General's Office

48A. (1) A review of the Auditor-General's Office is to be conducted under this section at least once every 3 years.

(2) The review is to examine the auditing practices and standards of the Auditor-General and to determine whether the Auditor-General is complying with those practices and standards in the carrying out of the Auditor-General's functions under this Act.

(3) The review is to be conducted by a person ("**the reviewer**") appointed by the Public Accounts Committee for the time being constituted under Part 4.

(4) The reviewer:

- (a) is to be appointed on such terms and conditions and is entitled to such remuneration (if any) as are determined by the Public Accounts Committee; and
- (b) in conducting a review under this section, must comply with any directions as to the review given by the Committee.

(5) The remuneration payable to the reviewer is to be paid from money appropriated by Parliament for the purpose.

(6) Sections 36, 37 and 38 apply in relation to the reviewer as if references in those sections to the Auditor-General were references to the reviewer.

(7) The reviewer is to report to the Auditor-General as to the result of any such review and as to such other matters as in the judgment of the reviewer call for special notice.

(8) The reviewer must not make a report of a review conducted under this section unless, at least 28 days before making the report, the reviewer has given the Auditor-General a summary of findings and proposed recommendations in relation to the review.

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

(9) The reviewer must include in the report any written submissions or comments made by the Auditor-General or a summary, in an agreed form, of any such submissions or comments.

(10) The reviewer, in a report of a review under this section:

- (a) may include such information as he or she thinks desirable in relation to matters that are the subject of the review; and
- (b) must set out the reasons for opinions expressed in the report; and
- (c) may include such recommendations arising out of the review as he or she thinks fit to make.

(11) The Auditor-General is to forward a report prepared under this section to the Public Accounts Committee within 2 months of receipt of the report.

(12) The Chairman of the Public Accounts Committee is, on receipt of such a report, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

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

Explanatory note

Item (6) provides for a review of the Auditor-General's Office to be carried out at least once every 3 years. The reviewer is to be appointed by the Public Accounts Committee and the report of the reviewer is to be presented to the Legislative Assembly by the Chairman of the Public Accounts Committee.

Item (5) contains a consequential amendment.

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

**Amendments—Presentation of documents to Clerk of
Legislative Assembly**

- (7) Sections 51 (**Public Accounts and opinion to be presented to Legislative Assembly**), 52A (**Auditor-General's report etc. to be presented to the Legislative Assembly**), 57 (**Functions of Committee**):
- (a) In section 51 (2), 52A (2) and 57 (4), after “Clerk of the Legislative Assembly”, insert “to be dealt with in accordance with section 63C”.
 - (b) Omit sections 51 (3), 52A (3), 57 (5).
 - (c) From section 57 (4), omit “transmit”, insert instead “present”.
- (8) Section 63A (**Reference of matters to Public Accounts Committee**):
- From section 63A (6), omit “and (5)”.
- (9) Section 63C:
- After section 63B, insert:
- Documents presented to the Clerk of the Legislative Assembly**
- 63C. A document which is presented to the Clerk of the Legislative Assembly in accordance with a provision of this Act:
- (a) is, on presentation and for all purposes, taken to have been laid before the Legislative Assembly; and
 - (b) is to be printed by authority of the Clerk of the Legislative Assembly; and
 - (c) is, for all purposes, taken to be a document published by order or under the authority of the Legislative Assembly; and
 - (d) is to be recorded in the Votes and Proceedings of the Legislative Assembly on the first sitting day of the Legislative Assembly after receipt of the report by the Clerk of the Legislative Assembly.

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

Explanatory note

Item (9) inserts a general provision which specifies how documents which are required to be presented to the Clerk of the Legislative Assembly are to be treated.

The amendments in item (7) (b) delete similar provisions occurring throughout the Act.

The amendments in items (7) (a) and (c) and (8) are consequential.

Amendment—Liability of Auditor-General etc.

(10) Section 63D:

Before section 64, insert:

Liability of Auditor-General etc.

63D. (1) A matter or thing done by the Auditor-General or a member of the Auditor-General's Office does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Auditor-General or member personally to any action, liability, claim or demand.

(2) For the purpose of determining whether the Crown is vicariously liable for any matter or thing done by the Auditor-General or a member of the Auditor-General's Office, it is declared for the avoidance of doubt that the Auditor-General and any such member is in the service of the Crown.

Explanatory note

Item (10) protects the Auditor-General and the Auditor-General's staff from personal liability for actions done in the execution of the Act or any other Act.

Doubt exists as to whether the Crown would be vicariously liable for the actions of the Auditor-General or such staff because of the independence of the Auditor-General in the exercise of the Auditor-General's statutory duties and the removal of the staff from the Public Service. The amendment will ensure that a person deprived of an action against the Auditor-General or a member of the Auditor-General's Office because of the new provisions will have an action against the Crown.

**SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL—*continued***

Amendment—Formation of subsidiary organisations to be notified

- (11) Section 63B (Subsidiary organisations of statutory bodies):
- (a) At the end of paragraph (b) of the definition of “statutory body” in section 63B (1), insert:
 - or
 - (c) a person, group of persons or body specified in Schedule 3 which is a body corporate;
 - (b) After section 63B (1), insert:
 - (1A) Within 1 month after a corporation, association or trust becomes a subsidiary organisation of a statutory body, the statutory body must notify the Auditor-General and the Treasurer in writing of that fact.

Explanatory note

The amendment in item (11) (b) includes a requirement in section 63B that a statutory body notify the formation of any subsidiary organisation to the Auditor-General and the Treasurer. The amendment in item (11) (a) extends the definition of statutory body for the purposes of that section to bodies listed in Schedule 3 (Departments) of the Act which are bodies corporate.

**SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL**

(Sec. 3)

- (1) Section 28 (Appointment etc.):
- Omit section 28 (1), insert instead:
 - (1) The Auditor-General is to be appointed by the Governor for a term of 7 years and is not eligible for re-appointment, including re-appointment after the end of that term.
- (2) Schedule 1 (The Auditor-General):
- (a) Omit clause 1 (Ineligibility by reason of age).

SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL—*continued*

- (b) Before clause 2, insert:

Auditor-General to continue in office

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

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

- (c) At the end of clause 2, insert:

(2) The Auditor-General is not to hold any other position in the public sector during his or her term of office as Auditor-General or after the expiration of that term, except with the consent of the Governor.

- (d) Omit clause 3 (**Term of office**).

- (e) After clause 4, insert:

Resignation of Auditor-General

4A. The office of Auditor-General becomes vacant if the Auditor-General resigns the office by instrument in writing addressed to the Governor.

Explanatory note

The amendments contained in this Schedule convert the term of office of the Auditor-General to a 7-year term. The holder of the office of Auditor-General is not eligible for re-appointment at the end of that term. The Auditor-General may not hold any other position in the public sector without the consent of the Governor.

Provision is made for the current Auditor-General to continue in office until the expiration of a 7-year term or until the Auditor-General attains the age of 65 years, whichever occurs first.

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL**

(Sec. 3)

(1) Part 3, Division 1A:

After Division 1, insert:

**Division 1A—Office and Staff of the
Auditor-General**

**Constitution of Auditor-General's Office as body
corporate for employment of staff**

33A. (1) For the purpose of employing staff under section 33B, there is constituted by this section a body corporate with the corporate name of the Auditor-General's Office.

(2) The affairs of the Auditor-General's Office are to be managed by the Auditor-General.

(3) Any act, matter or thing done in the name of, or on behalf of, the Auditor-General's Office by the Auditor-General, or with the authority of the Auditor-General, is taken to have been done by the Auditor-General's Office.

Staff of the Auditor-General's Office

33B. (1) The Auditor-General's Office may employ such staff as may be necessary to enable the Auditor-General to exercise the Auditor-General's functions.

(2) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of any staff of the Auditor-General's Office.

(3) The Auditor-General's Office may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other provision of this Act or any other Act or law.

(4) A person employed by the Auditor-General's Office is not an employee within the meaning of the Government and Related Employees Appeal Tribunal Act 1980.

(2) Section 65:

After section 64, insert:

Savings and transitional provisions

65. Schedule 4 has effect.

Public Finance and Audit (Auditor-General) Amendment 1991 (No. 2)

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

(3) Schedule 4:

After Schedule 3, insert:

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 65)

PART 1—GENERAL

Savings and transitional regulations

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

Public Finance and Audit (Auditor-General) Amendment Act 1991.

Annual Reports Legislation (Amendment) Act 1991.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE
ENACTMENT OF PUBLIC FINANCE AND AUDIT
(AUDITOR-GENERAL) AMENDMENT ACT 1991**

Definitions

2. In this Schedule:

“appointed day” means the day on which section 33A commences;

“former office” means the group of staff comprising the Auditor-General’s Office immediately before the appointed day;

“member of the former office” means a member of staff of the former office, other than a member employed on a temporary basis;

“Office” means the Auditor-General’s Office constituted by section 33A.

Staff of the Office

3. Each member of the former office becomes entitled, on the appointed day, to be appointed to a position in the Office at a salary not less than the salary which the member was paid immediately before that day.

Public Finance and Audit (Auditor-General) Amendment 1991 (No. 2)

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

Annual leave, long service or extended leave and sick leave

4. A member of the former office who, pursuant to this Schedule, becomes an officer of the Office retains any rights to:

- (a) annual leave; and
- (b) long service or extended leave; and
- (c) sick leave,

accrued or accruing to the person as a member of the former office.

No entitlement to dual benefits

5. A member of the former office who, pursuant to this Schedule, becomes an officer of the Office is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind in respect of the same period of service.

Public servants may re-apply for positions in the Public Service

6. (1) A member of staff of the Office who, immediately before the appointed day, was a public servant may, within the period of 3 years immediately following that day, apply for a position in the Public Service as if the person were still a public servant.

(2) A member of staff of the Office who applies for such a position, or who is appointed to or employed in such a position, is, for the purposes of:

- (a) the Public Sector Management Act 1988; and
- (b) the Government and Related Employees Appeal Tribunal Act 1980; and
- (c) the Industrial Arbitration Act 1940,

to be regarded as a public servant in relation to the application, appointment or employment.

Operation of Industrial Arbitration Act 1940

7. Nothing in this Schedule affects the operation of the Industrial Arbitration Act 1940.

Explanatory note

The amendments contained in this Schedule constitute the Auditor-General's Office as a body corporate for the purposes of employing staff. The Office will be managed by the Auditor-General and will be able to employ staff not subject to the Public Sector Management Act 1988.

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—*continued***

Existing permanent staff of the Auditor-General are given an entitlement to appointment to positions in the Office at not less than their current salaries. As they will cease to be public servants their existing rights to superannuation and leave are preserved. Provision is also made for them to be considered as public servants for 3 years for the purposes of applying for other positions within the Public Service.

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983**

(Sec. 3)

(1) Section 39 (Application and interpretation):

In section 39 (2A), after “not being”, insert “the Auditor-General’s Office or”.

(2) Section 41A (Preparation of financial statements):

(a) After “statutory body” where firstly occurring, insert “(other than the Auditor-General’s Office)”.

(b) At the end of section 41A, insert:

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

(3) Section 43 (Inspection and audit of accounts of statutory bodies):

In section 43 (1), after “statutory body”, insert “(other than the Auditor-General’s Office)”.

(4) Section 45A (Application and interpretation):

(a) From section 45A (1), omit “, other than the Auditor-General’s Office”.

(b) From section 45A (3), omit “(other than the Auditor-General’s Office)”.

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—*continued***

(5) Section 45D (Preparation of financial statements):

- (a) From section 45D (1), omit “(other than the Auditor-General)”.
- (b) Omit section 45D (2).

Explanatory note

The amendments in items (1)–(5) update the Act as a consequence of the amendment of Schedule 2 to the Act (by a proclamation published on 3 February 1989) to specify the Auditor-General’s Office as a statutory body to which Division 3 (general audit of statutory bodies) of Part 3 applies.

(6) Section 41A (Preparation of financial statements):

From section 41A (b), omit “for verification and certification”.

(7) Section 45D (Preparation of financial statements):

From section 45D (1) (b), omit “for verification and certification”.

Explanatory note

Items (6) and (7) omit unnecessary descriptions of the functions of the Auditor-General in respect of financial statements submitted by statutory bodies and Departments. The functions of the Auditor-General are specified in sections 41C and 45F.

(8) Section 41C (Auditing etc. of financial statements):

- (a) Omit section 41C (1), insert instead:

(1) The Auditor-General is, within the period of 10 weeks after the receipt by the Auditor-General of the financial statements referred to in section 41A of a statutory body, to audit the accounts of the statutory body for the financial year to which the financial statements relate.

(1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is, within that 10-week period to furnish an opinion:

- (a) stating that the Auditor-General has audited the accounts caused to be kept by the statutory body for that financial year; and
- (b) indicating whether the financial statements comply with section 41B; and

Public Finance and Audit (Auditor-General) Amendment 1991 (No. 2)

SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—*continued*

- (c) setting forth any qualifications subject to which the opinion is given.
 - (b) Omit section 41C (3).
- (9) Section 41D (**Return of audited financial statements etc. to statutory body**):
 - Omit “certificate”, insert instead “opinion”.
- (10) Section 45F (**Auditing etc. of financial statements**):
 - (a) Omit section 45F (1), insert instead:
 - (1) The Auditor-General is, within the period of 10 weeks after the receipt by the Auditor-General of the financial statements referred to in section 45D of a Department, to audit the accounts of the Department for the financial year to which the financial statements relate.
 - (1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is to furnish an opinion:
 - (a) stating that the Auditor-General has audited the accounts caused to be kept by the Department Head for that financial year; and
 - (b) indicating whether the financial statements comply with section 45E; and
 - (c) setting forth any qualifications subject to which the opinion is given.
 - (b) Omit section 45F (3).
- (11) Section 45G (**Return of audited financial statements etc. to Department Head**):
 - Omit “certificate”, insert instead “opinion”.
- (12) Section 48 (**Auditing of accounts**):
 - (a) From section 48 (2), omit “a certificate”, insert instead “an opinion”.
 - (b) From section 48 (2), omit “the certificate”, insert instead “the opinion”.

SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—*continued*

Explanatory note

The amendments in items (8)–(12) replace references to the issue of certificates relating to audit of accounts with references to opinions relating to audit of accounts. The changed terminology more accurately describes the documents concerned.

The amendments also enable the Auditor-General to authorise the Deputy Auditor-General or an auditor to furnish those opinions.

(13) Section 43 (**Inspection and audit of accounts of statutory bodies**):

From section 43 (3), omit “Consolidated Fund”, insert instead “Auditor-General”.

(14) Section 45 (**Particular audit**):

From section 45 (3), omit “Consolidated Fund”, insert instead “Auditor-General”.

(15) Section 45I (**Inspection and audit of accounts of Departments**):

From section 45I (3), omit “Consolidated Fund”, insert instead “Auditor-General”.

Explanatory note

The amendments in items (13)–(15) are necessary because of changed administrative arrangements under which audit fees are paid to the Auditor-General.

(16) Section 45 (**Particular audit**):

(a) In section 45 (2), after “Auditor-General” where firstly occurring, insert “or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General”.

(b) In section 45 (2), after “Auditor-General” where secondly occurring, insert “or authorised person”.

Explanatory note

The amendments in item (16) enable the Auditor-General to authorise the Deputy Auditor-General or an auditor to make reports as to the inspection and audit of the accounts and records of statutory bodies under Division 4 of Part 3.

Public Finance and Audit (Auditor-General) Amendment 1991 (No. 2)

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 4)

Public Sector Management Act 1988 No. 33

(1) Schedule 2 (Administrative offices):

Omit:

Auditor-General's Office

Auditor-General.

(2) Schedule 3 (Declared authorities):

In appropriate alphabetical order, insert:

Auditor-General's Office.

State Authorities Non-contributory Superannuation Act 1987 No. 212

Schedule 1 (Employers):

At the end of Part 1, insert:

Auditor-General's Office

State Authorities Superannuation Act 1987 No. 211:

Schedule 1 (Employers):

At the end of Part 1, insert:

Auditor-General's Office

Superannuation Act 1916 No. 28:

Schedule 3 (Employers):

At the end of Part 1, insert:

Auditor-General's Office.

Explanatory note

The Public Sector Management Act 1988 is amended to remove the Auditor-General's Office from the list of administrative offices and to make it a declared authority.

This Schedule also amends the Superannuation Acts specified in the Schedule to preserve the superannuation entitlements of existing staff of the Auditor-General's Office by including the Office as an employer for the purposes of those Acts.

PUBLIC FINANCE AND AUDIT (AUDITOR-
GENERAL) AMENDMENT BILL 1991 AND
ANNUAL REPORTS LEGISLATION
(AMENDMENT) BILL 1991

I move

that these Bills now be read a second time.

Honourable Members will be aware that this Government has undertaken a Financial Management Improvement Program which has greatly improved accountability and management in the public sector.

I would be the first to acknowledge that a number of financial reforms were introduced by the late Ken Booth. However, I think it is fair to say that my Government has significantly accelerated those reforms. In addition, we have introduced many new ones.

I am sure I don't need to remind Members that our reforms include:

- . Global Budgeting,
- . Forward Estimates,
- . Accrual Accounting, and
- . Consolidated Financial Statements.

I am proud to say that New South Wales is at the leading edge of these developments and that in some areas, such as consolidated financial statements, we are leading the world.

The basic aim of our reforms is to provide the tools to manage public sector resources better for the people of New South Wales.

To that end, we have devolved responsibility to managers, and have supported the development of accounting and budgeting systems which produce meaningful, measurable results.

Since we have modernised these management functions, it is only appropriate to turn our attention to the area of review.

New South Wales has been fortunate to have had for many years a strong, independent Auditor-General's Office.

Following the introduction of responsible government in 1856, the Government auditor carried out audits in accordance with principles laid down by the Executive Council. The introduction of the Audit Act of 1870 provided the Auditor-General with similar independence to his counterpart in England. The Act required that reports be made to the Parliament.

This principle of independence of office and duty to report to the Parliament have been strengthened by subsequent legislation.

A rapidly changing environment requires that further changes be made to the Auditor-General's Office. Specifically, it is necessary to give the Auditor-General the powers and resources to adequately deal with changing circumstances.

The Bills before the House seek to do this in a number of ways. Perhaps most importantly they give the Auditor-General the power and discretion to carry out special audits. Special audits are known by a number of terms - comprehensive audits or value for money audits.

Whatever the name, they are an examination of the efficiency, effectiveness and economy of a function, and not merely a measure of financial compliance.

This, and many of the other provisions in the Bills, are based upon a report by the Public Accounts Committee on the Auditor-General's Office.

I commend the Public Accounts Committee for the thoroughness and incisiveness of its report.

I should also add that the Bills before the House have the full support of the current Auditor-General.

I now turn to the detail of the Bills. The four most important areas of the Bills are:-

- . first, the introduction of special audit powers;
- . second, the removal of the Auditor-General's Office from the constraints of the Public Sector Management Act;
- . third, the peer review of the Auditor-General's Office; and
- . finally, the tenure of the Auditor-General.

I shall deal with each of these in turn.

The introduction of special audit powers is consistent with the Government's drive for good management. Special audit powers already exist in a number of other jurisdictions such as the Commonwealth, Victoria, Tasmania, New Zealand and a number of the Canadian Provinces.

The Auditor -General is the most important review mechanism in government. It is only appropriate that the Auditor-General should be able to examine the efficiency, effectiveness and economy of an organisation as well as ensuring that it has achieved financial compliance.

The only limitation placed on the Auditor-General is that such an audit cannot question the merit of Government policy objectives.

It is a measure of the Government's commitment to accountability that the wide powers given to the Auditor-General to carry out special audits give the Auditor-General and not the Government the discretion to select which audits will be performed.

These new powers will place a responsibility on the Auditor-General to closely examine the skills mix available from staff. It is apparent that skills outside the accounting/auditing fields will be required. For example, I could well imagine a requirement for engineers or quantity surveyors.



However, some of these specialist requirements are likely to be of a short-term rather than long-term nature. This means the Auditor-General must have maximum flexibility to adjust his staffing.

To achieve this, provision is included in the legislation to make the Auditor-General's Office a body corporate for the purpose of employing staff. This means that the Office will be removed from the constraints of the Public Sector Management Act and will be managed by the Auditor-General, who will have the power to hire and fire staff in much the same way as would happen in an accounting firm.

The rights of existing staff will be maintained, and for a period of three years they will continue to have the right to apply for positions in the New South Wales Public Service as if they were public servants.

The Government believes that, while auditing others, the Auditor-General's Office itself should not escape review. Accordingly, the Bills provide for a three yearly peer review of that Office.

The reviewer will be appointed by the Public Accounts Committee. The report on the review will be forwarded to the Auditor-General for comment and response. Within 2 months of receiving such a report, the Auditor-General must forward it to the Chairperson of the Public Accounts Committee for tabling.

I turn now to the tenure of the Auditor-General.

Under existing legislation, the Auditor-General is appointed until the person reaches the age of 65. This could mean that an appointee who became Auditor-General at age 40 could remain in the position for a quarter of a century. In today's rapidly changing world this no longer seems appropriate.

The trend in other jurisdictions is to appoint the Auditor-General for a fixed period, with no right of re-appointment. This permits the regular injection of fresh thoughts and ideas.

The legislation provides for a seven year, non-renewable appointment.

Normally, one would not expect an ex Auditor-General to be appointed to another public sector position because of the possibility of conflict of interest.

However, in recognition that unusual circumstances may arise, there is a provision that an ex Auditor-General may be appointed to another New South Wales public sector position with the approval of the Governor.

There are a number of other important changes, many of which have been specifically requested by the Auditor-General.

The requirements for signing the financial statements of statutory authorities have been changed so that they now have to be signed before the Auditor-General gives an opinion, but not necessarily at the time of initial lodgement with the Auditor-General.

This change parallels practice in the private sector.



Protection has been afforded to the Auditor-General and the staff of the Auditor-General's Office against liability for actions in good faith carried out under the provisions of the Public Finance and Audit Act or any other Act. This is necessary to protect the independence of the Office and the Auditor-General, and to permit the fearless pursuit of their profession.

Similar provisions have recently been included in the legislation of the Commonwealth, Tasmania and Western Australia.

To ensure that all activities of a statutory body are subject to proper scrutiny, the formation of any subsidiary organisation must be notified to the Auditor-General and the Treasury.

Provisions have been included to permit the Auditor-General to delegate to staff the signing of audit opinions. At present, the Auditor-General must personally sign all opinions, an anachronistic practice. Similarly, in accordance with modern practice, the term "audit certificate" has been replaced with "audit opinion".

Finally, annual reporting legislation has been amended so that annual reports must include a response to any item in an audit report which the Auditor-General deems as being significant. This is in line with the concept of accountability.

The provisions included in the Bills are further evidence of the Government's commitment to disclosure and accountability.

I commend the Bills to the House.

**PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL)
AMENDMENT ACT 1991 No. 88**

NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE AND AUDIT ACT
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SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE AND AUDIT ACT
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SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE AND AUDIT ACT
1983 RELATING TO THE OFFICE AND STAFF OF THE
AUDITOR-GENERAL

SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC FINANCE AND
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SCHEDULE 5—AMENDMENT OF OTHER ACTS

**PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL)
AMENDMENT ACT 1991 No. 88**

NEW SOUTH WALES



Act No. 88, 1991

An Act to amend the Public Finance and Audit Act 1983 with respect to the auditing of Departments and statutory authorities, reporting requirements, the office of Auditor-General and in other respects; and to amend certain other Acts consequentially. [Assented to 17 December 1991]

See also Annual Reports Legislation (Amendment) Act 1991.

Public Finance and Audit (Auditor-General) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Finance and Audit (Auditor-General) Amendment Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 4 (1)–(5), and section 3 in its application to those provisions, are taken to have commenced on 3 February 1989.

Amendment of Public Finance and Audit Act 1983 No. 152

3. The Public Finance and Audit Act 1983 is amended in the manner set out in Schedules 1–4.

Amendment of other Acts

4. Each Act specified in Schedule 5 is amended in the manner set out in that Schedule.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in Schedules 1–5 does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING**

(Sec. 3)

Amendment—special audits of activities of Departments and statutory authorities etc.

(1) Part 3, Division 2A:

After Division 2, insert:

Division 2A—Special audits of activities

Definitions

38A. In this section:

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

“audit” includes examination and inspection;

“authority” means an authority, or other body, whose accounts are subject to audit by the Auditor-General under this Act or any other Act;

“responsible Minister” means:

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

“special audit” means an audit under this Division.

Special audit by Auditor-General

38B. (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of an authority to determine whether the authority is carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.

(2) A special audit is separate from, and does not affect, any other audit required or authorised by or under this Act or any other Act.

Report of special audit

38C. (1) The Auditor-General is to report to the Head of the authority, the responsible Minister and the Treasurer as to the result of any special audit and as to such other matters as in the judgment of the Auditor-General call for special notice.

(2) The Auditor-General must not make a report of a special audit under this section unless, at least 28 days before making the report, the Auditor-General has given the Head of the authority and the responsible Minister a summary of findings and proposed recommendations in relation to the audit.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

(3) The Auditor-General is to include in the report of a special audit under this section any submissions or comments made by the Head of the authority or a summary, in an agreed form, of any such submissions or comments.

(4) The Auditor-General, in a report of a special audit under this section:

- (a) may include such information as he or she thinks desirable in relation to the activities that are the subject of the audit; and
- (b) is to set out the reasons for opinions expressed in the report; and
- (c) may include such recommendations arising out of the audit as the Auditor-General thinks fit to make.

(5) The Auditor-General may include the report in any other report of the Auditor-General.

Special audit not to question policy

38D. Nothing in this Division entitles the Auditor-General to question the merits of policy objectives of the Government including:

- (a) any policy objective of the Government contained in a record of a policy decision of Cabinet; and
- (b) a policy direction of a Minister; and
- (c) a policy statement in any Budget Paper or any other document evidencing a policy decision of the Cabinet or a Minister.

Tabling etc. of reports under s. 38C

38E. (1) The Auditor-General is, as soon as practicable after making a report under section 38C, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

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

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

(3) The Auditor-General may include the report in any other report of the Auditor-General to the Legislative Assembly.

Explanatory note

Item (1) enables the Auditor-General to carry out a special audit of the activities of an authority to determine whether it is carrying out its activities effectively, economically and efficiently. An authority includes a Department, a government administrative office, a statutory authority and any other body which is subject to audit by the Auditor-General under the Act or any other Act.

A special audit is not to question the merits of government policy objectives. The Head of the authority may make submissions and comments which are to be included in the Auditor-General's report of the audit.

The Auditor-General is required to present the report of any such audit to the Legislative Assembly but may include that report in any other report of the Auditor-General.

Amendments—financial statements of statutory bodies

(2) Section 41B (Nature of financial statements):

- (a) In section 41B (1) (e), after “university;”, insert “and”.
- (b) Omit section 41B (1) (f) and (5).

(3) Section 41C (Auditing etc. of financial statements):

Before section 41C (2), insert:

(1B) An opinion in relation to the financial statements of a statutory body is not to be furnished under subsection (1A) unless the Auditor-General has received a statement made in accordance with a resolution of the statutory body stating whether, in the opinion of the person or persons who are to sign the statement in accordance with subsection (1C):

- (a) the financial statements exhibit a true and fair view of the financial position and transactions of the statutory body; or
- (b) in the case of a statutory body being the Senate, Council or Board of Governors of a university, the financial statements exhibit a true and fair view of the financial position and transactions of the university.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

- (1C) The statement is to be signed by:
- (a) 2 members of the statutory body; or
 - (b) in the case of a statutory body which is a corporation sole, by the person who constitutes the corporation sole; or
 - (c) in the case of a statutory body without members, by the chief executive officer of the body.

Explanatory note

The current provisions of the Act that require financial statements of statutory bodies to be accompanied by a signed statement as to their accuracy when submitted to the Auditor-General for auditing are removed by the amendments in item (2).

Item (3) requires instead that such a statement must be furnished after auditing but before the furnishing of the Auditor-General's opinion on the financial statements.

(Section 41C is also amended by Schedule 4 (8).)

Amendment—reports of audits of certain statutory bodies

(4) Section 45 (Particular audit):

After section 45 (2), insert:

(2A) The Auditor-General is to include a reference to any audit conducted under this section in the report referred to in section 52 (1).

Explanatory note

Item (4) amends section 45 (which provides for the Auditor-General to carry out audits of certain statutory bodies prescribed by the regulations at the request of the Treasurer, a Minister or a prescribed person) to require the Auditor-General to include a reference to the conduct of any such audit in the Auditor-General's report to Parliament.

Amendments—Review of Auditor-General's Office

(5) Part 3, Division 5, heading:

After "Audit", insert "and review".

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

(6) Section 48A:

After section 48, insert:

Review of Auditor-General's Office

48A. (1) A review of the Auditor-General's Office is to be conducted under this section at least once every 3 years.

(2) The review is to examine the auditing practices and standards of the Auditor-General and to determine whether the Auditor-General is complying with those practices and standards in the carrying out of the Auditor-General's functions under this Act.

(3) The review is to be conducted by a person ("**the reviewer**") appointed by the Public Accounts Committee for the time being constituted under Part 4.

(4) The reviewer:

- (a) is to be appointed on such terms and conditions and is entitled to such remuneration (if any) as are determined by the Public Accounts Committee; and
- (b) in conducting a review under this section, must comply with any directions as to the review given by the Committee.

(5) The remuneration payable to the reviewer is to be paid from money appropriated by Parliament for the purpose.

(6) Sections 36, 37 and 38 apply in relation to the reviewer as if references in those sections to the Auditor-General were references to the reviewer.

(7) The reviewer is to report to the Auditor-General as to the result of any such review and as to such other matters as in the judgment of the reviewer call for special notice.

(8) The reviewer must not make a report of a review conducted under this section unless, at least 28 days before making the report, the reviewer has given the Auditor-General a summary of findings and proposed recommendations in relation to the review.

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

(9) The reviewer must include in the report any written submissions or comments made by the Auditor-General or a summary, in an agreed form, of any such submissions or comments.

(10) The reviewer, in a report of a review under this section:

- (a) may include such information as he or she thinks desirable in relation to matters that are the subject of the review; and
- (b) must set out the reasons for opinions expressed in the report; and
- (c) may include such recommendations arising out of the review as he or she thinks fit to make.

(11) The Auditor-General is to forward a report prepared under this section to the Public Accounts Committee within 2 months of receipt of the report.

(12) The Chairman of the Public Accounts Committee is, on receipt of such a report, to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

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

Explanatory note

Item (6) provides for a review of the Auditor-General's Office to be carried out at least once every 3 years. The reviewer is to be appointed by the Public Accounts Committee and the report of the reviewer is to be presented to the Legislative Assembly by the Chairman of the Public Accounts Committee.

Item (5) contains a consequential amendment.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

**Amendments—Presentation of documents to Clerk of
Legislative Assembly**

- (7) Sections 51 (**Public Accounts and opinion to be presented to Legislative Assembly**), 52A (**Auditor-General's report etc. to be presented to the Legislative Assembly**), 57 (**Functions of Committee**):
- (a) In section 51 (2), 52A (2) and 57 (4), after "Clerk of the Legislative Assembly", insert "to be dealt with in accordance with section 63C".
 - (b) Omit sections 51 (3), 52A (3), 57 (5).
 - (c) From section 57 (4), omit "transmit", insert instead "present".
- (8) Section 63A (**Reference of matters to Public Accounts Committee**):
- From section 63A (6), omit "and (5)".
- (9) Section 63C:
- After section 63B, insert:
- Documents presented to the Clerk of the Legislative Assembly**
- 63C. A document which is presented to the Clerk of the Legislative Assembly in accordance with a provision of this Act:
- (a) is, on presentation and for all purposes, taken to have been laid before the Legislative Assembly; and
 - (b) is to be printed by authority of the Clerk of the Legislative Assembly; and
 - (c) is, for all purposes, taken to be a document published by order or under the authority of the Legislative Assembly; and
 - (d) is to be recorded in the Votes and Proceedings of the Legislative Assembly on the first sitting day of the Legislative Assembly after receipt of the report by the Clerk of the Legislative Assembly.

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued*

Explanatory note

Item (9) inserts a general provision which specifies how documents which are required to be presented to the Clerk of the Legislative Assembly are to be treated.

The amendments in item (7) (b) delete similar provisions occurring throughout the Act.

The amendments in items (7) (a) and (c) and (8) are consequential.

Amendment—Liability of Auditor-General etc.

(10) Section 63D:

Before section 64, insert:

Liability of Auditor-General etc.

63D. (1) A matter or thing done by the Auditor-General or a member of the Auditor-General's Office does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Auditor-General or member personally to any action, liability, claim or demand.

(2) For the purpose of determining whether the Crown is vicariously liable for any matter or thing done by the Auditor-General or a member of the Auditor-General's Office, it is declared for the avoidance of doubt that the Auditor-General and any such member is in the service of the Crown.

Explanatory note

Item (10) protects the Auditor-General and the Auditor-General's staff from personal liability for actions done in the execution of the Act or any other Act.

Doubt exists as to whether the Crown would be vicariously liable for the actions of the Auditor-General or such staff because of the independence of the Auditor-General in the exercise of the Auditor-General's statutory duties and the removal of the staff from the Public Service. The amendment will ensure that a person deprived of an action against the Auditor-General or a member of the Auditor-General's Office because of the new provisions will have an action against the Crown.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 1—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO AUDITING AND
FINANCIAL REPORTING—*continued***

Amendment—Formation of subsidiary organisations to be notified

- (11) Section 63B (**Subsidiary organisations of statutory bodies**):
- (a) At the end of paragraph (b) of the definition of “statutory body” in section 63B (1), insert:
 - or
 - (c) a person, group of persons or body specified in Schedule 3 which is a body corporate;
 - (b) After section 63B (1), insert:
 - (1A) Within 1 month after a corporation, association or trust becomes a subsidiary organisation of a statutory body, the statutory body must notify the Auditor-General and the Treasurer in writing of that fact.

Explanatory note

The amendment in item (11) (b) includes a requirement in section 63B that a statutory body notify the formation of any subsidiary organisation to the Auditor-General and the Treasurer. The amendment in item (11) (a) extends the definition of statutory body for the purposes of that section to bodies listed in Schedule 3 (Departments) of the Act which are bodies corporate.

**SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL**

(Sec. 3)

- (1) Section 28 (**Appointment etc.**):
- Omit section 28 (1), insert instead:
 - (1) The Auditor-General is to be appointed by the Governor for a term of 7 years and is not eligible for re-appointment, including re-appointment after the end of that term.
- (2) Schedule 1 (**The Auditor-General**):
- (a) Omit clause 1 (**Ineligibility by reason of age**).

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 2—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE
AUDITOR-GENERAL—*continued*

- (b) Before clause 2, insert:

Auditor-General to continue in office

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

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

- (c) At the end of clause 2, insert:

(2) The Auditor-General is not to hold any other position in the public sector during his or her term of office as Auditor-General or after the expiration of that term, except with the consent of the Governor.

- (d) Omit clause 3 (**Term of office**).

- (e) After clause 4, insert:

Resignation of Auditor-General

4A. The office of Auditor-General becomes vacant if the Auditor-General resigns the office by instrument in writing addressed to the Governor.

Explanatory note

The amendments contained in this Schedule convert the term of office of the Auditor-General to a 7-year term. The holder of the office of Auditor-General is not eligible for re-appointment at the end of that term. The Auditor-General may not hold any other position in the public sector without the consent of the Governor.

Provision is made for the current Auditor-General to continue in office until the expiration of a 7-year term or until the Auditor-General attains the age of 65 years, whichever occurs first.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL**

(Sec. 3)

(1) Part 3, Division 1A:

After Division 1, insert:

**Division 1A—Office and Staff of the
Auditor-General**

**Constitution of Auditor-General's Office as body
corporate for employment of staff**

33A. (1) For the purpose of employing staff under section 33B, there is constituted by this section a body corporate with the corporate name of the Auditor-General's Office.

(2) The affairs of the Auditor-General's Office are to be managed by the Auditor-General.

(3) Any act, matter or thing done in the name of, or on behalf of, the Auditor-General's Office by the Auditor-General, or with the authority of the Auditor-General, is taken to have been done by the Auditor-General's Office.

Staff of the Auditor-General's Office

33B. (1) The Auditor-General's Office may employ such staff as may be necessary to enable the Auditor-General to exercise the Auditor-General's functions.

(2) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of any staff of the Auditor-General's Office.

(3) The Auditor-General's Office may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other provision of this Act or any other Act or law.

(4) A person employed by the Auditor-General's Office is not an employee within the meaning of the Government and Related Employees Appeal Tribunal Act 1980.

(2) Section 65:

After section 64, insert:

Savings and transitional provisions

65. Schedule 4 has effect.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

(3) Schedule 4:

After Schedule 3, insert:

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS
(Sec. 65)

PART 1—GENERAL

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:
Public Finance and Audit (Auditor-General) Amendment Act 1991.
Annual Reports Legislation (Amendment) Act 1991.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE
ENACTMENT OF PUBLIC FINANCE AND AUDIT
(AUDITOR-GENERAL) AMENDMENT ACT 1991**

Definitions

2. In this Schedule:

- “appointed day” means the day on which section 33A commences;
- “former office” means the group of staff comprising the Auditor-General’s Office immediately before the appointed day;
- “member of the former office” means a member of staff of the former office, other than a member employed on a temporary basis;
- “Office” means the Auditor-General’s Office constituted by section 33A.

Staff of the Office

3. Each member of the former office becomes entitled, on the appointed day, to be appointed to a position in the Office at a salary not less than the salary which the member was paid immediately before that day.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

Annual leave, long service or extended leave and sick leave

4. A member of the former office who, pursuant to this Schedule, becomes an officer of the Office retains any rights to:

- (a) annual leave; and
- (b) long service or extended leave; and
- (c) sick leave,

accrued or accruing to the person as a member of the former office.

No entitlement to dual benefits

5. A member of the former office who, pursuant to this Schedule, becomes an officer of the Office is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind in respect of the same period of service.

Public servants may re-apply for positions in the Public Service

6. (1) A member of staff of the Office who, immediately before the appointed day, was a public servant may, within the period of 3 years immediately following that day, apply for a position in the Public Service as if the person were still a public servant.

(2) A member of staff of the Office who applies for such a position, or who is appointed to or employed in such a position, is, for the purposes of:

- (a) the Public Sector Management Act 1988; and
- (b) the Government and Related Employees Appeal Tribunal Act 1980; and
- (c) the Industrial Arbitration Act 1940,

to be regarded as a public servant in relation to the application, appointment or employment.

Operation of Industrial Arbitration Act 1940

7. Nothing in this Schedule affects the operation of the Industrial Arbitration Act 1940.

Explanatory note

The amendments contained in this Schedule constitute the Auditor-General's Office as a body corporate for the purposes of employing staff. The Office will be managed by the Auditor-General and will be able to employ staff not subject to the Public Sector Management Act 1988.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 3—AMENDMENTS TO THE PUBLIC FINANCE
AND AUDIT ACT 1983 RELATING TO THE OFFICE AND
STAFF OF THE AUDITOR-GENERAL—*continued***

Existing permanent staff of the Auditor-General are given an entitlement to appointment to positions in the Office at not less than their current salaries. As they will cease to be public servants their existing rights to superannuation and leave are preserved. Provision is also made for them to be considered as public servants for 3 years for the purposes of applying for other positions within the Public Service.

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983**

(Sec. 3)

(1) Section 39 (Application and interpretation):

In section 39 (2A), after “not being”, insert “the Auditor-General’s Office or”.

(2) Section 41A (Preparation of financial statements):

(a) After “statutory body” where firstly occurring, insert “(other than the Auditor-General’s Office)”.

(b) At the end of section 41A, insert:

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

(3) Section 43 (Inspection and audit of accounts of statutory bodies):

In section 43 (1), after “statutory body”, insert “(other than the Auditor-General’s Office)”.

(4) Section 45A (Application and interpretation):

(a) From section 45A (1), omit “, other than the Auditor-General’s Office”.

(b) From section 45A (3), omit “(other than the Auditor-General’s Office)”.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—continued**

(5) Section 45D (Preparation of financial statements):

- (a) From section 45D (1), omit “(other than the Auditor-General)”.
- (b) Omit section 45D (2).

Explanatory note

The amendments in items (1)–(5) update the Act as a consequence of the amendment of Schedule 2 to the Act (by a proclamation published on 3 February 1989) to specify the Auditor-General’s Office as a statutory body to which Division 3 (general audit of statutory bodies) of Part 3 applies.

(6) Section 41A (Preparation of financial statements):

From section 41A (b), omit “for verification and certification”.

(7) Section 45D (Preparation of financial statements):

From section 45D (1) (b), omit “for verification and certification”.

Explanatory note

Items (6) and (7) omit unnecessary descriptions of the functions of the Auditor-General in respect of financial statements submitted by statutory bodies and Departments. The functions of the Auditor-General are specified in sections 41C and 45F.

(8) Section 41C (Auditing etc. of financial statements):

- (a) Omit section 41C (1), insert instead:

(1) The Auditor-General is, within the period of 10 weeks after the receipt by the Auditor-General of the financial statements referred to in section 41A of a statutory body, to audit the accounts of the statutory body for the financial year to which the financial statements relate.

(1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is, within that 10-week period to furnish an opinion:

- (a) stating that the Auditor-General has audited the accounts caused to be kept by the statutory body for that financial year; and
- (b) indicating whether the financial statements comply with section 41B; and

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—*continued***

- (c) setting forth any qualifications subject to which the opinion is given.
 - (b) Omit section 41C (3).
- (9) Section 41D (**Return of audited financial statements etc. to statutory body**):
 - Omit “certificate”, insert instead “opinion”.
- (10) Section 45F (**Auditing etc. of financial statements**):
 - (a) Omit section 45F (1), insert instead:
 - (1) The Auditor-General is, within the period of 10 weeks after the receipt by the Auditor-General of the financial statements referred to in section 45D of a Department, to audit the accounts of the Department for the financial year to which the financial statements relate.
 - (1A) The Auditor-General or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General is to furnish an opinion:
 - (a) stating that the Auditor-General has audited the accounts caused to be kept by the Department Head for that financial year; and
 - (b) indicating whether the financial statements comply with section 45E; and
 - (c) setting forth any qualifications subject to which the opinion is given.
 - (b) Omit section 45F (3).
- (11) Section 45G (**Return of audited financial statements etc. to Department Head**):
 - Omit “certificate”, insert instead “opinion”.
- (12) Section 48 (**Auditing of accounts**):
 - (a) From section 48 (2), omit “a certificate”, insert instead “an opinion”.
 - (b) From section 48 (2), omit “the certificate”, insert instead “the opinion”.

Public Finance and Audit (Auditor-General) Amendment 1991

**SCHEDULE 4—MINOR AMENDMENTS TO THE PUBLIC
FINANCE AND AUDIT ACT 1983—*continued***

Explanatory note

The amendments in items (8)–(12) replace references to the issue of certificates relating to audit of accounts with references to opinions relating to audit of accounts. The changed terminology more accurately describes the documents concerned.

The amendments also enable the Auditor-General to authorise the Deputy Auditor-General or an auditor to furnish those opinions.

(13) Section 43 (Inspection and audit of accounts of statutory bodies):

From section 43 (3), omit “Consolidated Fund”, insert instead “Auditor-General”.

(14) Section 45 (Particular audit):

From section 45 (3), omit “Consolidated Fund”, insert instead “Auditor-General”.

(15) Section 45I (Inspection and audit of accounts of Departments):

From section 45I (3), omit “Consolidated Fund”, insert instead “Auditor-General”.

Explanatory note

The amendments in items (13)–(15) are necessary because of changed administrative arrangements under which audit fees are paid to the Auditor-General.

(16) Section 45 (Particular audit):

(a) In section 45 (2), after “Auditor-General” where firstly occurring, insert “or a person (being the Deputy Auditor-General or an auditor) authorised by the Auditor-General”.

(b) In section 45 (2), after “Auditor-General” where secondly occurring, insert “or authorised person”.

Explanatory note

The amendments in item (16) enable the Auditor-General to authorise the Deputy Auditor-General or an auditor to make reports as to the inspection and audit of the accounts and records of statutory bodies under Division 4 of Part 3.

Public Finance and Audit (Auditor-General) Amendment 1991

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 4)

Public Sector Management Act 1988 No. 33

(1) Schedule 2 (Administrative offices):

Omit:

Auditor-General's Office

Auditor-General.

(2) Schedule 3 (Declared authorities):

In appropriate alphabetical order, insert:

Auditor-General's Office.

State Authorities Non-contributory Superannuation Act 1987 No. 212

Schedule 1 (Employers):

At the end of Part 1, insert:

Auditor-General's Office

State Authorities Superannuation Act 1987 No. 211:

Schedule 1 (Employers):

At the end of Part 1, insert:

Auditor-General's Office

Superannuation Act 1916 No. 28:

Schedule 3 (Employers);

At the end of Part 1, insert:

Auditor-General's Office.

Explanatory note

The Public Sector Management Act 1988 is amended to remove the Auditor-General's Office from the list of administrative offices and to make it a declared authority.

This Schedule also amends the Superannuation Acts specified in the Schedule to preserve the superannuation entitlements of existing staff of the Auditor-General's Office by including the Office as an employer for the purposes of those Acts.

[Minister's second reading speech made in—
Legislative Assembly on 2 July 1991
Legislative Council on 11 December 1991]