

Financial Management and Audit Acts (Amendment) Bill

No.

TABLE OF PROVISIONS

Clause

PART 1—PRELIMINARY

1. Purpose
2. Commencement
3. Principal Act

PART 2—AMENDMENT OF THE FINANCIAL MANAGEMENT ACT 1994

4. New sections 45 to 47 substituted
 45. Report of operations and financial statements to be prepared
 46. Tabling requirements
 47. Minister may vary reporting requirements
5. Application of section 4
6. New section 53A inserted
 - 53A. Annual reports of State-owned corporations and other bodies
7. Other amendments of the **Financial Management Act 1994**

PART 3—GUARANTEES AND FINANCIAL ACCOMMODATION

8. Definition
9. New Parts 6B and 6C inserted

PART 6B—GUARANTEE CHARGE

- 40I. Definitions
- 40J. Application of Part
- 40K. Guarantee charge
- 40L. Information to be supplied

PART 6c—FINANCIAL ACCOMMODATION LEVY

- 40M. Leviable authority
- 40N. Financial accommodation levy
- 40O. Leviable authority not liable to pay guarantee charge
10. Amendment of the **State Owned Enterprises Act 1992**

PART 4—AMENDMENT OF THE AUDIT ACT 1994

11. Definitions
12. Audit of authorities
13. Payment for performance audits of authorities
14. Other amendments of the **Audit Act 1994**

PART 5—AMENDMENT OF OTHER ACTS

15. Amendment of the **Co-operative Housing Societies Act 1958**
16. Amendment of the **Crown Land (Reserves) Act 1978**
17. Amendment of the **Dried Fruits Act 1958**
18. Amendment of the **Film Victoria Act 1981**
19. Amendment of the **Financial Management (Consequential Amendments) Act 1994**
20. Amendment of the **Legal Profession Practice Act 1958**
21. Solicitors' Guarantee Fund—audit
56. Audit of accounts of the fund
22. Amendment of the **Medical Practice Act 1994**
23. Amendment of the **Project Development and Construction Management Act 1994**
24. Amendment of the **Unclaimed Moneys Act 1962**

LEGISLATIVE ASSEMBLY

Read 1° 26 April 1995

(Brought in by Mr Stockdale and Mr Smith (Polwarth))

A BILL

to amend the **Financial Management Act 1994**, the **Audit Act 1994**
and other Acts and for other purposes.

Financial Management and Audit Acts (Amendment) Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The main purpose of this Act is—

(a) to amend the **Financial Management Act 1994**
and the **Audit Act 1994**—

(i) to provide for the more timely reporting
and auditing of departments and public
bodies and the reporting of State-owned
corporations and other bodies;

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

Financial Management and Audit Acts (Amendment)

- (ii) to provide for all performance audits to be paid for by the Parliament;
- (b) to enable charges to be made for the giving of government guarantees and the obtaining of financial accommodation by certain authorities.

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2. Commencement

- (1) Section 7 (2) is deemed to have come into operation on 10 May 1994.
- (2) Section 19 (1) is deemed to have come into operation on 31 May 1994.
- (3) Section 22 is deemed to have come into operation on 1 July 1994.
- (4) Section 23 is deemed to have come into operation on 13 December 1994.
- (5) Section 19 (2) is deemed to have come into operation on 1 January 1995.
- (6) The remaining provisions of this Act come into operation on the day on which this Act receives the Royal Assent.

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No. 18/1994
as amended
by N s
75/1994 and
110/1994.

3. Principal Act

In this Act the **Financial Management Act 1994** is called the Principal Act.

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**PART 2—AMENDMENT OF THE FINANCIAL
MANAGEMENT ACT 1994**

4. New sections 45 to 47 substituted

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For sections 45 to 47 of the Principal Act substitute—

**“45. Report of operations and financial statements
to be prepared**

- (1) As soon as practicable after the end of each financial year—

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5 (a) the relevant Minister of a department must cause to be prepared, in accordance with this Part, a report of the operations of the department during the financial year;

(b) a public body must cause to be prepared, in accordance with this Part, a report of its operations during the financial year;

10 (c) the accountable officer of each department and public body must cause to be prepared, in accordance with this Part, financial statements of the department or public body for the financial year.

15 (2) The accountable officer of each department and public body must submit the financial statements of the department or public body to the Auditor-General within 8 weeks after the end of the financial year.

20 (3) Sub-section (2) does not apply to a public body that is not required under the **Audit Act 1994** or any other Act to have its financial statements or accounts audited by the Auditor-General.

25 (4) The financial statements of an Administrative Office specified in column 3 of an item in Schedule 1 to the **Public Sector Management Act 1992** (other than the Environment Protection Authority) must be incorporated in and consolidated with the financial statements for that financial year of the department in column 1 of that item.

30 **46. Tabling requirements**

35 (1) Subject to sub-sections (2) and (3), the relevant Minister of a department or

- public body must cause the report of operations and audited financial statements of the department or public body to be laid before each House of the Parliament on or before 31 October each year or, if a House is not then sitting, on the first sitting day of that House after 31 October. 5
- (2) If it appears to the relevant Minister from the financial statements of the department or public body that the cash payments from all sources made by the department or public body in the financial year do not exceed \$5 000 000, the relevant Minister— 10
- (a) must report to each House of the Parliament the receipt by him or her of the report of operations and financial statements of the department or public body; and 20
- (b) if a member of either House of the Parliament so requests, must cause the report of operations and financial statements to be laid before each House of the Parliament within 14 sitting days of that House after the request. 25
- (3) If the relevant Minister of a department or public body has not received the report of operations and financial statements of the department or public body in time for him or her to comply with sub-section (1), the relevant Minister— 30
- (a) must cause that fact and the reasons for it to be reported to each House of the Parliament; and 35
- (b) must cause the report of operations and financial statements to be laid before each House of the Parliament

as soon as practicable after they are received by him or her.

47. Minister may vary reporting requirements

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- (1) Subject to sub-section (2), the Minister, in writing, may grant an exemption to the accountable officer of a department or public body from any provision of this Part relating to the contents, form or preparation of the financial statements of that department or public body.
- 10
- (2) The Minister must not grant an exemption from the requirement to cause financial statements to be prepared and submitted to the Auditor-General, but may extend the period within which they must be so submitted.
- 15
- (3) An exemption under this section continues to apply in relation to an accountable officer until the Minister advises the accountable officer in writing that it no longer applies.
- 20
- (4) An accountable officer must include in financial statements particulars of any exemption given under this section in respect of those statements.”.
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5. Application of section 4

- 30
- (1) Section 45 (4) of the Principal Act as substituted by section 4 of this Act applies to departments in respect of the financial year ending on 30 June 1995 and each subsequent financial year.
- (2) The remaining provisions of sections 45, 46 and 47 of the Principal Act as substituted by section 4 of this Act apply to departments and public bodies in respect of each financial year ending after 1 January 1996.

- (3) Sections 45 (other than sub-section (2A)), 46 and 47 of the Principal Act as in force immediately before the commencement of section 4 of this Act apply to departments and public bodies in respect of financial years ending on or before 1 January 1996.

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6. *New section 53A inserted*

After section 53 of the Principal Act **insert—**

“53A. *Annual reports of State-owned corporations and other bodies*

- (1) This section applies to the following bodies— 10
- (a) a corporation within the meaning of the Corporations Law (other than a State owned company within the meaning of the **State Owned Enterprises Act 1992**) all the shares in which are owned by or on behalf of the State or a statutory authority (whether or not a public statutory authority), whether directly or indirectly; and 15 20
- (b) a body corporate declared by the Governor in Council under sub-section (2) to be a body to which this section applies. 25
- (2) The Governor in Council, by notice published in the Government Gazette, may declare a body corporate to be a body to which this section applies if— 30
- (a) a member, or a member of the governing body, of the body corporate is appointed by the Governor in Council or a Minister; or 30
- (b) the Governor in Council is satisfied that a primary object of the body 35

5 corporate is to carry out a public function in relation to which it is registered, or holds a licence or other authority granted or issued, under an Act.

10 (3) The Governor in Council, by notice published in the Government Gazette, must declare a Minister to be the relevant Minister in relation to a body to which this section applies for the purposes of this section.

15 (4) A body to which this section applies must, as soon as practicable after the end of each financial year, submit to the relevant Minister of that body its annual report, including its audited financial statements, in respect of that financial year.

20 (5) Subject to sub-sections (6) and (7), the relevant Minister must cause the annual report to be laid before each House of the Parliament on or before 31 October each year or, if a House is not then sitting, on the first sitting day of that House after 31 October.

25 (6) If it appears to the relevant Minister from the annual report that the cash payments from all sources made by the body in the financial year do not exceed \$5 000 000, the relevant Minister—

30 (a) must report to each House of the Parliament the receipt by him or her of the annual report; and

35 (b) if a member of either House of the Parliament so requests, must cause the annual report to be laid before each House of the Parliament within 14 sitting days of that House after the request.

(7) If the relevant Minister has not received the annual report in time for him or her to comply with sub-section (5), the relevant Minister—

(a) must cause that fact and the reasons for it to be reported to each House of the Parliament; and 5

(b) must cause the annual report to be laid before each House of the Parliament as soon as practicable after it is received by him or her.”. 10

7. Other amendments of the Financial Management Act 1994

(1) In the Principal Act—

(a) in section 3, in paragraph (b) of the definition of “public body” after “corporation” insert “or State body”; 15

(b) in section 3 for the definition of “the relevant Minister” substitute—

“**the relevant Minister**” means— 20

(a) in relation to a department, the Minister or Ministers for the time being responsible for any part of that department;

(b) in relation to a public body established by or under a provision of an Act or enactment, the Minister or Ministers for the time being administering that provision or enactment; 25

(c) in relation to any other public body, the Minister declared by Order under section 5 to be the relevant Minister; 30

(d) in relation to a body to which section 53A applies, the Minister declared by notice under section 53A (3) to be the relevant Minister in relation to the body for the purposes of section 53A;” 35

(c) in section 5 for “Part 7” **substitute** “this Act”;

(d) for section 25 (h) **substitute**—

“*(h)* must include details, as at the end of the financial year, of—

5 (i) the liabilities (including contingent liabilities under guarantees and indemnities or in respect of superannuation payments and all other contingent liabilities) and prescribed assets of the State; and

10 (ii) prescribed assets and prescribed liabilities of prescribed bodies;”;

(e) in section 29 **omit** “for a financial year”;

(f) in section 30 (1)—

15 (i) for “annual appropriation Act for a financial year” **substitute** “appropriation Act”;

(ii) for “for that year” **substitute** “under that Act”;

20 (g) in section 30 (2)—

(i) for “annual appropriation Act for a financial year” **substitute** “appropriation Act”;

25 (ii) for “for that year” **substitute** “under that Act”;

(h) in section 31 (1)—

(i) for “annual appropriation Act for the Parliament for a financial year” **substitute** “appropriation Act for the Parliament”;

30 (ii) for “for that year” (where twice occurring) **substitute** “under that Act”;

(i) in section 31 (2)—

35 (i) for “annual appropriation Act for the Parliament for a financial year” **substitute** “appropriation Act for the Parliament”;

(ii) for “for that year” (where twice occurring) **substitute** “under that Act”;

- (j) in section 48 for “this Part” **substitute** “section 45”;
- (k) in section 49 for “this Part” **substitute** “section 45”;
- (l) in section 51 for “an annual report” **substitute** “a report of operations or financial statements”; 5
- (m) in section 52, sub-section (1) is **repealed**;
- (n) in section 55 for “by the Minister in accordance with the regulations” **substitute** “in accordance with the regulations by the chief finance and accounting officer, the accountable officer or the relevant Minister”; 10
- (o) in sections 56 (5) and (6) for “the Minister” (wherever occurring) **substitute** “the relevant Minister”; 15
- (p) in section 59, sub-sections (4) and (5) are **repealed**;
- (q) section 64 is **repealed**;
- (2) In Schedule 2 to the Principal Act—
 - (a) in item 7 for “Unclaimed Moneys Fund” **substitute** “Consolidated Fund”; 20
 - (b) in item 29 for “*Industry*” **substitute** “*Industries*”.

PART 3—GUARANTEES AND FINANCIAL ACCOMMODATION 25

8. Definition

In section 3 of the Principal Act, after the definition of “enactment” **insert—**

“**financial accommodation**” has the same meaning as in the **Borrowing and Investment Powers Act 1987**;’ 30

9. New Parts 6B and 6C inserted

After Part 6A of the Principal Act **insert—**

“PART 6B—GUARANTEE CHARGE

40I. Definitions

In this Part—

“State guarantee” means—

- (a) a guarantee under an Act; or
- (b) a guarantee executed by the Treasurer—

guaranteeing the due satisfaction of amounts payable in respect of financial accommodation.

40J. Application of Part

This Part does not apply in relation to financial accommodation obtained before the commencement of this section.

40K. Guarantee charge

(1) The Treasurer may determine, before financial accommodation to which a State guarantee is to apply is provided to a person, that an annual guarantee charge is payable by that person in respect of the financial accommodation at an annual percentage rate specified in the determination, being a rate that, in the opinion of the Treasurer, does not exceed the difference between—

- (a) the annual interest or discount rate and other costs of the financial accommodation; and
- (b) the estimated annual interest or discount rate and other costs of the financial accommodation that would apply if the State guarantee did not apply.

- (2) A person who is required to pay a guarantee charge in respect of financial accommodation must pay to the Treasurer, for payment into the Consolidated Fund— 5
- (a) if the financial accommodation is provided for less than 12 months, an amount determined—
- (i) if the guarantee is under an Act, by multiplying the amount of the financial accommodation by the rate referred to in sub-section (1); or 10
- (ii) if the guarantee is executed by the Treasurer, by multiplying the amount of the limit of the guarantee by the rate referred to in sub-section (1); or 15
- (b) if the financial accommodation is provided for 12 months or more, an amount in respect of each financial year during which the guarantee is in force determined by multiplying the sum of the person's liabilities in respect of the financial accommodation as at the end of that financial year by the rate referred to in sub-section (1). 20 25
- (3) A guarantee charge is payable on or before 31 December next following the financial year, or part of a financial year, to which it relates and may be recovered as a debt due to the State. 30

40L. *Information to be supplied*

A person who is required to pay a guarantee charge must give to the Treasurer, or a person authorised by the Treasurer, such information as the 35

Treasurer or authorised person reasonably requires for the purpose of determining the amount of the charge in respect of a financial year.

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**PART 6C—FINANCIAL ACCOMMODATION
LEVY**

40M. *Leviable authority*

10 (1) In this Part, “leviable authority” means an authority in respect of which an Order under sub-section (2) is in force.

15 (2) The Governor in Council may, by Order published in the Government Gazette, declare a public authority within the meaning of the **Treasury Corporation of Victoria Act 1992** to be a leviable authority for the purposes of this Part.

40N. *Financial accommodation levy*

20 (1) A leviable authority must pay to the Treasurer for payment into the Consolidated Fund a levy, in respect of each leviable period, in respect of financial accommodation provided to the authority, or in respect of such part of that accommodation as the Treasurer determines from time to time.

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30 (2) The levy payable by a leviable authority in respect of each leviable period is determined by multiplying the liabilities of the authority in respect of the financial accommodation to which the levy relates as at the end of that leviable period by a percentage rate determined in relation to that authority by the Treasurer, or a person authorised by the Treasurer, in respect of
35 the financial year in which the leviable

period falls, being a rate that, in the opinion of the Treasurer or authorised person, does not exceed the difference between—

(a) the annual interest or discount rate and other costs of the financial accommodation; and 5

(b) the estimated annual interest or discount rate and other costs of the financial accommodation that would apply if the leviable authority were not a public authority. 10

(3) The Treasurer or authorised person may, in determining the levy in accordance with sub-section (1), have regard to such matters as the Treasurer or person determines. 15

(4) The levy is payable at such times, and in such manner, as the Treasurer determines and may be recovered as a debt due to the State. 20

(5) In this section, “**leviable period**”, in relation to a leviable authority, means a financial year or such shorter period as the Treasurer determines from time to time in relation to that authority. 25

40o. *Leviable authority not liable to pay guarantee charge*

A leviable authority that is liable to pay a financial accommodation levy under this Part in respect of financial accommodation is not liable to pay a guarantee charge under Part 6B in respect of that financial accommodation.”. 30

10. Amendment of the State Owned Enterprises Act 1992

Section 87A of the **State Owned Enterprises Act 1992** is repealed.

PART 4—AMENDMENT OF THE AUDIT ACT 1994

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11. Definitions

No. 2/1994.

In section 3 of the **Audit Act 1994**, in paragraph (b) of the definition of “public body” for “State business corporation or State owned company” **substitute** “State owned enterprise”.

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12. Audit of authorities

(1) In section 9 of the **Audit Act 1994** before “A report” **insert** “(1)”.

(2) At the end of section 9 of the **Audit Act 1994** **insert**—

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“(2) In the case of the audit of the financial statements of an authority in respect of each financial year ending after 1 January 1996 the report under sub-section (1) must be submitted within 4 weeks after the day on which the financial statements were received by the Auditor-General for auditing.”.

20

13. Payment for performance audits of authorities

In the **Audit Act 1994**—

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(a) in section 10 (2) for “a department” **substitute** “an authority”;

(b) in section 16 (7)—

(i) for “department” **substitute** “authority”;

(ii) for “departments” **substitute** “authorities”;

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(c) in section 16 (8) for “a department” **substitute** “an authority”.

14. Other amendments of the Audit Act 1994

Sections 21 (2) and (3) and Part 7 of the **Audit Act 1994** are repealed.

PART 5—AMENDMENT OF OTHER ACTS

No. 6226,
reprinted
No. 48/1992
and
subsequently
amended by
No. 91/1994.

15. Amendment of the Co-operative Housing Societies Act 1958

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In section 64 of the **Co-operative Housing Societies Act 1958** omit “, out of moneys made available by Parliament for the purpose,”.

No. 9212,
reprinted
No. 48/1993
and
subsequently
amended by
Nos 86/1993,
75/1994,
89/1994,
96/1994 and
121/1994.

16. Amendment of the Crown Land (Reserves) Act 1978

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In section 15 (9) of the **Crown Land (Reserves) Act 1978** paragraph (b) is repealed.

No. 6239,
reprinted
No. 72/1989
and
subsequently
amended by
Nos 31/1994
and 65/1994.

17. Amendment of the Dried Fruits Act 1958

(1) In section 16 of the **Dried Fruits Act 1958**, for sub-section (3) substitute—

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“(3) There shall be paid out of the fund—

(a) all expenditure incurred in carrying out the powers and duties of the Board or in the administration of this Act, including the payment of allowances of members and salaries, wages or other remuneration and allowances and expenses of officers of the Board; and

20

(b) the audit fees required to be paid by the Board by section 10 of the **Audit Act 1994**.”.

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(2) Section 18 of the **Dried Fruits Act 1958** is repealed.

18. Amendment of the Film Victoria Act 1981

No. 9716,
reprinted to
No. 31/1994.

Section 18 of the **Film Victoria Act 1981** is
repealed.

**19. Amendment of the Financial Management
(Consequential Amendments) Act 1994**

No. 31/1994
as amended
by No. 75/1994.

(1) In the **Financial Management (Consequential
Amendments) Act 1994**—

(a) in Schedule 1—

(i) in item 5.4 for “18 (1) (d)” substitute “18
(1)”;

(ii) in item 12.1 for “appropriated” substitute
“provided”;

(iii) in item 19 for “appropriated” substitute
“provided”;

(iv) in item 21 for “appropriated” substitute
“provided”;

(v) in item 46 for “appropriated” substitute
“provided”;

(vi) in item 47.1 for “appropriated” substitute
“provided”;

(vii) in item 62 for “appropriated” substitute
“provided”;

(b) in Schedule 2—

(i) in item 24.2 for “18” substitute “18A”;

(ii) in item 76 for “*Development Corporation*”
substitute “*Victoria*”.

(2) In Schedule 2 to the **Financial Management
(Consequential Amendments) Act 1994**, in item 10
after “*Control*” insert “(*Plumbers Gasfitters and
Drainers*)”.

N . 6291,
reprint d to
N . 37/1993
and
ub quently
am nd d by
N s 70/1993,
14/1994,
18/1994,
104/1994 and
109/1994.

20. *Amendment of the Legal Profession Practice Act 1958*

In section 53 (4) (bc) of the **Legal Profession Practice Act 1958** for “under section 12 (3) of the **Annual Reporting Act 1983** to defray the costs and expenses of an audit of the accounts of the Fund or the institute” substitute “to defray the reasonable costs and expenses of an audit of the accounts of the fund”.

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21. *Solicitors’ Guarantee Fund—audit*

After section 55B of the **Legal Profession Practice Act 1958** insert—

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“56. *Audit of accounts of the fund*

(1) The accounts of the fund must from time to time and at least once in each year be audited by the Auditor-General or a person authorised by the Auditor-General.

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(2) The provisions of Part 3 of the **Audit Act 1994** apply to an audit of the accounts of the fund as if references to an authority in that Part were references to the council.”.

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N . 23/1994.

22. *Amendment of the Medical Practice Act 1994*

In section 91 of the **Medical Practice Act 1994**—

(a) for “advances made by the Minister administering the **Public Account Act 1970**” substitute “advances from the **Public Account**”;

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(b) for “**Public Account Act 1970**” (wherever else occurring) substitute “section 14 of the **Financial Management Act 1994**”.

N . 101/1994.

23. *Amendment of the Project Development and Construction Management Act 1994*

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In the **Project Development and Construction Management Act 1994**—

(a) in section 3 (1) for the definition of “public body” **substitute**—

“**public body**” in Part 3 or Part 4 means—

(a) a public statutory authority;

(b) a State business corporation within the meaning of the **State Owned Enterprises Act 1992**;

(c) a body, office or trust body—

(i) established by or under an Act or enactment; or

(ii) established by the Governor in Council or a Minister—

and that is declared by the Minister, by notice published in the Government Gazette, to be a body or office to which that Part applies;’;

(b) in section 18 (2) for “**Crown Lands (Reserves)**” **substitute** “**Crown Land (Reserves)**”;

(c) in section 44 for “(c)” **substitute** “(b)”;

(d) in section 58 (2) for “ULA land” **substitute** “ULA property”.

24. Amendment of the Unclaimed Moneys Act 1962

In the heading to Part II of the **Unclaimed Moneys Act 1962** for “**COMPANIES AND FIRMS**” **substitute** “**BUSINESSES**”.

No. 6879,
reprinted to
No. 45/1994.

