

## Audit (Amendment) Bill

### EXPLANATORY MEMORANDUM

#### PART 1—PRELIMINARY

- Clause 1 explains the purpose of the Bill.
- Clause 2 is the commencement provision. Part 1 (Preliminary) and sections 9 (the addition of Part 2A—Audit Victoria), 17 (amendments to section 16), 21 (the application of the **Freedom of Information Act 1982**), 23 (transitional amendments), 24 and 26(2) (certain consequential amendments) commence on Royal Assent. The remaining provisions operate from 1 July 1998.
- Clause 3 states that the **Audit Act 1994** is the Principal Act.

#### PART 2—AMENDMENT OF THE PRINCIPAL ACT

- Clause 4 introduces a new purpose provision.
- Clause 5 inserts six new definitions into the definition provision of the Principal Act (section 3). The definitions are of:
- Audit Victoria
  - authorised person
  - Board
  - director
  - insolvent under administration
  - Parliamentary Committee
- Clause 6 inserts section 3A into the Principal Act. This provision defines the objectives of the Principal Act.
- Clause 7 inserts two new provisions into the Principal Act. The provisions are:
- proposed section 4A—which relates to the independence of the Auditor General, stating that the Auditor General is an independent officer of the Parliament;

- proposed section 4B—which provides that the Auditor General must, in performing or exercising his or functions or powers, confer with and have regard to the audit priorities determined by the Parliamentary Committee.

Clause 8 inserts section 7A into the Principal Act. This provision requires the Auditor General to submit a report to the Parliamentary Committee every six months as to the appointments made during the previous six months.

Clause 9 introduces a new Part 2A into the Principal Act. That Part deals with the statutory authority, Audit Victoria. The provisions in the new Part are:

- proposed section 7B—which establishes the body corporate named "Audit Victoria";
- proposed section 7C—which deals with the functions and powers of Audit Victoria;
- proposed section 7E—which limits the directions which the Minister can provide to the Board of Audit Victoria to matters which do not concern the carrying out of audits by Audit Victoria. The provision also states that any directions made must be included in the annual report of Audit Victoria;
- proposed sections 7D, 7F, 7G, 7H, 7I and 7L—which deal with the board of directors of Audit Victoria, and the appointment and terms of appointment of the directors and disclosure of their interests;
- proposed sections 7J, 7K—which deal with proceedings of the Board and validity of decisions;
- proposed section 7M—which empowers the Board to appoint a chief executive officer and staff.

Clause 10 introduces a new Part 2B into the Principal Act. This Part deals with authorised persons.

- proposed section 7N:
  - requires that the Auditor General ensures that, for each authority, there is an authorised person or firm appointed to undertake financial audits;

- provides that the appointments are to be for 3 years, but can be extended by the Auditor General by up to 2 further years;
- requires that the authorised person is to be:
  - a person; or
  - a firm;
- provides that appointments are to be made in accordance with the competitive process detailed in section 7P.
- proposed section 7O makes similar provision in relation to the appointment of a person or firm to audit the annual financial statement under Part 5 of the **Financial Management Act 1994**;
- proposed section 7P—requires the Auditor General to follow a competitive process in making appointments for the purpose of section 7N or 7O, but allows him or her to by-pass that process by appointing a person without complying with the competitive process, or by appointing a person who did not take part in the competitive process.

Where the competitive process is by-passed, the Auditor General must include the reasons for such a decision in the next report to the Parliamentary Committee under section 7A or in the following report.

- proposed section 7Q—provides that the Auditor General may appoint authorised persons to conduct performance audits of authorities. The authorised person can be a person or a firm;
- proposed section 7R—provides that the appointments made for the purpose of section 7Q are to be made either:
  - from a panel selected in accordance with a competitive process; or
  - following a tender process conducted for the purpose of the audit concerned.

The provision allows the Auditor General to by pass the competitive process. Where he does, he or she must include the reasons for doing so in his or her next report under section 7A or in the following report.

- proposed section 7S provides where a firm or a member of a firm is the authorised person, employees of the firms or Audit Victoria are also regarded as an authorised persons for the purpose of the appointment if authorised by the authorised person;
- proposed section 7T provides that if a body corporate is an authorised person, each officer or employee of the body corporate is an authorised person for the purposes of the appointment;
- proposed 7U—requires the Auditor General to issue performance standards to authorised persons;
- proposed section 7V—allows for the resignation and removal of authorised persons.

Clause 11 amends section 8(1) of the Principal Act to remove the references to the Auditor General.

Clause 12 replaces section 9 of the Principal Act with two new provisions, sections 9 and 9A.

- proposed section 9 requires the authorised person for an authority to make a report to the Auditor General on each audit of the financial statement of the authority which must be made within 3 weeks after the authorised person receives the financial statements;
- proposed section 9A requires the Auditor General to report, within 4 weeks of the provision to the authorised person for an authority of financial statements concerning that authority.

Clause 13 substitutes a new section 10. The new provision requires authorities to pay to the Consolidated Fund amounts to defray the reasonable costs and expenses of audits or any other things done in relation to an authority other than anything done under sections 15 or 16 unless that audit or thing was requested by the Minister responsible for the authority or the authority.

Clause 14 amends:

- section 11 of the Principal Act to allow the Auditor General to authorise persons to exercise the powers provided by that provision; and

- section 12 of the Principal Act to ensure that the Auditor General and authorised persons have access to Cabinet documents and that such materials are treated in the same manner as documents which are subject to secrecy provisions.

Clause 15 substitutes a new provision for section 13 of the Principal Act.

Clause 16 amends sections 14 and 15 of the Principal Act to:

- extend the operation of section 14 to failure to attend upon an person authorised under section 11;
- alter section 15(1) to allow the Auditor General to make a report under that section on any audit conducted by an authorised person.

Clause 17 amends section 16 to allow Audit Victoria to conduct performance audits. This provision will operate from Royal assent.

Clause 18 makes further amendments to section 16 which will operate from 1 July 1997. These amendments will:

- repeal sections 16(1) to (5B);
- require the Auditor General, when he or she considers it necessary to determine whether an authority is achieving its objectives to:
  - prepare an audit specification for a performance audit in consultation with the Parliamentary Committee and the relevant authority; and
  - nominate an authorised person to conduct that audit in accordance with that specification;
- establishes a reporting process which:
  - requires the authorised person to report to the Auditor General and for that report to include that report the comments of the authority on the report, or a summary of them;
  - requires the Auditor General to make a report of the audit which must be transmitted to each House within 7 sitting days after the making of the report. That report

will, if the Auditor General's report varies the report of the authorised person, include any comments of the authority on those variations, or a summary of those comments.

Clause 19 makes minor amendments to sections 17 and 19.

Clause 20 inserts into the Principal Act:

- proposed section 20A—establishes a penalty for the improper use of information acquired during the course of, or as a result of, carrying out of functions under the Act.

Clause 21 inserts into the Principal Act:

- proposed section 20B exempts Audit Victoria and certain documents of the Auditor General and the Victorian Auditor-General's Office from the operation of the **Freedom of Information Act 1982**.

### **PART 3—TRANSITIONAL**

Clause 22 introduces two new provisions into the Principal Act.

- proposed section 24, which will allow the Public Service Commissioner, after consultation with the Auditor-General and the Board of Audit Victoria, to designate the officers and employees of the Victorian Auditor-General's Office who are to become officers and employees of Audit Victoria;
- proposed section 25 provides that, from the commencement of clause 21 (Royal Assent), any officer or employee designated under proposed section 24:
  - is deemed to be appointed by Audit Victoria, is entitled to remunerations and terms and conditions determined by the Public Service Commissioner to be no less favourable than those which he or she received or was entitled to receive before that commencement;
  - retains accrued leave entitlements;
  - ceases to be an officer or employee of the public service;
  - remains, if an officer before the transfer, an officer within the meaning of the **State Superannuation Act 1988**—

is not entitled to any compensation as a result of the person ceasing to be a public servant.

Clause 23 introduces a new provision into the Principal Act.

- proposed section 26:
  - preserves the operation of the Principal Act, as in force before the commencement of clause 10 (1 July 1998) in relation to any financial audits commenced before that date;
  - allows the Auditor General to authorise Audit Victoria, and provides Audit Victoria with sufficient powers, to perform anything under the Act as in force before that date.

#### **PART 4—CONSEQUENTIAL AMENDMENTS**

Clauses 24 to 28 and the Schedule make amendments to a number of Acts which are consequential upon the alterations made to the Principal Act by this Bill.

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