



TASMANIA

FINANCIAL MANAGEMENT AND AUDIT ACT 1990

No. 28 of 1990

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FINANCIAL MANAGEMENT AND AUDIT ACT 1990

No. 28 of 1990

AN ACT to provide for the management of the public finances of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices, for the audit of public finances, to amend the *Public Account Act 1986*, the *Tasmania Bank Act 1987* and the *Tasmanian State Service Act 1984* and to repeal the *Audit Act 1918* and the *Statutory Authorities' Reports Act 1967*

[Royal Assent 12 September 1990]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Financial Management and Audit Act 1990*.

Commencement

2—The provisions of this Act commence on such day or days as may be fixed by proclamation.

Interpretation

3—In this Act, unless the contrary intention appears—

“**accounting manual**” means the accounting manual of an Agency issued and in force from time to time under section 10;

“**accounts**” means the records, however compiled and whether recorded or stored in written or printed form or on microfilm or by electronic process or otherwise, of transactions in respect of public money or other money or public property or other property, expressed in money, or in the case of property expressed in money or other units of measurement, being records required to be established and kept for the purposes of this Act and includes books, documents, writings, monetary forms, abstracts, vouchers and other documents from which any such records have been compiled;

“**Agency**” means a Government department specified in Column 1 of Schedule 1;

“**the appropriate Minister**”, in relation to an Agency or public body, means the Minister for the time being responsible for the administration of that Agency or public body;

“**Auditor-General**” means a person holding the office of Auditor-General by virtue of section 31 (1) or 68 (2);

“**bank**” means—

(a) in relation to a bank in Australia, a bank carrying on business under the authority of an Act of the Commonwealth or of a State; or

(b) in relation to a bank not in Australia, a bank approved by the Treasurer;

“**certifying officer**” means an officer appointed as a certifying officer under section 22 (h);

“**clearing account**” means a bank account of an Agency in which money is deposited before it is credited to the Public Account;

“**financial year**” means—

(a) a period of 12 months ending on 30th June in any year; or

(b) any other period of 12 months in respect of which an Agency is required by any written law or by a direction given under section 29 to maintain financial records;

“Government department” means a Government department referred to in Column 1 of Schedule 1;

“Head of Agency” means a Head of an Agency referred to in Column 2 of Schedule 1 and includes the officers specified in Column 2 of Schedule 2;

“officer” means a person who is—

(a) a Head of Agency or an employee within the meaning of the *Tasmanian State Service Act 1984*; or

(b) employed by or in an Agency or by the Governor-in-Council pursuant to the Royal prerogative or pursuant to any written law, whether that person is employed under a contract of service or a contract for service and whether or not that person receives any remuneration for the employment;

“other money” means money, negotiable instruments or securities of any kind for the payment of money, other than public money, collected, received or held by the Treasurer, a Head of Agency or an officer in the course of official duties;

“other property” means property, other than public property and other money, held by the Treasurer, a Head of Agency or an officer in the course of official duties;

“public body” means—

(a) a State authority; or

(b) a local authority; or

(c) the council, board, trust, trustees or other governing body (however designated) of, or for, a corporation, body of persons, institution, district or place, whose accounts are by law made subject to Part 3, to the repealed Act or to examination by the Auditor-General; or

(d) any such council, board, trust, trustees or other governing body in receipt of a subsidy or grant-in-aid made by the Crown or a State authority—

and includes the corporation, if any, of which the public body is the governing body;

“public money” means money, negotiable instruments or securities of any kind for the payment of money collected, received or held by a person for or on behalf of the Crown in right of the State and includes all money forming part of, or payable to, the Public Account;

“public property” means all property other than public money held by any person for or on behalf of the Crown in right of the State;

“quarter”, in relation to a financial year, means a period of 3 months commencing on the first, fourth, seventh or tenth month in that financial year;

“the regulations” means regulations made and in force under this Act;

“the repealed Act” means the *Audit Act 1918*;

“the Secretary” means the Secretary of the responsible Department in relation to the *Public Account Act 1986*;

“State authority” means a body or authority, whether incorporated or not, that is established or constituted under a written law or under the Royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister, or another State authority, but does not include a Government department;

“the State Service” means the State Service as referred to in section 3 (2) of the *Tasmanian State Service Act 1984*;

“the Treasurer’s Instructions” means Instructions issued by the Treasurer under section 23;

“written law” means an Act passed by the Parliament of Tasmania and for the time being in force and all subordinate legislation for the time being in force under any such Act.

Application of this Act to certain appropriations

4—(1) The application of this Act extends to the financial administration of the appropriations specified in Column 1 of Schedule 2.

(2) For the purposes of subsection (1), the officer specified in Column 2 of Schedule 2 opposite to an appropriation specified in Column 1 of that Schedule shall, in relation to that appropriation, be deemed to be a Head of Agency.

Power of Governor to amend Schedule 1

5—(1) The Governor may, by order, amend Column 1 of Schedule 1—

(a) by omitting the name of a Government department specified in that Schedule; or

(b) by inserting the name of another Government department; or

(c) where the name of any such Government department is changed, by omitting the name of that Government department and inserting its new name.

(2) The Governor may, by order, amend Column 2 of Schedule 1 by inserting, opposite the name of a Government department, the title or other description of an office or by omitting or amending that title or other description.

(3) The Governor may, by order, omit Schedule 1 and substitute a new Schedule containing in Column 1 the names of Government departments and containing in Column 2 the titles or other descriptions of offices.

PART 2

FINANCIAL MANAGEMENT

Division 1—Application of this Part

Application of this Part

6—(1) Subject to this section, this Part applies to all Agencies and to the financial administration of all appropriations specified in Column 1 of Schedule 2.

(2) The Governor may, by order made on the recommendation of the Treasurer, declare that this Part or any specified provisions of this Part shall not apply to an Agency, a State authority or other organization forming part of an Agency specified in the order.

(3) An order made under subsection (2) may be expressed to be in force for a period specified in the order, in which case the order shall be in force for the period so specified and shall then cease to have effect.

(4) The provisions of section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order made under subsection (2) in the same manner as they apply to regulations.

Division 2—System of accounts and accounting manuals**System of accounts**

7—(1) The Treasurer shall keep accounts of all transactions affecting the Public Account.

(2) The basis of the system of accounts kept under subsection (1) shall be—

- (a) the printed estimates of receipts and expenditure submitted to Parliament in accordance with section 9 of the *Public Account Act 1986*; and
- (b) the accounts maintained under section 13 of that Act.

Agency accounts

8—A Head of Agency shall, in respect of all money paid into or out of the Public Account for that Agency, establish and maintain in accordance with the Treasurer's Instructions, accounts and accounting and financial information systems.

Other Agency accounts to be maintained

9—In addition to the accounts required to be established and maintained under section 8, a Head of Agency shall maintain such other accounts as may be required in accordance with the Treasurer's Instructions to record the assets and financial position of the Agency and transactions of all activities conducted by the Agency including manufacturing, trading and commercial activities.

Accounting manuals

10—(1) A Head of Agency shall prepare and issue, within such time as the Treasurer may allow, an accounting manual in accordance with the Treasurer's Instructions.

(2) A Head of Agency shall ensure that the accounting manual is maintained in an effective and up to date form and is readily available to officers of the Agency.

(3) An officer engaged in duties in connection with the financial management of an Agency shall, subject to this Act, comply with the processes and procedures specified in the accounting manual issued in respect of that Agency.

Division 3—Bank accounts**Bank accounts**

11—(1) A Head of Agency may, with the approval of the Treasurer, open and maintain one or more bank accounts for such purpose and subject to such terms and conditions as the Treasurer may determine.

(2) An account opened and maintained in accordance with subsection (1) shall be used to expend money only as authorized by this Act, the *Public Account Act 1986* or any other written law and shall be operated in accordance with the Treasurer's Instructions.

Treasurer may approve overdraft

12—An officer shall not cause any bank account of an Agency maintained under this Division to be overdrawn, except with and subject to the approval of the Treasurer.

Division 4—Expenditure**Authority for expenditure**

13—Money shall not be drawn from—

- (a) the Consolidated Fund, except pursuant to a Treasurer's expenditure control authority; or
- (b) an account within the Special Deposits and Trust Fund, except for the purposes of that account as defined by the Treasurer under section 13 (2) of the *Public Account Act 1986*.

Treasurer's expenditure control authority

14—(1) The Treasurer shall, from time to time, issue a Treasurer's expenditure control authority to the appropriate Minister for the purpose of issuing and applying money from the Consolidated Fund in accordance with an Appropriation Act who shall authorize the responsible Head of Agency to incur expenditure not exceeding the limit of that authority.

(2) In the application of subsection (1) to an appropriation from the Public Account specified in Schedule 2, the reference to the appropriate Minister in that subsection shall be read as a reference to—

- (a) in the case of an appropriation to assist the Governor in the performance of his duties, the Minister administering the *Governor of Tasmania Act 1982*; or

- (b) in the case of an appropriation for the Legislative Council, the President of that House; or
- (c) in the case of an appropriation for the House of Assembly, the Speaker for that House; or
- (d) in the case of an appropriation for the Legislature-General as referred to in the Appropriation Act, both the President and the Speaker acting jointly.

(3) A Treasurer's expenditure control authority may be a standing authority regulating expenditure in general terms or may limit or specify the period or nature of expenditure transactions or series of expenditure transactions.

(4) A reference in this section to the regulation of the expenditure of money includes a reference to the commitment of money for expenditure.

(5) Nothing in this section authorizes the Treasurer to expend money in excess of an amount appropriated by Parliament or for any purpose other than a purpose authorized by Parliament, unless otherwise provided in the *Public Account Act 1986* or some other written law.

Payments to be certified

15—An officer shall not incur expenditure in the course of official duties unless that expenditure is certified as correct by a certifying officer in accordance with the Treasurer's Instructions.

Governor's authority for emergency expenditure

16—(1) In cases of emergency where it is necessary to incur expenditure from the Consolidated Fund—

- (a) in excess of an amount authorized to be spent by an item in a schedule to an Appropriation Act; or
- (b) for a purpose not provided for by Parliament—

the written authority of the Governor shall be first sought and obtained by the Treasurer.

(2) The Treasurer shall, in seeking the Governor's authority under subsection (1), provide the Governor with a report by the Auditor-General to the effect that the authority would be proper having regard to the circumstances of the emergency.

(3) The Auditor-General, before making the report, may seek any necessary explanation from the Treasurer or any other appropriate Minister and may make, in writing, any observation that the Auditor-General thinks necessary.

Supplementary estimates

17—The Treasurer shall—

- (a) as soon as practicable after the end of each financial year, prepare supplementary estimates of all expenditure from the Consolidated Fund that is authorized under section 16; and
- (b) cause those supplementary estimates to be laid before each House of Parliament within 14 sitting days of that House after they are prepared.

Division 5—Receipt of money

All money to be paid to a bank account

18—A Head of Agency shall ensure that all public money or other money collected or received is paid each day, or at other intervals approved by the Treasurer, into a bank account maintained in accordance with Division 3 or any other written law.

Public money to be credited to the Public Account

19—(1) All public money collected or received by an Agency shall, except as otherwise provided in any other written law, be credited to the Public Account.

(2) Where an Agency is unable to determine correctly the purpose for which any money has been paid to that Agency, the money shall be retained in the Agency's clearing account until that purpose has been determined.

Other money collected to be credited to Special Deposits and Trust Fund

20—(1) Other money which comes into the possession or control of an officer of an Agency shall be treated in the same manner as provided for public money in this Division and shall be paid into the Special Deposits and Trust Fund or accounted for in such other manner as the Treasurer may direct.

(2) This section applies to the extent only to which it is consistent with any other written law applicable to that money.

Division 6—Appointments, delegations and instructions

Financial management of Agencies

21—(1) The Head of an Agency shall be responsible to the appropriate Minister for the financial management of that Agency.

(2) In the case of the appropriations referred to in Column 1 of Schedule 2, the Head of Agency specified in Column 2 of that Schedule opposite to that appropriation is responsible for the financial management of that appropriation.

Responsibilities of Head of Agency

22—A Head of Agency shall be responsible for the financial management of that Agency in an efficient, effective and economical manner including in particular—

- (a) ensuring that expenditure by that Agency is in accordance with law; and
- (b) maintaining effective accounting and financial management information systems for that Agency; and
- (c) the development and maintenance in accordance with the Treasurer's Instructions of a system for effective internal control including, where appropriate, an internal audit function; and
- (d) systematically monitoring the financial performance of that Agency; and
- (e) the custody, control, management of and accounting for, all public property, public money, other property and other money in the possession of, or under the control of, that Agency; and
- (f) the proper collection of all money payable to, or collectable under, any law administered by that Agency; and
- (g) regular reviews at least annually of fees and charges collected by or payable to that Agency; and
- (h) the appointment of one or more officers in that Agency as certifying officers charged with the duty of certifying all expenditure of that Agency; and
- (i) any other functions and duties as may be required under this Act, any other written law or the Treasurer's Instructions.

Treasurer's Instructions

23—(1) The Treasurer shall issue instructions with respect to the principles, practices and procedures to be observed in the financial management of all Agencies, and those instructions shall have effect unless they are inconsistent with this Act or any other written law.

(2) Treasurer's Instructions, so far as they relate to the duties of a Head of Agency under section 27, shall be prepared after consultation with the Minister responsible for the administration of the *Tasmanian State Service Act 1984*.

(3) Treasurer's Instructions may be issued—

(a) so as to apply—

(i) at all times or at a time specified in the Treasurer's Instructions; or

(ii) to all Agencies or to Agencies specified in the Treasurer's Instructions; and

(b) so as to confer a discretionary authority on a person or body or a class of persons or bodies specified in the Treasurer's Instructions.

(4) It is the duty of each Head of Agency and officer to comply with any requirement of the Treasurer's Instructions that is applicable to that Head or officer.

(5) Treasurer's Instructions are not statutory rules within the meaning of the *Rules Publication Act 1953*.

Delegations

24—(1) The Treasurer may, by instrument in writing and either generally or as otherwise provided by that instrument, delegate to the Secretary such of the Treasurer's functions and powers under this Act as are specified in that instrument.

(2) The Treasurer may, by instrument in writing, revoke wholly or in part or vary a delegation made under subsection (1).

(3) Where a function has been delegated under subsection (1) to the Secretary, the Secretary may, by instrument in writing, delegate to a person for the time being holding a specified office in the responsible Department in relation to the *Public Account Act 1986* any functions that are delegated to the Secretary in accordance with this section, other than this power of delegation.

(4) The Secretary may, by instrument in writing, revoke wholly or in part or vary a delegation made under subsection (3).

(5) Any act or thing done in the performance of a function delegated under subsection (1) or (3) has the same force and effect as if it had been done by the Treasurer under this Act.

(6) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument of delegation.

(7) Notwithstanding any delegation made under this section, the Treasurer may continue to perform or exercise all or any of the functions or powers delegated.

(8) An instrument purporting to be signed by a delegate of the Treasurer or of the Secretary in the capacity of such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Treasurer or the Secretary, as the case may require.

(9) If the Treasurer or Secretary by whom a delegation is made dies, or ceases to hold office as such, that delegation shall be deemed to continue in force according to its tenor until it is revoked or varied under this section.

Division 7—Treasurer's statements

Treasurer's quarterly statements

25—The Treasurer shall, within one month after the expiration of each quarter in a financial year, publish in the *Gazette* in accordance with the regulations a statement of the receipts and expenditure of the Consolidated Fund in respect of that quarter.

Treasurer's annual financial statements and report by Auditor-General

26—(1) The Treasurer shall, before 31st August in each year, prepare in accordance with the regulations and submit to the Auditor-General financial statements for the Public Account in respect of the last preceding financial year.

(2) The Treasurer shall, on or before 30th September in each year, cause copies of the financial statements and the Auditor-General's report on those statements to be laid before each House of Parliament.

(3) If the Treasurer is unable to comply with subsection (2) by reason of the fact that either House of Parliament is not sitting, the Treasurer shall forthwith—

- (a) forward copies of the financial statements and of the Auditor-General's report on those statements to the Clerk of the Legislative Council or the Clerk of the House of Assembly, as the case may require; and
- (b) make copies of the financial statements and of the report available to the public—

and shall, on the next sitting day of that House, cause copies of the financial statements and of the report to be laid before that House.

Division 8—Reports by Heads of Agencies

Reports by Heads of Agencies

27—(1) A Head of Agency shall in respect of each financial year prepare a report containing such information as may be required by the Treasurer's Instructions or any written law and including—

- (a) a report on the performance of the functions and the exercise of the powers of the Head of Agency under any written law; and
- (b) a report on the performance of the functions and the exercise of the powers of—
 - (i) any statutory office the holder of which is employed in or attached to that Agency; or
 - (ii) any statutory authority attached to that Agency; and
- (c) financial statements in respect of that financial year and, except in the case of the financial year ending on 30th June 1990, the Auditor-General's report on those statements.

(2) Notwithstanding subsection (1), the report of a Head of Agency shall not contain any matter that is required under any other written law to be submitted to a Minister by the holder of a statutory office employed in or attached to that Agency or by any statutory authority attached to that Agency.

(3) The financial statements required to be prepared by subsection (1) shall be prepared and certified in accordance with and in such manner and form as may be specified in the Treasurer's Instructions so as to present fairly—

- (a) the financial transactions of the Agency during the financial year; and
- (b) the state of affairs of the Agency at the end of the financial year.

(4) A report under subsection (1) shall be prepared in the manner and form specified in the Treasurer's Instructions.

(5) A Head of Agency specified in Column 2 of Schedule 1 shall submit a report under subsection (1) to the appropriate Minister as may be directed by the appropriate Minister for the purpose of complying with section 30.

(6) A report under subsection (1) shall be combined in a single document with the report required to be made under section 33AB (1) of the *Tasmanian State Service Act 1984* so as to form an annual report.

Head of Agency to forward financial statements, &c., to Auditor-General

28—A Head of Agency other than the Auditor-General shall, as soon as possible and within 2 months after the end of each financial year, forward to the Auditor-General a copy of the financial statements and the information referred to in section 27 (1) relating to that financial year.

Power to fix special financial year

29—(1) The Treasurer may direct that the financial records of an Agency shall be maintained in respect of a period of 12 months ending on a day other than 30th June in any year.

(2) A direction under subsection (1) may fix different periods of 12 months in relation to different Heads of Agencies, different Agencies and different parts of Agencies.

Tabling of reports of Heads of Agencies

30—(1) The appropriate Minister shall on or before 30th November in each year cause to be laid before both Houses of Parliament copies of an annual report prepared under section 27 (6).

(2) If the appropriate Minister is unable to comply with subsection (1) by reason of the fact that either House of Parliament is not sitting, the appropriate Minister shall, on 30th November—

(a) forward copies of the annual report to the Clerk of the Legislative Council or the Clerk of the House of Assembly, as the case may require; and

(b) make the annual report available to the public—

and shall, within the next 7 sitting days of that House, cause copies of the annual report to be laid before that House.

(3) In the case of a report prepared by a Head of Agency referred to in Column 2 of Schedule 2, the Head shall on or before 30th November in each year cause copies of the report to be laid before both Houses of Parliament.

(4) If a Head of Agency referred to in Column 2 of Schedule 2 is unable to comply with subsection (3) by reason of the fact that either House of Parliament is not sitting, the Head shall, within the next 7 sitting days of that House, cause copies of the report referred to in that subsection to be laid before that House.

(5) If the 30th November is a Sunday or a day which is a bank holiday or a public holiday throughout the State, it is sufficient compliance with this section if copies of the annual report are forwarded to the Clerk of the Legislative Council and the Clerk of the House of Assembly and are made available to the public on the next day after the 30th November which is not a bank holiday or a public holiday throughout the State.

(6) Where the Treasurer has given a direction under section 29 (1), the Treasurer may, after consultation with the Minister responsible for the administration of the *Tasmanian State Service Act 1984*, fix a date other than 30th November for the tabling of reports under this section and in any such case this section has effect as if references to 30th November were references to the date so fixed.

(7) A date fixed under subsection (6) shall not be later than 5 months after the expiration of the period of 12 months specified in the relevant direction.

PART 3

AUDIT

Division 1—The Auditor-General and Deputy Auditor-General

Appointment of Auditor-General

31—(1) There shall be an Auditor-General who shall be appointed by the Governor, and who shall not, except as provided in this Part, be subject to the *Tasmanian State Service Act 1984*.

(2) A person who is appointed as Auditor-General shall be the permanent head of the Audit Department.

(3) Subject to section 33, an appointment under this section shall be for a term of not less than 5 years or until retirement as provided by that section.

Terms and conditions of appointment of Auditor-General

32—(1) Subject to this Part and to any Act under or by reference to which the salary and allowances of the Auditor-General are determined, the terms and conditions of service of the Auditor-General shall be such as the Governor from time to time determines.

(2) Where a determination is made under subsection (1) that provides for terms and conditions of service that differ from the terms and conditions of service of a person appointed under Part V of the *Tasmanian State Service Act 1984* who is entitled to be paid a salary at the same rate as the rate of salary payable to the Auditor-General, the Treasurer shall cause a copy of the determination to be laid before each House of Parliament within 14 sitting days of that House after the making of the determination.

(3) Except insofar as a determination made under subsection (1) otherwise provides, the Auditor-General is entitled to the same leave of absence, whether recreation leave or leave of any other kind, as that to which the Auditor-General would have been entitled under the *Tasmanian State Service Act 1984*, if the Auditor-General were an employee within the meaning of that Act, but only in the circumstances and subject to the conditions that are applicable in respect of such an employee.

(4) A person appointed as Auditor-General shall, for the purposes of the *Retirement Benefits Act 1982*, and the *State Employees (Long-Service Leave) Act 1950*, be deemed to be an employee within the meaning of the relevant Act.

(5) An employee, within the meaning of the *Tasmanian State Service Act 1984*, appointed as Auditor-General or a person who immediately before appointment as Auditor-General held office under Part V of that Act is entitled to retain all existing and accruing rights as if the service of that person as Auditor-General were a continuation of service as an employee or, as the case may be, as a person holding office under that Part.

(6) Where a person ceases to hold office as Auditor-General and becomes an employee, within the meaning of the *Tasmanian State Service Act 1984*, or holds office under Part V of that Act, the service of that person as Auditor-General shall be regarded as service in the State Service for the purpose of determining rights as such an employee or, as the case may be, as a person holding office under that Part.

Retirement of Auditor-General

33—The Auditor-General shall retire from office on attaining the age specified in section 30 (1) (a) of the *Tasmanian State Service Act 1984*, as the age for retirement of Heads of Agencies within the meaning of that Act.

Auditor-General not be a member of Parliament

34—A person who is a member of a House of Parliament of the Commonwealth, or of a State or Territory of the Commonwealth, or a candidate for election as a member of such House of Parliament, is disqualified from being appointed to the office of Auditor-General, and if a person holding that office becomes a candidate for election as such a member, that person vacates the office of Auditor-General.

Auditor-General removable by Parliament only

35—The Auditor-General shall not be removed from office as Auditor-General unless a resolution for that removal is passed by both Houses of Parliament.

Power of the Governor to suspend Auditor-General

36—(1) At any time when Parliament is not sitting the Governor may suspend the Auditor-General from office as Auditor-General for incapacity, incompetence or misbehaviour, in which case the person holding office as Deputy Auditor-General shall act in the office of Auditor-General.

(2) Where the Governor suspends the Auditor-General from office, the Governor shall, cause to be laid before each House of Parliament, within the next 7 sitting days of that House after that suspension, a full statement of the cause of that suspension.

(3) If a resolution is presented to the Governor by either House of Parliament, within 20 sitting days of that House after a statement under subsection (2) is laid before it, requesting that the Auditor-General be restored to that office, the Auditor-General shall be restored accordingly.

(4) If no such resolution is so presented, the Governor shall within 30 days of the expiration of the period mentioned in subsection (3) confirm the suspension, and declare the office of Auditor-General to be, and that office shall become, vacant.

Requirement to comply with Employment Instructions

37—The Auditor-General shall comply with—

- (a) any Employment Instructions or Administrative Instructions, within the meaning of the *Tasmanian State Service Act 1984*, that relate to the Auditor-General or the Audit Department; or
- (b) any directions given to the Auditor-General by the Commissioner for Public Employment under section 35 (3) or 36 (5) of that Act—

except so far as, in the opinion of the Auditor-General, they are inconsistent with the functions, powers or duties of the Auditor-General under this Act.

Appointment of Deputy Auditor-General

38—Subject to and in accordance with the *Tasmanian State Service Act 1984*, a person shall be appointed or employed as Deputy Auditor-General, and the person so appointed or employed shall—

- (a) act as Auditor-General during any illness, suspension or absence of the Auditor-General, and during any vacancy in that office; and
- (b) while so acting, exercise the powers and perform the duties of the Auditor-General and receive salary at the same rate as that payable to the Auditor-General.

*Division 2—Audits***Auditor-General to audit accounts**

39—The Auditor-General shall, except as provided in section 45, be the auditor of the accounts of the Treasurer, of all Government departments and public bodies and of the financial administration of each appropriation referred to in Column 1 of Schedule 2.

Reports on financial statements

40—Where the Auditor-General performs an audit under this or any other Act on the financial statements of the Treasurer, of a Government department or of a public body, the report—

- (a) shall, except as provided by any other written law, include an opinion as to whether the financial statements have been drawn up so as to present fairly the financial transactions during the period specified in the statements and the financial position at the end of that period; and
- (b) may include particulars of any other matter arising from the audit which the Auditor-General considers should be included in the report.

Power of Auditor-General to dispense with audits of certain public bodies

41—(1) The Auditor-General may dispense with the audit of a particular public body or the audits of public bodies included in a class or category of public bodies if in the opinion of the Auditor-General there is sufficient cause to do so.

(2) The Auditor-General may exercise any of the powers and perform any of the duties of the Auditor-General under this Act in respect of the audit of a public body notwithstanding that the audit of that public body has been dispensed with pursuant to subsection (1).

Duty to forward accounts to Auditor-General

42—(1) The Auditor-General may, by notice in writing given to a member of the council, board, trust, trustees or other governing body (however designated) of a public body require that member to forward to the Auditor-General the financial statements of that public body within the time prescribed by law, or where no time is so prescribed, within such time as may be determined by the Auditor-General.

(2) The financial statements shall be in such form as may be required under any written law or under the Treasurer's Instructions or, if no such form is so required, in such form as the Auditor-General may direct.

(3) A member of the council, board, trust, trustees or other governing body (however designated) of a public body who fails to comply with a requirement under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

(4) In a prosecution for an offence under subsection (3) it is a defence if the person charged can show that at the relevant time the financial statements of the public body were not in the possession or custody of, or under the control of, that person, unless the lack of possession, custody or control arose from a wrongful act or omission on the part of that person.

Duties and powers of Auditor-General as to audits

43—The Auditor-General shall perform the audits required by this or any other Act in such manner as the Auditor-General thinks fit having regard to—

- (a) this Act and any other relevant written law relating to the financial management of the Government department or public body concerned; and

(b) recognized professional auditing standards and practices—
and, in performing any such audit, the Auditor-General may take into account any other matter that—

- (c) affects the economy, efficiency or effectiveness of any Government department or public body; or
- (d) the Auditor-General considers appropriate.

Power of Auditor-General to investigate

44—The Auditor-General may—

- (a) at any time conduct any investigation that the Auditor-General considers necessary concerning any matter relating to the accounts of the Treasurer, a Government department, or a public body or to public money, other money or money of a statutory authority or to public property or other property; and
- (b) carry out examinations of the economy, efficiency and effectiveness of Government departments, public bodies or parts of Government departments or public bodies.

Audit of the financial statements of the Auditor-General

45—(1) The Governor may appoint a registered company auditor within the meaning of the *Companies (Tasmania) Code* or any corresponding law in force in any other State or Territory, other than the Auditor-General or an officer employed in the Audit Department, to perform an audit of the financial statements relating to that Department.

(2) A person who performs an audit under subsection (1) is entitled to such fee as the Treasurer may determine.

(3) An audit under subsection (1) shall be performed in accordance with recognized professional auditing standards and practices.

(4) A report of an audit under subsection (1) shall include an opinion with respect to the matters referred to in section 40 (a) and may include particulars of any other matters arising from the audit that the auditor considers should be included in the report.

(5) The Auditor-General shall append to the annual report of the Auditor-General prepared under Division 3 a copy of the report issued by an auditor appointed under subsection (1) on the completion of the audit of the financial statements referred to in that subsection.

Auditor-General may appoint person to audit, &c.

46—(1) The Auditor-General may in writing appoint an officer employed in the Audit Department or some other suitable person to carry out the whole or a part of an audit or investigation that the Auditor-General is required by this Act or any written law or by arrangement to carry out or for any other purpose of this Act.

(2) A person so appointed—

- (a) may exercise all the powers conferred on the Auditor-General under sections 47, 48 and 49; and
- (b) in accordance with any directions in writing given to him by the Auditor-General, shall report in writing to the Auditor-General on completion of the audit or investigation; and
- (c) except in the case of an officer employed in the Audit Department, is entitled to such fee for the audit as the Auditor-General may determine.

(3) The Auditor-General may continue to exercise all or any of the powers of the Auditor-General in respect of an audit notwithstanding that a person has been appointed under subsection (1) to carry out the whole or a part of that audit.

Access to accounts, &c.

47—(1) For the purposes of an audit performed under this Act or for any other purpose of this Act, the Auditor-General is entitled to full and free access at all reasonable times at no cost to inspect—

- (a) all documents and such other information and records which the Auditor-General considers necessary for the purpose of this Act; and
- (b) public money, other money or money of a public body; and
- (c) public property or other property—

that is or are in the possession, custody or control of any person.

(2) The Auditor-General may make copies of, or extracts from, any of those documents or other information or records.

(3) A person who is in possession of any such accounts, information, documents or records, public money or other money or money of a public body or public property or other property and who fails at any reasonable time, on request by the Auditor-General or a person appointed by the Auditor-General, to produce to the Auditor-General or person so appointed such information, documents, records, money or property as may be specified in the request is guilty of an offence and is liable on summary conviction to a fine not exceeding 40 penalty units.

Bank or other financial institution to furnish information

48—(1) Whenever requested to do so by the Auditor-General, the manager or person in charge of or responsible for an account held by a bank or other financial institution in which public money or other money or money of a public body has been deposited shall provide the Auditor-General with such statements, certificates and information regarding any account relating to such money as the Auditor-General specifies.

(2) A manager or other person who fails to provide the Auditor-General with statements, certificates or information as required by subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 40 penalty units.

Power to require information from officers

49—(1) In this section, “**officer**” includes—

- (a) a person who is employed by or in a Government department or public body under the provisions of any industrial award or agreement; and
- (b) a person who performs a service for a Government department or public body whether for remuneration or not.

(2) The Auditor-General may require an officer to provide the Auditor-General with such information or explanation as may be necessary for the purpose of an audit or investigation under this Act.

(3) An officer who is required to provide any such information or explanation and who without reasonable excuse fails to comply with that requirement within 14 days after receiving notification of it is guilty of an offence and is liable on summary conviction to a fine not exceeding 40 penalty units.

Power to call for persons and papers

50—(1) The Auditor-General may, by notice in writing given to a person named in the notice, require that person—

- (a) to appear personally before the Auditor-General at a time and place specified in the notice; and
- (b) to answer fully any question that may be put to that person for the purpose of the exercise of the powers of the Auditor-General under this Act; and

(c) to produce to the Auditor-General such accounts, records, books, vouchers, documents, computer tapes and disks and papers in the possession or custody of that person as may be necessary for the purpose of the exercise of any such power.

(2) A person of whom a requirement is made under subsection (1) and who fails to comply with that requirement is guilty of an offence and is liable on summary conviction to a fine not exceeding 40 penalty units.

(3) Where a person is required under subsection (1) to attend before the Auditor-General, that person is entitled to be paid such expenses as the Auditor-General deems reasonable.

(4) The Auditor-General may cause a search to be made in, and extracts to be taken from, any book, document, system or record in the custody of the Treasurer or in any public office or office of a public body, without paying any fee.

Power to administer oath or affirmation

51—(1) The Auditor-General may examine on oath or affirmation all persons whom the Auditor-General thinks fit to examine respecting all matters and things necessary for the due performance and exercise of the duties and powers vested in the Auditor-General under this Act or any other written law.

(2) For the purposes of subsection (1), the Auditor-General may administer an oath or affirmation.

Requirement to answer questions

52—A person is required to answer fully a question put to that person by the Auditor-General under this Part, notwithstanding that the answer may tend to incriminate that person, but any answer given shall not be admitted in evidence in any criminal or civil proceedings against that person, except proceedings for an offence against this Part.

Power to obtain opinion

53—The Auditor-General may submit to the Attorney-General or Solicitor-General a case in writing as to any question concerning the powers, or the discharge of the duties, of the Auditor-General or a question of law relating to an audit and the Attorney-General or Solicitor-General, as the case may be, shall give a written opinion on the case to the Auditor-General.

Communication with Ministers

54—The Auditor-General shall notify the appropriate Minister of all matters arising out of the exercise of the powers and the performance of the Auditor-General's duties under this Act or any other written law that are, in the opinion of the Auditor-General, of sufficient importance to justify doing so.

Protection from liability

55—No action or claim for damages shall lie against the Auditor-General acting in good faith or any other person so acting on behalf of the Auditor-General and with the Auditor-General's authority for or on account of anything done or omitted to be done, or ordered or authorized to be done or omitted to be done, which purports to be done or omitted to be done pursuant to this Act unless it is proved that the act was done or omitted to be done, or ordered or authorized to be done or omitted to be done, maliciously and without reasonable and probable cause.

Audit fees

56—(1) The Treasurer shall, after consultation with the Auditor-General, determine whether a fee is to be charged for an audit under this Act and the amount of that fee.

(2) Any such fee for an audit is a debt due to the Crown and may be recovered as such in a court of competent jurisdiction by the Treasurer.

Division 3—Reports**Tabling of Auditor-General's reports on Government departments and public bodies**

57—(1) The Auditor-General shall, on or before 30th September in each year prepare and submit to Parliament a report in writing as to the audit of the Public Account in respect of the preceding financial year.

(2) The Auditor-General shall, on or before 31st May in each year, report to Parliament in writing on the audit of Government departments and public bodies in respect of the preceding financial year.

(3) A report under subsection (2)—

(a) may be included in a report under subsection (1) or may be prepared and submitted as a separate report; and

(b) shall include details of all public bodies the audits of which have been dispensed with under section 41 (1) and may describe the public bodies by their name or by reference to the classes or categories of public bodies in which they are included.

(4) The Auditor-General may, in a report submitted under subsection (1) or (2), or in any special report that the Auditor-General may at any time think fit to make, recommend any plans and suggestions in respect of the economy, efficiency or effectiveness of a Government department or public body and any other matters which the Auditor-General considers appropriate.

(5) For the purposes of this section, the Auditor-General shall submit a report to Parliament by forwarding printed copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly, each of whom shall, on receipt of the report, cause the report to be laid before the appropriate House or, if that House is not then sitting, shall do so on the next sitting day of that House.

Reports on financial statements

58—(1) The Auditor-General shall provide a report on the Treasurer's financial statements, as referred to in section 26 (1), to the Treasurer within sufficient time to enable the Treasurer to comply with section 26 (2).

(2) The Auditor-General shall provide the report on the financial statement of an Agency, as referred to in section 27 (1), to the Head of Agency in sufficient time to enable the Head to comply with that subsection.

PART 4

RECOVERIES AND WRITE-OFFS

Division 1—Agencies

Auditor-General, Secretary or Head of Agency to take action in respect of losses

59—(1) Where the Auditor-General, the Secretary or a Head of Agency is of the opinion that any loss, deficiency, destruction or damage with respect to public or other money or public or other property may have occurred under circumstances which could render an officer liable to pay an amount to the Crown, the Auditor-General, the Secretary or a Head of Agency may direct that an inquiry be held.

(2) An inquiry under subsection (1) shall be held in a manner prescribed by the regulations.

(3) On receiving a report of any such inquiry the Auditor-General, the Secretary or a Head of Agency shall, having regard to all the circumstances of the case—

(a) determine that the officer shall be liable under section 60 and determine in accordance with the regulations the amount that the officer is liable to pay to the Crown; or

(b) decide to take no further action—

and in each case notify the officer, in writing, of the determination or decision.

(4) If it comes to the notice of the Auditor-General, the Secretary or a Head of Agency that such a loss, deficiency, destruction or damage has, or appears to have, arisen in circumstances that could constitute an offence under the *Criminal Code* or any other written law, the Auditor-General, the Secretary or a Head of Agency shall report the matter in writing to the Commissioner of Police.

(5) The Auditor-General, the Secretary or a Head of Agency shall not withhold or delay any evidence for the purpose of any prosecution arising from an action instituted under subsection (4).

Liability for losses

60—The liability of an officer who contributes to, or causes, a loss, deficiency or damage to public or other money or public or other property shall be in accordance with the regulations.

Recovery of losses, &c.

61—(1) The Crown may recover from an officer by action in a court of competent jurisdiction the amount for which the officer is stated to be liable in a determination made under section 59.

(2) In any such proceedings the court may have regard to but is in no way bound by the determination.

Write-offs

62—(1) An amount in respect of public property and other property and revenue and other debts due to the Crown may be written off by the appropriate Minister or a Head of Agency in accordance with the regulations.

(2) An amount in respect of public property and other property and revenue and other debts due to the Crown greater than an amount that may be written off under the regulations may with the prior approval of the Governor be written off by an appropriate Minister.

Division 2—Public bodies

Auditor-General, &c., to take action in respect of losses

63—(1) Where the Auditor-General or a member of the council, board, trust, trustees or other governing body of a public body is of the opinion that any loss, deficiency, destruction or damage with respect to any money or any property may have occurred under circumstances which could render an employee of the public body liable to pay an amount to the public body, the Auditor-General or member may direct that an inquiry be held.

(2) An inquiry under subsection (1) shall be held in a manner prescribed by the regulations.

(3) On receiving a report of any such inquiry the Auditor-General or member referred to in subsection (1) shall, having regard to all the circumstances of the case—

(a) determine that the employee shall be liable under section 64 and determine in accordance with the regulations the amount that the employee is liable to pay to the public body; or

(b) decide to take no further action—

and in each case notify the employee, in writing, of the determination or decision.

(4) If it comes to the notice of the Auditor-General or member referred to in subsection (1) that such a loss, deficiency, destruction or damage has, or appears to have, arisen in circumstances that could constitute an offence under the *Criminal Code* or any other written law, the Auditor-General or other person shall report the matter in writing to the Commissioner of Police.

(5) The Auditor-General or member referred to in subsection (1) shall not withhold or delay any evidence for the purpose of any prosecution arising from an action instituted under subsection (4).

Liability for losses

64—The liability of an employee of a public body who contributes to, or causes, a loss, deficiency or damage to any money or any property as mentioned in section 63 (1) shall be in accordance with the regulations.

Recovery of losses, &c.

65—(1) A public body may recover from its employee by action in a court of competent jurisdiction the amount for which the employee is stated to be liable in a determination made under section 63.

(2) In any such proceedings the court may have regard to, but is in no way bound by, the determination.

PART 5
MISCELLANEOUS**Regulations**

66—The Governor may make regulations for the purposes of this Act.

Proceedings for offences

67—A prosecution for an offence against this Act—

(a) shall be taken by way of summary proceedings under the *Justices Act 1959* within 12 months after the offence is committed or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever period later expires; and

(b) may be instituted by a person authorized in writing in that behalf by the Treasurer or the Auditor-General.

Repeal of *Audit Act 1918*, &c., and savings

68—(1) The *Audit Act 1918** and the *Audit Amendment Act 1979*† are repealed.

(2) The repeals effected by subsection (1) do not affect the tenure or term of office of a person who, immediately before the date fixed for the commencement of Part 3, held the office of Auditor-General or Deputy Auditor-General.

* 9 Geo. V, No. 3.

† No. 80 of 1979.

Repeal of the *Statutory Authorities' Reports Act 1967*

69—The *Statutory Authorities' Reports Act 1967*† is repealed.

Consequential amendments of certain Acts

70—The Acts specified in Schedule 3 are amended in the manner specified in that Schedule.

SCHEDULE 1

Sections 3, 5 and 27 (4)

AGENCIES TO WHICH THIS ACT APPLIES

COLUMN 1 Agency	COLUMN 2 Head of Agency
Department of Administrative Services and Consumer Affairs	Secretary
Audit Department	Auditor-General
Department of Community Services	Secretary
Department of Construction	Secretary
Department of Education and the Arts	Secretary
Department of Employment, Industrial Relations and Training	Secretary
Department of Environment and Planning	Secretary
Department of Forestry	Secretary
Department of Health	Secretary
Department of Justice	Secretary
Department of Parks, Wildlife and Heritage..	Secretary
Department of Police and Emergency Services	Secretary
Department of Premier and Cabinet	Secretary
Department of Primary Industry	Secretary
Department of Resources and Energy	Secretary
Department of Roads and Transport	Secretary
Department of Tourism, Sport and Recreation	Secretary
Department of Treasury and Finance	Secretary

SCHEDULE 2

Sections 3, 4, 6, 14 (2), 21 (2),
30 (3) and (4) and 39

SPECIAL APPROPRIATIONS TO WHICH THIS ACT APPLIES

COLUMN 1 Appropriation	COLUMN 2 Head of Agency
Appropriations from the Public Account to assist the Governor in the performance of his duties.....	A person appointed as Official Secretary under section 7 of the <i>Governor of Tasmania Act 1982</i>
Appropriations from the Public Account for the Legislative Council.....	The Clerk of the Legislative Council
Appropriations from the Public Account for the House of Assembly.....	The Clerk of the House of Assembly
Appropriations from the Public Account for the Legislature-General as referred to in an Appropriation Act.....	Both the Clerk of the Legislative Council and the Clerk of the House of Assembly acting jointly

SCHEDULE 3

Section 70

CONSEQUENTIAL AMENDMENTS OF CERTAIN ACTS***Parliamentary Privilege Act 1898***

(62 Vict. No. 30)

Section 5—

Omit subsections (2) and (3)

Public Account Act 1986

(No. 56 of 1986)

Section 11—

Omit subsection (8) and substitute the following subsection:—

(8) Nothing in this section affects the operation of section 16 of the *Financial Management and Audit Act 1990*.

New section 12A (Supplementary estimates)—

After section 12, insert the following new section in Part II:—

12A—The Treasurer shall—

- (a) as soon as practicable after the end of each financial year, prepare supplementary estimates of all expenditure from the Consolidated Fund that is authorized under section 10, 11 or 12; and
- (b) cause those supplementary estimates to be laid before each House of Parliament within 14 sitting days of that House after they are prepared.

Section 14 (1) (a)—

Omit “Treasury” and substitute “relevant Department”.

Section 14 (2) (b)—

Omit “regulation 20 of Schedule II to the *Audit Act 1918*” and substitute “section 16 of the *Financial Management and Audit Act 1990*”.

New section 14A (Power of Treasurer to meet current and accruing requirements)—

After section 14, insert the following new section:—

14A—(1) The Treasurer may, in any financial year before the passing of an Appropriation Act for that year, issue and apply in accordance with this section such amounts as may be necessary to meet the current and accruing requirements for the year.

SCHEDULE 3—*Continued*

(2) The authority of the Treasurer in respect of a financial year ceases on the passing of an Appropriation Act for or in respect of that financial year, and does not in any event extend beyond the first 2 months of that financial year.

(3) On the passing of an Appropriation Act, all money issued and applied under this section shall be regarded and treated for all purposes as having been paid out of the supply granted by that Act under the appropriate divisions and heads of service.

(4) A payment under this section shall be at such rates, and shall not in the whole exceed such an amount, as would be equivalent to the expenditure for the month of June of the immediately preceding financial year in respect of all salaries, pay, wages, allowances, contracts, supplies, services, rents and other charges, and of all ordinary contingencies of any Agency.

(5) Where the estimates of expenditure for a financial year have been submitted to Parliament, and the rate of expenditure in those estimates is, in any case, lower for any service than the rate of expenditure authorized in the Appropriation Act for the last preceding financial year, a payment authorized by this section shall not exceed the lower rates.

(6) The amount of any payments and advances made under this section is payable out of the Consolidated Fund.

Section 15 (1)—

Omit “section 29 of the *Audit Act 1918*” and substitute “section 26 (1) of the *Financial Management and Audit Act 1990*”.

Tasmania Bank Act 1987

(No. 54 of 1987)

Section 23—

Omit “section 32 of the *Audit Act 1918*” and substitute “section 39 of the *Financial Management and Audit Act 1990*”.

Tasmanian State Service Act 1984

(No. 25 of 1984)

Section 30 (3)—

Insert after paragraph (e) the following paragraph:—

(ea) in the case of a person who is the Head of an Agency, has wilfully and without good cause failed to comply with any Treasurer’s Instructions, within the meaning of the *Financial Management and Audit Act 1990*, that relate to that person as a Head of Agency;

SCHEDULE 3—*Continued*

Section 33AB—

After subsection (1) insert the following subsection:—

- (1A) A report required to be submitted under subsection (1) shall be combined in a single document with a report required to be made under section 27 (1) of the *Financial Management and Audit Act 1990* so as to form an annual report.

After “be” in subsection (4), insert “determined after consultation with the Minister responsible for the administration of the *Financial Management and Audit Act 1990* and shall be”.