

1988

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUDIT AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance
Senator The Hon. Peter Walsh.)

AUDIT AMENDMENT BILLGENERAL OUTLINE

The purpose of this Bill is to amend the Audit Act 1901 (the Act). The key amendments seek to:

- . simplify the processes for continued Parliamentary control over the form of the monthly Commonwealth Financial Statements;
- . enhance the accountability of Departments;
- . particularise penalties and to create an offence for the misuse of credit cards issued to the Commonwealth;
- . permit the Auditor-General to exercise discretion on materiality in reporting on legislative breaches; and
- . clarify the Minister for Finance's powers on the write-off of irrecoverable revenue and debts that are uneconomic to pursue.

2. During the debates on the Statute Law Bill in October 1987, Parliament indicated a wish to continue to have a controlling say over the form of Executive Government financial reporting of progressive (monthly) performances against the annual budget (ie the Minister for Finance's Monthly Statements of Commonwealth Financial Transactions). It was suggested that an amendment to the Act providing for the format of the Monthly Statement of Financial Transactions to be varied by regulation would be acceptable to Parliament. Clause 6 seeks to introduce that suggestion which simplifies the processes to vary the form, but, at the same time, retains Parliament's scrutiny over any proposal for a variation of it.

3. The Administrative Arrangements Orders dated 24 July 1987 made extensive changes to the then structures of Departments, including the abolition of some Departments. The requirement under section 50 of the Act, as it stands, to have separate financial reports for the 23 day period would make the 1987/88 financial reports unduly complicated and not very meaningful for comparisons. Proposed sub-clause 8(2) seeks to overcome these difficulties for that financial year.

4. On 17 and 18 November 1987, respectively, guidelines for the preparation of Departmental annual reports were tabled in the House of Representatives and the Senate. Those guidelines foreshadowed amendments to Part VII of the Act to enhance the accountability of Departments. The amendments now being proposed (in Clauses 7 and 9 to 12) give effect to that initiative. They have been discussed with the Joint Committee of Public Accounts.

5. Consistent with the Government's criminal law policy, the general penalty provision of section 69 of the Act is to be replaced by particular penalty provisions for each offence creating provision (Clauses 17 and 20). The setting of levels for particular penalties has been arranged in consultation with the Attorney-General's Department. Also, following the introduction of the credit card for the payment of Government accounts, an offence creating provision (Clause 16) mirroring section 64 of the Act was seen to be necessary for the protection of public moneys and to deter the abuse of the credit card.

6. Currently, the Auditor-General has discretion on reporting minor or immaterial breaches of the Act and other legislation by Departments and some statutory authorities. Clause 15 seeks to provide a general provision covering all statutory authorities.

7. Doubt has arisen as to whether the generally accepted accounting practice of not pursuing debts which are considered to be uneconomical to recover requires the exercise of the Minister's waiver powers rather than those for write-off. Clause 18 is intended to put the matter beyond doubt by nominating the latter.

8. The other amendments are minor matters. Clause 3 seeks to remove a conflict between paragraph 8(3)(a) and section 9A of the Act. Clause 4 omits an out-of-date and unused provision to require the examination of records of an accounting officer. Clause 21 seeks to change the name of the Auditor-General's Office, as it appears in the Act, into line with current terminology - i.e. the Australian Audit Office.

FINANCIAL IMPACT STATEMENT

9. The proposed change to the future reporting requirements aimed at enhancing Departmental accountability is likely to give rise to some additional resource costs, including to the Australian Audit Office. It is expected, however, that the improved accountability will lead to greater efficiencies in departmental management. It is not possible to quantify these at this stage.

10. The amendment which will apply to the 1987/88 financial year's report should reduce administrative effort and costs from the levels that would otherwise be required, by permitting rationalisation of reports to reflect changed Administrative Arrangements effective from 24 July 1987.

11. The other changes, including those affecting the penalty provisions, the duties of the Auditor-General, and write-off powers of the Minister for Finance, are not expected to have any significant financial impact on Government revenue or expenditure.

ABBREVIATIONS

12. The following abbreviations are used in this Explanatory Memorandum

Act: Audit Act 1901

Bill: Audit Amendment Bill 1988

References to paragraphs, subsections and sections are references to those of the Audit Act.

Notes on Individual Clauses

Clause 1 - Short title etc.

Clause 2 - Commencement

Clauses 1 and 2 deal with the short title and commencement of the Act. Clause 1 also defines the "Principal Act" as the Audit Act 1901.

Sub-clause 2(2) provides that clauses 6 and 19 shall come into operation on a day to be fixed by Proclamation.

Sub-clause 2(3) provides that clauses 16, 17 and 20 are to commence on the 28th day after the day on which the Audit Amendment Act receives the Royal Assent.

The other provisions of the Bill will come into operation on the day the Audit Amendment Act receives the Royal Assent.

Clause 3 - Acting appointment

Paragraph 8(3)(a) currently provides that, subject to section 8, the Governor-General may determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of Auditor-General.

Section 9A currently provides for the remuneration and allowances that are payable to a person appointed to act as Auditor-General and appropriates the Consolidated Revenue Fund accordingly.

The remuneration and allowances of an acting Auditor-General should be paid under section 9A. The proposed amendment will remove the inconsistency caused by paragraph 8(3)(a).

Clause 4 - Repeal of section 45

Section 45 currently provides, inter-alia, that the Minister for Finance may require the Auditor-General to inspect, examine and audit the accounts and records of an accounting officer.

The provision is an old one and there is no record of it having been used at least within the last 40 to 50 years. It is inconsistent with the fundamental principle, accepted by Governments for many years now, that the Auditor-General should not be open to direction by the Executive Government as to his or her duties. To reflect that concept of the independence of the Auditor-General, it is proposed that section 45 be repealed.

Clause 5 - Insertion of new section

Sub-clause 5(1) will introduce a new section 48Q in Part VII consequent upon the proposed amendment of section 50 by clause 7. Proposed new section 48Q sets out the various definitions necessary for the operation of Part VII.

Sub-clause 5(2) provides that the proposed definitions will apply to the financial years commencing 1 July 1988 and to subsequent financial years. This reflects the timing for the operation of the amendments to be brought about by clauses 7 and 9 to 12.

Clause 6 - Minister's monthly statement of financial transactions.

Subsection 49(2) currently provides that the format of the Monthly Statement of Financial Transactions which is published by the Minister for Finance, shall be varied only with the prior approval of both Houses of the Parliament.

An amendment to that section was proposed in the Statute Law (Miscellaneous Provisions) Bill 1987 to provide that the format could be changed at the discretion of the Minister for Finance and explanations thereof subsequently tabled in the Parliament. That proposal was rejected, however, on the basis that Parliament should retain a say over the format of the Statement.

The amendment now proposed will both retain Parliament's scrutiny over the format of the Monthly Statement while at the same time simplifying the processes enabling more timely changes to the format. The proposed amendment will provide that the format of the Statement shall be set by regulation.

Clause 7 - Repeal of section 50 and substitution of new sections

Section 50 currently requires the Minister for Finance to prepare, at the end of each financial year a statement of receipts and expenditure of the Consolidated Revenue Fund, the Loan Fund and the Trust Fund during the preceding year for each Department. The section also provides for each Secretary of a Department to furnish certain information in respect of his or her Department.

On 17 and 18 November 1987, respectively, guidelines for the preparation of departmental annual reports were tabled in the House of Representatives and the Senate. Those guidelines foreshadowed an amendment of section 50 to provide that a Department's financial statements shall be prepared in accordance with guidelines determined by the Minister for Finance.

Accordingly, it is proposed to repeal the existing section 50, and with respect to reports for the 1988-89 financial year onwards to provide for -

- . the Minister for Finance to prepare financial statements disclosing aggregate information in respect of the receipts and expenditure of the Consolidated Revenue Fund, the Loan Fund and the Trust Fund; and for the Auditor-General to audit the Minister for Finance's statements (proposed new section 50AB refers);
- . Departmental Secretaries to prepare financial statements as at the end of the financial year (proposed new section 50 refers) in accordance with guidelines determined by the Minister for Finance (proposed new section 50AA refers) with such financial statements being transmitted for audit to the Auditor-General; and
- . the Minister for Finance to make guidelines on the inclusion of particulars of receipts and expenditure of the three Funds and other information (such as details of assets) in the Departmental financial statements.

In these provisions "Department" and "Secretary" are to have the same meaning as in section 2AB.

Proposed new section 50AC will allow for the rounding of amounts in the statements relating to details of receipts and expenditure; this is currently permitted under the provisions of subsection 50(5) which is to be repealed.

Clause 8 - Application of amendment made by section 7 etc.

Sub-clause 8(1) provides that the amendment to be made by clause 7 applies in relation to the financial year commencing 1 July 1988 and to subsequent years.

Sub-clause 8(2) will permit transactions of Departments that were affected by the Administrative Arrangements Order of 24 July 1987 to be shown in the Financial Statements as transactions of the appropriate current Departments.

In an Administrative Arrangements Order dated 24 July 1987 the Governor-General abolished a number of the Departments then in existence (the former Departments) and transferred their functions to new or other existing Departments (the gaining Departments).

Under the current provisions of section 50, it would be necessary for the section 50 statement prepared by the Minister for Finance to show separately the transactions

of each of the former Departments. Since their transactions occurred over a period of only 23 days, separate reports for the former Departments would serve no meaningful purpose.

Accordingly, the proposed amendment will provide, for the year ending 30 June 1988, that the transactions of a former Department should be shown as the transactions of the appropriate gaining Department.

Clause 9 - Repeal of section 51 and substitution of new section

Section 51 currently provides that the Auditor-General shall examine and report on the financial statements that are transmitted to him.

Clause 9 provides for the continuation of section 51 for the new financial statements prepared under the proposed new sections 50 and 50AB.

In addition, the proposed new section 51 will require the Auditor-General to include a statement in his or her reports on Departmental financial statements that the financial statements are prepared in accordance with the guidelines to be given under the proposed new section 50AA.

The additional financial information referred to in the proposed new paragraph 50(2)(b) is currently not audited or published. Departmental systems which lend themselves more readily to audit will need to be introduced in some cases for the proper recording of this financial data. The proposed new section will also recognise a need for a period of grace for Departments to make the change. Accordingly, audit of the additional information will commence on a date to be determined for each Department by the Minister for Finance having regard to the advice of the Auditor-General (proposed new subsection 51(3) refers).

Sub-clause 9(2) provides that the amendment to section 51 is to apply in relation to the financial year commencing 1 July 1988 and to subsequent financial years.

Clause 10 - Certain orders and legal opinions to be annexed to Auditor-General's report

Clause 10 makes an amendment to section 52 consequential to the amendments proposed in clauses 7 and 9.

Section 52 currently requires the Auditor-General to annex to his report, prepared under section 51, certain orders and legal opinions. Since the Auditor-General will be reporting on the aggregate financial statements as well as the Departmental financial statements, the proposed amendment to section 52 will ensure that there is no

duplicating in annexing the orders and legal opinions to reports. The proposed new section 52 will require only the annexing to the report on the aggregate financial statements.

Clause 11- Auditor-General's reports on aggregate financial statements to be transmitted to Parliament

The amendment contained in clause 11 is consequential upon those proposed in clauses 7 and 9. It makes an amendment to section 53.

The proposed new section 53 will require the Auditor-General to table in both Houses of the Parliament his report on the aggregate financial statements of the Minister for Finance which are transmitted to the Auditor-General pursuant to the proposed new subsection 50AB(2) (see clause 7).

Clause 12 - Auditor-General's reports on Departmental financial statements to be given to Minister administering Department etc.

The amendment contained in clause 12 is consequential upon those proposed in clauses 7 and 9.

The amendment will insert a new section 53A which will provide that, after preparing and signing a report relating to a Departmental financial statement, the Auditor-General shall give a signed copy of that report to the Minister administering that Department or, where the Department is a Department of the Parliament, to the appropriate Presiding Officer or Officers. Reports in respect of branches of the Public Service in respect of which a person has been given, under an Act, the powers of a Secretary, shall be given to the Minister administering the Act that gives that person those powers.

The clause further provides that the appropriate Minister or Presiding Officer or Officers shall cause a copy of the Auditor-General's report to be published in the same statutory report containing the Departmental financial statements.

Clauses 13 and 14 - Annual report and financial statements

Existing subsections 63H(2A) and 63M(2A) are similar provisions and they provide that the Auditor-General is not required to include details of breaches of the legislation establishing an authority unless he is of the opinion that the breach is of sufficient importance to justify doing so.

The omission of subsections 63H(2A) and 63M(2A) is proposed as a consequence of the proposed introduction of the general discretion to be given to the Auditor-General under the new section 63R by clause 15.

Clause 15 - Auditor-General not required to report on less significant cases of non-compliance by bodies with their establishing enactments

Clause 15 will introduce a new section 63R which will provide that where an enactment, which establishes a body or authority, requires the Auditor-General to report to a Minister on a matter relating to the compliance by the body or authority with the requirements of that enactment, the Auditor-General will need only report those breaches which are, in the opinion of the Auditor-General, of sufficient importance to justify doing so.

Currently, the Auditor-General has discretion, not to include in his reports on some statutory authorities covered by the Act, details of inconsequential or trivial breaches of legislation. Other legislation involving statutory authorities require the Auditor-General to report all breaches, irrespective of their significance. For example, if an unauthorised overdrawing of a bank account to the extent of \$1 is found the Auditor-General is required to report that matter. As a result, the Auditor-General's reports, in many cases, have to include matters which are of little technical consequence and which detract from the overall materiality of the reports. The proposed amendment will bring reporting provisions of other legislation into line with the current requirements of the Act which are consistent with professional audit standards.

Clause 16 - Misuse of Commonwealth credit cards

Clause 16 will introduce a new section 64A which will provide a penalty for the misuse of Commonwealth credit cards.

Departments may issue Commonwealth Corporate Credit Cards to officers whose duties involve the purchase or payment for goods and services. The Attorney-General's Department has advised that the current provisions of the Act do not, in a range of circumstances, provide penalties for the misuse of a credit card.

Accordingly, as a deterrent measure, it is proposed that a new section 64A be included in the Act to provide that where a person, who is permitted to use a Commonwealth credit card, wilfully uses that card other than in accordance with the conditions set down for its use, that person shall be liable, on conviction, to a penalty of \$20,000 or imprisonment for 5 years, or both. These penalties mirror those applicable to the misappropriation of public moneys (see section 64).

Clause 17 - Repeal of section 69

Existing section 69 provides that if any person is guilty of any wilful act of commission or omission contrary to the Act for which no penalty is expressly provided, that person shall be guilty of an offence and liable to a penalty not exceeding \$100.

The Attorney-General's Department has advised that, as a general penalty provision, section 69 is contrary to Commonwealth criminal law policy. Accordingly, it is proposed that section 69 be repealed in favour of the more appropriate measure of prescribing penalties for particular offences. (These are proposed under Clause 20).

Clause 18 - Writing off, and waiver of rights to, certain money and stores

Subsection 70C(1) currently provides that the Minister for Finance shall have the power to write-off certain moneys or stores. There is some doubt as to whether debts which are too costly to pursue, given the amounts involved, can be written-off on the basis that recovery would be uneconomical. They may, however, be waived under subsection 70C(2). But such action, unlike write-off, extinguishes any legal rights the Commonwealth might have to subsequently recover the debt even where circumstances make recovery possible.

Accordingly, on the basis that while it is clearly sensible not to pursue recovery of a debt when it is uneconomical to do so, but inappropriate to extinguish any legal rights to recover such a debt if it later becomes economical to pursue, an amendment is proposed to section 70C(1) which will give the Minister for Finance the power to write-off a debt on those grounds rather than having to resort to his waiver power in dealing with such debts.

Clause 19 - Repeal of Schedule

Clause 19 repeals the Schedule to the Act as a consequence of the proposed amendment of section 49 by clause 6.

Clause 20 - Amendments relating to offences

In conjunction with the Attorney-General's Department, the existing penalties in the Act have been reviewed and amendments are proposed to update those penalties. In addition, a number of new penalties will be required as a consequence of the proposed repeal of section 69 by clause 17. The proposed amendments are set out in Schedule 1 to the Bill.

Clause 20 inserts a new provision in section 2A which will limit the application of the penalty provisions to statutory authorities which are not part of the Crown. The provision will ensure that the Commonwealth is not put in the position of imposing a penalty on itself.

Details of the amendments to the penalties are as follows -

Section 14B(2)

Offence - Wilful failure to produce accounts or records upon request from the Auditor-General.

Existing penalty - section 69.

Proposed penalty - (a) in the case of a natural person \$2,000 or imprisonment for 12 months, or both;

(b) in the case of a body corporate - \$10,000.

Section 14C(3)

Offence - divulging or communicating information, obtained by reason of section 11, 13, 14, 14B, 41 or 48E, to another person other than in the course of duty.

Existing penalty - section 69.

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Section 22

Offence - Wilful failure to transmit or pay public moneys as directed by the Minister for Finance.

Existing penalty - section 69

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Section 24

Offence - Wilful failure by accounting officer to furnish statement.

Existing penalty - section 69.

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Subsection 25(4)

Offence - Wilful failure to comply with a direction given by the Minister for Finance on the manner in which moneys covered by the section are to be dealt with.

Existing penalty - \$100

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Subsection 34(1)

Offence - An accounting officer wilfully causing or permitting an account, which has not been authorized by an authorizing officer, to be paid out of the Commonwealth Public Account or a drawing account.

Existing penalty - section 69.

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Subsection 34(2)

Offence - An authorizing officer wilfully authorizing the payment of an account where-

(a) he is not satisfied that moneys are lawfully available for the expenditure;

(b) the certifying officer has not indicated that payment may properly be made; or

(c) such other requirements relating to the authorization of the payment as are prescribed, or specified in directions given by the Minister for Finance, have not been complied with.

Existing penalty - section 69.

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Subsection 42(1A)

Offence - Wilful failure to reply to a query or observation by the Auditor-General within 14 days, or such longer period as the Auditor-General allows.

Existing penalty - section 69.

Proposed penalty - \$500.

Subsection 48M(3)

Offence - divulging or communicating information, obtained by reason of section 11, 13, 14, 14B, 41 or 48E, to another person other than in the course of duty.

Existing penalty - section 69.

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Subsections 63(1) and (3), and 63A(1) and (2)

The proposed amendments to these sections will permit the regulations made pursuant to the sections to prescribe penalties for offences against the particular regulations up to an amount of \$500.

Section 63F

Offence - Wilful failure by an authority, which is independent of the Commonwealth, to keep proper accounts and records in accordance with generally accepted commercial practice.

Existing penalty - section 69.

Proposed penalty - \$10,000

Section 63G

Requirement in subsection (6) -To furnish the Auditor-General with such information as is in the possession of the person, or to which that person has access, as the Auditor-General considers necessary for the purposes of the functions of the Auditor-General under Division 2 of Part XI.

Offence (subsection (7)) - Refusal or failure to comply with the requirements of subsection (6).

Existing penalty - upon conviction, a fine of \$200.

Proposed penalty - natural person: \$1000 or imprisonment for 6 months or both; body corporate: \$5,000.

Proposed offence (subsection (8)) - Knowingly furnishing information that is false or misleading.

Proposed penalty - natural person: \$2,000 or imprisonment for 12 months, or both; body corporate: \$10,000.

Section 63K

Offence - Wilful failure by an authority, which is independent of the Commonwealth, to keep proper accounts and records.

Existing penalty - section 69.

Proposed penalty - \$10,000

Section 63L

Requirement in subsection (6) -To furnish the Auditor-General with such information as is in the possession of the person, or to which that person has access, as the Auditor-General considers necessary for the purposes of the functions of the Auditor-General under Division 3 of Part XI.

Offence (subsection (7)) - Refusal or failure to comply with the requirements of subsection (6).

Existing penalty - upon conviction, a fine of \$200.

Proposed penalty - natural person: \$1000 or imprisonment for 6 months or both; body corporate: \$5,000.

Proposed offence (subsection (8)) - Knowingly furnishing information that is false or misleading.

Proposed penalty - natural person: \$2,000 or imprisonment for 12 months, or both; body corporate: \$10,000.

Section 63ME

Requirement in subsection (3) - To furnish the Auditor-General with such information as is in the possession of the person, or to which that person has access, as the Auditor-General considers necessary for the purposes of the functions of the Auditor-General under Division 3A of Part XI.

Offence (subsection (4)) - Refusal or failure to comply with the requirements of subsection (3).

Existing penalty - upon conviction, a fine of \$200.

Proposed penalty - natural person: \$1000 or imprisonment for 6 months or both; body corporate: \$5,000.

Proposed offence (subsection (5)) - Knowingly furnishing information that is false or misleading.

Proposed penalty - natural person: \$2,000 or imprisonment for 12 months, or both; body corporate: \$10,000.

Subsection 70D(8)

Offence - Divulging or communicating, except with the consent of the Minister for Finance or in the course of duty, any information that relates to the receipts or expenditure of exempt accounts.

Existing penalty - \$500

Proposed penalty - \$5,000 or imprisonment for 2 years, or both.

Subsection 71(4)

Subsection 71(4) currently provides that the regulations, which the Governor-General may make pursuant to section 71, may include penalties for breaches of those regulations up to an amount of \$10. The amendment will increase that amount to \$500.

Schedule 1 to the Bill also includes proposed amendments to subsections 63(3) and 63A(2). These subsections provide for the making of regulations. The proposed amendments will insert the words "(other than this section)" after "this Act" in both subsections. The amendments are of a drafting nature and have the effect of ensuring that regulations made pursuant to sections 63 and 63A may not be inconsistent with those sections.

Clause 21 - Amendments to change references from Auditor-General's Office to Australian Audit Office

This clause introduces Schedule 2 to the Bill which changes various references in the Act from the "Auditor-General's Office" to the "Australian Audit Office".

The Australian Audit Office has been known by that name for all practical purposes, but in formal documents has to be described as the Auditor-General's Office. The proposed amendment will bring the terminology of the Act into line with actual practice.