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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

**COMMONWEALTH AUTHORITIES AND COMPANIES (CONSEQUENTIAL
AMENDMENTS) BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Finance,
the Honourable Kim C. Beazley, MP)



COMMONWEALTH AUTHORITIES AND COMPANIES (CONSEQUENTIAL AMENDMENTS) BILL 1995

OUTLINE

This Bill complements the package of legislation to replace the *Audit Act 1901* which is currently before the Senate, namely, the *Auditor-General Bill 1995*, the *Commonwealth Authorities and Companies Bill 1995*, the *Financial Management and Accountability Bill 1995* and the *Audit (Transitional and Miscellaneous) Bill 1995*.

2. The *Commonwealth Authorities and Companies Bill 1995* impacts upon the enabling legislation of approximately 130 Commonwealth authorities and as such will necessitate consequential amendments to that legislation to eliminate overlapping requirements and ensure consistency of respective provisions.

3. The consequential amendments are being proposed in two stages: the first stage was incorporated in the *Audit (Transitional and Miscellaneous) Amendment Bill 1995* and deals with those Commonwealth authorities (approximately 80) which currently draw their financial requirements from Part XI of the *Audit Act 1901*; the second stage is incorporated in this Bill and deals with those Commonwealth authorities (approximately 50) which are subject to individual financial requirements in their enabling legislation and are not currently subject to Part XI of the *Audit Act 1901*.

4. In addition to the second stage consequential amendments, this Bill addresses certain other matters. The Bill is structured as follows:

- Schedule 1 repeals clause 8 of the *Commonwealth Authorities and Companies Act 1995* which will extend the latter's application to those authorities not subject to Part XI of the *Audit Act 1901*. It also contains a number of technical amendments to the *Commonwealth Authorities and Companies Bill 1995*, and one amendment to the *Auditor-General Bill 1995*, which clarify a number of minor matters that came to light during the drafting of the second stage consequential amendments.
- Schedule 2 contains consequential amendments to three enabling Acts of Commonwealth authorities that are currently subject to Part XI of the *Audit Act 1901* but which were established after the introduction of the *Audit (Transitional and Miscellaneous) Amendment Bill 1995* and were therefore unable to be included in it. Schedule 2 also contains minor technical amendments to four enabling Acts that have already been amended by the *Audit (Transitional and Miscellaneous) Amendment Bill 1995*, most of which are consequential on certain of the amendments to the *Commonwealth Authorities and Companies Bill 1995* contained in Schedule 1 to this Bill.
- Schedule 3 contains consequential amendments to the enabling Acts of the Commonwealth authorities that are not currently subject to Part XI of the *Audit Act 1901* (ie it implements the second stage of the consequential amendments process outlined above).

FINANCIAL IMPACT STATEMENT

5. The proposed amendments have no financial impact.

NOTES ON CLAUSES

Clause 1 - Short Title

1. This clause is self-explanatory.

Clause 2 - Commencement

2. Subclause 2(1) provides that this Bill is to commence on the same day as the *Financial Management and Accountability Bill 1995* if this Bill receives the Royal Assent on or before the day on which the *Financial Management and Accountability Bill 1995* commences.
3. Subclause 2(2) provides that if this Bill receives the Royal Assent after the commencement date of the *Financial Management and Accountability Bill 1995* -
 - (a) clauses 1,2,3 and 7 commence on the day the Royal Assent is received; and
 - (b) clauses 4 and 5 (other than the repeal of section 8 of the *Commonwealth Authorities and Companies Act 1995*), and Schedule 2, have retrospective application to the commencement date of the *Financial Management and Accountability Bill 1995*; and
 - (c) clause 6, the repeal of section 8 of the *Commonwealth Authorities and Companies Act 1995*, and Schedule 3, commence on the first 1 July after the Royal Assent.

Clause 3 - Some amendments in Schedule 3 may not take effect

4. This clause provides, in effect, that if certain authorities cease to be Commonwealth authorities prior to the commencement of this Act, the amendments to their enabling legislation made by this bill shall not take effect.

Clause 4 - Amendments of the *Commonwealth Authorities and Companies Act 1995* and the *Auditor-General Act 1995*

Clause 5 - Consequential amendments of other Acts - authorities to which the *Audit Act 1901* applied

Clause 6 - Consequential amendments of other Acts - other authorities

Clause 7 - Regulations for transitional matters

5. These clauses are self-explanatory.

SCHEDULE 1

AMENDMENTS OF THE COMMONWEALTH AUTHORITIES AND COMPANIES ACT 1995 AND THE AUDITOR-GENERAL ACT 1995

Commonwealth Authorities and Companies Act 1995

Item 1 - Section 5 (definition of 'financial year')

1. The current definition simply provides that an authority's 'financial year' means its annual accounting period. This wording was intended to take account of the fact that a small number of authorities do not operate on a standard financial year i.e. 1 July - 30 June.
2. However, it has become apparent that the current definition would enable other authorities to also opt for non-standard financial years.
3. It is therefore proposed to amend the definition to provide, in effect, that the term 'financial year' means the period 1 July to 30 June unless an authority's enabling legislation specifically provides otherwise.

Item 2 - Section 5 (definition of 'incorporating law')

4. Various amending provisions in this schedule contain the term 'incorporating law'. This amendment clarifies the meaning of that term.

Item 3 - Section 8

5. The repeal of section 8 was foreshadowed in the Explanatory Memorandum to the *Audit (Transitional and Miscellaneous) Amendment Bill 1995* and will have the effect of extending the application of the *Commonwealth Authorities and Companies Act 1995* to those Commonwealth authorities that were not subject to Part XI of the *Audit Act 1901*.

Item 4 - Subsection 9(3)

6. Throughout the *Commonwealth Authorities and Companies Bill 1995* there are provisions which say that people must do certain things. Other provisions say that people must cause certain things to be done. It is proposed to amend the latter provisions so that they are expressed in the same terms as the former, thereby eliminating any implication that the failure of the former provisions to use the word 'cause' means that the persons concerned must personally perform the obligations imposed. (Whether such obligations must be performed personally, or whether the task can be delegated, will depend on the nature of the obligation and the particular circumstances).

7. Hence this amendment to subclause 9(3) is intended to remove any implication in so far as subclause 9(1) is concerned that directors of a Commonwealth authority must personally prepare the annual report rather than delegate the task to others, even though the responsibility for the preparation of the annual report, and its contents, remains with the directors.

Item 5 - Section 13

8. Clause 13 of the *Commonwealth Authorities and Companies Bill 1995* currently provides for the provision of interim financial statements by Commonwealth authorities in accordance with Finance Minister's Orders (FMOs).

9. The equivalent provisions in the *Corporations Law* relating to companies that are 'disclosing entities' provide that a company's interim financial statements are to be accompanied by a directors' report.

10. It is proposed, therefore, to substitute a new clause 13 to specifically require that the interim financial statements are to be accompanied by a directors' report of operations and that they be included in an interim report. This will eliminate any doubt as to whether, under the current wording of clause 13 of the *Commonwealth Authorities and Companies Bill 1995*, the FMOs relating to interim financial statements could actually require this.

Item 6 - Paragraph 17(6)(h)

11. The purpose of this amendment is to ensure that the contents of the corporate plan which relate to community service obligations do not merely provide details of what those obligations are, but also specify the strategies and policies to be followed in carrying out those obligations.

Item 7 - Insert Section 19A

12. The enabling Acts of a number of Commonwealth authorities contain a provision which provides that the authorities cannot enter into a contract involving expenditure over a specified amount of money without the consent of the responsible Minister.

13. In the case of such authorities which also have an investment power, there is also a provision in their enabling Acts which says that this limit on contracts does not apply to investments. The proposed amendment will ensure that this approach is continued for all authorities which, in future, will draw their investment powers from subclauses 18(3) and 19(3) of the *Commonwealth Authorities and Companies Bill 1995*.

Item 8 - Subsection 30(1)

Item 9 - Subsection 30(1)

Item 10 - Subsection 30(2)

14. The purpose of these amendments is to take account of the amendment to the definition of 'financial year' proposed in item 1 (see above).

Item 11 - Subsection 35(4)

15. The reasons for these amendments are explained above in relation to item 4.

Item 12 - Section 37

16. Clause 37 of the *Commonwealth Authorities and Companies Bill 1995* currently provides for the provision of interim financial statements by wholly-owned Commonwealth companies in accordance with Finance Minister's Orders (FMOs).

17. The equivalent provisions in the *Corporations Law* relating to companies that are 'disclosing entities' provide that a company's interim financial statements are to be accompanied by a directors' report.

18. It is proposed, therefore, to substitute a new clause 37 to specifically require that the interim financial statements are to be accompanied by a directors' report of operations and that they be included in an interim report. This will eliminate any doubt as to whether, under the current wording of clause 37 of the *Commonwealth Authorities and Companies Bill 1995*, the FMOs relating to interim financial statements could actually require this.

Item 13 - Paragraph 41(6)(h)

19. The purpose of this amendment is to ensure that the contents of a corporate plan which relate to community service obligations do not merely provide details of what those obligations are, but also specify the strategies and policies to be followed in carrying out those obligations.

Item 14 - Section 42

20. Clause 42 of the *Commonwealth Authorities and Companies Bill 1995* is intended to impose the same obligations on wholly-owned Commonwealth companies as are imposed on Commonwealth authorities by clause 28 of the *Commonwealth Authorities and Companies Bill 1995*. However a subclause equivalent to subclause 28(4) was inadvertently omitted from clause 42.

21. It is therefore proposed to amend clause 42 so that it mirrors clause 28, which was the original policy intention.

22. This amendment will enable the responsible Minister to exempt the directors of wholly-owned Commonwealth companies from compliance with general policies of the government, of which they are notified under clause 42, in relation to specified activities e.g. where compliance by an overseas subsidiary would conflict with the local practices or customs of the country in which the subsidiary operates.

Item 15 - Subsection 44(1)

23. The reasons for this amendment are explained above in relation to item 4.

Item 16 - Insert Section 45A

24. In a number of recent instances where Commonwealth authorities have been wound up, it has become apparent that there is no-one responsible for preparing a final annual report (including financial statements) and attending to other matters.

25. The proposed clause 45A will provide for regulations to deal with such matters where a body ceases to be a Commonwealth authority.

Auditor-General Act 1995

Item 17 - Section 5 (definition of 'Commonwealth authority')

26. The purpose of this amendment is to include a note at the end of the definition of 'Commonwealth authority' in clause 5 of the *Auditor-General Bill 1995* drawing attention to the fact that the proposed subclause 5(2) is also relevant to that definition.

Item 18 - Section 5 (add subsection (2))

27. The definition of 'Commonwealth authority' in clause 5 of the *Auditor-General Bill 1995* provides that the term has the same meaning as in the *Commonwealth Authorities and Companies Act 1995*.

28. There are a small number of instances where it has been appropriate for the consequential amendments to exempt a Commonwealth authority from the application of the *Commonwealth Authorities and Companies Act 1995*. In all such cases, however, the Auditor-General will be the auditor of the authorities concerned and as such it is appropriate that the *Auditor-General Act* apply to them. The proposed subclause (2) will ensure that the *Auditor-General Act* does so apply.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS - AUTHORITIES TO WHICH THE AUDIT ACT 1901 APPLIED

This Schedule contains amendments, consequential on the enactment of the *Commonwealth Authorities and Companies Bill 1995*, to seven enabling Acts of Commonwealth authorities that were subject to Part XI of the Audit Act 1901 and which, as such, would, in the normal course, have been included in the *Audit (Transitional and Miscellaneous) Amendment Bill 1995*. However, because the authorities concerned were established after the introduction of the *Audit (Transitional and Miscellaneous) Bill 1995*, it has been necessary to include them in this Bill.

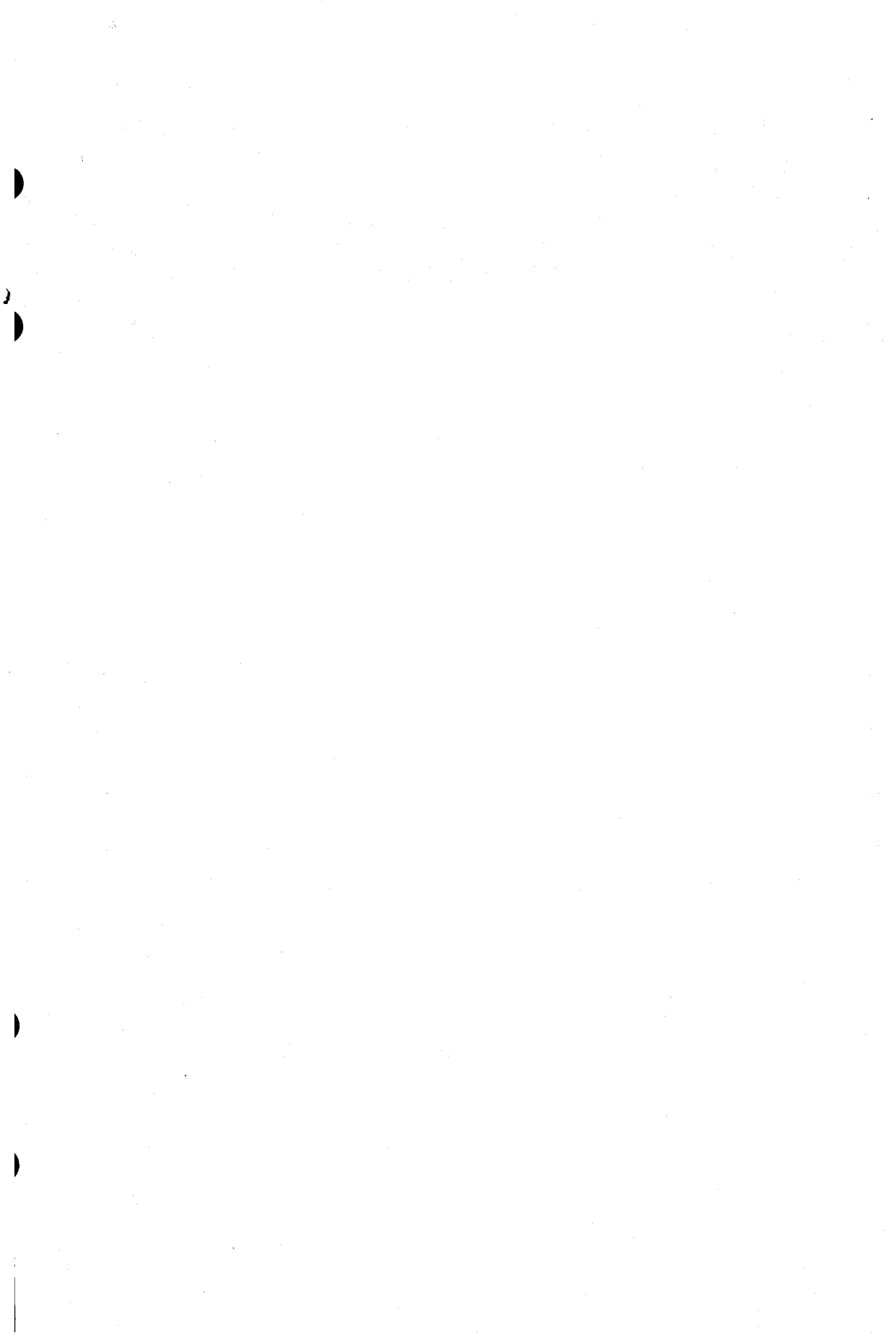
2. The Schedule also contains additional amendments to legislation that has been dealt with in the *Audit (Transitional and Miscellaneous) Bill 1995*. These additional amendments are consequential on certain amendments to the *Commonwealth Authorities and Companies Bill 1995* that are contained in Schedule 1 to this Bill.

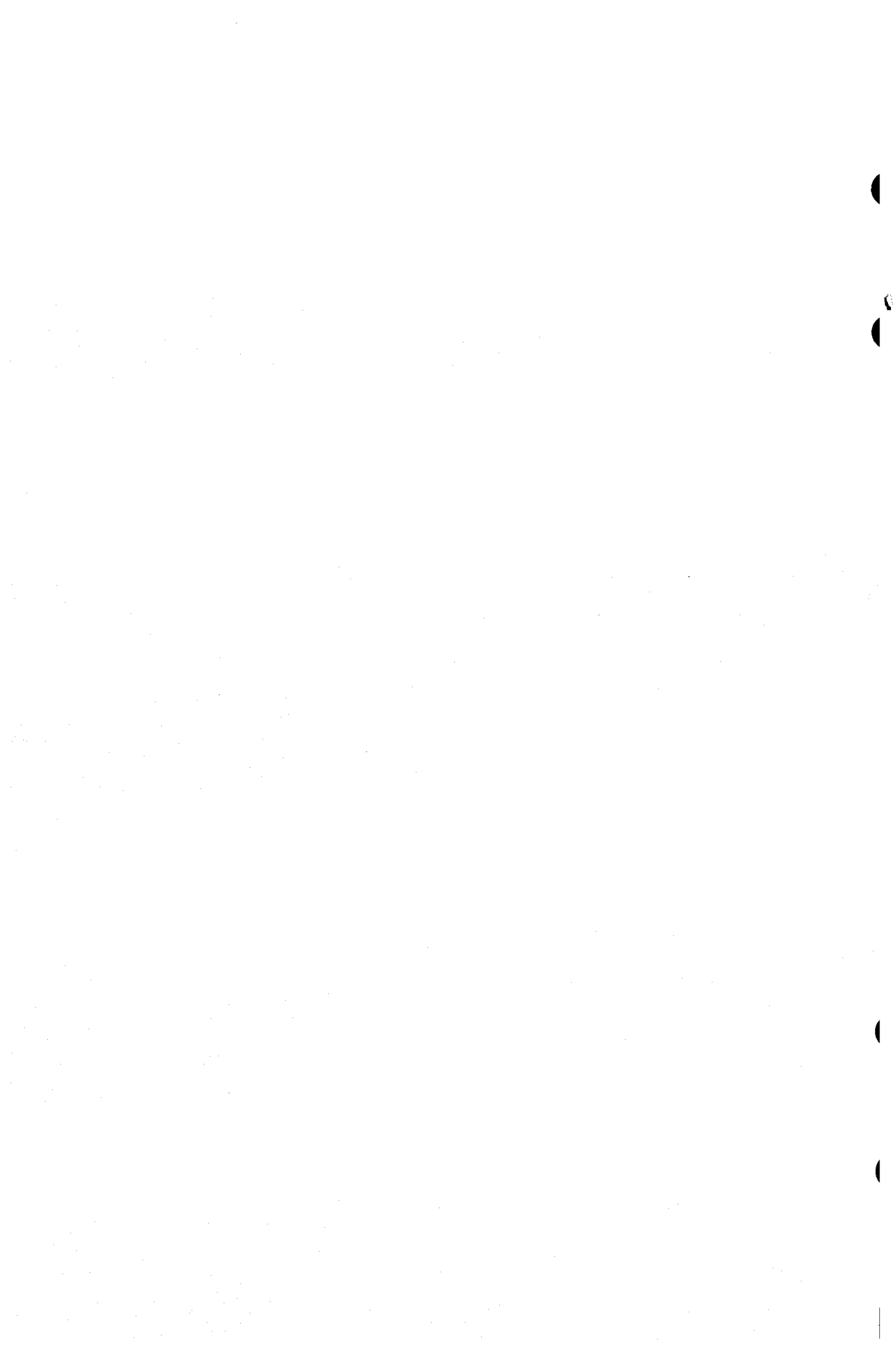
SCHEDULE 3

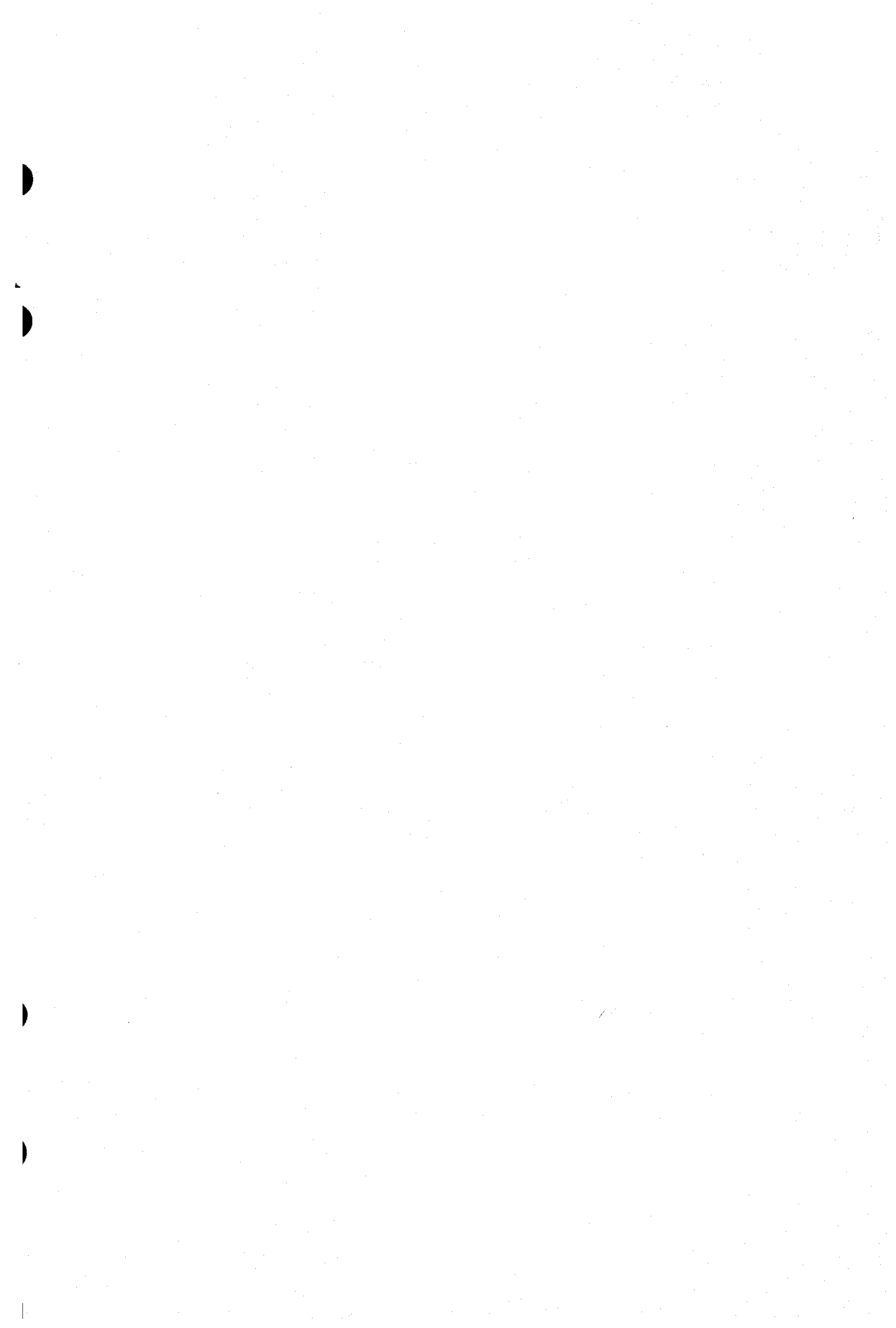
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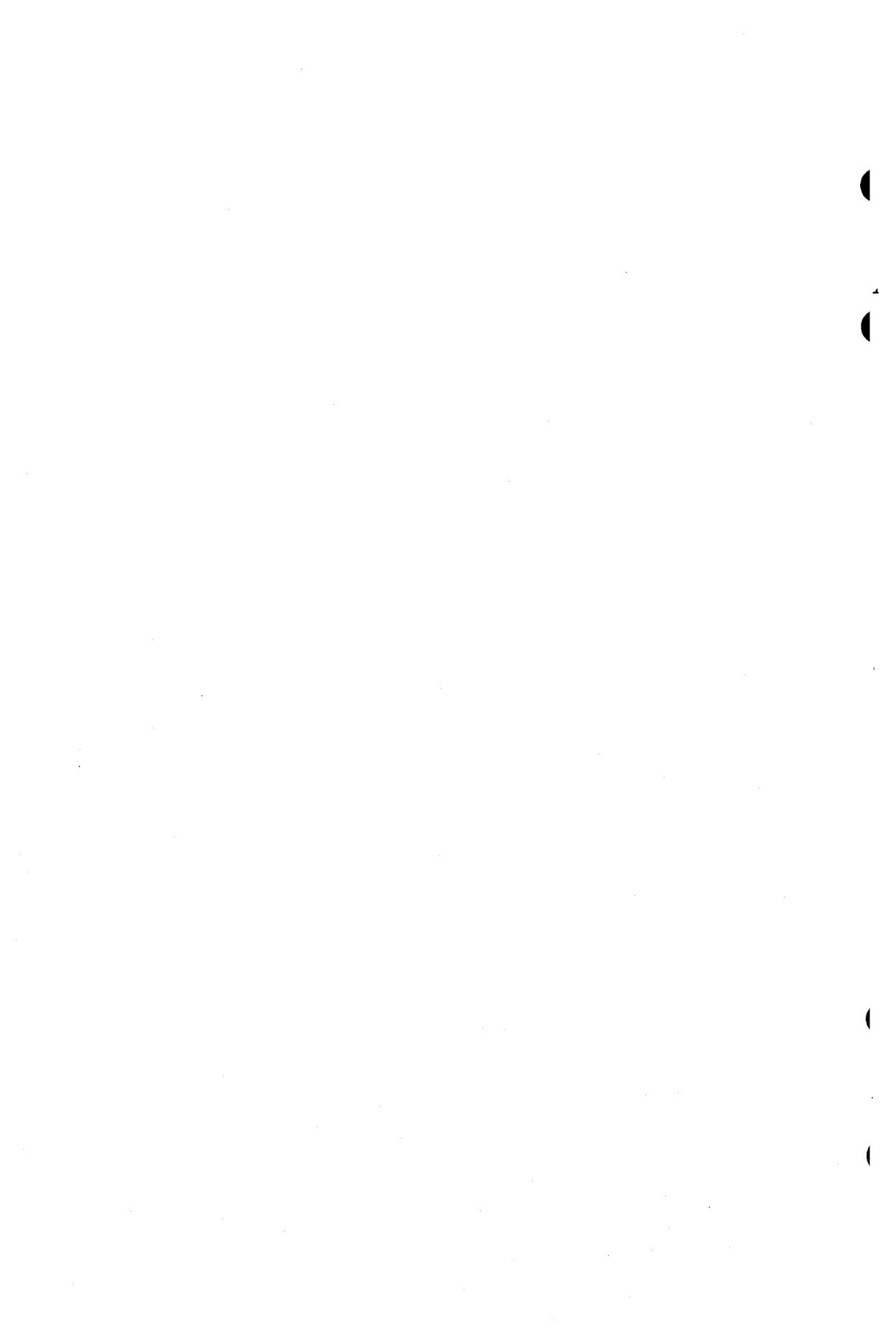
This Schedule contains amendments, consequential on the enactment of the *Commonwealth Authorities and Companies Act 1995*, to the enabling legislation of Commonwealth authorities that were not subject to Part XI of the *Audit Act 1901* and as such have not been included in the *Audit (Transitional and Miscellaneous) Bill 1995*.

2. There are a very few consequential amendments that had not been completed at the time of introduction of this Bill. It is proposed that they will be incorporated in this Schedule as Parliamentary amendments.









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