

# **IMPACT of the *AUDIT ACT 2008* that received Royal Assent on 1 March 2009**

## **Introduction**

Through various forums agencies and other public sector entities, including local government entities, have been kept informed as the *Audit Bill 2008* progressed through the Parliament. The Bill introduced a number of changes when compared with the audit responsibilities outlined in the *Financial Management and Audit Act 1990* (FMAA).

On 1 March 2009 the *Audit Act 2008* (the Audit Act) was proclaimed and this document outlines the changes that the Act will introduce for both "State entities" and the Audit Office. A copy of the Act can be found at [www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au). Please note that the commentary below does not deal with every aspect in the Audit Act.

## **Overarching provisions**

The Audit Act is the sole authority for public sector audit functions within Tasmania, providing a consistent audit approach for all State entities within the State and Local Government sectors. All requirements relating to the audit of financial statements, general investigative powers and to performance and compliance audits are contained in the Audit Act and audit provisions in other Tasmanian Acts have, as far as possible, been removed.

## **State entity**

A new definition of a "State entity" contained within the Audit Act now encompasses all public sector entities including those established under the *Local Government Act 1993*. It includes an agency, council, Government Business Enterprise, State-owned Company, State Authority, Corporations established by the *Water and Sewerage Corporations Act 2008* and the governing body of any corporation, body of persons or institution that are appointed by a Minister or by the Governor.

As a result, the term State entity is used in this document.

## **Independence of the Auditor-General (section 10)**

The independence of the Auditor-General is directly addressed in the Audit Act. This section authorises and requires the Auditor-General to act independently in relation to the performance of the functions of the Auditor-General. The section also establishes the Auditor-General's complete discretion in the performance of those functions, subject to the Audit Act and other Tasmanian laws.

This section also provides that the Auditor-General is not subject to direction from anyone in relation to his audit functions, including any decision as to whether or not an audit is to be conducted, how an audit is to be conducted or in relation to the content of any report arising from an audit.

## **Annual work plan (section 11)**

The Auditor-General (AG) must consult with the Public Accounts Committee (PAC) in relation to AG's annual work plan with the plan to ultimately be transmitted to the Speaker of the House of Assembly and to the President of the Legislative Council making the plan a public document. The plan will include details of the financial and performance audit work that we have planned for the period 1 July to 30 June 2010.

Once the plan has been tabled it will be placed on the Office's website.

## **State entities and audited subsidiaries of State entities to have accountable authority (sections 14 and 15)**

Section 14 requires a State entity or an audited subsidiary of a State entity to have an accountable authority. It ensures that each entity that is subject to audit by the Auditor-General has a governing person or body and goes on to specify who these bodies or persons are.

Section 15 provides that where the Treasurer considers that there is, or may be, some doubt as to the accountable authority for a particular State entity, the Treasurer may, by notice published in the Gazette, appoint a person or body to be the accountable authority of that State entity.

## **Financial information to be reported and Reporting deadline (sections 17 and 47)**

Section 17 requires the accountable authorities to submit financial statements for the State entity to the Auditor-General as soon as possible and within 45 days of the end of the financial year and that the financial statements be "complete in all material respects". This section also provides for me to determine whether the financial statements submitted are complete in all material respects.

It is the Audit Office's intention to write to State entities as soon as the Office has received an entities' financial statements advising whether or not they are complete in all material respects.

To be "complete in all material respects" means that the financial statements must:

1. Be signed by the accountable authority at the time they are submitted.
2. Comply with relevant legislative requirements governing the State entity being audited.
3. Comply with Australian Accounting Standards. In the case of government departments, compliance with the Department of Treasury and Finance's model financial statements will satisfy this requirement.

Where a State entity, for example a subsidiary of a State-owned Company, wishes to prepare a special purpose financial report, this will be acceptable subject to appropriate disclosures in the report and the lack of users of the financial report who cannot demand information normally made available in a general purpose financial report.

Regarding the timelines for submission of financial statements to my Office, it should be noted that section 47 provides for transitional arrangements for State entities not currently required to submit statements within 45 days. These State entities will not be bound by section 17 until the financial year commencing after 30 June 2010. Therefore,

- State entities with a 30 June balance date – must submit their June 2011 financial statements in accordance with Section 17
- State entities with a December balance date, must submit their December 2011 financial statements in accordance with Section 17.

### **Auditor-General to be auditor of financial statements of all State entities (section 18)**

This section provides that the Auditor-General is to audit the financial statements submitted by a State entity or subsidiary of a state entity.

***Financial audit authority for State-owned Companies*** - State-owned Companies (SOCs) are subject to the Australian Corporations Law and the Auditor-General is appointed as the financial auditor of SOCs through shareholders letters of expectations. The Auditor-General's authority to perform the financial audit of SOCs is contained in section 18.

***Dispensing with audits*** - in consultation with the Treasurer, the Auditor-General may dispense with all or any part of, the audit the financial statements of a particular State entity or of State entities included in a category or class specified by the Auditor-General, if the Auditor-General considers that it is appropriate in the circumstances. Such dispensation of an audit may be in respect of a particular financial year and subject to any conditions determined by the Auditor-General.

It is our current practice to detail in a report to Parliament those State entities or categories of State entities the audits of which the AG has dispensed with. The decision to dispense with an audit is only made where the AG is satisfied that existing financial reporting arrangements are satisfactory and that the alternative auditing arrangements are appropriate. This practice will continue.

It is noted that the Office can still conduct performance audits/investigations of State entities the financial statement audits of which have been dispensed with.

### **Audit Completion deadlines (section 19)**

Having carried out an audit of the financial statements of a State entity under section 18, section 19 requires the Auditor-General to prepare and sign an opinion based on that audit and provide it to the State entity's responsible Minister with a copy to the relevant accountable authority. If the Australian Auditing and Assurance Standards also require the preparation of a formal communication of audit findings (such as a Management Letter), a copy of that communication is to accompany the opinion.

Section 19 also requires the Auditor-General to finalise the audit opinion for a State entity or an audited subsidiary of a State entity within 45 days of receiving the financial statements from the accountable authority.

There are two new requirements here:

- Firstly, the AG will now be forwarding his/her signed audit opinion to the responsible Minister as well as, which currently occurs, to the accountable authority and the AG will also forward to this Minister the AG's management letter and memorandum of findings. Where there is an interim management letter or memorandum of findings, this will also be forwarded to the Minister as well as to the accountable authority.
- Secondly, the timeframes for the AG to complete the audits of financial statements has been brought forward such that, from 30 June 2011, every financial statement audit of every State entity must be completed by 30 September. For 30 June 2009, this will only impact those State entities that are currently required to submit financial statements to my Office within 45 days of balance date (mainly government departments, Government Business Enterprises and some Statutory Authorities). As a result, priority will be given to these State entities this year with details of the timing of all State entities being made explicit in audit strategies developed this year.

### **Audit of State-owned Companies (section 20)**

This section confirms existing arrangements whereby my Office can conduct performance audits and/or investigations at SOCs.

### **Audit of Subsidiaries of State entities (section 21) and of the Accounts of related entities (section 22)**

Section 21 requires an accountable authority responsible for the operations of a State entity to advise the Auditor-General in writing of all the subsidiaries of the State entity, before the end of each financial year. It also requires the Auditor-General to be the auditor of a subsidiary of a State entity, unless the Auditor-General determines otherwise.

This is a new requirement and State entities will need to establish systems under which the Audit Office is informed annually about existing subsidiaries and of new subsidiaries when established/incorporated. To assist, the Audit Office will enquire into the existence of subsidiaries during our audit planning and include an explicit reference to this in management representations. As soon as the AG is notified of the details of subsidiary entities, he/she will notify you as to whether or not he/she plans to conduct the audit.

In addition, the Audit Office will annually write to all accountable authorities seeking advice regarding the establishment of new subsidiaries.

Section 21 authorises the Audit Office to conduct performance audits/investigations at all subsidiary entities.

Similarly, section 22 requires accountable authorities to notify the Auditor-General in writing if its State entity performs any of its functions in one or more of the following ways:

- a. in a partnership or jointly with another person or body;
- b. through the instrumentality of another person or body; or

c. by means of a trust.

The Audit Office will write to all accountable authorities seeking advice regarding the performance of their State entity's functions in any of the manners outlined in section 22.

Regarding both sections 21 and 22; your attention is drawn to the definitions of Subsidiaries and related entities in section 3 of the Audit Act.

### **Power to conduct performance audits and investigations (sections 23 and 24)**

The ability of the Audit Office to conduct performance audits, compliance audits and investigations has been retained. Section 23(c) provides that the Auditor-General may carry out an examination or investigation into any matter relating to public money, other money or to public property or other property. This includes the ability of the Audit Office to, what is referred to as, "follow the dollar", i.e., the Audit Office is able to investigate State entities or private sector entities relating to the expenditure of public money, other money or to the management of public property or other property.

Note also that under section 23(f) the Audit Office may carry out an examination or investigation examining the efficiency, effectiveness and economy within which a related entity of a State entity performs functions on behalf of the State entity in partnership, or jointly with the State entity; or as a delegate or agent of the State entity.

Section 24 is also new providing for the Auditor-General at his/her discretion, to carry out any audit that the Treasurer requests the Auditor-General to carry out. It also provides that where a grant or advance of money is made by the Government to a person for a specific purpose, the Treasurer may request the Auditor-General to audit accounts of that person to ascertain whether the money granted or advanced has been expended in accordance with the purposes of the grant or advance.

### **Audit fees (sections 27, 29 and 52)**

These sections change the fee setting arrangements for financial statement audit work conducted by the Audit Office. In the past financial statement audit fees, and any variations thereto, were subject to approval by the Treasurer and this practice will continue for all fees and fee variations for 30 June 2008 and 31 December 2008 balance dates.

Section 27 requires the AG to determine whether or not a fee is to be charged and if so the amount. Accountable authorities must pay the fee determined. However, this section also provides that if a fee is disputed by the accountable authority liable to pay the fee, the accountable authority may refer the dispute to the Government Prices Oversight Commission who will determine the amount of the fee to be paid. It is the Audit Office's understanding that accountable authorities seeking to refer a dispute in this way may have to pay any fees levied by the Commission.

Section 29 requires the AG to include in a report to Parliament the basis on which audit fees are charged.

## **Confidentiality (section 46)**

This section applies to a person who is, or who has been: the Auditor-General, a person employed in the Tasmanian Audit Office, a person appointed to assist the Auditor-General in a particular matter, an authorised person, the independent auditor of the Tasmanian Audit Office or an auditor engaged to conduct a review of efficiency and effectiveness of the Tasmanian Audit Office.

It requires that these persons are to maintain confidentiality with respect to all matters that come to their knowledge during the course of their employment or duties under the Audit Act or any other written law and that those persons must not communicate any of these matters to anyone except when required under the administration of the Audit Act or another written law or required under any proceedings of the Audit Act, other written Law or the Criminal Code.

However, this does not apply to the communication of information to the Public Accounts Committee, the House of Assembly or Legislative Council, or any other body established by the House of Assembly or Legislative Council to investigate the activities of one or more State entities or subsidiaries of State entities.

This section also provides that a person who receives a summary of audit findings on an audit of a State entity must maintain confidentiality regarding all matters within the summary and must not: communicate any of the information within the summary to anyone; copy or reproduce any of the information within the summary unless it is in connection with making submissions or comments to the Auditor-General or in connection with obtaining legal advice on those matters.

Should you have any questions regarding the implications of the new Audit Act please do not hesitate to contact any of the following persons:

Mike Blake	Auditor-General
Ric De Santi	Deputy Auditor-General
Geoff Driscoll	General Manager Performance Audit Services
David Strong	General Manager Strategy and Governance

all on 62260100.



H M Blake  
**AUDITOR-GENERAL**

**2 MARCH 2009**