

## REPORTING BY TASMANIAN PUBLIC SECTOR ENTITIES

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### INTRODUCTION

Within Tasmania there are many different types of public and private sector entities carrying out services to the community. Public sector entities are created in many varied ways, but in the main, usually by way of some form of legislation, be it general, sector specific, or entity specific. While these forms can be viewed loosely as “Government” created entities, there are also situations where private sector entities, perhaps originally established as companies or incorporated bodies, become public sector entities whereby their operations become subordinate to governance by another public sector entity.

All public sector entities, irrespective of their origin, bear a governance responsibility to report. For most, it requires the annual reporting and tabling of their outcomes of operations in Parliament by way of an annual report or statements. For others, it will be to controlling bodies or those charged with governance oversight (e.g. a Minister). For many entities, reporting functions are incorporated in the written law under which they operate.

Increasingly in recent years there have been numerous amendments to many acts of Parliament removing financial reporting references. This is not to say that an entity no longer needs to report, but rather it is an administrative approach. It relies on an awareness of where applicable reporting requirements are instead located. For financial reporting in Tasmania, this is the *Audit Act 2008* (the Audit Act). The effect of centralising reporting obligations in the Audit Act has been to remove inconsistencies and shortfalls in some acts and ensure a consistent framework across all Tasmanian public sector entities. The approach also holds administrative benefits in that a change in one act, need not result in the requirement to make amendments to all the other acts that would be affected.

### THE REQUIREMENT TO REPORT

Each State entity, or audited subsidiary of a State entity, is required to have an “accountable authority” (section 14). The accountable authority is the person or body (however described) overseeing the governance of an entity, that is, having the general direction and control of, and all responsibility for, the operations of the entity (section 14(3) and 14(4)).

Under the Audit Act an accountable authority is required to prepare and forward to the Auditor-General, as soon as possible and within 45 days after the end of the financial year, a copy of their financial statements which are complete in all material respects (section 17(1)). Unless otherwise specified, the financial statements are to be prepared in accordance with accounting standards and other requirements issued by the Australian Accounting Standards Board (section 17(4)).

Following the submission of financial statements, they are assessed by the Auditor-General to determine whether an audit is required. Where an audit is carried out, the Auditor-General is required to prepare and sign an opinion on an audit carried out in accordance with requirements determined by the Australian Auditing and Assurance Standards (section 19(1)). The audit opinion is required to be finalised within 45 days of receiving financial statements from the accountable authority (section 19(3)). Where financial statements of the entity are to be included in an Annual

Report to be tabled in Parliament, a copy of the opinion is also provided to the relevant Minister (section 19(4)). Where there are audit findings, these are communicated to the accountable authority and also the appropriate Minister (section 19(2)).

## WHAT IS A STATE ENTITY?

What constitutes a State entity can be confusing. The Audit Act is written so as to capture all known entity types created by government, royal prerogative or governed by those appointed by government. Under the Audit Act (section 4) a State entity is defined as the follow categories:

**State entity** includes –

- (a) an agency; and
- (b) a council; and
- (c) a Government Business Enterprise; and
- (d) a State-owned company; and
- (e) a State authority that is not a Government Business Enterprise; and
- (f) the council, board, trust or trustees, or other governing body (however designated) of, or for, a corporation, body of persons or institution, that is or are appointed by the Governor or a Minister of the Crown; and
- (g) a body or authority referred to in section 21 , established under section 29 or 30 , or continued under section 326 , of the *Local Government Act 1993*; and
- (h) the Corporation incorporated under section 5 of the *Water and Sewerage Corporation Act 2012*; and
- (i) a body or authority in respect of which the Treasurer has made a determination under section 32A.

## WHAT IS A SUBSIDIARY OF A STATE ENTITY?

As part of their operations, many State entities create subsidiaries to undertake some form of business on their behalf. This is not unusual and not confined to one particular public sector. In Tasmania there are numerous subsidiaries and these are primarily created by State-owned Companies, Government Business Enterprises (GBEs), Departments, Councils and Local Government Authorities. This includes subsidiaries of subsidiaries.

Under the Audit Act a **subsidiary**, of a State entity, means –

- (a) a company or body formed or incorporated under the Corporations Act or formed or incorporated under equivalent laws of a place other than a State or Territory –
  - (i) in respect of which the State entity has the capacity to control decision making, directly or indirectly, in relation to the financial and operating policies of the company or body; and
  - (ii) that is not itself a State entity; or
- (b) a body, trust or other entity formed under written law or under equivalent laws of the Commonwealth or a State or Territory of the Commonwealth –
  - (i) in respect of which the State entity has the capacity to control decision making, directly or indirectly, in relation to the financial and operating policies of the body, trust or other entity; and
  - (ii) that is not itself a State entity; or
- (c) a body that is declared under an Act to be a subsidiary of a State entity and is not itself a State entity; or

(d) a body that is determined by the Treasurer, by written notice given to the State entity, to be a subsidiary of the State entity

The effect of paragraphs (a)(ii), (b)(ii) and the latter part of (c) means that if the entity happens to be a State entity in its own right, it will not be a subsidiary of a State entity for the purposes of reporting under the Audit Act, regardless of the relationship it has with the parent State entity. The same applies to a body, trust or other entity formed under written law or under equivalent laws of the Commonwealth or a State or Territory of the Commonwealth.

The only exceptions provided in the Audit Act are where the body is declared under an Act to be a subsidiary of a State entity and is not itself a State entity, or it is determined by the Treasurer, by written notice given to the State entity, to be a subsidiary of the State entity (section 4). These exceptions are considered rare and it is our understanding that they have yet to be applied.

As a consequence, the vast majority of entities that would be generally be termed by the nature of their arrangement as subsidiaries to their parent entity, are not defined as subsidiaries under the Audit Act, but rather State entities in their own right and, therefore, must submit financial statements to the Audit General annually.

## STATE ENTITY OR SUBSIDIARY OF A STATE ENTITY?

Dealing with each category of State entity in turn provides a clear understanding of the entity types these categories are designed to include:

### (a) an Agency

An agency includes all the Government departments as noted in the *Financial Management Act 2016*, as specified in Column 1 of Schedule 1. While this would appear straight forward, it also includes a few other entities as noted in Schedule 1, being the Integrity Commission, Tourism Tasmania and the Tasmanian Audit Office.

### (b) a Council

A council means a local government council within the meaning of the *Local Government Act 1993*. For example, Hobart City Council. There are currently 29 councils in Tasmania.

### (c) a Government Business Enterprise

A GBE means a statutory authority specified in Schedule 1 to the *Government Business Enterprises Act 1995*. For example, Hydro-Electric Commission.

### (d) a State-owned company

In Australia, companies are incorporated under the Commonwealth's *Corporations Act 2001* (Corporations Act). A State-owned company is any company that is controlled by the Tasmanian government (or Crown), a State authority or another company which is itself controlled by the Crown or a State authority. For example, Aurora Energy Pty Ltd. Momentum Energy Pty Ltd, a subsidiary of the Hydro-Electric Commission, is also a State entity.

### (e) a State authority that is not a Government Business Enterprise

What constitutes a State authority is quite broad. Any entity that is not captured by one of the other more specific categories, will most likely be a State authority.

Under the Audit Act a:

*“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 an agency.” (section 4)*

This definition is quite all-encompassing, not only capturing many larger specifically created public sector entities, but also the many smaller trusts, boards or management authorities. For example, the Theatre Royal Management Board.

Companies, that are not a State-owned company, are also created under a written law being the Corporations Act and therefore also State Authorities if the directors are appointed by the Governor, a Minister or another State authority. This would apply to any subsidiary company of a parent State entity. Although a GBE would also be a State Authority, it is specifically excluded from this category by paragraph (e) in the definition of a State entity.

**(f) the council, board, trust or trustees, or other governing body (however designated) of, or for, a corporation, body of persons or institution, that is or are appointed by the Governor or a Minister of the Crown**

This category applies to an entity that is not a State authority, where those in a governance role are appointed by the Governor or a Minister. An example would be the Ministerial appointment of the Tasmanian Economic Regulator.

**(g) a body or authority referred to in section 21, established under section 29 or 30, or continued under section 326, of the *Local Government Act 1993***

This category provides for the inclusion of any single authority, joint authority or controlling authority within the meaning of the *Local Government Act 1993*. Effectively it provides for the inclusion of any entities created by councils via the *Local Government Act 1993*. For example, the Local Government Association of Tasmania.

**(h) the Corporation incorporated under section 5 of the *Water and Sewerage Corporation Act 2012***

In Tasmania we currently have just one Water and Sewerage Corporation, being TasWater. Originally there were four. When initially established, ownership of all the companies was held by Tasmania’s 29 local councils. This however, did not meet the requirements of the previous categories. Even though water and sewerage companies are created under a written law, an entity that is controlled by councils does not meet the requirements of a State authority or that of a State-owned Company. This category was specifically added with the creation of the *Water and Sewerage Corporation Act 2012* to include entities created under that act.

**(i) a body or authority in respect of which the Treasurer has made a determination under section 32A**

In the situation that a body or authority does not meet one of the previously listed categories, the Treasurer, in consultation with the Auditor-General, may make a determination that it is a State Entity. This last category provides a safety net to capture any unforeseen situations.

## AUDITED SUBSIDIARY OF A STATE ENTITIES

Under the Audit Act (section 21(1)) the accountable authority of each State entity is to advise the Auditor-General, in writing, before the end of the relevant financial year of all the subsidiaries of that State entity. This is to enable the Auditor-General to assess, determine and co-ordinate auditing requirements.

If the entity is a “subsidiary” as determined under section 4 of the Audit Act, as previously discussed, the Audit Act provides that the Auditor-General is the auditor unless the Auditor-General determines otherwise (section 21(2)).

Where the Auditor-General has not made a determination that he is not the auditor, then the subsidiary is deemed to be an “audited subsidiary of a State entity” (section 4) and the accountable authority for the entity must prepare and forward to the Auditor-General, as soon as possible and within 45 days after the end of the financial year, a copy of their financial statements which are complete in all material respects. The Auditor-General must then conduct an audit on those financial statements in accordance with the requirements in section 19 of the Audit Act.

## AUDITS OF RELATED ENTITIES

In a similar manner to subsidiary entities, accountable authorities are required 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 partnership or jointly with another person or body; or
- (b) through the instrumentality of another person or body; or
- (c) by means of a trust (section 22).

Once identified an assessment is made to determine if the related entity is State entity.

## Dispensing of Audits

The Auditor-General has the discretion under section 18(2) of the Audit Act to dispense with certain audits if considered appropriate in the circumstances.

The dispensation is subject to meeting one of the following conditions, as determined by the Auditor-General:

1. The State entity must demonstrate to the Auditor-General that its financial reporting and auditing arrangements are appropriate.

To satisfy this condition, the State entity is required to submit their audited financial statements to the Auditor-General by 14 August by each year, in accordance with section 17(1) of the Audit Act. The financial statements are then reviewed and, where necessary, feedback on information presented in the financial statements is provided to the entity. (Should the audit of the State entity no be completed by 14 August, the entity is still required to submit financial statements signed by those charged with governance (the accountable authority) and will need to liaise with the Office on audit status.)

- The entity is controlled by a parent State entity and the financial transactions and balances of the controlled entity are subject to audit procedures as part of the group audit of the controlling entity. The financial statements of the consolidating parent entity is required to disclose information about all subsidiaries within the group, in accordance with Australian Accounting Standards.

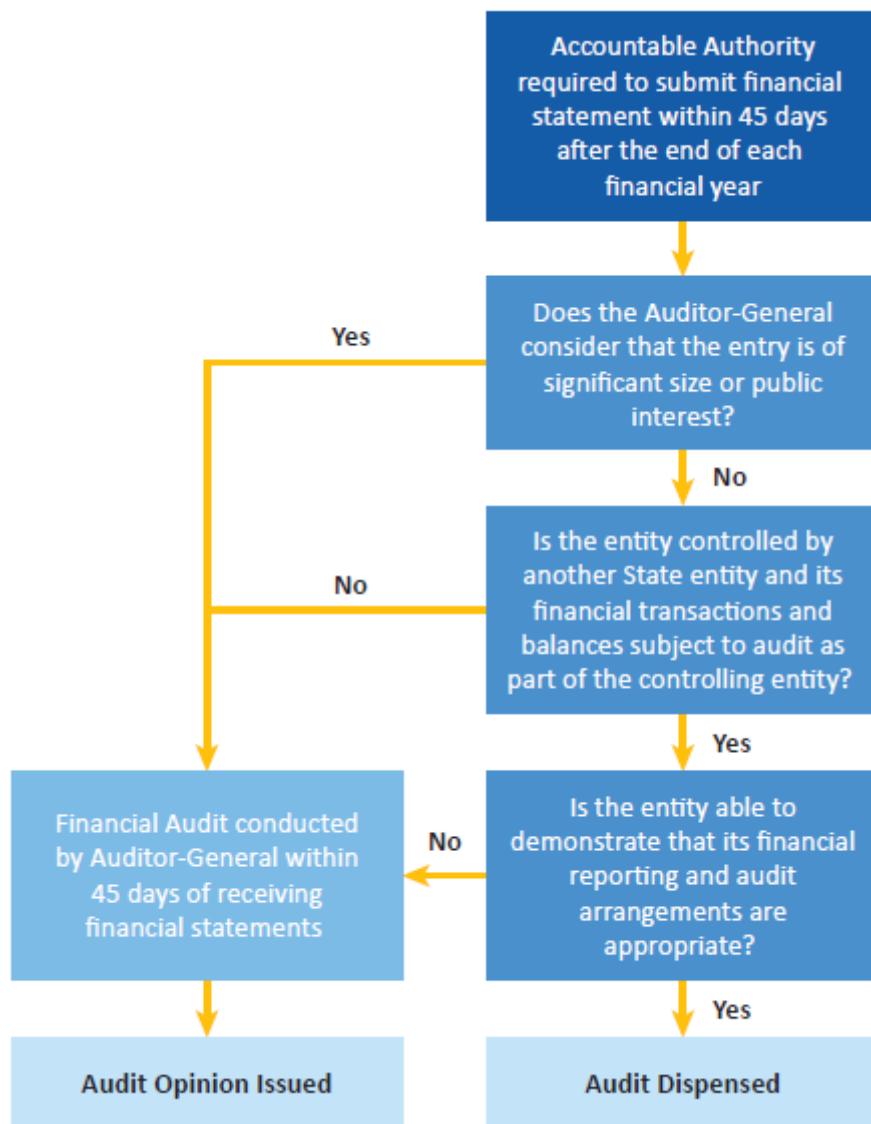
The granting of a dispensation is purely at the Auditor-General’s discretion and cannot be granted in advance of an entity submitting signed financial statements. Where the entity is of significant size or by its nature of particular public interest, it is unlikely a dispensation will be granted.

It is important to note that dispensation of the audit does not limit any of the Auditor-General’s functions or powers given under the Audit Act. The Audit Act also requires the Auditor-General to consult with the Treasurer before exercising the power to dispense with audits.

Should further information on the dispensing of audits be required, please discuss this with your current audit team from the Tasmanian Audit Office or contact the Office directly.

## THE REPORTING PROCESS

The reporting process for an Accountable Authority is illustrated as follows:



## FINANCIAL STATEMENT SUBMISSION REQUIREMENTS

In consideration of the ever increasing pressure on entities in completing financial statements within the 45 days required under the Audit Act, and to alleviate the need for financial statements to be re-signed by the accountable authority following amendments to them after their initial submission, we provide an option for management certification in the submission of financial statements by 14 August each year. Entities that have established procedures in place and are content with their existing approach need not change.

Under section 17 of the Audit Act, statements are required to be:

- submitted within 45 days of the end of the financial year
- complete in all material respects
- signed and dated by the accountable authority, for example Head of Agency, Board, General Manager.

Under the management certification option, entities initially submit financial statements accompanied by a management certification, signed by a suitably senior finance officer responsible for financial reporting, (such as the Chief Financial Officer or equivalent). Mandatory wording is required for the management certification to be submitted with the financial statements. This must be accompanied by a Financial Statements Preparation and Submission Checklist. Both of these are available under the Resources tab on our website (links are below the heading 'Client Reference Information').

The financial statements are still required to be complete in all material respects and must be submitted within 45 days of the end of the financial year.

Following the completion of our audit and before the audit opinion is issued, the financial statements and management representation letter, will still need be signed and dated by the accountable authority



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