

## Authorised Version No. 063

# Audit Act 1994

## No. 2 of 1994

Authorised Version incorporating amendments as at  
1 December 2016

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**Audit Act 1994**

**No. 2 of 1994**

Authorised Version incorporating amendments as at  
1 December 2016

**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purposes**

The purposes of this Act are to provide for—

- (a) the conduct of efficient and effective financial and performance audits in the Victorian public sector and the examination of bodies that receive public grants; and
- (aa) without limiting the generality of paragraph (a), performance audits of authorities includes having regard to information called for from an associated entity to the extent necessary to ensure that the objectives specified in section 3A are achieved;
- (ab) the review of the Government's estimated financial statements by the Auditor-General; and
- (b) the provision of reports on those audits and reviews by the Auditor-General to the Parliament; and
- (c) the administration and audit of the Victorian Auditor-General's Office.

**S. 1**  
substituted by  
**Nos 93/1997**  
s. 4, 53/1999  
s. 6.

**S. 1(aa)**  
inserted by  
**No. 30/2016**  
s. 90.

**S. 1(ab)**  
inserted by  
**No. 9/2000**  
s. 7(1)(a).

**S. 1(b)**  
amended by  
**No. 9/2000**  
s. 7(1)(b).

## 2 Commencement

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on 1 July 1994.

## 3 Definitions

- (1) In this Act—

S. 3  
amended by  
No. 82/2012  
s. 184(3) (ILA  
s. 39B(1)).

S. 3(1) def. of  
*annual  
financial  
report*  
inserted by  
No. 36/2003  
s. 3(1).

*annual financial report* means the report prepared under section 24 of the **Financial Management Act 1994** for a financial year;

S. 3(1) def. of  
*associated  
entity*  
inserted by  
No. 30/2016  
s. 91.

*associated entity* means any person or body that provides services or performs functions for, or on behalf of, an authority, or on behalf of the State, for which an authority is responsible, and without limiting the generality of this definition includes—

- (a) a contracted service provider or sub-contractor of the authority;
- (b) an agent or delegate of the authority;
- (c) the holder of a concession granted by the authority;
- (d) a trustee of the authority;
- (e) a person or body that has entered into—
  - (i) a partnership; or
  - (ii) an arrangement for sharing of profits; or
  - (iii) a union of interest; or
  - (iv) a co-operative arrangement; or

- (v) a joint venture; or
- (vi) a reciprocal concession—  
with the authority;

(f) a third party contractor;

**audit** includes examination and inspection;

**Auditor-General** means the Auditor-General  
appointed under section 94A of the  
**Constitution Act 1975**;

S. 3(1) def. of  
*Auditor-  
General*  
inserted by  
No. 53/1999  
s. 7(a).

\* \* \* \* \*

S. 3(1) def. of  
*Audit Victoria*  
inserted by  
No. 93/1997  
s. 5,  
repealed by  
No. 53/1999  
s. 7(b).

\* \* \* \* \*

S. 3(1) def. of  
*authorised  
person*  
inserted by  
No. 93/1997  
s. 5,  
repealed by  
No. 53/1999  
s. 7(b).

**authority** means—

S. 3(1) def. of  
*authority*  
amended by  
No. 36/2003  
s. 3(2).

- (a) a department;
- (b) a public body;
- (c) an entity (other than a department or  
public body) of which the State or a  
public body has control;

\* \* \* \* \*

S. 3(1) def. of  
*Board*  
inserted by  
No. 93/1997  
s. 5,  
repealed by  
No. 53/1999  
s. 7(b).

S. 3(1) def. of  
*business day*  
inserted by  
No. 36/2003  
s. 3(1).

*business day* means a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

S. 3(1) def. of  
*Chief Examiner*  
inserted by  
No. 82/2012  
s. 184(2).

*Chief Examiner* means the Chief Examiner appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**;

S. 3(1) def. of  
*compulsory appearance*  
inserted by  
No. 82/2012  
s. 184(2).

*compulsory appearance* means the appearance of a person before the Auditor-General, or before a person authorised by the Auditor-General, in accordance with a requirement in writing under section 11(1);

S. 3(1) def. of  
*control*  
inserted by  
No. 36/2003  
s. 3(1).

*control*, in relation to an entity or company, has the same meaning as in the accounting standard that applies for the purpose of deciding whether a company has to prepare consolidated financial statements under the Corporations Act;

S. 3(1) def. of  
*corrupt conduct*  
inserted by  
No. 82/2012  
s. 184(2),  
amended by  
No. 82/2012  
s. 305(a).

*corrupt conduct* has the meaning given in section 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of  
*department*  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 17.1(a)).

*department* has the same meaning as in section 4 of the **Public Administration Act 2004**;

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*	*	*	*	*	S. 3(1) def. of <i>director</i> inserted by No. 93/1997 s. 5, repealed by No. 53/1999 s. 7(b).
<i>domestic partner</i> of a person means—					S. 3(1) def. of <i>domestic partner</i> inserted by No. 82/2012 s. 184(2).
(a) a person who is in a registered relationship with the person; or					
<b>Note</b>					
A <i>registered relationship</i> is defined in subsection (2).					
(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);					
<i>entity</i> has the same meaning as in the accounting standard that applies for the purpose of deciding whether a company has to prepare consolidated financial statements under the Corporations Act;					S. 3(1) def. of <i>entity</i> inserted by No. 36/2003 s. 3(1).
<i>estimated financial statements</i> means estimated financial statements prepared under section 23H of the <b>Financial Management Act 1994</b> ;					S. 3(1) def. of <i>estimated financial statements</i> inserted by No. 36/2003 s. 3(1).
<i>Examiner</i> means an Examiner appointed under Part 3 of the <b>Major Crime (Investigative Powers) Act 2004</b> ;					S. 3(1) def. of <i>Examiner</i> inserted by No. 82/2012 s. 184(2).



S. 3(1) def. of  
*IBAC*  
inserted by  
No. 82/2012  
s. 184(2),  
amended by  
No. 82/2012  
s. 305(b).

*IBAC* means the Independent Broad-based  
Anti-corruption Commission established  
under section 12 of the **Independent  
Broad-based Anti-corruption Commission  
Act 2011**;

S. 3(1) def. of  
*IBAC  
personnel*  
inserted by  
No. 82/2012  
s. 184(2).

*IBAC personnel* has the meaning given in  
section 3(1) of the **Victorian Inspectorate  
Act 2011**;

S. 3(1) def. of  
*independent  
auditor*  
amended by  
No. 36/2003  
s. 3(3).

*independent auditor* means a person appointed  
under section 17 as an independent auditor of  
the Victorian Auditor-General's Office;

S. 3(1) def. of  
*insolvent  
under  
adminis-  
tration*  
inserted by  
No. 93/1997  
s. 5,  
repealed by  
No. 53/1999  
s. 7(b).

\* \* \* \* \*

S. 3(1) def. of  
*Inspector*  
inserted by  
No. 82/2012  
s. 184(2),  
amended by  
No. 82/2012  
s. 305(c).

*Inspector* means the person appointed under  
section 18 of the **Victorian Inspectorate  
Act 2011**;

S. 3(1) def. of  
*legal  
practitioner*  
inserted by  
No. 82/2012  
s. 184(2).

*legal practitioner* means an Australian legal  
practitioner within the meaning of the **Legal  
Profession Act 2004**;

*Ombudsman officer* has the meaning given in section 2(1) of the **Ombudsman Act 1973**;

S. 3(1) def. of *Ombudsman officer* inserted by No. 82/2012 s. 184(2).

*Parliamentary Committee* means the Public Accounts and Estimates Committee under the **Parliamentary Committees Act 2003**;

S. 3(1) def. of *Parliamentary Committee* inserted by No. 93/1997 s. 5, amended by No. 110/2003 s. 54.

*performance audit* means—

- (a) in relation to the Auditor-General or the Victorian Auditor-General's Office, an audit conducted under section 19;
- (b) in any other case, an audit conducted under section 15;

S. 3(1) def. of *performance audit* inserted by No. 36/2003 s. 3(1).

*presiding officer*—

- (a) in relation to the compulsory appearance of a person, means the Auditor-General or person authorised by the Auditor-General before whom the person is appearing;
- (b) in relation to the voluntary appearance of a person, means the VAGO officer before whom the person is appearing;

S. 3(1) def. of *presiding officer* inserted by No. 82/2012 s. 184(2).

*public body* means—

- (a) a public statutory authority; or
- (b) a State owned enterprise within the meaning of the **State Owned Enterprises Act 1992**; or

S. 3(1) def. of *public body* amended by Nos 33/1995 s. 4(1), 43/1995 s. 11.

- (c) a corporation, all the shares in which are owned by or on behalf of the State, whether directly or indirectly; or
- (d) a trustee of a trust of which the State is the principal beneficiary; or
- (e) a person or body prescribed for the purposes of this definition; or
- (f) a municipal council; or
- (g) a corporation, all the shares in which are owned by or on behalf of one or more municipal councils, whether directly or indirectly; or
- (h) a trustee of a trust of which a municipal council is the principal beneficiary or of which several municipal councils are the principal beneficiaries; or
- (i) a regional library under section 196 of the **Local Government Act 1989**;

S. 3(1) def. of *Public Interest Monitor* inserted by No. 82/2012 s. 184(2).

*Public Interest Monitor* has the meaning given in section 4 of the **Public Interest Monitor Act 2011**;

S. 3(1) def. of *public money* repealed by No. 53/1999 s. 7(b).

\* \* \* \* \*

S. 3(1) def. of *registered company auditor* inserted by No. 82/2012 s. 184(2).

*registered company auditor* has the same meaning as in the Corporations Act;

S. 3(1) def. of *spouse* inserted by No. 82/2012 s. 184(2).

*spouse* of a person means a person to whom the person is married;

***third party contractor*** means a person or body that—

S. 3(1) def. of *third party contractor* inserted by No. 30/2016 s. 91.

- (a) enters into a contract with another associated entity or a contractor to another associated entity; or
- (b) enters into a subcontract in a chain of contracts in which the primary contract is with another associated entity or a contractor to another associated entity;

***VAGO officer*** means any of the following—

S. 3(1) def. of *VAGO officer* inserted by No. 82/2012 s. 184(2).

- (a) the Auditor-General;
- (b) the Deputy Auditor-General;
- (c) a person appointed to act in the office of Auditor-General or Deputy Auditor-General;
- (d) an employee referred to in section 7E;
- (e) a person or firm engaged under section 7F;
- (f) an officer or employee of a person, or a partner or employee of a firm, engaged under section 7F;
- (g) a registered company auditor to whom the Auditor-General has delegated a function or power under section 7G;
- (h) a person (other than a person referred to in paragraph (b) to (g)) whom the Auditor-General has authorised to exercise a power under section 11;

***VAGO premises*** means any premises or part of premises occupied by the Victorian Auditor-General's Office or a VAGO officer, other than residential premises;

S. 3(1) def. of *VAGO premises* inserted by No. 82/2012 s. 184(2).

S. 3(1) def. of  
*Victorian  
Auditor-  
General's  
Office*  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 17.1(b)),  
amended by  
No. 82/2012  
s. 184(1).

*Victorian Auditor-General's Office* means  
the office in respect of which the  
Auditor-General has the functions of  
public service body Head under section 16  
of the **Public Administration Act 2004**;

S. 3(1) def. of  
*Victorian  
Inspectorate*  
inserted by  
No. 82/2012  
s. 184(2).

*Victorian Inspectorate* means the Victorian  
Inspectorate established under the **Victorian  
Inspectorate Act 2011**;

S. 3(1) def. of  
*Victorian  
Inspectorate  
Officer*  
inserted by  
No. 82/2012  
s. 184(2).

*Victorian Inspectorate Officer* has the meaning  
given in section 3(1) of the **Victorian  
Inspectorate Act 2011**;

S. 3(1) def. of  
*voluntary  
appearance*  
inserted by  
No. 82/2012  
s. 184(2).

*voluntary appearance* means the appearance of a  
person before a VAGO officer in the course  
of or in relation to the performance of the  
Auditor-General's functions under this Act or  
any other Act, other than a compulsory  
appearance.

S. 3(2)  
inserted by  
No. 82/2012  
s. 184(3).

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as it has in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the

circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

### 3A Objectives

- (1) The objectives of this Act are—
- (a) to determine whether financial statements prepared in the Victorian public sector present fairly the financial position and financial results of operations of authorities and the State;
  - (b) to determine whether—
    - (i) authorities are achieving their objectives effectively and doing so economically and efficiently and in compliance with all relevant Acts;
    - (ii) Victorian public sector operations and activities are being performed effectively, economically and efficiently and in compliance with all relevant Acts;
    - (iii) there has been any wastage of public resources or any lack of probity or financial prudence in the management or application of public resources in the Victorian public sector;
  - (c) to determine whether financial benefits given by the State or an authority to non-government bodies are being applied economically, efficiently and effectively for the purposes for which they were given;
  - (ca) to ensure that the Auditor-General has the necessary powers when conducting a performance audit of an authority which

S. 3A  
inserted by  
No. 93/1997  
s. 6,  
substituted by  
No. 36/2003  
s. 4.

S. 3A(1)(b)(iii)  
inserted by  
No. 30/2016  
s. 92(1).

S. 3A(1)(ca)  
inserted by  
No. 30/2016  
s. 92(2).

involves information called for from an associated entity;

- (d) to ensure that the Auditor-General is held accountable for his or her performance and the performance of the Victorian Auditor-General's Office.

S. 3A(2)  
repealed by  
No. 30/2016  
s. 92(3).

\* \* \* \* \*

S. 3B  
inserted by  
No. 30/2016  
s. 93.

### **3B Extra-territorial operation of Part 3**

- (1) This section applies to Part 3 and section 16C.
- (2) Part 3 applies outside Victoria to the full extent of the legislative power of the State of Victoria.
- (3) Without derogating from subsections (1) and (2), it is Parliament's intention that the operation of Part 3 should, so far as possible, include operation in relation to the following—
  - (a) land situated outside Victoria, whether in or outside Australia;
  - (b) things situated outside Victoria, whether in or outside Australia;
  - (c) acts, omissions and transactions done, entered into or occurring outside Victoria, whether in or outside Australia;
  - (d) things, acts, omissions and transactions (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.
- (4) Nothing in this section limits the operation of any other provision of this Act.

## Part 2—Auditor-General

### Division 1—Acting Auditor-General and Deputy Auditor-General

Pt 2 Div. 1  
(Heading)  
inserted by  
No. 53/1999  
s. 8(a).

\* \* \* \* \*

S. 4  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
repealed by  
No. 53/1999  
s. 8(b).

\* \* \* \* \*

Ss 4A, 4B  
inserted by  
No. 93/1997  
s. 7,  
repealed by  
No. 53/1999  
s. 8(b).

\* \* \* \* \*

S. 5  
repealed by  
No. 53/1999  
s. 8(b).

#### 6 Acting appointment

(1) The Governor in Council may appoint a person to act in the office of Auditor-General—

- (a) during a vacancy in that office; or
- (b) during any period, or during all periods, when the person holding that office is absent from duty or is, for any other reason, unable to perform the functions of that office—

but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.



- (3) The Governor in Council—
- (a) subject to this section, may determine the terms and conditions of appointment of a person acting in the office of Auditor-General; and
  - (b) may terminate such an appointment at any time.
- (4) If a person is acting in the office of Auditor-General in accordance with subsection (1)(b) and that office becomes vacant while that person is so acting, that person may continue so to act until the Governor in Council otherwise directs, the vacancy is filled or a period of 6 months from the date on which the vacancy occurred expires, whichever first happens.
- (5) While a person is acting in the office of Auditor-General in accordance with subsection (1), the person has, and may exercise, all the powers, and shall perform all the functions, of that office.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of Auditor-General under an appointment made under subsection (1) shall not be called in question on the ground that the occasion for his or her appointment has not arisen, that there is a defect or irregularity in or in connection with his or her appointment, that the appointment had ceased to have effect or that the occasion for him or her to act had not arisen or had ceased.
- (7) A person acting in the office of Auditor-General shall be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly, remuneration at the same rate as is determined for the Auditor-General.

S. 6(5)  
amended by  
No. 53/1999  
s. 8(c).

- (8) A person acting in the office of Auditor-General, before undertaking the duties of office, must take an oath of office before the Executive Council.

## 7 Deputy Auditor-General

- (1) The person for the time being employed under Part 3 of the **Public Administration Act 2004** as Deputy Auditor-General or the person acting in that office for the time being under that Act may, during any illness, absence or suspension of the Auditor-General and during any vacancy in the office of Auditor-General, act as the deputy of the Auditor-General and, while acting in that capacity, has all the powers, and must perform all the duties, of the Auditor-General.
- (2) Subsection (1) does not apply if there is a person acting in the office of Auditor-General under section 6.
- (3) The Deputy Auditor-General or a person acting as Deputy Auditor-General, before first acting as the deputy of the Auditor-General, must take an oath of office before the Executive Council.
- (4) The Deputy Auditor-General, while acting as Auditor-General, is entitled to remuneration at the same rate as is determined for the Auditor-General.

S. 7(1)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 17.2).

## Division 2—Accountability and reporting

Pt 2 Div. 2  
(Heading)  
inserted by  
No. 53/1999  
s. 9.

### 7A Auditor-General's annual plan

- (1) Before the beginning of each financial year, the Auditor-General must—
- (a) prepare a draft annual plan describing the Auditor-General's proposed work program for that year; and

S. 7A  
inserted by  
No. 93/1997  
s. 8,  
substituted by  
No. 53/1999  
s. 9.

- (b) submit the draft to the Parliamentary Committee.
- S. 7A(1A)**  
inserted by  
No. 30/2016  
s. 94.
- (1A) The proposed work program described in the draft annual plan under subsection (1) must include details of any performance audit which involves information called for from an associated entity.
- S. 7A(1B)**  
inserted by  
No. 30/2016  
s. 94.
- (1B) Despite subsection (1A), a failure to include details of an authority or associated entity in the annual plan does not affect the power of the Auditor-General to conduct a performance audit of an authority, including a performance audit which involves information called for from an associated entity.
- (2) The Parliamentary Committee must consider the draft annual plan and may comment on it.
- (3) After considering the draft annual plan, the Parliamentary Committee must return it with any comments to the Auditor-General.
- S. 7A(4)**  
substituted by  
No. 36/2003  
s. 5.
- (4) As soon as practicable after the passage of the annual appropriation Acts for a financial year, the Auditor-General must complete the annual plan for that year, after considering any comments received from the Parliamentary Committee.
- S. 7A(5)**  
substituted by  
No. 36/2003  
s. 5.
- (5) The Auditor-General must indicate in the annual plan the nature of any changes suggested by the Parliamentary Committee that the Auditor-General has not adopted.
- S. 7A(6)**  
inserted by  
No. 36/2003  
s. 5.
- (6) Before the beginning of the financial year to which an annual plan relates, the Auditor-General must—
- (a) present the annual plan to the Parliamentary Committee; and
- S. 7A(6)(b)**  
substituted by  
No. 80/2006  
s. 15(1).
- (b) cause the annual plan to be transmitted to each House of the Parliament.

- (7) The clerk of each House of the Parliament must cause the annual plan to be laid before the House on the day on which it is received or on the next sitting day of the House. **S. 7A(7) inserted by No. 36/2003 s. 5.**
- (8) If the Auditor-General proposes to transmit an annual plan to the Parliament at a time when a House of the Parliament is not likely to sit between then and the beginning of the financial year to which the annual plan relates, the Auditor-General must— **S. 7A(8) inserted by No. 36/2003 s. 5, substituted by No. 80/2006 s. 15(2).**
- (a) give one business day's notice of his or her intention to do so to the clerk of the House of the Parliament; and
  - (b) give the annual plan to the clerk of the House on the day indicated in the notice; and
  - (c) publish the annual plan on the Auditor-General's Internet website on the day after giving it to the clerk.
- (9) The clerk of a House must— **S. 7A(9) inserted by No. 80/2006 s. 15(2).**
- (a) notify each member of the House of the receipt of a notice under subsection (8)(a) on the same day that the clerk receives that notice; and
  - (b) give a copy of the annual plan to each member of the House as soon as practicable after the annual plan is received under subsection (8)(b); and
  - (c) cause the annual plan to be laid before the House on the next sitting day of the House.
- (10) An annual plan that is given to the clerk of a House under subsection (8)(b) is taken to have been published by order, or under the authority, of the House. **S. 7A(10) inserted by No. 80/2006 s. 15(2).**

S. 7A(11)  
inserted by  
No. 80/2006  
s. 15(2).

- (11) The publication of an annual plan by the Auditor-General under subsection (8)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the annual plan as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.

New s. 7B  
inserted by  
No. 53/1999  
s. 9.

## **7B Annual report**

- (1) As soon as practicable after the end of each financial year, the Auditor-General must—
- (a) prepare a report of the operations of the Victorian Auditor-General's Office during the financial year that complies with subsection (2); and
  - (b) prepare financial statements for the financial year that comply with subsection (3) and give them to the independent auditor for auditing; and
  - (c) cause the report of operations and audited financial statements to be transmitted to each House of the Parliament.
- (2) The report of operations must—
- (a) comply with section 48 of the **Financial Management Act 1994** and directions under that Act that apply to reports of operations of departments, except to the extent determined by the Parliamentary Committee under section 7C; and
  - (b) include an account of the implementation of the annual plan required under section 7A; and

- (c) include the names of any persons to whom, during the financial year, the Auditor-General has delegated the power to make a report under section 9; and
- (d) include details of any resolutions of the Parliamentary Committee under section 7C in respect of the report of operations and the disallowance of any such resolutions; and S. 7B(2)(d) amended by No. 36/2003 s. 6(a).
- (e) summarise the quality control policies and procedures that were in place in the Victorian Auditor-General's Office for the financial year; and S. 7B(2)(e) inserted by No. 36/2003 s. 6(b).
- (f) summarise any additional auditing standards that the Auditor-General has applied under section 13(3) to the conduct of audits during the financial year. S. 7B(2)(f) inserted by No. 36/2003 s. 6(b).

**Note**

Section 20 applies to a report of operations.

**Note to s. 7B(2) inserted by No. 82/2012 s. 185(1).**

- (3) The financial statements must—
  - (a) comply with section 49 of the **Financial Management Act 1994** and directions under that Act that apply to financial statements of departments, except to the extent determined by the Parliamentary Committee under section 7C; and
  - (b) include details of any resolutions of the Parliamentary Committee under section 7C in respect of the financial statements and the disallowance of any such resolutions.

New s. 7C  
inserted by  
No. 53/1999  
s. 9.

### **7C Parliamentary Committee may alter obligations of Auditor-General**

S. 7C(1)(b)  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 17.2).

- (1) The Parliamentary Committee may, by resolution, vary any obligation or requirement imposed on the Auditor-General or the Victorian Auditor-General's Office by or under—
  - (a) section 7B(2)(a) or (3)(a); or
  - (b) the **Financial Management Act 1994** or the **Public Administration Act 2004**.
- (2) The chairman of the Parliamentary Committee must cause a copy of each resolution under subsection (1) to be laid before each House of the Parliament within 6 sitting days of that House after the resolution is passed.
- (3) A resolution under subsection (1) is disallowed in whole or in part if—
  - (a) a notice of resolution to disallow the resolution is given in a House of the Parliament on or before the 18th sitting day of that House after a copy of the resolution is laid before that House; and
  - (b) the resolution to disallow is passed by that House on or before the 12th sitting day of that House after the giving of the notice of resolution.
- (4) Notice of a resolution to disallow a resolution under subsection (1) may be expressed to apply to the whole or to any part of the resolution.
- (5) A resolution to disallow the whole or any part of a resolution under subsection (1) has effect according to its tenor.

- (6) If a House of the Parliament is prorogued or the Legislative Assembly is dissolved—
- (a) the prorogation or dissolution does not affect the power of the House to pass a resolution disallowing a resolution under subsection (1); and
  - (b) the calculation of sitting days of the House is to be made as if there had been no prorogation or dissolution.
- (7) The disallowance of a resolution under subsection (1)—
- (a) does not affect the validity of anything done in accordance with the resolution by the Auditor-General or the Victorian Auditor-General's Office before the disallowance takes effect;
  - (b) does not expose the Auditor-General or the Victorian Auditor-General's Office to any liability or sanction for acting in accordance with the resolution before the disallowance takes effect.

#### **7D Audit priorities, budgets and expenditure**

- (1) In performing or exercising his or her functions or powers, the Auditor-General must confer with, and have regard to any audit priorities determined by, the Parliamentary Committee.
- (2) The Auditor-General's budget for each financial year is to be determined in consultation with the Parliamentary Committee concurrently with the annual plan under section 7A.
- (3) Despite anything to the contrary in the **Financial Management Act 1994** or in regulations or directions under that Act but subject to any relevant appropriation Act, the Auditor-General may incur any expenditure or obligations

New s. 7D  
inserted by  
No. 53/1999  
s. 9.

S. 7D(2)  
amended by  
No. 36/2003  
s. 7.



necessary for the performance of the functions of the Victorian Auditor-General's Office.

### **Division 3—Administration**

Pt 2 Div. 3  
(Heading)  
inserted by  
No. 53/1999  
s. 9.

#### **7E Staff of Victorian Auditor-General's Office**

New s. 7E  
inserted by  
No. 53/1999  
s. 9,  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 17.2).

As many employees as are required for the performance of the functions of the Victorian Auditor-General's Office are to be employed under Part 3 of the **Public Administration Act 2004**.

#### **7F Assistance for Auditor-General**

New s. 7F  
inserted by  
No. 53/1999  
s. 9,  
amended by  
No. 36/2003  
s. 8.

The Auditor-General may engage any person or firm (other than a person who holds an appointment under section 19) under contract to assist in the performance of any function of the Auditor-General.

#### **7G Delegation**

New s. 7G  
inserted by  
No. 53/1999  
s. 9.

(1) The Auditor-General may, by instrument, delegate to a person employed in the Victorian Auditor-General's Office or to a registered company auditor any function or power of the Auditor-General other than—

S. 7G(1)  
amended by  
No. 36/2003  
s. 9(1).

S. 7G(1)(a)  
substituted by  
No. 36/2003  
s. 10(1)(a).

(a) the power to express an audit opinion under section 9A; or

S. 7G(1)(b)  
substituted by  
No. 36/2003  
s. 10(1)(a).

(b) the power to make a report under section 16, 16A or 16B; or

(c) this power of delegation.

S. 7G(1)(c)  
inserted by  
No. 36/2003  
s. 10(1)(a).

(2) The Auditor-General may delegate to a registered company auditor who is not employed in the Victorian Auditor-General's Office the power to express an audit opinion under section 9 on the financial statements of an authority only if the total expenditure disclosed in those financial statements does not exceed the threshold amount.

S. 7G(2)  
substituted by  
No. 36/2003  
s. 9(2),  
amended by  
No. 36/2003  
s. 10(1)(b).

(2A) The Auditor-General cannot delegate any function or power to a person who holds an appointment under section 19.

S. 7G(2A)  
inserted by  
No. 36/2003  
s. 10(2).

(3) For the purposes of subsection (2), the *threshold amount* is—

(a) for financial statements in respect of the financial years, or any part of the financial years, commencing on 1 July 2002 and 1 July 2003—\$5 000 000;

S. 7G(3)(a)  
substituted by  
No. 36/2003  
s. 9(3)(a).

(b) for financial statements in respect of a subsequent financial year, or any part of a subsequent financial year—the amount determined in accordance with the formula—

S. 7G(3)(b)  
amended by  
Nos 36/2003  
s. 9(3)(b)(i)(ii),  
44/2014  
s. 33(Sch.  
item 3).

$$\$5\,000\,000 \times \frac{A}{B}$$

where—

A is the all groups consumer price index for Melbourne in original terms for the reference period in which falls the March quarter of the previous financial year last published by the Australian Bureau of Statistics as at 15 June in the previous financial year;

B is the all groups consumer price index for Melbourne published by the Australian Statistician in respect of the quarter ending on 31 March 2003.

S. 7G(4)  
inserted by  
No. 36/2003  
s. 9(4),  
repealed by  
No. 82/2012  
s. 185(2).

\* \* \* \* \*

S. 7H  
inserted by  
No. 36/2003  
s. 11.

## 7H State indemnity

- (1) This section applies to—
  - (a) the Auditor-General;
  - (b) the Deputy Auditor-General;
  - (c) a person acting in the office of Auditor-General or Deputy Auditor-General;
  - (d) an employee referred to in section 7E.
- (2) The State must indemnify a person to whom this section applies against any liability that he or she incurs for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the performance of a function or duty under this or any other Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty under this or any other Act.
- (3) The indemnity does not cover a liability of a person to the extent to which he or she is entitled to be indemnified against the liability by a person other than the State, whether under a contract of insurance or otherwise.

Audit Act 1994  
No. 2 of 1994

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\* \* \* \* \*

**Pt 2A  
(Heading and  
ss 7B–7M)  
inserted by  
No. 93/1997  
s. 9,  
amended by  
Nos 43/1998  
s. 3(1)(2),  
46/1998  
s. 7(Sch. 1),  
repealed by  
No. 53/1999  
s. 10.**

\* \* \* \* \*

**Pt 2B  
(Heading and  
ss 7N–7V)  
inserted by  
No. 93/1997  
s. 10,  
repealed by  
No. 53/1999  
s. 11(1).**

Pt 3  
(Heading)  
substituted by  
No. 53/1999  
s. 11(2).

## Part 3—Public sector audits and reports

### 8 Audit of authorities

S. 8(1)  
amended by  
Nos 93/1997  
s. 11(1),  
53/1999  
s. 11(3).

(1) The financial statements of each authority must from time to time and at least once in each year be audited by the Auditor-General.

(2) The Auditor-General may dispense with all or any part of an audit of the financial statements of an authority in any year.

S. 8(3)  
inserted by  
No. 93/1997  
s. 11(2),  
substituted by  
No. 53/1999  
s. 11(4).

(3) The Auditor-General may audit any report of operations of an authority under section 45 of the **Financial Management Act 1994** to determine whether any performance indicators in the report of operations—

(a) are relevant to any stated objectives of the authority; and

(b) are appropriate for the assessment of the authority's actual performance; and

(c) fairly represent the authority's actual performance.

### 9 Audit opinions on financial statements

S. 9  
amended by  
No. 43/1995  
s. 12(1)(2),  
substituted by  
Nos 93/1997  
s. 12, 53/1999  
s. 12, 36/2003  
s. 12.

(1) After auditing an authority's financial statements under section 8(1), the Auditor-General must express a written audit opinion on the financial statements to the authority.

(2) The audit opinion must be expressed within 4 weeks after the day on which the financial statements were received by the Auditor-General for auditing.

(3) The Auditor-General must give a copy of each audit opinion on the financial statements of an authority to—

(a) the Minister responsible for the authority;  
and

(b) the Minister administering this section.

**9A Audit opinion on annual financial report of the State**

(1) The Auditor-General must express a written audit opinion on each annual financial report to the Minister who prepared the annual financial report.

S. 9A  
inserted by  
No. 93/1997  
s. 12,  
repealed by  
No. 53/1999  
s. 13,  
new s. 9A  
inserted by  
No. 36/2003  
s. 12.

(2) The audit opinion must be expressed a reasonable time before the annual financial report to which it relates is required to be transmitted to the Parliament under section 27D of the **Financial Management Act 1994**.

S. 9A(2)  
amended by  
No. 43/2004  
s. 15.

**10 Audit fees**

(1) An authority must pay to the Consolidated Fund an amount determined by the Auditor-General to defray the reasonable costs and expenses incurred by or on behalf of the Auditor-General in conducting an audit of the financial statements of the authority and expressing an audit opinion on them under section 9.

S. 10  
amended by  
No. 43/1995  
s. 13(a),  
substituted by  
No. 93/1997  
s. 13,  
amended by  
No. 53/1999  
s. 14,  
substituted by  
No. 36/2003  
s. 13.

(2) The Minister who prepared the annual financial report must pay to the Consolidated Fund an amount determined by the Auditor-General to defray the reasonable costs and expenses incurred by the Auditor-General in conducting an audit of the annual financial report and expressing an audit opinion on it under section 9A.

- (3) The Minister who prepared the estimated financial statements must pay to the Consolidated Fund an amount determined by the Auditor-General to defray the reasonable costs and expenses incurred by the Auditor-General in reviewing the estimated financial statements and making a report on them under section 16B.
- (4) If an authority or the Minister referred to in subsection (2) or (3) disputes the reasonableness of an amount to be paid by the authority or Minister under this section, the dispute is to be referred to arbitration under the **Commercial Arbitration Act 2011**.

S. 10(4)  
amended by  
No. 50/2011  
s. 46(Sch.  
item 1).

## 11 Power to call for persons and documents

- (1) For the purpose of carrying out functions or powers under this Act or any other Act, the Auditor-General or a person authorised in that behalf by the Auditor-General may, in writing, require such persons as he or she thinks fit to appear personally before him or her at a time and place named, and to produce to him or her all such documents in the possession, custody or control of such a person as appear to be necessary for the purposes of their examination.
- (1A) If the Auditor-General or a person authorised by the Auditor-General intends to examine a person on oath under subsection (3), a requirement given to the person under subsection (1) must state the nature of the matters about which the person to whom it is given is to be examined, except to the extent to which the Auditor-General or person authorised by the Auditor-General forms the opinion on reasonable grounds that this would be likely to prejudice the conduct of the audit to which the examination relates or would be contrary to the public interest.

S. 11(1)  
amended by  
No. 93/1997  
s. 14(a).

S. 11(1A)  
inserted by  
No. 82/2012  
s. 186.

- (1B) For the avoidance of doubt, the Auditor-General or person authorised by the Auditor-General is not required to give reasons for forming the opinion referred to in subsection (1A). S. 11(1B)  
inserted by  
No. 82/2012  
s. 186(2).
- (2) For the purpose of carrying out functions or powers under this Act or any other Act, the Auditor-General or a person authorised in that behalf by the Auditor-General may when he or she sees occasion cause a search to be made in and extracts to be taken from any documents in the possession, custody or control of any authority without paying any fee. S. 11(2)  
amended by  
No. 93/1997  
s. 14(b).
- (3) For the purpose of carrying out functions or powers under this Act or any other Act, the Auditor-General or a person authorised in that behalf by the Auditor-General may examine upon oath (which oath he or she is empowered to administer) all persons he or she thinks fit to examine relating to all matters and things necessary for the due execution of the powers of the Auditor-General or person. S. 11(3)  
amended by  
No. 93/1997  
s. 14(c)(d).
- 11A Auditor-General to report to Victorian Inspectorate on calling for persons or documents** S. 11A  
inserted by  
No. 82/2012  
s. 187.
- Within 3 days after a person is given a requirement in writing under section 11(1), the Auditor-General must give a report in writing to the Victorian Inspectorate specifying—
- (a) the name of the person;
- (b) the reasons why the requirement was given.
- 11B Requirement given to person under 16 years** S. 11B  
inserted by  
No. 82/2012  
s. 187.
- (1) A requirement in writing given under section 11(1) to a person under the age of 16 years at the date the requirement is given has no effect.



- (2) A person who claims to be under the age of 16 years at the date a requirement in writing is given to them under section 11(1) must provide proof of age in accordance with the regulations to the Auditor-General.

S. 11C  
inserted by  
No. 82/2012  
s. 187.

### **11C Legal advice and representation**

- (1) This section applies to a compulsory appearance by a person.
- (2) The person may seek legal advice from, and be represented by, a legal practitioner in relation to—
- (a) an audit conducted by the Auditor-General under this Act or any other Act; and
  - (b) the person's rights, liabilities, obligations and privileges under this Act.

S. 11D  
inserted by  
No. 82/2012  
s. 187,  
amended by  
No. 30/2016  
s. 95 (ILA  
s. 39B(1)).

### **11D Advance notice of performance audits**

- (1) Within a reasonable time before commencing to conduct a performance audit, the Auditor-General must provide a copy of the final version of the specification prepared under section 15 to any relevant authorities.
- (2) If an associated entity relevant to a performance audit is identified after the performance audit has been commenced, the Auditor-General must provide a copy of an updated version of the specification to any relevant authority and the associated entity within a reasonable time before calling for information from that associated entity.

S. 11D(2)  
inserted by  
No. 30/2016  
s. 95(2).

### **11E Further provisions relating to appearances**

- (1) This section applies to a compulsory appearance and a voluntary appearance.
- (2) Before the person appearing is asked any questions or required to produce any document, the presiding officer must—

S. 11E  
inserted by  
No. 82/2012  
s. 187.

- (a) confirm the age of the person if the presiding officer considers that he or she may be under the age of 18 years; and
  - (b) release the person from the appearance if the person is under the age of 16 years; and
  - (c) give the person a copy of the statement (if any) prescribed for the purposes of this subsection; and
  - (d) inform a legal practitioner who is representing the person of any non-disclosure requirements that apply under this Act; and
  - (e) take any other actions prescribed for the purposes of this subsection.
- (3) At any time during the appearance, if the presiding officer becomes aware that the person appearing is under the age of 16 years, the presiding officer must immediately release the person from the appearance.
- (4) If the person appearing does not have knowledge of the English language that is sufficient to enable the person to understand questions asked of him or her or to answer those questions, before the questioning commences the presiding officer must provide for a competent interpreter to be present.
- (5) If the person appearing is under the age of 18 years, the person must be accompanied by a parent or guardian or an independent person.
- (6) The presiding officer must direct that an independent person be present during the appearance if—
- (a) the presiding officer believes the person appearing has a mental impairment; or

- (b) the person appearing provides the presiding officer with reasonably satisfactory medical evidence that the person has a mental impairment.

S. 11F  
inserted by  
No. 82/2012  
s. 187.

**11F Audio or video recording of compulsory appearances**

- (1) This section applies to a compulsory appearance.
- (2) The presiding officer must ensure that the appearance is audio or video recorded.
- (3) Subject to subsection (4), evidence of anything said by the person appearing during the appearance is inadmissible as evidence against any person in any proceeding before a court or tribunal unless—
  - (a) the appearance was audio or video recorded; and
  - (b) the audio or video recording is available to be tendered in evidence.
- (4) A court may admit evidence of anything said by the person appearing during the appearance that is otherwise inadmissible because of subsection (3) if the court is satisfied that there are exceptional circumstances that justify the admission of the evidence.
- (5) Unless the Auditor-General considers on reasonable grounds that doing so may prejudice an audit, the Auditor-General must provide the person appearing with a copy of—
  - (a) the audio or video recording; and
  - (b) any transcript created.

- (6) If the Auditor-General determines not to provide the person with a copy of the audio or video recording and any transcript in accordance with subsection (5), the Auditor-General must allow the person to listen to or view the recording of his or her evidence at VAGO premises at any reasonable time.
- (7) As soon as possible after the appearance, the Auditor-General must provide the Victorian Inspectorate with a copy of the audio or video recording and any transcript of the appearance.

**11G Protection of legal practitioners and witnesses at compulsory appearances**

S. 11G  
inserted by  
No. 82/2012  
s. 187.

- (1) This section applies to a compulsory appearance.
- (2) A legal practitioner representing the person appearing or assisting the presiding officer at the appearance has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- (3) The person appearing has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

**12 Access to information**

- (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to persons employed in the public service or by an authority, where imposed by an enactment or rule of law or Cabinet confidentiality, applies to the disclosure of information required by the Auditor-General, a person authorised by the Auditor-General under section 11 or a person assisting the Auditor-General for the purposes of anything done under this Act.

S. 12(1)  
amended by  
Nos 93/1997  
s. 14(e)(i)(ii),  
53/1999  
s. 15(1)(a).

S. 12(2)  
amended by  
Nos 93/1997  
s. 14(f)(g),  
53/1999  
s. 15(1)(b)(i)(ii),  
82/2012 s. 188.

- (2) The Auditor-General or any other person must not divulge or communicate, except in the course of duty to another person performing duties under this Act, any information which has come to his or her knowledge by reason directly or indirectly of subsection (1) if the person from whom that information was obtained could not, but for that subsection, lawfully have divulged that information to the Auditor-General or other person.

Penalty: 50 penalty units, in the case of a natural person;  
250 penalty units, in the case of a body corporate.

S. 12(3)  
amended by  
No. 93/1997  
s. 14(h),  
substituted by  
No. 53/1999  
s. 15(2).

- (3) Despite subsection (2) or any other law to the contrary, the Auditor-General may include in a report any information which has come to his or her knowledge in the course of performing functions under this or any other Act if the Auditor-General considers that—
- (a) the information is relevant to the subject matter of the report; and
  - (b) the inclusion of the information in the report is in the public interest.

S. 12(4)  
inserted by  
No. 30/2016  
s. 96.

- (4) This section extends and applies to an associated entity and to persons employed by the associated entity.

S. 13  
substituted by  
Nos 93/1997  
s. 15, 36/2003  
s. 14.

### 13 Auditing standards

S. 13(1)  
substituted by  
No. 80/2006  
s. 16(1).

- (1) Standards made by the Auditing and Assurance Standards Board under section 336 of the Corporations Act or formulated by that Board under section 227B of the ASIC Act, as in force from time to time, must be applied, as appropriate,

in the performance of functions and exercise of powers in relation to audits or performance audits under this Act.

\* \* \* \* \*

S. 13(2)  
repealed by  
No. 80/2006  
s. 16(1).

- (3) The Auditor-General may apply additional auditing standards, not inconsistent with the standards referred to in subsection (1), to the conduct of audits under this Act.
- S. 13(3)  
amended by  
No. 80/2006  
s. 16(2).

**Note**

These additional standards must be summarised in the Auditor-General's annual report—see section 7B(2)(f).

**14 Offences**

- (1) A person must not fail to attend the Auditor-General or a person authorised by the Auditor-General under section 11 for the purpose of being examined under this Act, or to produce any documents, or to answer any lawful question when required so to do by the Auditor-General or person so authorised.
- S. 14(1)  
amended by  
Nos 93/1997  
s. 16(1)(a)(b),  
53/1999 s. 16,  
36/2003 s. 15.

Penalty: 50 penalty units, in the case of a natural person;  
250 penalty units, in the case of a body corporate.

- (2) A person who in relation to this Act makes and subscribes any declaration knowing it to be false, and a person who in the course of examination before the Auditor-General or a person authorised by the Auditor-General under section 11 wilfully and corruptly gives false evidence, is liable to the penalties of perjury.
- S. 14(2)  
amended by  
Nos 93/1997  
s. 16(1)(c),  
53/1999 s. 16.

## 15 Performance audits

S. 15  
amended by  
Nos 93/1997  
s. 16(2),  
53/1999  
s. 17(1),  
substituted by  
No. 36/2003  
s. 16.

- (1) The Auditor-General may conduct any audit he or she considers necessary to determine—
  - (a) whether an authority is achieving its objectives effectively and doing so economically and efficiently and in compliance with all relevant Acts; or
  - (b) whether the operations or activities of the whole or any part of the Victorian public sector (whether or not those operations or activities are being performed by an authority or authorities) are being performed effectively, economically and efficiently and in compliance with all relevant Acts.

S. 15(2)  
substituted by  
No. 30/2016  
s. 97.

- (2) In the course of conducting an audit under subsection (1), the Auditor-General may consider the effectiveness, economy and efficiency of services provided or functions performed by an associated entity for, or on behalf of, an authority, or on behalf of the State, for which an authority is responsible.

S. 15(3)  
substituted by  
No. 30/2016  
s. 97.

- (3) An audit having regard to information called for from an associated entity of an authority under this Act is limited to any matter relating to the use of public funds that are, or were, held or received by the authority and given to any associated entity, in accordance with the specification of the performance audit.

S. 15(4)  
inserted by  
No. 30/2016  
s. 97.

- (4) Subject to subsection (5), before conducting a performance audit, the Auditor-General must prepare a specification for the audit that sets out the particular objectives of the audit and any particular issues to be addressed in consultation with—
  - (a) the authority; and

- (b) at the discretion of the Auditor-General, any associated entity.
- (5) The Auditor-General must consult the Parliamentary Committee before conducting a performance audit if—
- S. 15(5)  
inserted by  
No. 30/2016  
s. 97.**
- (a) it is—
- (i) a collaborative audit; or
  - (ii) an audit that was not included in the annual plan; or
  - (iii) an audit that was included in the annual plan but there has been a material change to the objectives or issues to be addressed; or
  - (iv) an audit of an authority which involves information called for from an associated entity that has been identified before the specification is prepared; or
- (b) the Committee has requested that it be consulted.
- (6) If the Parliamentary Committee or an authority or associated entity does not respond to a request from the Auditor-General for comment on a draft specification for an audit within 15 business days of receiving the request—
- S. 15(6)  
inserted by  
No. 30/2016  
s. 97.**
- (a) the Parliamentary Committee or authority or associated entity is to be taken to have no comment on the draft specification; and
  - (b) the Auditor-General may finalise the specification.



S. 15(7)  
inserted by  
No. 30/2016  
s. 97.

- (7) The following provisions apply to an audit which involves information called for from an associated entity referred to in subsection (2) and apply (where appropriate) as if any references in those provisions to an authority were references to an associated entity—
- (a) section 3A (objectives);
  - (b) section 3B (extra-territorial operation of Part 3);
  - (c) section 11 (power to call for persons or documents);
  - (d) section 11A (Auditor-General to report to Victorian Inspectorate on calling for persons or documents);
  - (e) section 11B (requirement given to person under 16 years);
  - (f) section 11C (legal advice and representation);
  - (g) section 11D (advance notice of performance audits);
  - (h) section 11E (further provisions relating to appearances);
  - (i) section 11F (audio or video recording of compulsory appearances);
  - (j) section 11G (protection of legal practitioners and witnesses at compulsory appearances);
  - (k) section 12 (access to information);
  - (l) section 13 (auditing standards);
  - (m) section 14 (offences);
  - (n) section 16 (audit reports to Parliament);
  - (o) section 16F (information to public officials during the course of an audit);

- (p) section 20 (content of reports);
- (q) section 20A (improper use of information).

## **16 Audit reports to Parliament**

- (1) The Auditor-General may make a report to the Parliament on any one or more audits conducted by or on behalf of him or her under this or any other Act.

**S. 16**  
amended by  
Nos 43/1995  
s. 13(b)(c),  
93/1997 ss 17,  
18, 53/1999  
s. 17(2)(3),  
substituted by  
No. 36/2003  
s. 16.

- (2) In a report under this section, the Auditor-General—
  - (a) may include any information he or she thinks desirable in relation to matters that are the subject of the audit to which the report relates; and
  - (b) must set out the reasons for opinions expressed in the report; and
  - (c) may include any recommendations arising out of the audit that he or she thinks fit to make.

### **Note**

Section 20 applies to reports under this section.

**Note to**  
**s. 16(2)**  
inserted by  
No. 82/2012  
s. 189(1).

- (2A) The Auditor-General must not include in a report under this Act or any other Act any information that could lead to the disclosure of—
  - (a) a trade secret; or
  - (b) matters of a business, commercial or financial nature the disclosure of which could unreasonably expose any person, authority or associated entity to any material disadvantage—

**S. 16(2A)**  
inserted by  
No. 30/2016  
s. 98(1).

unless the Auditor-General is satisfied that the public interest requires the inclusion of the information in the report.

(3) After preparing a proposed report, the Auditor-General must—

(a) give a copy of it, or part of it, to—

S. 16(3)(a)(i)  
amended by  
No. 30/2016  
s. 98(2)(a).

(i) any authority or associated entity to which the proposed report or part relates or that, in the Auditor-General's opinion, has a special interest in the proposed report or part; and

(ii) in the case of a proposed report or part of a proposed report on a performance audit referred to in section 15(1)(b)—the department head of the department for which the Minister administering that section is responsible; and

S. 16(3)(b)  
amended by  
No. 30/2016  
s. 98(2)(b).

(b) ask the authority; associated entity or department head (as the case requires), in writing, for submissions or comments before a specified date, being—

S. 16(3)(b)(i)  
amended by  
No. 30/2016  
s. 98(2)(b).

(i) in the case of a proposed report on a performance audit—at least 10 business days after the proposed report or part is given to the authority; associated entity or department head; or

S. 16(3)(b)(ii)  
amended by  
No. 30/2016  
s. 98(2)(c).

(ii) in the case of a proposed report on any other audit—at least 5 business days after the proposed report or part is given to the authority or associated entity.

S. 16(3A)  
inserted by  
No. 30/2016  
s. 98(3).

(3A) The Auditor-General must give a copy of a proposed report to the Department Head of the Department of Premier and Cabinet.

- (4) The Auditor-General must include in the report to the Parliament any submissions or comments made before the specified date, or a summary of them in a form agreed between the Auditor-General and the authority, associated entity or department head. S. 16(4)  
amended by  
No. 30/2016  
s. 98(4).
- (4A) The report of a performance audit that includes information called for from an associated entity about services provided, or functions performed by, an associated entity for, or on behalf of, an authority, or on behalf of the State, for which an authority is responsible, must— S. 16(4A)  
inserted by  
No. 30/2016  
s. 98(5).
- (a) only direct any recommendation to that authority; and
- (b) not express an opinion about the associated entity that is not directly related to the Auditor-General's determination of the matters set out in section 15(1).
- (5) Nothing in this section entitles the Auditor-General to question the merits of policy objectives of the Government.
- (6) In subsection (5)—
- policy objectives*** includes—
- (a) a Government policy direction of a Minister;
- (b) a policy statement in a Budget Paper;
- (c) a statement of objectives in a corporate plan of an authority approved by a Minister;
- (d) any other document evidencing a policy decision of the Government or a Minister.

S. 16A  
inserted by  
No. 53/1999  
s. 18,  
amended by  
No. 9/2000  
s. 7(1)(c)(2),  
substituted by  
No. 36/2003  
s. 17.

## 16A Reports to Parliament on annual financial report of the State

- (1) The Auditor-General must make a report to the Parliament on each annual financial report.
- (2) A report under this section may include any information and recommendations that the Auditor-General thinks fit—
  - (a) for the more effective and efficient management of public resources; and
  - (b) for the keeping of proper accounts and records of the transactions relating to public resources.

Note to  
s. 16A(2)  
inserted by  
No. 82/2012  
s. 189(2).

### Note

Section 20 applies to reports under this section.

- (3) After preparing a proposed report, the Auditor-General must—
  - (a) give a copy of it to the Minister; and
  - (b) ask the Minister, in writing, for submissions or comments before a specified date, being at least 10 business days after the proposed report is given to him or her.
- (4) The Auditor-General must include in the report to the Parliament any submissions or comments made before the specified date, or a summary of them in a form agreed between the Auditor-General and the Minister.
- (5) In this section, *Minister* means the Minister who prepared the annual financial report.

**16AB Transmission of reports to Parliament**

**S. 16AB  
inserted by  
No. 36/2003  
s. 18.**

- (1) This section applies to a report under section 16 or 16A.
- (2) The Auditor-General must cause the report to be transmitted to each House of the Parliament—
  - (a) in the case of a report under section 16— as soon as practicable after it has been completed;
  - (b) in the case of a report under section 16A— on or before 24 November next following the financial year to which it relates.
- (3) The clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (4) If the Auditor-General proposes to transmit a report to the Parliament when the Parliament is in recess, the Auditor-General must—
  - (a) give one business day's notice of his or her intention to do so to the clerk of each House of the Parliament; and
  - (b) give the report to the clerk of each House on the day indicated in the notice; and
  - (c) publish the report on the Auditor-General's Internet website as soon as practicable after giving it to the clerks.
- (5) The clerk of each House must—
  - (a) notify each member of the House of the receipt of a notice under subsection (4)(a) on the same day that the clerk receives that notice; and

- (b) give a copy of a report to each member of the House as soon as practicable after the report is received under subsection (4)(b); and
  - (c) cause the report to be laid before the House on the next sitting day of the House.
- (6) A report that is given to the clerks under subsection (4)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (7) The publication of a report by the Auditor-General under subsection (4)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.
- (8) For the purposes of this section, Parliament is in recess when neither House is sitting.

S. 16AB(8)  
substituted by  
No. 30/2016  
s. 50.

## Part 3A—Review of estimated financial statements

Pt 3A  
(Heading and  
s. 16B)  
inserted by  
No. 9/2000  
s. 6.

### 16B Review and report to Parliament on estimated financial statements

S. 16B  
inserted by  
No. 9/2000  
s. 6.

- (1) The Auditor-General must review each set of estimated financial statements and make a report to the Parliament as to whether it appears that—
- (a) the statements have been prepared on a basis consistent with the accounting policies on which they are stated to be based;
  - (b) the statements are consistent with the targets specified in the current financial policy objectives and strategies statement for each key financial measure specified in that statement;
  - (c) the statements have been properly prepared on the basis of the assumptions contained in the accompanying statement prepared in association with the statements under section 23K of the **Financial Management Act 1994**;
  - (d) the methodologies used to determine those assumptions are reasonable.

S. 16B(1)  
amended by  
No. 36/2003  
s. 19(a).

#### Note

Section 20 applies to reports under this section.

Note to  
s. 16B(1)  
inserted by  
No. 82/2012  
s. 189(3).

- (2) The Auditor-General must give each report under this section to the Minister a reasonable time before it is required to be laid before each House of the Parliament under subsection (3).



- (3) The Minister must cause each report under this section to be laid before each House of the Parliament with the estimated financial statements to which it relates<sup>1</sup>.
- (4) For the purposes of a review and report under this section, the Minister must provide the Auditor-General with access to any documents requested by the Auditor-General, including any drafts of the estimated financial statements.
- (5) Nothing in this section entitles the Auditor-General to question the merits of policy objectives of the Government.
- (6) In this section—

*current financial policy objectives and strategies statement*, in relation to a set of estimated financial statements for a financial year, means the financial policy objectives and strategies statement prepared under section 23E of the **Financial Management Act 1994** in association with the budget for that financial year;

*Minister* means the Minister who prepares the estimated financial statements;

*policy objectives* has the same meaning as in section 16(6).

S. 16B(6)  
def. of  
*policy objectives*  
amended by  
No. 36/2003  
s. 19(b).

## **Part 3B—Further functions and powers of Auditor-General**

**Pt 3B  
(Heading and  
ss 16C–16G)  
inserted by  
No. 36/2003  
s. 20.**

### **16C Audits in relation to financial benefits given by the State or authorities**

**S. 16C  
inserted by  
No. 36/2003  
s. 20.**

- (1) The Auditor-General may conduct any audit he or she considers necessary to determine whether a financial benefit given by the State or an authority to a person or body that is not an authority has been applied economically, efficiently and effectively for the purposes for which it was given.
- (2) The following provisions apply to an audit under this section as if references in those provisions to an authority were references to the person or body that received the financial benefit—
  - (a) section 11 (power to call for persons and documents);
  - (b) section 11A (Auditor-General to report to Victorian Inspectorate on calling for persons or documents);
  - (c) section 11B (requirement given to person under 16 years);
  - (d) section 11C (legal advice and representation);
  - (e) section 11E (further provisions relating to appearances);
  - (f) section 11F (audio or video recording of compulsory appearances);

**S. 16C(2)  
substituted by  
No. 82/2012  
s. 190.**

- (g) section 11G (protection of legal practitioners and witnesses);
  - (h) section 12 (access to information);
  - (i) section 13 (auditing standards);
  - (j) section 14 (offences);
  - (k) section 16 (audit reports to Parliament);
  - (l) section 16F (giving information during the course of an audit);
  - (m) Part 4A (notifications and information sharing);
  - (n) section 20 (content of reports);
  - (o) section 20A (improper use of information).
- (3) In this section—

*financial benefit* means any form of financial benefit, other than a financial benefit received by a person or body as consideration for goods or services provided by them under an agreement entered into on commercial terms.

**Example**

An example of a financial benefit is a payment made by a department to a body that is not obliged to provide goods or services of approximately equal value directly back to the department in return.

S. 16D  
inserted by  
No. 36/2003  
s. 20.

**16D Acting as auditor under the Corporations Act**

- (1) The Auditor-General may accept appointment under the Corporations Act as the auditor of a State company.
- (2) The Auditor-General may charge fair and reasonable fees in respect of the appointment.
- (3) This section does not limit the Auditor-General's functions under section 16E.

- (4) In this section, *State company* means a company of which the State or an authority has control.

**Note**

Section 3 defines *control* by reference to the relevant accounting standard.

**16E Other auditing services for authorities**

S. 16E  
inserted by  
No. 36/2003  
s. 20.

- (1) At the request of an authority, the Auditor-General may enter into an arrangement with the authority for the provision by the Auditor-General of other auditing services to the authority.
- (2) An authority may make a request under subsection (1) only with the approval of the Minister responsible for the authority.
- (3) An arrangement may provide for the payment of fair and reasonable fees to the Auditor-General in respect of his or her services.

**16F Information to public officials during course of audit**

S. 16F  
inserted by  
No. 36/2003  
s. 20.

- (1) At any time during the conduct of an audit, the Auditor-General may give written information to a person or body referred to in subsection (2) concerning any matter that the Auditor-General considers warrants urgent investigation or attention.
- (2) The persons or bodies to whom information may be given under this section are—
- (a) a Minister;
  - (b) the Chief Commissioner of Police;
  - (c) an authority;
  - (d) a member, officer or employee of an authority;

- (e) the holder of an office established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister.
- (3) If the Auditor-General gives information under this section, he or she must—
  - (a) notify the Premier; and
  - (b) include a statement in the audit report that he has given information to a person or body under this section during the conduct of the audit.

S. 16FA  
inserted by  
No. 30/2016  
s. 99.

#### **16FA Collaboration with other Auditors-General**

- (1) The Auditor-General may collaborate with the Auditor-General of another jurisdiction with respect to any matter that is the subject of an agreement between Victoria and the other jurisdiction relating to the provision by Victoria of funding for, or expenditure on, that matter.
- (2) Subsection (1) does not empower the Auditor-General to conduct a joint audit with the Auditor-General of another jurisdiction.
- (3) Despite anything to the contrary in this Act, the Auditor-General may share with the Auditor-General of another jurisdiction any information collected in the course of an audit under this Act or any other Act other than information which is—
  - (a) contained in a cabinet document within the meaning of section 28 of the **Freedom of Information Act 1982**; or
  - (b) information which relates to matters of a business, commercial or financial nature, the disclosure of which would be likely to unreasonably expose a person, an authority or an associated entity to disadvantage.

- (4) Information provided under subsection (3) that has not already been published may only be provided on the condition that it is not disclosed or published by the Auditor-General to whom it is provided.
- (5) The Auditor-General must report on the sharing of information in accordance with this section—
  - (a) in the relevant report of the audit in the course of which the information was obtained; or
  - (b) if the sharing of information occurs after the relevant report of the audit has been prepared, in the next annual report.
- (6) In this section—

*another jurisdiction* means—

  - (a) the Commonwealth; or
  - (b) another Australian State; or
  - (c) an Australian Territory.

### **16G Other financial audits**

- (1) At the request of a person or body that is not an authority, the Auditor-General may enter into an arrangement with that person or body to audit its financial statements.
- (2) Before entering into an arrangement, the Auditor-General must be satisfied that—
  - (a) the person or body exists for a public purpose; and
  - (b) it is practicable and in the public interest for the Auditor-General to audit the financial statements of the person or body.
- (3) An arrangement may provide for the payment of fair and reasonable fees to the Auditor-General in respect of the audit.

S. 16G  
inserted by  
No. 36/2003  
s. 20.

**S. 16G(4)**  
substituted by  
No. 82/2012  
s. 191.

- (4) The following provisions apply to an audit by the Auditor-General under an arrangement made under this section as if references in those provisions to an authority were references to the person or body with whom or which the arrangement is made—
- (a) section 8 (audit of authorities);
  - (b) section 9 (audit opinions on financial statements);
  - (c) section 11 (power to call for persons and documents);
  - (d) section 11A (Auditor-General to report to Victorian Inspectorate on calling for persons or documents);
  - (e) section 11B (requirement given to person under 16 years);
  - (f) section 11C (legal advice and representation);
  - (g) section 11E (further provisions relating to appearances);
  - (h) section 11F (audio or video recording of compulsory appearances);
  - (i) section 11G (protection of legal practitioners and witnesses);
  - (j) section 12 (access to information);
  - (k) section 13 (auditing standards);
  - (l) section 14 (offences);
  - (m) section 16 (audit reports to Parliament);
  - (n) section 16F (giving information during the course of an audit);

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- (o) Part 4A (notifications and information sharing);
- (p) section 20 (content of reports);
- (q) section 20A (improper use of information).



## **Part 4—Audit of Victorian Auditor-General's Office**

### **17 Independent auditor to audit Victorian Auditor-General's Office**

S. 17(1)  
amended by  
No. 93/1997  
s. 19(1)(a).

- (1) A person may be appointed by resolution of the Legislative Council and Legislative Assembly, on the recommendation of the Parliamentary Committee, as an independent auditor of the Victorian Auditor-General's Office.
- (2) An appointment—
  - (a) must not be made for a period exceeding 3 years, but may be renewed; and
  - (b) may provide for the payment of remuneration.
- (3) Remuneration payable under the appointment shall be paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.
- (4) The function of the independent auditor is to carry out audits of the Victorian Auditor-General's Office in accordance with this Part.
- (5) Subject to any directions given by the Parliamentary Committee, the provisions specified in subsection (6) apply in relation to an audit by the independent auditor under this Part as if—
  - (a) a reference in those provisions to the Auditor-General were a reference to the independent auditor; and
  - (b) a reference to a compulsory appearance were a reference to an appearance of a person before the independent auditor, or person authorised by the independent auditor, in accordance with a requirement in writing under section 11(1); and

S. 17(5)  
amended by  
No. 93/1997  
s. 19(1)(a)(b),  
substituted by  
No. 82/2012  
s. 192(1).

- (c) a reference to a voluntary appearance were a reference to an appearance of a person before the independent auditor in the course of the performance of the independent auditor's functions under this Act, other than a compulsory appearance; and
  - (d) a reference to the presiding officer were a reference to the independent auditor or other person before whom the person appearing is appearing.
- (6) For the purposes of subsection (5), the following provisions are specified—
- (a) section 11 (power to call for persons and documents);
  - (b) section 11B (requirement given to person under 16 years);
  - (c) section 11C (legal advice and representation);
  - (d) section 11E (further provisions relating to appearances);
  - (e) section 11F, except section 11F(7) (audio or video recording of compulsory appearances);
  - (f) section 11G (protection of legal practitioners and witnesses);
  - (g) section 12 (access to information);
  - (h) section 14 (offences).

S. 17(6)  
inserted by  
No. 82/2012  
s. 192(1).

## **18 Report of independent auditor**

- (1) The independent auditor may make a report on an audit carried out under section 17.
- (2) A report under subsection (1) may include such information and such recommendations as the independent auditor thinks fit for the more

effective, efficient and economic operation of the Victorian Auditor-General's Office.

- (3) The independent auditor must not make a report of an audit under this section unless—
- (a) at least 10 business days before making the report, the independent auditor—
    - (i) has given the Auditor-General a copy of the report or a summary of the findings and proposed recommendations; and
    - (ii) has, in writing, asked the Auditor-General for submissions or comments before a specified date, being at least 5 business days after the report is given to the Auditor-General;
  - (b) has included in the report any submissions or comment received, before the specified date, from the Auditor-General or a summary, in an agreed form, of any such submissions or comment.
- (4) The independent auditor must, within 7 sitting days after making the report, transmit the report to each House of the Parliament.
- (5) Section 20 applies to a report under this section as if—
- (a) a reference in that section to the Auditor-General were a reference to the independent auditor (other than a reference in section 20(1)(a) to any audit by the Auditor-General); and
  - (b) a reference in section 20(2) to an authority or a department referred to in section 16(3)(a) were a reference to the Victorian Auditor-General's Office; and

S. 18(3)(a)  
amended by  
No. 36/2003  
s. 21(1)(a).

S. 18(3)(a)(ii)  
amended by  
No. 36/2003  
s. 21(1)(b).

S. 18(5)  
inserted by  
No. 82/2012  
s. 192(2).

(c) a reference in section 20(2) to the authority or department head were a reference to the Auditor-General.

**19 Performance audit of Auditor-General and Victorian Auditor-General's Office**

S. 19  
(Heading)  
inserted by  
No. 36/2003  
s. 21(2).

(1) An audit shall be conducted under this section at least once every 3 years to determine whether the Auditor-General and the Victorian Auditor-General's Office are achieving their objectives effectively and doing so economically and efficiently and in compliance with this Act.

S. 19(1)  
amended by  
No. 36/2003  
s. 21(3)(a).

(2) An audit under this section shall be conducted by a suitably qualified person appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Parliamentary Committee.

S. 19(2)  
amended by  
Nos 93/1997  
s. 19(2)(a),  
36/2003  
s. 21(3)(b).

(2A) None of the following can be appointed to conduct an audit under this section—

S. 19(2A)  
inserted by  
No. 36/2003  
s. 21(4).

(a) a person engaged by the Auditor-General under section 7F;

(b) a person who holds a delegation from the Auditor-General under section 7G;

(c) the independent auditor.

(3) A person appointed under this section—

S. 19(3)  
amended by  
No. 36/2003  
s. 21(5)(a).

(a) shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and

S. 19(3)(a)  
amended by  
No. 93/1997  
s. 19(2)(a).

- (b) in conducting the audit, must comply with directions as to the audit given by that Committee.
- S. 19(4)**  
amended by  
No. 36/2003  
s. 21(5)(b).
- (4) The remuneration payable to a person appointed under this section shall be paid from money appropriated to the Parliament.
- S. 19(5)**  
amended by  
Nos 93/1997  
s. 19(2)(a)(b),  
36/2003  
s. 21(5)(c),  
substituted by  
No. 82/2012  
s. 193(1).
- (5) Subject to any directions given by the Parliamentary Committee, the provisions specified in subsection (5A) apply in relation to an audit by the independent auditor under this Part as if—
- (a) a reference in those provisions to the Auditor-General were a reference to the person appointed under this section; and
- (b) a reference to a compulsory appearance were a reference to an appearance of a person before the person appointed under this section, or a person authorised by that person, in accordance with a requirement in writing under section 11(1); and
- (c) a reference to a voluntary appearance were a reference to an appearance of a person before the person appointed under this section in the course of the performance of that person's functions under this Act, other than a compulsory appearance; and
- (d) a reference to the presiding officer were a reference to the person appointed under this section or other person before whom the person appearing is appearing.
- S. 19(5A)**  
inserted by  
No. 82/2012  
s. 193(1).
- (5A) For the purposes of subsection (5), the following provisions are specified—
- (a) section 11 (power to call for persons and documents);
- (b) section 11B (requirement given to person under 16 years);

- (c) section 11C (legal advice and representation);
  - (d) section 11E (further provisions relating to appearances);
  - (e) section 11F, except section 11F(7) (audio or video recording of compulsory appearances);
  - (f) section 11G (protection of legal practitioners and witnesses);
  - (g) section 12 (access to information);
  - (h) section 14 (offences).
- (6) A person appointed under this section must not make a report of an audit under this section unless—
- (a) at least 20 business days before making the report, the person has given the Auditor-General a summary of findings and proposed recommendations in relation to the audit; and
  - (b) has, in writing, asked the Auditor-General for submissions or comment before a specified date, being at least 10 business days after the report is given to the Auditor-General.
- (7) The person must include in the report of an audit under this section any submissions or comment received, before the report is made, from the Auditor-General or a summary, in an agreed form, of any such submissions or comment.
- (8) The person, in a report of an audit under this section—
- (a) may include such information as he or she thinks desirable in relation to matters that are the subject of the audit; and
  - (b) must set out the reasons for opinions expressed in the report; and

**S. 19(6)**  
amended by  
**No. 36/2003**  
s. 21(5)(d)(f).

**S. 19(6)(a)**  
amended by  
**No. 36/2003**  
s. 21(5)(d)(ii).

**S. 19(6)(b)**  
amended by  
**No. 36/2003**  
s. 21(5)(d)(iii).

**S. 19(7)**  
amended by  
**No. 36/2003**  
s. 21(5)(e).

**S. 19(8)**  
amended by  
**No. 36/2003**  
s. 21(5)(e).

S. 19(9)  
amended by  
No. 36/2003  
s. 21(5)(e).

(c) may include any recommendations arising out of the audit as he or she thinks fit to make.

(9) The person must cause a copy of the report to be transmitted to each House of the Parliament within 7 sitting days of that House after making the report.

S. 19(10)  
inserted by  
No. 82/2012  
s. 193(2).

(10) Section 20 applies to a report under this section as if—

(a) a reference in that section to the Auditor-General were a reference to the person appointed under this section (other than a reference in section 20(1)(a) to any audit by the Auditor-General); and

(b) a reference in section 20(2) to an authority or a department referred to in section 16(3)(a) were a reference to the Victorian Auditor-General's Office; and

(c) a reference in section 20(2) to the authority or department head were a reference to the Auditor-General.

## Part 4A—Notifications and information sharing

Pt 4A  
(Heading and  
ss 19A–19C)  
inserted by  
No. 82/2012  
s. 194.

### 19A Mandatory notification of corrupt conduct to IBAC

S. 19A  
inserted by  
No. 82/2012  
s. 194.

- (1) Subject to any exemption notice issued under section 57B of the **Independent Broad based Anti-corruption Commission Act 2011**, the Auditor-General must notify the IBAC of any matter that the Auditor-General suspects on reasonable grounds involves corrupt conduct occurring or having occurred, that the Auditor-General becomes aware of in the performance of functions or the exercise of powers under this Act or any other Act.
- (2) Subsection (1) applies despite anything to the contrary in section 12(2).
- (3) This section does not apply to anything referred to the Auditor-General by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**.
- (4) If the Auditor-General considers at any time that anything referred to the Auditor-General by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct, the Auditor-General must inform the IBAC.
- (5) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.

S. 19A(1)  
substituted by  
No. 30/2016  
s. 51(1).

S. 19A(3)  
amended by  
No. 82/2012  
s. 305(d).

S. 19A(4)  
amended by  
Nos 82/2012  
s. 305(d),  
30/2016  
s. 51(2).



S. 19B  
inserted by  
No. 82/2012  
s. 194.

### **19B Mandatory notification to Victorian Inspectorate**

(1) The Auditor-General must notify the Victorian Inspectorate of any matter of which the Auditor-General becomes aware in the performance of functions under this Act or any other Act that—

(a) appears to involve—

(i) misconduct of or in relation to the IBAC or IBAC personnel; or

S. 19B(1)(a)(i)  
amended by  
No. 30/2016  
s. 52.

(ii) misconduct (other than corrupt conduct) of an Ombudsman officer, a VAGO officer, the Chief Examiner or an Examiner; and

S. 19B(1)(a)(ii)  
amended by  
No. 30/2016  
s. 52.

(b) appears to be relevant to the functions of the Victorian Inspectorate.

(2) Subsection (1) applies despite anything to the contrary in section 12(2).

S. 19C  
inserted by  
No. 82/2012  
s. 194.

### **19C Communication of information to specified persons or bodies**

(1) At any time, the Auditor-General may provide or disclose any information received or obtained in the course of the performance of duties and functions or the exercise of powers under this Act or any other Act to a person or body specified in subsection (2) if the Auditor-General considers that—

(a) the information is relevant to the performance of the duties and functions or the exercise of the powers of the person or body; and

(b) it is appropriate for the information to be brought to the attention of the person or body, having regard to the nature of the information.

- (1A) Subsection (1) applies to the provision or disclosure of information specified in that subsection despite anything to the contrary in section 12(2) except in respect of information that, but for section 12(1), could not have been lawfully provided or disclosed because Cabinet confidentiality applies. S. 19C(1A) inserted by No. 30/2016 s. 53(1).
- (2) For the purpose of subsection (1), the following persons and bodies are specified—
- (a) the IBAC;
  - (b) the Victorian Inspectorate;
  - (c) the Ombudsman;
  - (d) Victoria Police; S. 19C(2)(d) substituted by No. 30/2016 s. 53(2).
  - (e) the Director of Public Prosecutions;
  - (f) the Commissioner for Privacy and Data Protection established under section 95 of the **Privacy and Data Protection Act 2014**; S. 19C(2)(f) substituted by No. 30/2016 s. 53(3).
  - (g) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**; S. 19C(2)(g) inserted by No. 30/2016 s. 53(3).
  - (h) the Chief Municipal Inspector appointed under section 223A of the **Local Government Act 1989**; S. 19C(2)(h) inserted by No. 30/2016 s. 53(3).
  - (i) a municipal monitor appointed under section 223CA of the **Local Government Act 1989**; S. 19C(2)(i) inserted by No. 30/2016 s. 53(3).
  - (j) the Victorian WorkCover Authority within the meaning of the **Workplace Injury Rehabilitation and Compensation Act 2013**; S. 19C(2)(j) inserted by No. 30/2016 s. 53(3).

S. 19C(2)(k)  
inserted by  
No. 30/2016  
s. 53(3).

(k) the Environment Protection Authority established under section 5 of the **Environment Protection Act 1970**;

S. 19C(2)(l)  
inserted by  
No. 30/2016  
s. 53(3).

(l) the Racing Integrity Commissioner established under section 37A of the **Racing Act 1958**;

S. 19C(2)(m)  
inserted by  
No. 30/2016  
s. 53(3).

(m) the Australian Federal Police constituted under section 6 of the Australian Federal Police Act 1979 of the Commonwealth;

S. 19C(2)(n)  
inserted by  
No. 30/2016  
s. 53(3).

(n) the police force or police service (however described) of another State or a Territory;

S. 19C(2)(o)  
inserted by  
No. 30/2016  
s. 53(3).

(o) any other prescribed person or body.

S. 19C(3)  
substituted by  
No. 30/2016  
s. 53(4).

(3) Subsection (1) applies subject to any other restriction on the provision or disclosure of information under this Act or any other Act or any Commonwealth Act.

(4) Nothing in this section affects section 16F.

## Part 5—General

### 20 Content of reports

- (1) The Auditor-General must not include in a report under this Act or any other Act—
  - (a) any information that the Auditor-General considers would prejudice any audit by the Auditor-General, any criminal proceedings or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate; or
  - (b) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
  - (c) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.
- (2) If the Auditor-General intends to include in a report under this Act or any other Act a comment or an opinion that is adverse to any person who is to be named in the report and who is an officer or employee in an authority or a department referred to in section 16(3)(a), the authority or department head must, after receiving a copy of the proposed report or the relevant part of the proposed report under that section, give the person a reasonable opportunity to respond to the authority or department head in relation to the adverse material.
- (3) The Auditor-General must not include in a report under this Act or any other Act the name of any person who is not the subject of any adverse comment or opinion unless the Auditor-General states in the report that the person is not the subject of any adverse comment or opinion.

S. 20  
amended by  
No. 53/1999  
s. 19(a)  
repealed by  
No. 36/2003  
s. 22,  
new s. 20  
inserted by  
No. 82/2012  
s. 195.

## 20A Improper use of information

S. 20A  
inserted by  
No. 93/1997  
s. 20,  
amended by  
No. 36/2003  
s. 23(1)(2) (ILA  
s. 39B(1)).

S. 20A(c)  
substituted by  
No. 53/1999  
s. 19(b).

S. 20A(d)  
substituted by  
No. 53/1999  
s. 19(b).

S. 20A(e)  
substituted by  
No. 53/1999  
s. 19(b).

- (1) A person who is, or has been—
  - (a) the Auditor-General; or
  - (b) an officer or employee of the Victorian Auditor-General's Office; or
  - (c) a person engaged under section 7F to assist the Auditor-General; or
  - (d) an officer or employee of a person or firm, or a partner of a firm, engaged under section 7F to assist the Auditor-General; or
  - (e) a person to whom functions or powers have been delegated under section 7G—

must not make improper use of, or, except when carrying out functions under this Act, divulge or communicate, any information acquired during the course of, or as a result of, carrying out those functions.

Penalty: 50 penalty units, in the case of a natural person;  
250 penalty units, in the case of a body corporate.

S. 20A(2)  
inserted by  
No. 36/2003  
s. 23(2).

S. 20A(2)(a)  
amended by  
No. 30/2016  
s. 100(1).

- (2) A person who receives a proposed report, or part of a proposed report, of the Auditor-General under this Act must not disclose any information contained in it except—
  - (a) where the person is an officer or employee of an authority, in the course of performing the person's official duties; or

(b) after the information has been made public in a report by the Auditor-General.

Penalty: 50 penalty units, in the case of a natural person;  
250 penalty units, in the case of a body corporate.

(3) A person to whom information is given under sections 15, 16F or 19C must not disclose it except—

S. 20A(3) inserted by No. 36/2003 s. 23(2), amended by No. 30/2016 s. 100(2)(a).

(a) in the course of performing the person's official duties where the person received the information pursuant to section 16F or 19C;  
or

S. 20A(3)(a) amended by No. 30/2016 s. 100(2)(b).

(b) after the information has been made public in a report by the Auditor-General where the person received the information pursuant to section 15.

S. 20A(3)(b) amended by No. 30/2016 s. 100(2)(c).

Penalty: 50 penalty units, in the case of a natural person;  
250 penalty units, in the case of a body corporate.

(4) Subsection (1) does not apply to the provision or disclosure of information by the Auditor-General in accordance with section 16F or 19C.

S. 20A(4) inserted by No. 30/2016 s. 54.

## **20B Exemption from Freedom of Information Act 1982**

S. 20B inserted by No. 93/1997 s. 21.

\* \* \* \* \*

S. 20B(1) repealed by No. 53/1999 s. 19(c)

- (2) The **Freedom of Information Act 1982** does not apply to a document of an agency to the extent to which the document discloses information about—
- (a) an audit that is, has been or is to be, conducted under this or any other Act;
  - (b) a report of an audit conducted under this or any other Act;
  - (c) a function of an agency that is, has been or is to be carried out under the **Gambling Regulation Act 2003**.
- (3) In subsection (2), *agency* means—
- (a) the Auditor-General; or
  - (b) the Victorian Auditor-General's office.

S. 20B(2)(c)  
substituted by  
No. 114/2003  
s. 12.1.3  
(Sch. 6  
item 1).

## 21 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

S. 21(2)(3)  
repealed by  
No. 43/1995  
s. 14.

\* \* \* \* \*

## Part 6—Transitional provisions

### 21A Commencement day

In this Part—

*commencement day* means the day on which section 10 of the **Audit (Amendment) Act 1999** comes into operation.

S. 21A  
inserted by  
No. 53/1999  
s. 20.

\* \* \* \* \*

S. 22  
substituted by  
No. 53/1999  
s. 21,  
repealed by  
No. 30/2016  
s. 101.

\* \* \* \* \*

S. 23  
repealed by  
No. 30/2016  
s. 101.

\* \* \* \* \*

New s. 24  
inserted by  
No. 93/1997  
s. 22,  
substituted by  
No. 53/1999  
s. 22,  
repealed by  
No. 30/2016  
s. 101.

### 25 Transfer of Audit Victoria staff

- (1) On and from the commencement day, every person who was an officer or employee of Audit Victoria immediately before that day—
  - (a) ceases to be an officer or employee of Audit Victoria; and
  - (b) is deemed to be employed in the Victorian Auditor-General's Office under Part 3 of the **Public Sector Management and Employment Act 1998**; and

New s. 25  
inserted by  
No. 93/1997  
s. 22,  
substituted by  
No. 53/1999  
s. 22.



- (c) is entitled to remuneration and other terms and conditions determined by the Auditor-General to be no less favourable than those that the person received or was entitled to receive immediately before that day as such an officer or employee; and
- (d) retains any entitlement to long service leave, annual leave, sick leave or maternity leave accrued or accruing to the person immediately before that day.

- (2) If an officer or employee referred to in subsection (1) was, immediately before the commencement day, an officer within the meaning of the **State Superannuation Act 1988**, they continue, subject to that Act, to be an officer within the meaning of that Act while employed under Part 3 of the **Public Administration Act 2004**.
- (3) A person is not entitled to any compensation as a result of the person ceasing to be an officer or employee of Audit Victoria by virtue of this section.

S. 25(2)  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 17.2).

New s. 26  
inserted by  
No. 93/1997  
s. 23,  
substituted by  
No. 53/1999  
s. 22,  
repealed by  
No. 30/2016  
s. 101.

S. 27  
inserted by  
No. 9/2000  
s. 8,  
repealed by  
No. 30/2016  
s. 101.

\* \* \* \* \*

\* \* \* \* \*

\* \* \* \* \*

S. 28  
inserted by  
No. 36/2003  
s. 24,  
repealed by  
No. 30/2016  
s. 101.

**29 Transitional provisions—Integrity and  
Accountability Legislation Amendment Act 2012**

S. 29  
inserted by  
No. 82/2012  
s. 196.

- (1) Section 11, as amended by section 186 of the amending Act, applies to a requirement given to a person under section 11(1) on or after the day on which section 186 of the amending Act comes into operation, including a requirement in relation to an audit begun before that day.
- (2) Sections 11A and 11B apply in relation to a requirement given to a person under section 11(1) on or after the day on which section 187 of the amending Act comes into operation, including a requirement in relation to an audit begun before that day.
- (3) A requirement given under section 11(1) to a person who is under the age of 16 years that was in force immediately before the day on which section 187 of the amending Act comes into operation ceases to have any force or effect on and from that day.
- (4) Section 11C applies on and after the day on which section 187 of the amending Act comes into operation, including in relation to an audit begun before that day.
- (5) Sections 11D, 11E, 11F and 11G apply to a compulsory appearance or voluntary appearance (as the case requires) on or after the day on which section 187 of the amending Act comes into operation, including a compulsory appearance or voluntary appearance in relation to an audit begun before that day.

(6) Section 20 applies to a report made on or after the day on which section 195 of the amending Act comes into operation, including a report in relation to an audit conducted or begun before that day.

(7) In this section—

*amending Act* means the **Integrity and Accountability Legislation Amendment Act 2012**.

Pt 7 (Heading and ss 24–26) repealed by No. 43/1995 s. 14.

\* \* \* \* \*



## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 19 November 1993*

*Legislative Council: 29 March 1994*

The long title for the Bill for this Act was "A Bill to provide for the office of Auditor-General and the audit of public accounts, to amend, and repeal, the **Audit Act 1958**, to repeal or amend certain other Acts and for other purposes."

The **Audit Act 1994** was assented to on 27 April 1994 and came into operation as follows:

Part 1 (sections 1–3) on 27 April 1994: section 2(1); rest of Act on 1 July 1994: section 2(2).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Audit Act 1994** by Acts and subordinate instruments.

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### **Local Government (Further Amendment) Act 1995, No. 33/1995**

*Assent Date:* 6.6.95  
*Commencement Date:* All of Act (except ss 4, 5) on 6.6.95: s. 2(1); ss 4, 5 on 1.7.95: s. 2(2)  
*Current State:* All of Act in operation

### **Financial Management and Audit Acts (Amendment) Act 1995, No. 43/1995**

*Assent Date:* 14.6.95  
*Commencement Date:* Ss 11–14 on 14.6.95: s. 2(6)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

### **Audit (Amendment) Act 1997, No. 93/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* Ss 9, 17, 21, 22 on 16.12.97: s. 2(1); ss 4–8, 10–16, 18–20, 23 on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

### **Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 3 on 16.12.97: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

### **Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

### **Audit (Amendment) Act 1999, No. 53/1999**

*Assent Date:* 14.12.99  
*Commencement Date:* Ss 6–22 on 1.1.00: Government Gazette 23.12.99 p. 2764  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

### **Financial Management (Financial Responsibility) Act 2000, No. 9/2000**

*Assent Date:* 18.4.00  
*Commencement Date:* Ss 6–8 on 19.4.00: s. 2  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

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**Audit (Amendment) Act 2003, No. 36/2003**

*Assent Date:* 11.6.03  
*Commencement Date:* Ss 5, 9, 11 on 12.6.03: s. 2(1); ss 3, 4, 6–8, 10, 12–24 on 1.7.03: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Parliamentary Committees Act 2003, No. 110/2003**

*Assent Date:* 9.12.03  
*Commencement Date:* S. 54 on 10.12.03: s. 2  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Gambling Regulation Act 2003, No. 114/2003**

*Assent Date:* 16.12.03  
*Commencement Date:* S. 12.1.3(Sch. 6 item 1) on 1.7.04: Government Gazette 1.7.04 p. 1843  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Financial Management (Amendment) Act 2004, No. 43/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* S. 15 on 17.6.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 17) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* Ss 15, 16 on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Commercial Arbitration Act 2011, No. 50/2011**

*Assent Date:* 18.10.11  
*Commencement Date:* S. 46(Sch. item 1) on 17.11.11: Special Gazette (No. 369) 15.11.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 184–196 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; s. 305 on 11.2.13: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

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**Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014**

*Assent Date:* 27.6.14  
*Commencement Date:* S. 33(Sch. item 3) on 30.6.14: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

**Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016**

*Assent Date:* 31.5.16  
*Commencement Date:* Ss 50, 51(2), 52–54, 90–101 on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1; s. 51(1) on 1.12.16: Special Gazette (No. 194) 21.6.16 p. 1  
*Current State:* This information relates only to the provision/s amending the **Audit Act 1994**

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### **3 Amendments Not in Operation**

There are no amendments which were Not in Operation at the date of this publication.

#### 4 Explanatory details

- <sup>1</sup> S. 16B(3): Section 27E of the **Financial Management Act 1994** requires the Minister to cause the estimated financial statements for a financial year to be laid before the Legislative Assembly on or before the day that the second readings of the annual appropriation Bills for that year are moved and the Legislative Council on that day or the next sitting day.