

PARLIAMENT OF VICTORIA

Audit Amendment Bill 2018

TABLE OF PROVISIONS

<i>Clause</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	2
3 Principal Act	2
Part 2—Principal Act amended	3
4 Purposes amended	3
5 Definitions	3
6 Objectives	8
7 Section 3B amended	9
8 New section 3C inserted	10
9 Parts 2, 3, 3A, 3B, 4, 4A, 5 and 6 substituted	10
Part 3—Consequential amendments to other Acts	90
Division 1—Victorian Inspectorate Act 2011	90
10 Definitions	90
11 Functions of the Victorian Inspectorate	90
12 Coercive questioning	90
13 Complaints	91
14 Own motion investigation	91
15 Conduct of investigation	91
16 Legal representation of witnesses and other persons	91
17 Advice to a complainant	91
18 Matters to be included in annual report	92
Division 2—Other consequential amendments	92
19 Health (Commonwealth State Funding Arrangements) Act 2012	92
20 Health Services Act 1988	92
21 Independent Broad-based Anti-corruption Commission Act 2011	92
22 Mental Health Act 2014	92
23 Parliamentary Committees Act 2003	93
24 Public Health and Wellbeing Act 2008	93

<i>Clause</i>	<i>Page</i>
Part 4—Repeal of amending Act	94
25 Repeal of amending Act	94
<hr/> <hr/>	
Endnotes	95
1 General information	95

PARLIAMENT OF VICTORIA

Introduced in the Assembly

Audit Amendment Bill 2018

A Bill for an Act to re-enact with amendments certain provisions of the **Audit Act 1994** and to extend and modernise the duties, powers and functions of the Auditor-General and the Victorian Auditor-General's Office, to clarify the rights and obligations of entities audited by the Auditor-General, to consequentially amend certain other Acts and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are to re-enact with amendments certain provisions of the **Audit Act 1994**—

5

- (a) to further facilitate the transparency of the expenditure of public funds and performance of public functions and the accountability of government to Parliament; and

- 5
- (b) to strengthen and clarify the duties, powers and functions of the Auditor-General and the Victorian Auditor-General's Office; and
- (c) to clarify the rights and obligations of entities audited by the Auditor-General; and
- (d) to improve the operational efficiency and effectiveness of the Auditor-General and the Victorian Auditor-General's Office; and
- 10 (e) to make consequential amendments to other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- 15 (2) If a provision of this Act does not come into operation before 1 July 2019, it comes into operation on that day.

3 Principal Act

In this Act, the **Audit Act 1994** is called the Principal Act.

Part 2—Principal Act amended

4 Purposes amended

For section 1(a), (aa), (ab), (b) and (c) of the Principal Act **substitute**—

- 5 "(a) the conduct of efficient and effective financial audits in the Victorian public sector; and
- 10 (b) the conduct of efficient and effective performance audits in the Victorian public sector, including the examination of specified uses of a financial benefit or property for a particular purpose; and
- 15 (c) the conduct of efficient and effective assurance reviews in the Victorian public sector, including the examination of specified uses of a financial benefit or property for a particular purpose; and
- 20 (d) the provision of reports on audits and assurance reviews by the Auditor-General to the Parliament; and
- (e) the administration and audit of the Victorian Auditor-General's Office."

5 Definitions

(1) In section 3(1) of the Principal Act—

- 25 (a) in the definition of *associated entity*—
- (i) for "an authority" (where twice occurring) **substitute** "a public body";
- (ii) for "the authority" (wherever occurring) **substitute** "the public body";

- 5 (b) the definitions of *authority*, *compulsory appearance*, *domestic partner*, *entity*, *independent auditor*, *presiding officer*, *spouse* and *voluntary appearance* are repealed;
- (c) in the definition of *legal practitioner* omit "within the meaning of the **Legal Profession Act 2004**";
- 10 (d) in the definition of *performance audit*—
- (i) in paragraph (a), for "19" substitute "82";
- (ii) in paragraph (b), after "section" insert "14 or";
- 15 (e) for the definition of *public body* substitute—
- "*public body* means any of the following but does not include an exempt entity—
- (a) a public sector body within the meaning of section 4(1) of the **Public Administration Act 2004**;
- 20 (b) a corporate body, or an unincorporated body, established for a public purpose by or under an Act, the Governor in Council or a Minister, including a university within the meaning of section 1.1.3(1) of the **Education and Training Reform Act 2006**;
- 25 (c) an entity of which the State or another public body has sole or joint control;
- 30

- 5
- (d) a Council within the meaning of the **Local Government Act 1989**;
- (e) a State owned enterprise within the meaning of the **State Owned Enterprises Act 1992**;
- 10
- (f) a trust body within the meaning of the **Financial Management Act 1994**;
- (g) a trustee of a trust in which the State is the principal beneficiary;
- (h) a trustee of a trust in which a Council is the principal beneficiary or several Councils are the principal beneficiaries;
- 15
- (i) a regional library under section 196 of the **Local Government Act 1989**;
- (j) a registered community health centre within the meaning of the **Health Services Act 1988**;
- 20
- (k) a body that provides aged care services that is registered under the **Health Services Act 1988**;
- 25
- (l) any other entity prescribed for the purposes of this definition;"
- (f) for paragraph (h) of the definition of **VAGO officer substitute**—
- "(h) an authorised person within the meaning of Part 7;"
- 30
- (g) in the definition of **VAGO premises** omit "or a VAGO officer";
- (h) in the definition of **Victorian Inspectorate Officer**, for "2011;" substitute "2011."
-

(2) In section 3(1) of the Principal Act **insert** the following definitions—

5 "**additional auditing and assurance standards**
 means standards made or formulated by a
 body performing comparable functions to the
 Auditing and Assurance Standards Board, as
 in force from time to time;

10 **assurance review** has the same meaning as a
 limited assurance engagement within the
 meaning of the auditing and assurance
 standards;

15 **auditing and assurance standards** means
 the standards made by the Auditing and
 Assurance Standards Board under section
 336 of the Corporations Act or formulated
 by the Board under section 227B of the
 ASIC Act, as in force from time to time;

20 **Auditing and Assurance Standards Board**
 means the Auditing and Assurance Standards
 Board established under section 227A of the
 ASIC Act;

25 **authorised person** means any of the following
 who are authorised by the Auditor-General
 under section 29—

- (a) a Deputy Auditor-General;
(b) a person acting in the office of
 Deputy Auditor-General;
(c) a senior VAGO officer;

30 **Department Head** has the same meaning as in
 section 4(1) of the **Public Administration
 Act 2004**;

draft specification means—

- 5
- (a) in relation to a performance audit conducted under section 14 or 15, a specification prepared for the purpose of consultation under section 17; and
 - 10 (b) in relation to a performance audit of the Auditor-General or the Victorian Auditor-General's Office under section 82, a specification prepared for the purpose of consultation with the Auditor-General under section 82(7);

entry notice means a notice served under section 44;

exempt entity means—

- 15
- (a) a department of the Parliament; or
 - (b) a court; or
 - (c) any other prescribed entity;

final specification means—

- 20
- (a) in relation to a performance audit conducted under section 14 or 15, a specification finalised under section 17(3); and
 - 25 (b) in relation to a performance audit of the Auditor-General or the Victorian Auditor-General's Office under section 82, a specification finalised under section 82(8);

independent financial auditor means a person appointed under section 79;

30 ***independent performance auditor*** means a person appointed under section 82 to audit the Auditor-General and the Victorian Auditor-General's Office;

information gathering notice means a notice served under section 30;

5 *public purpose audit arrangement* means an arrangement entered into by the Auditor-General with an entity that is not a public body under section 24;

senior VAGO officer means a person who holds a prescribed position or is a member of a class of prescribed positions;".

10 (3) Section 3(2) of the Principal Act is **repealed**.

(4) At the foot of section 3 of the Principal Act **insert**—

"**Note**

15 The **Electronic Transactions (Victoria) Act 2000** applies to the preparation and provision of reports, specifications, audit opinions and other documents under this Act."

6 Objectives

(1) In section 3A(1)(a) of the Principal Act, for "authorities" **substitute** "public bodies".

20 (2) For section 3A(1)(b), (c) and (ca) of the Principal Act **substitute**—

"(b) to determine whether—

25 (i) public bodies are achieving their objectives effectively, economically and efficiently and in compliance with all relevant Acts;

30 (ii) Victorian public sector operations and activities are being performed effectively, economically and efficiently and in compliance with all relevant Acts;

- 5 (iii) financial benefits or property given
by a public body to an associated entity
or other entity, or property otherwise
of an associated entity, are being
used effectively, economically and
efficiently for the particular purpose
that financial benefit or property is
given or otherwise used;
- 10 (c) to determine whether 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;
- 15 (ca) to ensure the Auditor-General has the
necessary powers when conducting an
audit or assurance review;".
- (3) In section 3A(1)(d) of the Principal Act,
for "his or her performance" **substitute**
"performance as the Auditor-General".

20 **7 Section 3B amended**

- (1) In the heading to section 3B of the Principal Act,
for "**Part 3**" **substitute** "**Parts 3, 4, 5, 6, 7 and 9**".
- 25 (2) In section 3B(1) of the Principal Act, for "Part 3
and section 16C" **substitute** "Parts 3, 4, 5, 6, 7
and 9".
- (3) In section 3B(2) of the Principal Act, for "Part 3
applies" **substitute** "Parts 3, 4, 5, 6, 7 and 9
apply".
- 30 (4) In section 3B(3) of the Principal Act, for "Part 3"
substitute "Parts 3, 4, 5, 6, 7 and 9".

8 New section 3C inserted

After section 3B of the Principal Act **insert—**

"3C Act binds the Crown

This Act binds the Crown—

- 5 (a) in right of the State of Victoria; and
(b) to the extent that the legislative power of the Parliament permits, in all its other capacities."

9 Parts 2, 3, 3A, 3B, 4, 4A, 5 and 6 substituted

10 For Parts 2, 3, 3A, 3B, 4, 4A, 5 and 6 of the Principal Act **substitute—**

"Part 2—Auditor-General and Victorian Auditor-General's Office

15 **Division 1—Acting Auditor-General and Deputy Auditor-General**

4 Acting appointment

- (1) The Governor in Council may appoint a person to act in the office of Auditor-General—
- 20 (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—
- 25 but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

- 5
- (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
- 10 (b) may terminate such 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
- 15 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
- 20 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 must perform
- 25 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)
- 30 must not be called into question on the ground that—
- (a) the occasion for the appointment has not arisen; or
- 35 (b) there is a defect or irregularity in or in connection with the appointment; or
-

- (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.
- 5 (7) A person acting in the office of the Auditor-General is entitled to remuneration payable at the same rate as is determined for the Auditor-General and is to be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly.
- 10 (8) A person acting in the office of Auditor-General, before undertaking the duties of office, must take an oath or affirmation of office before the Executive Council.
- 15 **5 Deputy Auditor-General**
- (1) A 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—
- 20 (a) 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
- 25 (b) while acting in that capacity, has all the powers, and must perform all the duties, of the Auditor-General.
- 30 (2) Subsection (1) does not apply if there is a person acting in the office of Auditor-General under section 4.

- 5
- (3) A 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 or affirmation of office before the Executive Council.
- (4) A Deputy Auditor-General, while acting as Auditor-General, is entitled to remuneration at the same rate as is determined for the Auditor-General.
- 10
- (5) A person acting as Deputy Auditor-General, while acting as Deputy Auditor-General, is entitled to remuneration at the same rate as is determined for the Deputy Auditor-General.

Division 2—Administration

15

6 Staff of Victorian Auditor-General's Office

20

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**.

7 Assistance for Auditor-General

25

The Auditor-General may engage any person or firm under contract to assist in the performance of any function of the Auditor-General other than the following—

- 30
- (a) a person appointed to conduct an independent financial audit of the Victorian Auditor-General's Office under section 79;
- (b) a person appointed as the independent performance auditor of the Auditor-General and the Victorian Auditor-General's Office under section 82.

8 Delegation

- 5
- (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—
- 10
- (a) the power to express an audit opinion under section 12; or
- (b) the power to make a report under section 19, 56, 57 or 60; or
- (c) this power of delegation.
- 15
- (2) The Auditor-General, by instrument, 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 11 on the financial statements of a public body only if the total expenditure disclosed in those financial statements does not exceed the threshold amount.
- 20
- (3) The Auditor-General cannot delegate any function or power to a person who holds an appointment under section 82.
- 25
- (4) For the purposes of subsection (2), the ***threshold amount*** is—
- 30
- (a) for financial statements in respect of the financial years, or any part of the financial years, commencing on 1 July 2017 and 1 July 2018—
\$10 000 000;

5 (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—

$$\$10\,000\,000 \times \frac{A}{B}$$

where—

10 **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
15 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
20 31 March 2018.

9 State indemnity

- (1) This section applies to—
- (a) the Auditor-General; and
 - (b) a Deputy Auditor-General; and
 - 25 (c) a person acting in the office of Auditor-General or Deputy Auditor-General; and
 - (d) an employee referred to in section 6.
- (2) The State must indemnify a person to whom
30 this section applies against any liability that the person incurs for anything done or omitted to be done in good faith—
-

- 5
- (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.
- 10
- (3) The indemnity does not cover a liability of a person to the extent to which the person is entitled to be indemnified against the liability by a person other than the State, whether under a contract of insurance or otherwise.

Part 3—Financial audits

15

10 Audit of public bodies

- (1) The financial statements of each public body must be audited by the Auditor-General—
- (a) from time to time; and
- (b) at least once in each year.
- 20
- (2) The Auditor-General may dispense with all or any part of an audit of the financial statements of a public body in any year.
- (3) The Auditor-General may audit any report of operations of a public body under section 45 of the **Financial Management Act 1994** to determine whether any performance indicators in the report of operations—
- 25
- (a) are relevant to any stated objectives of the public body; and
- 30
- (b) are appropriate for the assessment of the public body's actual performance; and

- (c) fairly represent the public body's actual performance.

11 Audit opinions on financial statements

- 5 (1) After auditing a public body's financial statements under section 10(1), the Auditor-General must express a written audit opinion on the financial statements to the public body.
- 10 (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.
- 15 (3) The Auditor-General must give a copy of each audit opinion on the financial statements of a public body to—
- (a) the Minister responsible for the public body; and
 - (b) the Minister administering this section if—
 - 20 (i) the audit opinion is a modified opinion; or
 - (ii) the audit opinion relates to a matter that the Auditor-General believes requires the attention of the Minister.
- 25

12 Audit opinion on annual financial report of the State

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

5 (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**.

13 Audit fees

10 (1) A public body 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 public body and expressing an audit opinion on them under section 11.

15 (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 12.

20 (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 19.

25 (4) If a public body or the Minister referred to in subsection (1), (2) or (3) disputes the reasonableness of an amount to be paid by the public body or Minister under this section, the dispute is to be referred to

arbitration under the **Commercial Arbitration Act 2011**.

Part 4—Performance audits

14 Performance audits

- 5 (1) The Auditor-General may conduct any performance audit the Auditor-General considers necessary to determine—
- 10 (a) whether a public body is achieving its objectives effectively, economically and efficiently and in compliance with all relevant Acts; or
- 15 (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 a public body) are performed effectively, economically and efficiently and in compliance with all relevant Acts.
- 20 (2) The Auditor-General must not conduct a performance audit of the Victorian Inspectorate under this section and, for that purpose, a reference to a public body in this section does not include the Victorian
- 25 Inspectorate.
- (3) A performance audit under this section is limited to considering the objectives and particular issues (if any) specified in—
- 30 (a) the final specification; or
- (b) if the final specification is amended, the amended specification.

15 Additional scope of performance audits in relation to the use of a financial benefit or property

- 5
- (1) The Auditor-General may conduct any performance audit the Auditor-General considers necessary to determine whether a financial benefit or property specified in subsection (2) has been used effectively, economically and efficiently for the particular purpose for which it was given.
- 10
- (2) For the purposes of subsection (1), the following are specified—
- 15
- (a) a financial benefit given to an associated entity by a public body for a particular purpose;
- (b) a financial benefit given to an entity (that is not a public body) by a public body for a particular purpose and the financial benefit is not given on commercial terms;
- 20
- (c) property given to an associated entity by a public body for a particular purpose;
- 25
- (d) property given to an entity (that is not a public body) by a public body for a particular purpose and the property is not given on commercial terms;
- 30
- (e) property of an associated entity and where a public body provides a financial benefit for a particular purpose in relation to that property;

- (f) property of an associated entity in which a public body holds a security interest for a particular purpose.

Example

5 An example of a financial benefit or property that is not given on commercial terms is a payment made by a public body to an entity that is not obliged to provide goods or services of approximately equal value directly back to the public body in return.

- 10 (3) A performance audit under this section is limited to considering the objectives and particular issues (if any) specified in—
 - (a) the final specification; or
 - 15 (b) if the final specification is amended, the amended specification.

16 Specifications for performance audits

- 20 (1) Subject to subsection (3), the Auditor-General must prepare a specification for any performance audit in accordance with sections 17 and 18 before calling for any information or exercising any powers under Part 7 in relation to the performance audit.
- 25 (2) The specification must set out the objectives of the audit, the entities included in the audit and the particular issues (if any) to be considered.
- 30 (3) Nothing in this section prevents a VAGO officer requesting information and a person providing information by consent at any time.

17 Consultation on draft specifications for performance audits

- 5 (1) Before finalising the specification for a performance audit the Auditor-General must consult with the following on a draft specification—
- (a) any public body that appears in the draft specification;
- 10 (b) the Parliamentary Committee, if any of the following apply—
- (i) the performance audit does not appear in the Auditor-General's annual plan prepared under section 73;
- 15 (ii) the performance audit appears in the Auditor-General's annual plan prepared under section 73 and is subject to a material change to any of the following—
- 20 (A) the objectives of the audit;
- (B) the entities included in the audit;
- (C) the particular issues (if any) to be considered;
- 25 (iii) the performance audit is conducted under section 15 and includes an associated entity or an entity that is not a public body;
- 30 (iv) the performance audit involves collaboration or information sharing with the Auditor-General of another jurisdiction under section 69;

- (v) the Parliamentary Committee requests that it be consulted;
- (c) any associated entity or other entity that is included in the draft specification if the draft specification is for a performance audit conducted under section 15.
- 5
- (2) The Auditor-General may consult with an associated entity or any other entity on a draft specification for a performance audit conducted under section 15.
- 10
- (3) If the Parliamentary Committee, public body, associated entity or other entity does not respond to a request for comment on a draft specification for a performance audit within 15 business days of receiving the request—
- 15
- (a) the Parliamentary Committee, public body, associated entity or other entity is to be taken to have no comment on the draft specification; and
- 20
- (b) the Auditor-General may finalise the specification.
- 18 Final specifications for performance audits and amending final specifications**
- 25
- (1) The Auditor-General must provide a final specification for a performance audit to any public body, associated entity or other entity that is included in the performance audit.
- (2) The Auditor-General may amend a final specification for a performance audit if the Auditor-General is satisfied the amendment is necessary to achieve the purpose of the performance audit.
- 30

- 5
- (3) The Auditor-General must amend a final specification for a performance audit if there is a material change to any of the following—
- (i) the objectives of the audit;
 - (ii) the entities included in the audit;
 - (iii) the particular issues (if any) to be considered.
- 10
- (4) Subject to subsection (7), if the Auditor-General amends a final specification for a performance audit, the Auditor-General must do the following before calling for any further information or exercising further powers under Part 7—
- 15
- (a) provide a copy of the amended specification to any public body, associated entity or other entity included in the amended specification;
 - (b) consult with any public body, associated entity or other entity that is included in the amended specification if there is a material change to any of the following—
- 20
- (i) the objectives of the audit;
 - (ii) the entities included in the audit;
 - (iii) the particular issues (if any) to be considered.
- 25
- (5) If the Auditor-General amends a final specification for a performance audit, the Auditor-General may consult with an associated entity or any other entity on the amended specification.
- 30

- 5 (6) If the public body, associated entity or other entity does not provide comments under subsection (4) on the amended specification within 15 business days of receiving the request—
- (a) the public body, associated entity or other entity is to be taken to have no comment on the amended specification; and
- 10 (b) the Auditor-General may continue to call for any information or exercise any powers under Part 7 in relation to the performance audit.
- 15 (7) Nothing in this section prevents a VAGO officer requesting information and a person providing information by consent at any time.

Part 5—Assurance reviews

19 Assurance reviews of estimated financial statements

- 20 (1) The Auditor-General must conduct an assurance review of each set of estimated financial statements and make a report to the Parliament as to whether it appears that—
- 25 (a) the statements have been prepared on a basis consistent with the accounting policies on which they are stated to be based; and
- 30 (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; and

- 5 (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**; and
- (d) the methodologies used to determine those assumptions are reasonable.
- 10 (2) The Auditor-General must give each report under subsection (1) to the Minister a reasonable time before it is required to be laid before each House of the Parliament under subsection (3).
- 15 (3) The Minister must cause each report under subsection (1) to be laid before each House of the Parliament with the estimated financial statements to which it relates.

Note

20 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

25 that year are moved and the Legislative Council on that day or the next sitting day.

- 30 (4) For the purposes of an assurance review and report under subsection (1), 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) 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.

20 Auditor-General may conduct assurance review

(1) The Auditor-General may conduct an assurance review of a particular aspect of any of the following if the Auditor-General considers it necessary to achieve the objectives of this Act—

- (a) the operations or activities of a public body;
- (b) 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 a public body);
- (c) subject to section 21, the use of a financial benefit or property that is specified in section 21(2) for a particular purpose.

(2) The Auditor-General may conduct an assurance review with respect to financial statements or performance of the whole or any part of the operations or activities included in subsection (1).

- (3) The Auditor-General must not conduct an assurance review of the Victorian Inspectorate, other than an assurance review of estimated financial statements.

5

21 Additional scope of assurance reviews in relation to the use of a financial benefit or property

- (1) The Auditor-General may conduct any assurance review the Auditor-General considers necessary to determine whether a financial benefit or property specified in subsection (2) has been used effectively, economically and efficiently for the particular purpose for which it was given.
- 10
- (2) For the purposes of subsection (1), the following are specified—
- 15
- (a) a financial benefit given to an associated entity by a public body for a particular purpose;

20

 - (b) a financial benefit given to an entity (that is not a public body) by a public body for a particular purpose and the financial benefit is not given on commercial terms;

25

 - (c) property given to an associated entity by a public body for a particular purpose;

30

 - (d) property given to an entity (that is not a public body) by a public body for a particular purpose and the property is not given on commercial terms;

35

 - (e) property of an associated entity and where a public body provides a financial benefit for a particular purpose in relation to that property;

- (f) property of an associated entity in which a public body holds a security interest for a particular purpose.

Example

5 An example of a financial benefit or property that is not given on commercial terms is a payment made by a public body to an entity that is not obliged to provide goods or services of approximately equal value directly back to the public body in return.

10 **Part 6—Other auditing functions**

22 Acting as auditor under the Corporations Act

- 15 (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.
- 20 (3) This section does not limit the Auditor-General's functions under section 23.
- (4) In this section, *State company* means a company of which the State or a public body has control.

Note

25 Section 3(1) defines *control* by reference to the relevant accounting standard.

23 Other auditing services for public bodies

- 30 (1) At the request of a public body, the Auditor-General may enter into an arrangement with the public body for the provision by the Auditor-General of other auditing services to the public body.

(2) A public body may make a request under subsection (1) only with the approval of the Minister responsible for the public body.

5

(3) An arrangement may provide for the payment of fair and reasonable fees to the Auditor-General in respect of the Auditor-General's services.

24 Auditor-General may enter into public purpose audit arrangement

10

(1) At the request of an entity that is not a public body the Auditor-General may enter into an arrangement with that entity to audit the entity's financial statements.

15

(2) Before entering into the audit arrangement, the Auditor-General must be satisfied that—

(a) the entity exists for a public purpose; and

20

(b) it is practicable and in the public interest for the Auditor-General to audit the financial statements of the entity.

(3) An audit arrangement may provide for the payment of fair and reasonable fees to the Auditor-General in respect of the audit.

25

25 Conduct of financial audits under a public purpose audit arrangement

30

(1) If the Auditor-General enters into a public purpose audit arrangement, the Auditor-General must audit the financial statements of the entity that entered into the arrangement—

(a) from time to time; and

(b) at least once in each year.

- 5
- (2) The Auditor-General may dispense with all or any part of the audit of the entity's financial statements in any year.
- (3) After auditing an entity's financial statements, the Auditor-General must express a written audit opinion on the financial statements.
- 10
- (4) 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.

26 Auditor-General may report to Parliament on financial audits under a public purpose audit arrangement

- 15
- (1) The Auditor-General may make a report to the Parliament on any financial audit conducted under a public purpose audit arrangement.
- 20
- (2) In a report under subsection (1), the Auditor-General—
- (a) must set out the reasons for opinions expressed in the report; and
- (b) may include any information the Auditor-General considers relevant; and
- 25
- (c) may include any recommendations the Auditor-General considers relevant.

27 Content of reports of financial audits under a public purpose audit arrangement

- 30
- (1) The Auditor-General must not include the following in a report on a financial audit conducted under a public purpose audit arrangement—
-

- 5
- 10
- 15
- 20
- 25
- 30
- 35
- (a) information that discloses a trade secret;
 - (b) information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose a public body, associated entity or other entity to any material disadvantage;
 - (c) any information that the Auditor-General considers would prejudice any criminal proceeding or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate;
 - (d) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence;
 - (e) 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 on a financial audit conducted under a public purpose audit arrangement 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 of the entity that entered into the public purpose audit arrangement, the entity, after receiving the report, must give the person a reasonable opportunity to respond to the adverse material.
- (3) Subject to this section but despite any other law to the contrary, the Auditor-General may include in a report on a financial audit conducted under a public purpose audit arrangement any information acquired by
-

the Auditor-General by reason of, or in the course of, conducting the audit if the Auditor-General considers—

- 5
- (a) the information is relevant to the subject matter of the report; and
 - (b) the inclusion of that information in the report is in the public interest.

28 Information gathering powers under a public purpose audit arrangement

10 Divisions 1 and 2 of Part 7 apply to a financial audit conducted under a public purpose audit arrangement as if references in those Divisions to a person or to a public
15 body were references to the entity with whom the audit arrangement is made.

Part 7—Information gathering powers and duties

Division 1—Power to require information, documents and attendances

20 **29 Power to authorise**

The Auditor-General may appoint, in writing, an authorised person to exercise any powers under this Part.

25 **30 Power to call for information, documents and attendances**

If it is relevant to the performance of functions or powers under this Act or any other Act, the Auditor-General or an authorised person may serve an information
30 gathering notice on a person requiring the person to do any of the following—

- 5 (a) provide to the Auditor-General or authorised person any relevant information specified in the notice before a specified time and in a specified manner;
- 10 (b) produce to the Auditor-General or authorised person any relevant document or other thing in the person's possession, custody or control, before a specified time and in a specified manner;
- 15 (c) attend and give evidence or answer any relevant questions before the Auditor-General or authorised person at a specified time and place.

31 Information gathering notices

An information gathering notice must—

- 20 (a) be in writing; and
- (b) be in the prescribed form (if any); and
- (c) include the following—
- 25 (i) a statement that it is an information gathering notice under section 30 of this Act;
- (ii) a statement that it is an offence not to comply with the information gathering notice without reasonable excuse;
- (iii) any other prescribed matter.

32 How an information gathering notice is served

- 5 (1) An information gathering notice must be served at a reasonable time, being not less than 5 business days, before the date on which the person is required to attend or otherwise comply with the notice, unless—
- 10 (a) the Auditor-General or authorised person considers on reasonable grounds that delay is likely to prejudice the conduct (but not the timing) of the audit or assurance review to which the notice relates; or
- 15 (b) the person to whom the notice is addressed consents to provide the information, or to produce the document or thing, or to attend to give evidence or answer any questions, at an earlier time.
- 20 (2) An information gathering notice directed to a natural person must be served—
- (a) personally; or
- (b) at the person's usual place of work.
- 25 (3) An information gathering notice directed to a body corporate must be served by leaving it with an employee who is apparently at least 18 years of age—
- (a) at the registered office; or
- (b) at the principal place of business.

30 **33 Power to examine on oath or affirmation**

- (1) The Auditor-General or an authorised person may administer an oath or affirmation to a person.

- 5
- 10
- 15
- 20
- 25
- (2) In relation to a person required by an information gathering notice to attend and give evidence or answer any question, the Auditor-General or an authorised person—
 - (a) may require the person to take an oath or make an affirmation; and
 - (b) may administer an oath or affirmation to the person; and
 - (c) may examine the person in accordance with the notice; and
 - (d) may require the person to produce documents or other things in accordance with the notice.
 - (3) If the Auditor-General or an authorised person intends to examine a person on oath or affirmation under subsection (2), the information gathering notice must state the nature of the matters about which the person to whom it is addressed is to be examined, except to the extent to which the Auditor-General or authorised person forms the opinion on reasonable grounds that this—
 - (a) would be likely to prejudice the conduct of the audit or assurance review to which the notice relates; or
 - (b) would be contrary to the public interest.
 - (4) The Auditor-General or authorised person is not required to give reasons for forming the opinion referred to in subsection (3).

34 Legal representation and protection of legal practitioners and persons attending

- 5 (1) A person may be represented by a legal practitioner in relation to an attendance before the Auditor-General or an authorised person in accordance with an information gathering notice.
- 10 (2) A legal practitioner representing a person attending before the Auditor-General or an authorised person, or assisting the Auditor-General or an authorised person at an attendance, has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- 15 (3) A person attending before the Auditor-General or an authorised person in accordance with an information gathering notice has the same protection and immunity as a witness has in a proceeding in the Supreme Court.
- 20

35 Requirements for persons under the age of 16 years

- 25 (1) An information gathering notice served on a person under the age of 16 years at the date the notice is served has no effect.
- 30 (2) Before a person required to attend by an information gathering notice produces any document or other thing, answers any question or gives any evidence, the Auditor-General or authorised person must—
- 35 (a) confirm the age of the person if the Auditor-General or authorised person considers that the person may be under the age of 18 years; and

- (b) release the person from attendance if the person is under the age of 16 years.
- 5 (3) If, at any time before or during an attendance to answer questions or give evidence or produce documents or other things, the Auditor-General or authorised person becomes aware that the person attending is under the age of 16 years, the Auditor-General or authorised person must immediately release the person from attendance.
- 10
- (4) Subsections (2) and (3) also apply to a person providing information or producing documents or other things, or attending to answer questions or give evidence, by consent.
- 15
- 36 Further provisions relating to attendances**
- (1) If, during an attendance, it becomes apparent that the person required to attend in accordance with an information gathering notice to answer questions or give evidence, does not have knowledge of the English language that is sufficient to enable the person to understand questions asked or to answer those questions, the Auditor-General or authorised person must provide for a competent interpreter to be present during the attendance.
- 20
- 25
- (2) If a person required to attend by an information gathering notice to answer questions or give evidence is under the age of 18 years (but 16 years of age or over) the person must be accompanied by a parent or guardian or an independent person known to the person attending.
- 30
- 35
-

- 5
- 10
- 15
- 20
- 25
- 30
- (3) The person required to attend by an information gathering notice must be accompanied by an independent person if—
 - (a) the Auditor-General or authorised person believes that the person attending has a mental impairment; or
 - (b) the person attending provides the Auditor-General or authorised person with reasonably satisfactory medical evidence that the person has a mental impairment.
 - (4) This section also applies to a person providing information, documents or other things, or attending to answer questions or give evidence, by consent.
- 37 Audio or video recording of attendances**
- (1) The Auditor-General or an authorised person must ensure an attendance by a person required to attend by an information gathering notice is audio or video recorded.
 - (2) Subject to subsection (3), evidence of anything said during an attendance by a person required to attend is inadmissible as evidence against any person in any proceeding before a court or tribunal unless—
 - (a) the attendance was audio or video recorded; and
 - (b) the audio or video recording is available to be tendered in evidence.

- 5
- (3) A court or tribunal may admit evidence of anything said during the attendance by a person required to attend that is otherwise inadmissible because of subsection (2) if the court or tribunal is satisfied that there are exceptional circumstances that justify the admission of the evidence.
- 10
- (4) Unless the Auditor-General or an authorised person considers on reasonable grounds that doing so may prejudice an audit or assurance review, the Auditor-General or authorised person must provide the person who is required to attend with a copy of—
- 15
- (a) the audio or video recording; and
- (b) any transcript created.
- 20
- (5) If the Auditor-General or an authorised person determines not to provide the person who is required to attend with a copy of the audio or video recording and any transcript of the attendance in accordance with subsection (4), the Auditor-General or authorised person must allow the person to listen to or view the recording of the person's evidence at VAGO premises at any
- 25
- reasonable time.
- 30
- (6) As soon as possible after an attendance, the Auditor-General or authorised person must provide the Victorian Inspectorate with a copy of the audio or video recording and any transcript of the attendance.
- 35
- 38 No requirement to pay fees**
- For the purpose of exercising information gathering powers under this Part, the Auditor-General or a VAGO officer is not required to pay any fees.
-

**39 Auditor-General to report to Victorian
Inspectorate on the service of an
information gathering notice**

5 Within 3 business days after a person is
served with an information gathering notice,
the Auditor-General must give a written
report to the Victorian Inspectorate
specifying—

- 10 (a) the name of the person to whom the
notice was served; and
- (b) the reasons for serving the notice; and
- (c) the purpose of the audit or assurance
review.

40 Secrecy and confidentiality

15 (1) This section applies whether a person
provides information (including an answer
to a question), a document or thing to the
Auditor-General, an authorised person or a
VAGO officer assisting the Auditor-General
20 for the purposes of anything done under this
Act—

- (a) in response to a request; or
- (b) pursuant to an information gathering
notice.

25 (2) Subject to subsection (3), a person may
comply with a request for information, a
document or thing despite anything in
another enactment, rule of law or contract
that—

- 30 (a) prohibits the person from giving the
information or producing the document
or other thing; or

- (b) imposes a duty of confidentiality on the person in relation to the information, document or other thing.
- 5 (3) A person may only comply with a request to provide information or a document which is subject to Cabinet confidentiality if the request is made for any of the following purposes—
- 10 (a) a financial audit under Part 3;
- (b) a performance audit under Part 4;
- (c) an assurance review under Part 5;
- 15 (d) performing the Auditor-General's functions or powers under another Act where the other Act expressly authorises the provision of that information.
- (4) Subject to subsection (5), it is not a reasonable excuse for a person to refuse or fail to comply with an information gathering notice on the grounds that another enactment, rule of law or contract—
- 20 (a) prohibits the person from giving the information or producing the document or other thing; or
- 25 (b) imposes a duty of confidentiality on the person in relation to the information, document or other thing.
- 30 (5) It is a reasonable excuse for a person to refuse or fail to comply with an information gathering notice that requires the provision of information or a document which is subject to Cabinet confidentiality unless the information gathering notice is served for any of the following purposes—
-

- 5
- (a) a financial audit under Part 3;
 - (b) a performance audit under Part 4;
 - (c) an assurance review under Part 5;
 - (d) performing the Auditor-General's functions or powers under another Act where the other Act expressly authorises the provision of that information.
- 10
- (6) A person is not subject to any civil, administrative or disciplinary proceeding or action only because the person complied with—
- 15
- (a) a request for information, a document or thing by the Auditor-General, an authorised person or a VAGO officer assisting the Auditor-General for the purposes of anything done under this Act; or
 - (b) an information gathering notice.

20

Division 2—Use and inspection of documents and other things

41 Use and inspection of documents or other things produced

- 25
- (1) In respect of any document or thing produced in response to an information gathering notice or provided by consent, the Auditor-General or a VAGO officer may do all or any of the following—
- 30
- (a) inspect any document or other thing;
 - (b) retain the document or other thing for as long as is reasonably necessary for the purpose for which it was produced or provided;
-

- (c) take extracts from and make copies of the document or other thing.
- 5 (2) A person who is entitled to inspect a document or other thing that is in the possession of the Auditor-General or a VAGO officer may inspect the document or other thing at any reasonable time.
- 42 Return or destruction of documents**
- 10 (1) If the retention of a document or other thing ceases to be reasonably necessary for the purpose for which it was produced or provided, the Auditor-General or a VAGO officer must cause the document or other thing to be—
- 15 (a) delivered to the person who appears to be entitled to that document or other thing; or
- (b) destroyed; or
- 20 (c) in the case of an electronic document, deleted.
- 25 (2) If a document referred to in subsection (1) is subject to Cabinet confidentiality, the Auditor-General or a VAGO officer must cause the document to be delivered to the Secretary to the Department of Premier and Cabinet at the completion of the audit or assurance review for which the document was produced or provided.
- 30 (3) For the purposes of subsection (1), a document in electronic form may be delivered to the person by electronic communication.

- 5 (4) Despite subsection (1), the Auditor-General may retain a copy of a document used in an audit or assurance review for any applicable period required by the auditing and assurance standards or by this Act or any other law.
- 10 (5) The Secretary to the Department of Premier and Cabinet must provide the Auditor-General or a VAGO officer with access to a document that was delivered in accordance with subsection (2), if necessary for the Auditor-General to comply with the auditing and assurance standards.

15 **Division 3—Power to enter and inspect premises**

43 Power to enter and inspect premises owned or occupied by a public body or an associated entity

- 20 (1) In accordance with this Division, the Auditor-General or an authorised person, at all reasonable times, may enter and remain on premises owned or occupied by a public body to inspect the premises and any document or other thing on the premises, if
- 25 the Auditor-General or an authorised person considers on reasonable grounds that—
- (a) it is necessary for the purposes of a financial audit or performance audit under this Act; and
 - 30 (b) the information and any other things that may be obtained from entering the premises cannot be obtained—
 - (i) by consent; or
 - 35 (ii) by serving an information gathering notice.
-

- 5 (2) In accordance with this Division, the Auditor-General or an authorised person, at all reasonable times, may enter and remain on premises owned or occupied by an associated entity to inspect the premises and any document or other thing on the premises if—
- 10 (a) entry and inspection of the premises is for the purposes of a performance audit under section 15; and
- (b) the premises—
- 15 (i) are used solely or predominately for the purposes of providing services to, or performing functions for, or on behalf of, a public body or the State; or
- (ii) contain property of a public body or the State, or property in which a public body or the State has a security interest.
- 20 (3) The Auditor-General or an authorised person who enters and remains on any premises under this section may be accompanied and assisted by a VAGO officer.
- 25 **44 Entry notice**
- Unless consent has been given, before entering the premises of a public body or an associated entity under section 43, the Auditor-General or an authorised person
- 30 must serve the owner or occupier of the premises with a written notice that—
- (a) is in the prescribed form (if any); and

(b) includes the following—

- (i) a statement that it is an entry notice under section 44 of this Act;
- 5 (ii) a statement that it is an offence not to comply with the entry notice without reasonable excuse;
- (iii) any other prescribed matter.

45 Service of entry notice

- 10 (1) An entry notice must be served at a reasonable time, being not less than 5 business days, before the date specified in the entry notice for the Auditor-General or authorised person to enter the premises of the public body or associated entity, unless—
 - 15 (a) the Auditor-General or authorised person considers on reasonable grounds that delay is likely to prejudice the conduct (but not the timing) of the audit to which the notice relates; or
 - 20 (b) the person to whom the notice is addressed consents to the Auditor-General or authorised person entering the premises at an earlier time.
- 25 (2) An entry notice directed to a natural person must be served—
 - (a) personally; or
 - (b) at the person's usual place of work.

- 5
- (3) An entry notice directed to a body corporate must be served by leaving it with an employee who is apparently at least 18 years of age—
- (a) at the premises that the Auditor-General or authorised person wants to enter; or
- (b) at the registered office or principal place of business.

10 **46 Proof of identity**

- (1) When exercising a power under this Division, the Auditor-General or an authorised person must produce proof of identity when requested by the owner or occupier of the premises of a public body or an associated entity.
- 15
- (2) If the Auditor-General or an authorised person fails to produce proof of identity on request, the Auditor-General or authorised person—
- 20
- (a) is not entitled to enter the premises; and
- (b) if the Auditor-General or authorised person is already on the premises, the Auditor-General or authorised person must immediately cease exercising powers of inspection and leave the premises.
- 25

47 Reasonable assistance to be given

30 A person served with an entry notice must provide all reasonable assistance necessary to each of the following who attends for the purposes of the Auditor-General or authorised person exercising the power to enter and inspect the premises of a public

35 body or an associated entity—

- (a) the Auditor-General;
- (b) an authorised person;
- (c) a VAGO officer.

48 Use of documents or things

5 If the Auditor-General, an authorised person
or a VAGO officer enters the premises of a
public body or an associated entity and
requests to copy any document, or remove
10 any document or thing, otherwise than in
accordance with an information gathering
notice, the owner or occupier of the premises
may request that the Auditor-General or
authorised person serve an information
gathering notice.

15 **49 Protection of privacy and minimisation of
disruption**

Irrespective of whether the Auditor-General,
an authorised person or a VAGO officer
enters the premises of a public body or an
20 associated entity by entry notice or by
consent, the Auditor-General, authorised
person or VAGO officer must take
reasonable steps to—

- 25 (a) protect the privacy of any person
temporarily or permanently residing at
the premises; and
- (b) minimise disruption to the operations of
the public body or associated entity that
owns or occupies the premises and to
30 any other occupiers.

50 Vulnerable persons

- 5
- (1) The Auditor-General must develop protocols for interacting with vulnerable persons on the premises of a public body or an associated entity entered and inspected by the Auditor-General, an authorised person or a VAGO officer.
- 10
- (2) The Auditor-General, authorised person or VAGO officer must comply with the protocols irrespective of whether the Auditor-General, authorised person or VAGO officer enters the premises by entry notice or by consent.
- 15
- (3) In this section, *vulnerable persons* includes—
- (a) children; and
 - (b) the elderly; and
 - (c) persons with a cognitive impairment or a disability.

20

51 Auditor-General to report to Victorian Inspectorate on the service of an entry notice

- 25
- Within 3 business days after a person is served with an entry notice, the Auditor-General must give a written report to the Victorian Inspectorate specifying—
- (a) the name of the person to whom the notice was served; and
 - (b) the reasons for serving the notice; and
 - 30 (c) the purpose of the audit.

Division 4—Offences

52 Offence to fail to comply with an information gathering notice

5 A person who is duly served with an information gathering notice must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: 240 penalty units or imprisonment for 2 years.

10 **Note**

See section 40 which provides for the non-application of statutory secrecy and confidentiality provisions.

53 Offence to fail to comply with an entry notice

15 A person who is duly served with an entry notice must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: 240 penalty units or imprisonment for 2 years.

20 **54 Offence to fail to take oath or make affirmation or answer question**

25 (1) Subject to subsection (3), a person who is duly served with an information gathering notice must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so.

Penalty: 240 penalty units or imprisonment for 2 years.

5 (2) Subject to subsection (3), a person who is
duly served with an information gathering
notice must not, without reasonable excuse,
refuse or fail to answer a question that the
person is required to answer by the Auditor-
General or an authorised person.

Penalty: 240 penalty units or imprisonment
for 2 years.

10 (3) A person does not commit an offence
against subsection (1) or (2) if, before the
person is required to take the oath or make
the affirmation or answer the question, the
Auditor-General or authorised person fails to
15 inform the person that refusal or failure to do
so without reasonable excuse is an offence.

**55 Offence to make false or misleading
statements or produce false or misleading
documents or other things**

20 (1) A person must not make a statement to the
Auditor-General or an authorised person that
the person knows to be false or misleading in
a material particular.

Penalty: 120 penalty units or imprisonment
for 12 months.

25 **Note**

See section 314 of the **Crimes Act 1958** in relation to
perjury and section 254 of that Act in relation to the
destruction of evidence.

30 (2) A person must not produce a document or
other thing to the Auditor-General or an
authorised person that the person knows to
be false or misleading in a material particular
unless the person—

35 (a) indicates to the Auditor-General or
authorised person the respect in which
it is false or misleading; and

(b) to the extent practicable, provides the correct information.

Penalty: 120 penalty units or imprisonment for 12 months.

5

Part 8—Reporting

Division 1—Preparation of reports

56 Reports to Parliament on audits and assurance reviews

10

(1) The Auditor-General may make a report to the Parliament on any audit or assurance review by or on behalf of the Auditor-General under this Act.

(2) In a report under subsection (1), the Auditor-General—

15

(a) must set out the reasons for opinions expressed in the report; and

(b) may include any information the Auditor-General considers relevant; and

20

(c) may include any recommendations the Auditor-General considers relevant.

57 Reports to Parliament on annual financial report of the State

25

(1) The Auditor-General must make a report to the Parliament on each annual financial report.

(2) A report under subsection (1) may include any information and recommendations that the Auditor-General considers necessary for—

30

(a) more effective and efficient management of public resources; and

- (b) the keeping of proper accounts and records of transactions relating to public resources.
- 5 (3) After preparing a proposed report, the Auditor-General must—
- (a) give a copy of the proposed report to the Minister; and
- 10 (b) request the Minister in writing for comment before a specified date, being at least 10 business days after the proposed report is given to the Minister.
- 15 (4) The Auditor-General must include in the report to the Parliament any comments made before the specified date, or a summary of those comments, in a form agreed between the Auditor-General and the Minister.
- (5) In this section, *Minister* means the Minister who prepares the annual financial report.
- 20 **58 Consultation on reports**
- (1) This section applies to reports to the Parliament by the Auditor-General under section 56.
- 25 (2) After preparing a proposed report, the Auditor-General—
- (a) must give a copy of the report or part of the proposed report to—
- 30 (i) any public body, associated entity or other entity to which the proposed report or part of the proposed report relates; and

- 5
- (ii) any public body, associated entity or other entity that the Auditor-General believes has a special interest in the proposed report or part of the proposed report; and
- (iii) the Secretary to the Department of Premier and Cabinet; and
- 10
- (b) may give a copy of the report or part of the proposed report to any entity the Auditor-General considers to have a special interest in the proposed report or part of the proposed report; and
- 15
- (c) must, in writing, request any entity provided with a copy of the report or part of the proposed report for comment before the specified date, being—
- 20
- (i) in the case of a proposed report on a performance audit, 10 business days after a copy of the report or part of the proposed report is made available to that entity; or
- 25
- (ii) in the case of a proposed report on any other audit or assurance review, 5 business days after a copy of the report or part of the proposed report is made available to that entity.
- 30
- (3) Subsection (2)(c) does not apply to the provision of a copy of a report or part of a proposed report to the Secretary to the Department of Premier and Cabinet unless the proposed report relates to an audit or assurance review of—
- 35
- (a) the Department of Premier and Cabinet; or
- (b) a prescribed body; or
-

- (c) the whole of the Victorian public sector.
- 5 (4) The Auditor-General must include in a report any comments made before the specified date, or a summary of those comments, in a form agreed between the Auditor-General and the entity that made those comments.

59 Transmission of reports to Parliament

- 10 (1) The Auditor-General must cause a report under section 56 of any audit or assurance review to be transmitted to each House of the Parliament as soon as practicable after the report has been completed.
- 15 (2) The Auditor-General must cause a report under section 57 on the annual financial report of the State to be transmitted to each House of the Parliament on or before 24 November next following the financial year to which it relates.
- 20 (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.
- 25 (4) If the Auditor-General proposes to transmit the report to the Parliament when the Parliament is in recess, the Auditor-General must—
- 30 (a) give one business day's notice of the Auditor-General's 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 website as soon as practicable after giving it to the clerk of each House.
- 5 (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
- 10 (b) give a copy of the report to each member of the House as soon as practicable after the report is received under subsection (4)(b); and
- 15 (c) cause the report to be laid before the House on the next sitting day of the House.
- (6) A report given to the clerks of each House under subsection (4)(b) is taken to have been published by order, or under the authority, of the Parliament.
- 20 (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—
- 25 (a) it were a report to which those sections applied; and
- 30 (b) the report had been published by the Government Printer under the authority of the Parliament.
- 35 (8) For the purposes of this section, Parliament is in recess when neither House is sitting.
-

**60 Auditor-General to report to
Parliamentary Committee on assurance
reviews**

- 5 (1) The Auditor-General must submit to the
Parliamentary Committee a report on any
assurance review by the Auditor-General
during the relevant period.
- 10 (2) The Auditor-General must include in the
report the reasons for conducting the
assurance review and identify any public
body, associated entity or other entity
included in the assurance review.
- 15 (3) The Auditor-General must submit the report
to the Parliamentary Committee no later than
4 weeks after the final day of the relevant
period.
- (4) For the purpose of this section—
relevant period means—
- 20 (a) the period between the day that
this section comes into operation
and the final day of the quarterly
cycle of the financial year that day
falls within; or
- 25 (b) each quarterly cycle of every
financial year following the period
in paragraph (a).

Division 2—Content of reports

**61 Reports relating to associated entities and
other entities**

- 30 (1) This section applies to reports by the
Auditor-General of a performance audit
conducted under section 15 or an assurance
review conducted under section 21.

- 5
- (2) The Auditor-General must not include the following in a report specified in subsection (1)—
- (a) any recommendation directed to an associated entity or an entity that is not a public body;
- 10 (b) any statement or finding about an associated entity or an entity that is not a public body that is not directly related to the matters to be determined by the performance audit or assurance review.
- 15 (3) The Auditor-General must include in the report the reasons for including any associated entity or entity that is not a public body in the performance audit or assurance review.
- 62 Reports not to disclose certain commercial or protected information**
- 20 The Auditor-General must not include the following in a report prepared by the Auditor-General under this Act or any other Act—
- (a) information that discloses a trade secret;
- 25 (b) information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose a public body, associated entity or other entity to any material disadvantage.
- 63 Reports not to question policy objectives**
- 30 (1) The Auditor-General must not in a report prepared under this Act or any other Act question the merits of policy objectives of the Government.
-

(2) In subsection (1)—

policy objectives includes—

- 5 (a) a Government policy direction of a Minister; and
- (b) a policy statement in a Budget Paper; and
- (c) a statement of objectives in a corporate plan of a public body approved by a Minister; and
- 10 (d) any other document evidencing a policy decision of the Government or a Minister.

64 Reports to disclose certain matters if in the public interest

15 Despite section 62 or any other law to the contrary, the Auditor-General may include in any report under this Act or any other Act any information acquired by the Auditor-General by reason of, or in the course of, the performance of the duties and functions or

20 the exercise of powers under this Act or any other Act if the Auditor-General considers—

- (a) the information is relevant to the subject matter of the report; and
- 25 (b) the inclusion of that information in the report is in the public interest.

65 Reports not to include certain findings

- (1) The Auditor-General must not include in a report under this Act or any other Act—
- 30 (a) any information that the Auditor-General considers would prejudice any criminal proceeding or criminal investigation, or any investigations by

the IBAC or the Victorian Inspectorate;
or

5

(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

10

(c) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

15

(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 of a public body, associated entity or other entity, the public body, associated entity or other entity, after receiving a copy of the proposed report or the relevant part of the proposed report, must give the person a reasonable opportunity to respond to the public body, associated entity or other entity in relation to the adverse material.

20

25

Part 9—Notifications and information sharing

66 Mandatory notification of corrupt conduct to IBAC

30

(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

35

aware of in the performance of functions or the exercise of powers under this Act or any other Act.

- 5
- (2) Subsection (1) applies despite anything to the contrary in this Act.
- (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**.
- 10
- (4) If the Auditor-General at any time suspects on reasonable grounds 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 corrupt conduct, the Auditor-General must inform the IBAC.
- 15
- (5) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.
- 20
- 67 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—
- 25
- (a) the Auditor-General suspects on reasonable grounds involves—
- 30
- (i) misconduct of or in relation to the IBAC or IBAC personnel; or
- (ii) misconduct (other than corrupt conduct) of an Ombudsman officer, a VAGO officer, the Chief Examiner or an Examiner; and

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

(2) Subsection (1) applies despite anything to the contrary in this Act.

5

68 Auditor-General may provide or disclose information to specified entity

10

(1) The Auditor-General may provide or disclose information acquired by the Auditor-General by reason of, or in the course of, the performance of the duties and functions or the exercise of powers under this Act or any other Act to a specified entity if the Auditor-General considers that—

15

(a) the information is provided or disclosed for the purpose of enabling the specified entity to perform duties and functions or exercise powers under any Act; and

20

(b) it is appropriate for the information to be provided or disclosed to the specified entity, having regard to the nature of the information.

(2) For the purposes of subsection (1), the following are specified entities—

25

(a) a public body;

(b) an associated entity;

(c) a Minister;

30

(d) the holder of a statutory office as defined in section 4(1) of the **Public Administration Act 2004**;

- 5 (e) an integrity body, other than the Auditor-General, within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;
- (f) a law enforcement agency within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;
- 10 (g) a prosecutorial body within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;
- (h) any other prescribed entity.
- 15 (3) Nothing in this section permits the Auditor-General to provide or disclose information that is—
- (a) contained in an exempt document within the meaning of section 28 of the **Freedom of Information Act 1982**; or
- 20 (b) subject to any restriction on the provision or disclosure of information under any other Act (including any Commonwealth Act).
- 25 **69 Collaboration and information sharing with other Auditors-General**
- 30 (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 or the other jurisdiction of funding for, or expenditure on, that matter.
-

- 5
- 10
- 15
- 20
- 25
- 30
- (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 provide or disclose any information acquired by the Auditor-General by reason of, or in the course of, the performance of the duties and functions or the exercise of powers under this Act or any other Act to the Auditor-General of another jurisdiction if the Auditor-General considers that it is in the public interest to provide or disclose the information.
 - (4) Nothing in this section permits the Auditor-General to provide or disclose information that is—
 - (a) contained in an exempt document within the meaning of section 28 of the **Freedom of Information Act 1982**; or
 - (b) information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose a person, public body or associated entity to any material disadvantage.
 - (5) 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, unless disclosure or publication is required for the performance of the duties and functions of that Auditor-General.

- 5
- (6) The Auditor-General must report on the sharing of information in accordance with this section—
- (a) in the relevant report of the audit or assurance review in the course of which the information was obtained; or
 - (b) if the sharing of information occurs after the relevant report of the audit or assurance review has been prepared or the information was not acquired in the conduct of an audit or assurance review, in the next annual report.
- 10
- (7) In this section—
- another jurisdiction* means—
- 15 (a) the Commonwealth; or
 - (b) another State; or
 - (c) a Territory.
- 70 Exemption from Freedom of Information Act 1982**
- 20 (1) 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—
- 25 (a) an audit or assurance review that is, has been or is to be, conducted under this or any other Act; and
 - (b) a report of an audit or assurance review conducted under this or any other Act; and
 - 30 (c) a function of an agency that is, has been or is to be carried out under the **Gambling Regulation Act 2003**.
-

- (2) In subsection (1) *agency* means—
- (a) the Auditor-General; or
 - (b) the Victorian Auditor-General's Office.

71 Improper use or unauthorised disclosures or provision of information

5

- (1) This section applies only to a person who is, or was—

10

- (a) a VAGO officer; or
- (b) a person appointed as the independent financial auditor of the Victorian Auditor-General's Office under section 79; or
- (c) a person appointed as the independent performance auditor of the Auditor-General and the Victorian Auditor-General's Office under section 82.

15

- (2) Subject to subsection (3), a person to whom this section applies must not make improper use of, or directly or indirectly provide or disclose any information acquired by the person by reason of, or in the course of, the performance of the duties and functions or the exercise of powers of the person under this Act or any other Act.

20

25

Penalty: 120 penalty units or imprisonment for 12 months.

30

- (3) A person to whom this section applies may provide or disclose information referred to in subsection (2) in the following circumstances—

- (a) for the performance of the duties and functions or the exercise of the powers of the person in accordance with this Act or any other Act;

- 5 (b) if the information is in the public domain at the time the information is provided or disclosed, otherwise than as a result of a disclosure that the person knows or ought to have known was unlawful;
- (c) for the purposes of a proceeding for an offence against this Act or any other Act;
- 10 (d) as is otherwise authorised or required by or under this Act or any other Act.

72 Unauthorised disclosure or provision of confidential information

- 15 (1) A person who receives or obtains confidential information from the Victorian Auditor-General's Office, a VAGO officer or otherwise under this Act, must not provide or disclose that information except in the circumstances specified in subsection (2).

20 Penalty: 120 penalty units or imprisonment for 12 months.

- (2) A person may provide or disclose confidential information in the following circumstances—
- 25 (a) for the purposes of making submissions or comments to the Auditor-General on a proposed report;
- (b) for the purposes of obtaining legal or financial advice;
- 30 (c) if the confidential information is in the public domain at the time the information is provided or disclosed, otherwise than as a result of a disclosure that the person knows or
- 35 ought to have known was unlawful;
-

- 5 (d) if the person is an officer or employee of a public body or an Auditor-General of another jurisdiction within the meaning of section 69(7), and the provision or disclosure is required to perform the person's official duties;
- (e) if the person is a Department Head and the provision or disclosure is required to perform the person's official duties;
- 10 (f) if the Auditor-General or a VAGO officer consents to the confidential information being provided or disclosed.
- 15 (3) In this section *confidential information* means—
- (a) a proposed report or part of a proposed report; and
- (b) a draft report or part of a draft report; and
- 20 (c) working documents prepared for the purposes of an audit or assurance review; and
- (d) information provided or disclosed to specified entities under section 68 and to other Auditors-General under section 69; and
- 25 (e) any other information provided or disclosed under this Act which is stated to be confidential or which is by its nature confidential.
- 30

Part 10—Accountability

Division 1—Reporting

73 Auditor-General's annual plan

- 5 (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
- 10 (b) submit the draft to the Parliamentary
Committee.
- (2) Subject to subsection (3), the proposed work
program referred to in subsection (1)(a) must
include details of any performance audit that
includes an associated entity.
- 15 (3) A failure to include details of a public body
or an associated entity in the annual plan
does not affect the power of the Auditor-
General to conduct a performance audit of a
public body, including a performance audit
20 that includes an associated entity.
- (4) The Parliamentary Committee must consider
the draft annual plan and may comment on it.
- (5) After considering the draft annual plan, the
Parliamentary Committee must return it with
25 any comments to the Auditor-General.
- (6) 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
30 any comments received from the
Parliamentary Committee.
-

- 5 (7) 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.
- 5 (8) Before the beginning of the financial year to which an annual plan relates, the Auditor-General must—
- 10 (a) present the annual plan to the Parliamentary Committee; and
- 10 (b) cause the annual plan to be transmitted to each House of the Parliament.
- 74 Annual plan to be laid before Parliament**
- 15 (1) 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.
- 20 (2) If the Auditor-General proposes to transmit an annual plan to the Parliament under section 73 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—
- 25 (a) give one business day's notice of the Auditor-General's intention to do so to the clerk of each House of the Parliament; and
- 30 (b) give the annual plan to the clerk of each House on the day indicated in the notice; and
- (c) publish the annual plan on the Auditor-General's website on the day after giving it to the clerk of each House.

- 5
- 10
- 15
- 20
- 25
- 30
- (3) The clerk of each House must—
 - (a) notify each member of the House of the receipt of a notice under subsection (2)(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 (2)(b); and
 - (c) cause the annual plan to be laid before the House on the next sitting day of the House.
 - (4) An annual plan that is given to the clerk of each House under subsection (2)(b) is taken to have been published by order, or under the authority, of the Parliament.
 - (5) The publication of an annual plan by the Auditor-General under subsection (2)(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—
 - (a) were a report to which those sections applied; and
 - (b) had been published by the Government Printer under the authority of the Parliament.

75 Annual report

- 5 (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
 - 10 (b) prepare financial statements for the financial year that comply with subsection (3) and give them to the independent financial auditor for auditing; and
 - 15 (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—
- 20 (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 76; and
 - 25 (b) include an account of the implementation of the annual plan required under section 73; and
 - 30 (c) include the names of any persons to whom, during the financial year, the Auditor-General has delegated the power to express a written audit opinion under section 8; and

- 5 (d) include details of any resolutions of the Parliamentary Committee under section 76(1) in respect of the report of operations and the disallowance of any of those resolutions; and
- (e) summarise the quality control policies and procedures that were in place in the Victorian Auditor-General's Office for the financial year; and
- 10 (f) summarise any additional auditing and assurance standards that the Auditor-General has applied under section 78(2) to the conduct of audits or assurance reviews during the financial year.
- 15 (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 76; and
- 20 (b) include details of any resolutions of the Parliamentary Committee under section 76(1) in respect of the financial statements and the disallowance of any of those resolutions.
- 25

Division 2—Other obligations

30 **76 Parliamentary Committee may alter obligations of Auditor-General**

- (1) The Parliamentary Committee, by resolution, may vary any obligation or requirement imposed on the Auditor-General or the Victorian Auditor-General's Office by or under—
- 35
-

- (a) section 75(2)(a) or (3)(a); or
 - (b) the **Financial Management Act 1994** or the **Public Administration Act 2004**.
- 5 (2) The chairperson 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
- 10 the resolution is passed.
- (3) A resolution under subsection (1) is disallowed in whole or in part if—
- 15 (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
 - 20 (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
- 25 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.
- 30 (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.
- 5 (7) The disallowance of a resolution under subsection (1)—
- 10 (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; and
- 15 (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.
- 77 Audit priorities, budgets and expenditure**
- (1) In performing or exercising the Auditor-General's functions or powers, the Auditor-General must—
- 20 (a) consult with the Parliamentary Committee; and
- (b) have regard to any audit priorities determined by the Parliamentary Committee.
- 25 (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 73.
- 30 (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
- 35 or obligations necessary for the performance
-

of the functions of the Victorian Auditor-General's Office.

78 Auditing and assurance standards

- 5 (1) Auditing and assurance standards must be applied, as appropriate, in the performance of functions and exercise of powers in relation to audits or assurance reviews under this Act.
- 10 (2) The Auditor-General may apply additional auditing and assurance standards, not inconsistent with the standards referred to in subsection (1), to the conduct of audits and assurance reviews under this Act.

Note

15 The additional auditing and assurance standards must be summarised in the Auditor-General's annual report—see section 75(2)(f).

Part 11—Audit of the Auditor-General and Victorian Auditor-General's Office

20

79 Independent financial auditor to audit Victorian Auditor-General's Office

- 25 (1) On the recommendation of the Parliamentary Committee, a suitably qualified person may be appointed by resolution of the Legislative Council and Legislative Assembly as an independent financial auditor of the Victorian Auditor-General's Office other than the following—
- 30 (a) a person who has a conflict of interest by reason of being engaged by the Auditor-General under section 7;

- 5
- (b) a person who has a conflict of interest by reason of holding a delegation from the Auditor-General under section 8;
- (c) a person appointed under section 82 as the independent performance auditor of the Auditor-General and the Victorian Auditor-General's Office.
- 10
- (2) The independent financial auditor—
- (a) is appointed for a period not exceeding 4 years; and
- (b) may be reappointed under this section; and
- 15
- (c) is appointed on the terms and conditions and is entitled to the remuneration determined by the Parliamentary Committee; and
- (d) in conducting the audit, must comply with directions as to the audit given by the Parliamentary Committee.
- 20
- (3) Remuneration payable under the appointment is to be paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.
- 25
- (4) The independent financial auditor must conduct an audit of the financial statements of the Victorian Auditor-General's Office at least once in each financial year.
- 30
- (5) Subject to any directions given by the Parliamentary Committee, the independent financial auditor may exercise any powers of the Auditor-General under Part 7 to the extent necessary to conduct the independent financial audit as if a reference in that Part to the Auditor-General includes a reference to
- 35
- the independent financial auditor.
-

5 (6) The independent financial auditor may apply additional auditing and assurance standards applied by the Auditor-General under section 78(2) to the conduct of audits of the financial statements of the Victorian Auditor-General's Office.

80 Audit opinions on financial statements of the Victorian Auditor-General's Office

10 After auditing the financial statements of the Victorian Auditor-General's Office under section 79(4), the independent financial auditor must provide a written audit opinion on the financial statements to the Parliamentary Committee and the Auditor-General.

81 Report of independent financial auditor

(1) The independent financial auditor may make a report of an audit conducted under section 79.

20 (2) A report under subsection (1) may include any information and recommendations the independent financial auditor considers necessary for the Victorian Auditor-General's Office to achieve its objectives effectively, economically and efficiently.

25 (3) The independent financial auditor must not make a report under subsection (1) unless—

(a) at least 10 business days before making the report, the independent financial auditor—

30 (i) gives the Auditor-General a copy of the report or a summary of the findings and proposed recommendations; and

- 5 (ii) requests the Auditor-General in writing for comment before a specified date, being at least 5 business days after the report is given to the Auditor-General; and
- 10 (b) the independent financial auditor includes in the report any comments made before the specified date, or a summary of those comments, in a form agreed between the independent financial auditor and the Auditor-General.
- 15 (4) The independent financial auditor, within 7 sitting days after making the report, must transmit the report to each House of the Parliament.
- 20 (5) The independent financial auditor must not include in a report under subsection (1)—
- (a) information that discloses a trade secret; or
- 25 (b) information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose the Auditor-General or the Victorian Auditor-General's Office to any material disadvantage; or
- 30 (c) information that the independent financial auditor considers would prejudice any criminal proceeding or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate; or
- 35 (d) 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
-

- (e) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.
- 5 (6) If the independent financial auditor intends to include in a report under subsection (1) 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 of the
10 Victorian Auditor-General's Office, the Auditor-General, after receiving a copy of the proposed report or the relevant part of the proposed report, must give the person a reasonable opportunity to respond to the
15 Auditor-General in relation to the adverse material.
- 82 Independent performance audit of Auditor-General and Victorian Auditor-General's Office**
- 20 (1) On the recommendation of the Parliamentary Committee, a suitably qualified person may be appointed by resolution of the Legislative Council and Legislative Assembly as an independent performance auditor of the
25 Auditor-General and the Victorian Auditor-General's Office other than the following—
- (a) a person who has a conflict of interest by reason of being engaged by the Auditor-General under section 7;
- 30 (b) a person who has a conflict of interest by reason of holding a delegation from the Auditor-General under section 8;
- (c) a person appointed under section 79 as the independent financial auditor of the
35 Victorian Auditor-General's Office.
-

- 5
- (2) The independent performance auditor—
- (a) is appointed on the terms and conditions and is entitled to the remuneration determined by the Parliamentary Committee; and
 - (b) in conducting the audit, must comply with directions as to the audit given by the Parliamentary Committee.
- 10
- (3) Remuneration payable to a person appointed as the independent performance auditor is to be paid from money appropriated to the Parliament.
- 15
- (4) The independent performance auditor must conduct a performance audit at least once every 4 years to determine whether the Auditor-General and the Victorian Auditor-General's Office are achieving their objectives effectively, economically and efficiently and in compliance with all relevant Acts.
- 20
- (5) Subject to any directions given by the Parliamentary Committee, the independent performance auditor may exercise any powers of the Auditor-General under Part 7 to the extent necessary to conduct the audit as if a reference in that Part to the Auditor-General includes a reference to the independent performance auditor.
- 25
- (6) The Parliamentary Committee must prepare and finalise a specification for a performance audit before the independent performance auditor may call for any information or rely on any power under Part 7 in relation to the audit.
- 30

- 5
- (7) Before finalising a specification for a performance audit the Parliamentary Committee must—
- (a) prepare a draft specification for the performance audit that sets out the objectives of the audit and the particular issues (if any) to be addressed; and
- 10 (b) consult with the Auditor-General on the draft specification.
- (8) If the Auditor-General does not respond to a request for comment on a draft specification for a performance audit within 15 business days of receiving the request—
- 15 (a) the Auditor-General is taken to have no comment on the draft specification; and
- (b) the independent performance auditor may finalise the specification.
- 20 (9) The Parliamentary Committee must provide the final specification for a performance audit to the Auditor-General.
- (10) The independent performance auditor may apply additional auditing and assurance standards applied by the Auditor-General under section 78(2) to the conduct of performance audits of the Auditor-General and the Victorian Auditor-General's Office.
- 25
- 83 Report of independent performance auditor**
- 30 (1) The independent performance auditor may make a report of a performance audit conducted under section 82.

- 5
- (2) A report under subsection (1)—
- (a) may include any information and recommendations the independent performance auditor considers relevant; and
 - (b) must set out the reasons for opinions expressed in the report.
- 10
- (3) The independent performance auditor must not make a report under subsection (1) unless—
- 15 (a) at least 20 business days before making the report, the independent performance auditor gives the Auditor-General a copy of the report or a summary of findings and proposed recommendations; and
 - 20 (b) the independent performance auditor requests the Auditor-General in writing for comment before a specified date, being at least 10 business days after the report is given to the Auditor-General; and
 - 25 (c) the independent performance auditor includes in the report any comments made before the specified date, or a summary of those comments, in a form agreed between the independent performance auditor and the Auditor-General.
- 30
- (4) The independent performance auditor, within 7 sitting days of making the report, must transmit the report to each House of the Parliament.
- 35
- (5) The independent performance auditor must not include in a report under subsection (1)—
-

- 5
- 10
- 15
- 20
- 25
- 30
- (a) information that discloses a trade secret; or
 - (b) information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose the Auditor-General or the Victorian Auditor-General's Office to any material disadvantage; or
 - (c) information that the independent performance auditor considers would prejudice any criminal proceeding or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate; or
 - (d) 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
 - (e) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.
- (6) If the independent performance auditor intends to include in a report under subsection (1) 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 of the Victorian Auditor-General's Office, the Auditor-General, after receiving a copy of the proposed report or the relevant part of the proposed report, must give the person a reasonable opportunity to respond to the Auditor-General in relation to the adverse material.

Part 12—General

84 Regulations

- 5 (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.
- 10 (2) The regulations may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or specified classes of person or body;
 - 15 (d) apply, adopt or incorporate any matter contained in any document or any method, whether—
 - 20 (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated or published on or before the date when the regulations are made; or
 - 25 (iii) as formulated or published from time to time;
 - (e) provide for the exemption of a person, body or thing or classes of person, body or thing from any of the regulations, whether—
 - 30 (i) unconditionally or on specified conditions; and
 - (ii) either wholly or to any specified extent.
-

Part 13—Transitional provisions

85 Transfer of Audit Victoria staff not affected by repeal of section 25

5

Despite the repeal of section 25 by the **Audit Amendment Act 2018**, that section, as in force immediately before its repeal, continues to apply to any person to whom it applied on and from 1 January 2000.

10

86 Transitional provisions relating to the Integrity and Accountability Legislation Amendment Act 2012

15

Despite the repeal of section 29 by the **Audit Amendment Act 2018**, that section, as in force immediately before its repeal, continues to apply to any person to whom, or requirement or other matter to which, it applied immediately before its repeal.

20

87 Transitional provision—Deputy Auditor-General

25

Despite the repeal of section 7 by the **Audit Amendment Act 2018**, a person employed as Deputy Auditor-General or a person acting as Deputy Auditor-General under that section immediately before its repeal is taken to be employed as Deputy Auditor-General or acting as Deputy Auditor-General under section 5 on and from the commencement of that section.

30

88 Transitional provision—staff of Victorian Auditor-General's Office

35

Despite the repeal of section 7E by the **Audit Amendment Act 2018**, any employee employed in accordance with that section immediately before its repeal is taken to be employed under section 6 on and from the

commencement of that section on the same conditions and with the same rights and entitlements as the person had immediately before the repeal.

5

89 Transitional provision—State indemnity

On the commencement of Part 2, as inserted by the **Audit Amendment Act 2018**, any indemnity by the State under section 7H as in force immediately before its repeal is taken to be an indemnity under section 9.

10

90 Transitional provision—information gathering powers and duties

(1) Part 7, as inserted by the **Audit Amendment Act 2018**, only applies to the exercise of any power or the performance of any functions under this Act or any other Act on and from the commencement of that Part.

15

(2) Sections 11, 11A, 11B, 11C, 11D, 11E, 11F, 11G and 12 as in force immediately before the commencement of Part 7 continue to apply to any review of estimated financial statements or audit commenced but not completed before the commencement of Part 7.

20

25

91 Transitional provision—audit fees

(1) Any amount owing under section 10 as in force immediately before its repeal by the **Audit Amendment Act 2018** is payable under section 13.

30

(2) An amount referred to in subsection (1) may be referred to arbitration under section 13(4).

92 Transitional provision—other auditing functions

5 Sections 16D, 16E and 16G as in force immediately before their repeal by the **Audit Amendment Act 2018** continue to apply to any audit commenced but not completed before the commencement of Part 6 as inserted by the **Audit Amendment Act 2018**.

10 **93 Transitional provision—reports**

(1) Any report required under sections 16, 16A, 16AB and 16B as in force immediately before their repeal by the **Audit Amendment Act 2018** may be dealt with under section 59 as if it were a report under Part 8.

15 (2) Any report required under section 18 as in force immediately before its repeal by the **Audit Amendment Act 2018** may be dealt with under section 81 as if it were a report under that section.

20 (3) Any report required under section 19 as in force immediately before its repeal by the **Audit Amendment Act 2018** may be dealt with under section 83 as if it were a report under that section."

25

Part 3—Consequential amendments to other Acts

Division 1—Victorian Inspectorate Act 2011

10 Definitions

5 In section 3(1) of the **Victorian Inspectorate Act 2011**, in the definition of *coercive power*, for "section 11" **substitute** "sections 30 and 43".

11 Functions of the Victorian Inspectorate

10 In section 11(3)(a)(ii) of the **Victorian Inspectorate Act 2011**, for "sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3)" **substitute** "sections 30, 31, 32, 33, 34, 35, 36, 37, 39, 43, 44, 45, 46, 50(1) and 51".

12 Coercive questioning

- 15 (1) In section 41(1) of the **Victorian Inspectorate Act 2011**, for "the appearance of a person at a compulsory appearance" **substitute** "an attendance by a person required to attend by an information gathering notice".
- 20 (2) In section 41(1)(a) of the **Victorian Inspectorate Act 2011**, for "appeared" **substitute** "attended".
- (3) In section 41(1)(b) of the **Victorian Inspectorate Act 2011**, for "appearance" **substitute** "attendance".
- 25 (4) In section 41(1)(c) of the **Victorian Inspectorate Act 2011**, for "appearance" **substitute** "person's attendance".
- (5) In section 41(1)(d) of the **Victorian Inspectorate Act 2011**—
- 30 (a) for "appearance" (where first occurring) **substitute** "attendance";
- (b) after "audit" **insert** "or assurance review";
-

(c) for "appearance occurred" **substitute**
"information gathering notice was served".

(6) In section 41(1)(e) of the **Victorian Inspectorate Act 2011**, for "appearance" **substitute**
"attendance".

5

13 Complaints

In section 43(3)(b) of the **Victorian Inspectorate Act 2011**, for "sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3)" **substitute**
"sections 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50 and 51".

10

14 Own motion investigation

In section 46(2)(b) of the **Victorian Inspectorate Act 2011**, for "sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3)" **substitute**
"sections 30, 31, 32, 33, 34, 35, 36, 37, 39, 43, 44, 45, 46 and 51".

15

15 Conduct of investigation

In section 47(8)(c) of the **Victorian Inspectorate Act 2011**, after "audit" **insert** "or assurance review".

20

16 Legal representation of witnesses and other persons

In section 58(2) and (8) of the **Victorian Inspectorate Act 2011**, after "audit" (wherever occurring) **insert** "or assurance review".

25

17 Advice to a complainant

In section 88(3)(e) of the **Victorian Inspectorate Act 2011**, after "audit" **insert** "or assurance review".

30

18 Matters to be included in annual report

- 5 (1) In section 91(1)(g)(ii) of the **Victorian Inspectorate Act 2011**, for "sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3)" **substitute** "sections 30, 31, 32, 33, 34, 35, 36, 37, 39, 43, 44, 45, 46, 50 and 51".
- (2) In section 91(7) of the **Victorian Inspectorate Act 2011**, after "audit" (where twice occurring) **insert** "or assurance review".

10 **Division 2—Other consequential amendments**

19 Health (Commonwealth State Funding Arrangements) Act 2012

15 In sections 19(2) and 20(5) of the **Health (Commonwealth State Funding Arrangements) Act 2012**, for "authority" **substitute** "public body".

20 Health Services Act 1988

20 In section 139(3A) of the **Health Services Act 1988**, for "section 12" **substitute** "section 40".

21 Independent Broad-based Anti-corruption Commission Act 2011

In section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**—

- 25 (a) in paragraph (b) of the definition of *mandatory notification provision*, for "19A" **substitute** "66";
- (b) in paragraph (d) of the definition of *notification to the IBAC*, for "19A" **substitute** "66".
- 30

22 Mental Health Act 2014

In section 140(4) of the **Mental Health Act 2014**, for "section 12" **substitute** "section 40".

23 Parliamentary Committees Act 2003

In section 14(2)(d)(ii) of the **Parliamentary Committees Act 2003**, after "audit" insert "or assurance review".

5

24 Public Health and Wellbeing Act 2008

In section 42(3) of the **Public Health and Wellbeing Act 2008**, for "section 12" substitute "section 40".

Part 4—Repeal of amending Act

25 Repeal of amending Act

This Act is **repealed** on 1 July 2020.

Note

5

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.