

# Audit Amendment Bill 2018

## Introduction Print

### EXPLANATORY MEMORANDUM

#### General

The purpose of the Bill is 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.

#### Clause Notes

##### Part 1—Preliminary

Part 1 of the Bill outlines the purposes of the Bill and contains the commencement provisions.

- Clause 1 provides that the main purposes of this Bill are to re-enact with amendments certain provisions of the **Audit Act 1994** to—
- further facilitate the transparency of the expenditure of public funds and performance of public functions and the accountability of government to Parliament; and
  - strengthen and clarify the duties, powers and functions of the Auditor-General and the Victorian Auditor-General's Office (VAGO); and
  - clarify the rights and obligations of entities audited by the Auditor-General; and
  - improve the operational efficiency and effectiveness of the Auditor-General and VAGO; and
  - make consequential amendments to other Acts.

- Clause 2 sets out the commencement of the Bill. It will come into operation on a day or days to be proclaimed or on 1 July 2019 if not proclaimed before that date.
- Clause 3 provides that in the Bill the **Audit Act 1994** is called the Principal Act.

### **Part 2—Principal Act amended**

Part 2 of the Bill amends the purposes of the Principal Act, amends existing definitions and inserts new definitions, amends the objectives of the Principal Act, and substitutes Parts 2, 3, 3A, 3B, 4, 4A, 5, and 6 of the Principal Act with new Parts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

- Clause 4 amends section 1 of the Principal Act, so that the purposes of the Act include—
- the conduct of efficient and effective financial audits in the Victorian public sector; and
  - 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
  - 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
  - the provision of reports on audits and assurance reviews by the Auditor-General to the Parliament; and
  - the administration and audit of VAGO.
- Clause 5 amends section 3 of the Principal Act by amending existing definitions, repealing existing definitions and inserting new definitions.
- Subclause (1) repeals the definitions of *authority*, *compulsory appearance*, *domestic partner*, *entity*, *independent auditor*, *presiding officer*, *spouse* and *voluntary appearance*. The definition of *authority* is to be replaced by the new definition of *public body*. The definition of *entity* under the **Interpretation of Legislation Act 1984** will apply to the use of this term in the Principal Act. The definitions of *compulsory appearance*,

*domestic partner, presiding officer, spouse* and *voluntary appearance* are no longer used.

Subclause (1) amends the definitions of *associated entity*, *legal practitioner*, *performance audit*, *VAGO officer*, *VAGO premises*, and *Victorian Inspectorate Officer*.

Subclause (1) substitutes a new definition of *public body* to mean the following, but does not include an exempt entity—

- a public sector body within the meaning of section 4(1) of the **Public Administration Act 2004**;
- 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**;
- an entity of which the State or another public body has sole or joint control;
- a Council within the meaning of the **Local Government Act 1989**;
- a State owned enterprise within the meaning of the **State Owned Enterprises Act 1992**;
- a trust body within the meaning of the **Financial Management Act 1994**;
- a trustee of a trust in which the State is the principal beneficiary;
- a trustee of a trust in which a Council is the principal beneficiary or several Councils are the principal beneficiaries;
- a regional library under section 196 of the **Local Government Act 1989**;
- a registered community health centre within the meaning of the **Health Services Act 1988**;
- a body that provides aged care services that is registered under the **Health Services Act 1988**;
- any other entity prescribed for the purposes of this definition.

The new definition of *public body* replaces the current definitions of *authority* and *public body* in the Principal Act.

Subclause (2) inserts the following new definitions into the Principal Act—

*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;

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

*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;

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

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

- a Deputy Auditor-General;
- a person acting in the office of Deputy Auditor-General;
- a senior VAGO officer;

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

*draft specification* means—

- in relation to a performance audit conducted under new section 14 or 15, a specification prepared for the purpose of consultation under new section 17; and
- in relation to a performance audit of the Auditor-General or VAGO under new section 82, a specification prepared for the purpose of consultation with the Auditor-General under new section 82(7);

*entry notice* means a notice served under new section 44;

*exempt entity* means—

- a department of the Parliament; or
- a court; or
- any other prescribed entity;

*final specification* means—

- in relation to a performance audit conducted under new section 14 or 15, a specification finalised under section 17(3); and
- in relation to a performance audit of the Auditor-General or VAGO under section 82, a specification finalised under section 82(8);

*independent financial auditor* means a person appointed under new section 79 to audit the Auditor-General and VAGO;

*independent performance auditor* means a person appointed under new section 82 to audit the Auditor-General and VAGO;

*information gathering notice* means a notice served under new section 30;

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

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

Subclause (3) repeals the definition of *domestic partner* in section 3(2) of the Principal Act as this term is not used in the Act.

Subclause (4) inserts a note at the foot of new section 3 of the Principal Act outlining the applicability of the **Electronic Transactions (Victoria) Act 2000** to the Principal Act.

Clause 6 amends the objectives of the Principal Act to substitute new objectives.

Subclause (1) substitutes "public bodies" for "authorities" in section 3A(1)(a) of the Principal Act consistent with the new defined term.

Subclause (2) substitutes sections 3A(1)(b), (c) and (ca) of the Principal Act for the following objectives—

- to determine whether—
  - public bodies are achieving their objectives effectively, economically and efficiently and in compliance with all relevant Acts;
  - Victorian public sector operations and activities are being performed effectively, economically and efficiently and in compliance with all relevant Acts;
  - 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;
- 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;
- to ensure the Auditor-General has the necessary powers when conducting an audit or assurance review.

Subclause (3) updates the language in section 3A(1)(d) of the Principal Act to substitute "his or her performance" for the words "performance as the Auditor-General".

- Clause 7 amends section 3B of the Principal Act to replace the reference to existing Part 3 and section 16C to new Parts 3, 4, 5, 6, 7 and 9 which contain the re-enacted and new provisions.
- Clause 8 inserts new section 3C into the Principal Act, which provides for the Act to bind the Crown.
- Clause 9 sets out the substantial amendments to the Principal Act, and substitutes Parts 2, 3, 3A, 3B, 4, 4A, 5, and 6 of the Principal Act for new Parts and sections.

Part 2 provides for the appointment of an Acting Auditor-General and the administration of VAGO.

Division 1 sets out the requirements for the appointment and remuneration of the Acting Auditor-General, and for a person acting as the deputy of the Auditor-General.

New section 4, which substantially re-enacts section 6 of the Principal Act and modernises its language, sets out the process for appointing an Acting Auditor-General, and modernises the language of section 6 of the Principal Act.

New section 5, which substantially re-enacts section 7 of the Principal Act, sets out the requirements for a person to act as the deputy of the Auditor-General and inserts a new subsection (5), which provides that while a person is acting as Deputy Auditor-General, the person is entitled to remuneration at the same rate as the Deputy-Auditor-General.

Division 2 sets out authorisations for employment of staff by VAGO, engagement of persons or firms by the Auditor-General, and delegation of the Auditor-General's functions and certain powers by instrument.

New section 6, which re-enacts section 7E of the Principal Act, authorises the employment of employees under Part 3 of the **Public Administration Act 2004** as required for the performance of functions of VAGO.

New section 7, which substantially re-enacts section 7F of the Principal Act with updated section references, authorises the Auditor-General to engage a person or firm to assist in the performance of the Auditor-General's functions, except for a person appointed to conduct—

- an independent financial audit of VAGO under new section 79;
- a person appointed as the independent performance auditor of the Auditor-General and VAGO under new section 82.

New section 8, which substantially re-enacts section 7G of the Principal Act, authorises delegation of the Auditor-General's functions and certain powers by instrument.

- new section 8(4) updates the definition of **threshold amount** at section 7G(3) of the Principal Act to replace "2002" and "2003", with "2017" and "2018" respectively in new section 8(4)(a);

- to replace "5 000 000" with "10 000 000" in new section 8(4)(a) and (b); and
- to replace "2003" with "2018" in new section 8(4)(b).

New section 9, which re-enacts section 7H of the Principal Act, requires the State to indemnify the Auditor-General, a Deputy Auditor-General, a person acting in the office of Auditor-General or Deputy Auditor-General, and a person employed under new section 6, against liability for anything done or omitted to be done in good faith in the exercise of a power or performance of a function or duty, or in the reasonable belief that the act or omission was in the exercise of a power or performance of a function or duty under the Principal Act or any other Act.

New Part 3 sets out the requirements for conducting financial audits.

New section 10 provides for the audit of the financial statements and report of operations of public bodies. It substantially re-enacts section 8 of the Principal Act, with minor technical amendments to enhance accessibility and updated references to new definitions.

New section 11 requires the Auditor-General to express a written audit opinion on a public body's financial statements after it is audited under new section 10(1). It re-enacts section 9 of the Principal Act, makes minor technical amendments to enhance the readability of the section, and updates references to new definitions and sections.

New section 12, which re-enacts section 9A of the Principal Act, requires the Auditor-General to express a written audit opinion on each annual financial report of the State to the Minister who prepared the annual financial report.

New section 13, which re-enacts section 10 of the Principal Act and updates its section references, requires a public body or relevant Minister to pay to the Consolidated Fund an amount determined by the Auditor-General to defray the reasonable costs and expenses incurred in conducting an audit and expressing an audit opinion. New section 13(4) clarifies that if a public body or relevant Minister disputes the reasonableness of the amount to be paid, the dispute is to be referred to arbitration under the **Commercial Arbitration Act 2011**.



New Part 4 consolidates and clarifies the requirements for preparing specifications and conducting consultation on performance audits by the Auditor-General.

New section 14(1) authorises the Auditor-General to conduct any performance audit the Auditor-General considers necessary to determine whether—

- a public body is achieving its objectives effectively, economically and efficiently and in compliance with all relevant Acts; or
- the operations or activities of the whole or any part of the Victorian public sector, whether or not they are performed by a public body, are performed effectively, economically and efficiently and in compliance with all relevant Acts.

New section 14(2) expressly prohibits the Auditor-General from conducting a performance audit of the Victorian Inspectorate, and excludes the Victorian Inspectorate from the operation of new section 14.

New section 14(3) states that a performance audit is limited to considering the objectives and particular issues specified in the final specification or, if there is one, the amended specification.

New section 15, which substantially re-enacts section 15(2), section 15(3) and section 16C of the Principal Act, authorises the Auditor-General to conduct any performance audit considered necessary to determine whether a financial benefit or property provided by a public body to an associated entity or other entity that is not a public body, has been used effectively, economically and efficiently for the particular purpose for which it was given.

New section 15(2) specifies the kinds of financial benefit or property that are subject to new subsection 15(1), and provides an example of a financial benefit or property that is not given on commercial terms.

New section 15(3) provides that a performance audit under this section is limited to considering the objectives and particular issues specified in the final specification, or the amended specification if there is one.

New sections 16 and 17, clarify the steps the Auditor-General must take before conducting a performance audit.

New section 16 requires the Auditor-General to first prepare a specification for any performance audit before calling for any information or exercising any powers under new Part 7. The objectives of the performance audit, the entities to be included in the audit, and the particular issues to be considered must be detailed in the specification.

New section 16(3) specifies that new section 16(1) does not prevent a VAGO officer from requesting information, and does not prevent a person providing information by consent at any time.

New section 17(1) outlines with whom the Auditor-General must consult before finalising the specification for a performance audit. New section 17(1) requires the Auditor-General to consult with—

- any public body that appears in the draft specification;
- the Parliamentary Committee if—
  - the performance audit does not appear in the Auditor-General's annual plan prepared under new section 73;
  - the performance audit appears in the Auditor-General's annual plan and is subject to a material change to the objectives of the audit, the entities included in the audit or the particular issues (if any) to be considered;
  - the performance audit is conducted under new section 15 and includes an associated entity or an entity that is not a public body;
  - the performance audit involves collaboration or information sharing with the Auditor-General of another jurisdiction under new section 69; or
  - it requests that it be consulted;
- any associated entity or other entity that is included in the draft specification if the draft specification is for a performance audit conducted under new section 15.

New section 17(2) authorises the Auditor-General to consult with an associated entity or any other entity on a draft specification for a performance audit conducted under new section 15.

New section 17(3), which substantially re-enacts section 15(6) of the Principal Act with updated terms, specifies that 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 days of receiving the request from the Auditor-General, they are to be taken to have no comment on the draft specification, and the Auditor-General may finalise the specification.

New section 18(1) requires the Auditor-General to provide a final specification for a performance audit to any public body, associated entity or other entity that is included in the performance audit.

New section 18(2) authorises the Auditor-General to amend a final specification for a performance audit if the Auditor-General is satisfied that the amendment is necessary to achieve the purpose of the performance audit.

New section 18(3) requires the Auditor-General to amend a final specification if there is a material change to the objectives of the audit, the entities included in the audit, or the particular issues (if any) to be considered.

If the Auditor-General amends a final specification for a performance audit, new section 18(4) requires the Auditor-General to do the following before calling for any further information or exercising further powers under new Part 7—

- provide a copy of the amended specification to any public body, associated entity or other entity included in the amended specification;
- 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—
  - the objectives of the audit;
  - the entities included in the audit; or
  - the particular issues (if any) to be considered.

New section 18(5) gives the Auditor-General a discretion to consult with any associated entity or other entity on the amended specification.

New section 18(6) specifies that if the public body, associated entity or other entity does not provide comments on an amended specification within 15 days of receiving the request from the Auditor-General, they are to be taken to have no comment on the amended specification, and the Auditor-General may continue to call for information or exercise any powers under new Part 7 in relation to the performance audit.

New section 18(7) specifies that new section 18(4) does not prevent a VAGO officer from requesting information, and does not prevent a person providing information by consent at any time.

New Part 5 provides for a new discretion for the Auditor-General to conduct assurance reviews. This discretion is not intended to detract from the Auditor-General's existing financial and performance audit functions and obligations, but will enable the Auditor-General to conduct reviews on targeted, smaller scale, time sensitive or lower risk matters.

New section 19 inserts a requirement for the Auditor-General to conduct an assurance review of each set of estimated financial statements.

New section 20 provides the Auditor-General with a power to 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 the Audit Act—

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

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 new section 20(1). However, the Auditor-General is prohibited from conducting an assurance review of the Victorian Inspectorate (other than a review of estimated financial statements).

New section 21 outlines the additional scope of assurance reviews in relation to the use of a financial benefit or property. The Auditor-General may conduct any assurance review the Auditor-General considers necessary to determine whether a financial benefit or property has been used effectively, economically and efficiently for the particular purpose for which it was given. The kinds of financial benefit or property under this section are specified as follows—

- a financial benefit given to an associated entity by a public body for a particular purpose;
- 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;
- property given to an associated entity by a public body for a particular purpose;
- 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;
- property of an associated entity and where a public body provides a financial benefit for a particular purpose in relation to that property;
- property of an associated entity in which a public body holds a security interest for a particular purpose.

This section also provides an example of a financial benefit or property not given on commercial terms to clarify the scope of the Auditor-General's discretion.

New Part 6 consolidates the Auditor-General's other audit functions.

New section 22, which re-enacts section 16D of the Principal Act and updates references to sections, authorises the Auditor-General to accept appointment under the Corporations Act 2001 of the Commonwealth as auditor of a State company.

New section 23, which substantially re-enacts section 16E and incorporates new terms and modernises the language of the section, authorises the Auditor-General to enter into an arrangement with a public body for the provision of other auditing services by the Auditor-General to the public body.

New section 24 substantially re-enacts sections 16G(1), 16G(2) and 16G(3) of the Principal Act in respect of other financial audits, and makes amendments to—

- update the section with new definitions and section references; and
- substitute the words "person or body" for the term "entity".

New section 24(1) authorises the Auditor-General to enter into a public purpose audit arrangement at the request of an entity that is not a public body.

Before entering into a public purpose audit arrangement, new section 24(2) requires the Auditor-General to be satisfied that the entity exists for a public purpose, and that it is practicable and in the public interest for the Auditor-General to audit the financial statements of the entity.

New section 25 substantially re-enacts section 16G(4)(a) of the Principal Act, and sets out the Auditor-General's obligations to audit the financial statements of the entity with which the Auditor-General has entered into a public purpose audit arrangement, and express a written audit opinion on the entity's financial statements.

New section 26, which re-enacts section 16G(4)(m) of the Principal Act, authorises the Auditor-General to make a report to Parliament on any financial audit conducted under a public purpose audit arrangement. Where the Auditor-General does make a report to the Parliament under new section 26(1), the Auditor-General must include in the report the reasons for opinions expressed in the report and may include any information the Auditor-General considers necessary, and may include any recommendations the Auditor-General considers relevant.

New section 27(1), which re-enacts sections 16G(4)(m) of the Principal Act, prohibits the Auditor-General from including the following in a report on a financial audit conducted under a public purpose audit arrangement—

- information that discloses a trade secret;

- 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;
- any information the Auditor-General considers would prejudice any criminal proceeding or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate;
- a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence;
- a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

New section 27(2) requires the entity with whom the Auditor-General has entered into a public purpose audit arrangement to provide a person who is an officer or employee of that entity with a reasonable opportunity to respond to a comment or opinion adverse to that person who is to be named in a report, which the Auditor-General intends to include in a report.

New section 28, which re-enacts section 16G(4)(c) to (j), specifies that the information gathering powers in Divisions 1 and 2 of new Part 7 are applicable to a financial audit conducted under a public purpose audit arrangement.

New Part 7 sets out the information gathering powers and duties that are applicable in the performance of certain functions and powers under the Principal Act and other Acts.

New Division 1 provides for the power to require information, documents and attendances.

New section 29 empowers the Auditor-General to appoint, in writing, an authorised person to exercise any powers under new Part 7.

New section 30 sets out the Auditor-General's 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 gathering notice to require a person to do any of the following—

- provide to the Auditor-General or authorised person any relevant information specified in the notice before a specified time and in a specified manner;
- 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;
- attend and give evidence or answer any relevant questions before the Auditor-General or authorised person at a specified time and place.

New section 31 sets out the content and form requirements for information gathering notices. An information gathering notice must—

- be in writing;
- be in the prescribed form (if any); and
- include a statement that it is an information gathering notice under new section 30 of this Act, a statement that it is an offence not to comply with the information gathering notice without reasonable excuse, and any other prescribed matter.

New section 32 sets out the service requirements for an information gathering notice, and provides exceptions in special circumstances. New section 32(1) requires an information gathering notice to be served at a reasonable time (not less than 5 business days) before the date on which the person is required to attend or otherwise comply with the notice, unless—

- 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
- 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 questions, at an earlier time.



New section 32(2) requires that an information gathering notice directed to a natural person must be served personally or at the person's usual place of work. If the information gathering notice is directed to a body corporate, new section 32(2) requires the notice must be served by leaving it with an employee who appears to be at least 18 years of age—

- at the registered office; or
- at the principal place of business.

New section 33(1) permits the Auditor-General or an authorised person to administer an oath or affirmation to a person.

New section 33(2) provides that, in relation to a person to whom an information gathering notice is directed, the Auditor-General or an authorised person may—

- require the person to either take an oath or make an affirmation; and
- administer an oath or affirmation to the person; and
- examine the person in accordance with the notice; and
- require the person to produce documents or other things in accordance with the notice.

New section 33(3) and (4), which substantially re-enact section 11(1A) and (1B) of the Principal Act and make technical amendments to improve accessibility, and update section references, require inclusion of information in an information gathering notice about the nature of the matters about which a person is to be examined. Such information does not need to be included in the information gathering notice if the Auditor-General or authorised person forms the opinion on reasonable grounds that its inclusion would be likely to prejudice the conduct of the audit or assurance review to which the notice relates, or would be contrary to the public interest.

New section 34 enables a person to have legal representation and provides for the protection of legal practitioners and persons attending before the Auditor-General or an authorised person.

New section 34(1) enables a person to 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.

New section 34(2) provides that 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.

New subsection (3) provides that 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.

New section 35 sets out the requirements relating to information gathering notices on persons under the age of 16 years of age. New section 35(1) provides that the notice has no effect if it is served on a person under the age of 16 years at the date the notice is served.

New section 35(2) requires the Auditor-General or authorised person to confirm the age of the person who is required to attend by an information gathering notice, if the Auditor-General or authorised person considers that the person may be under the age of 18 years. If the person is under the age of 16 years, the person must be released from an attendance.

Under new section 35(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.

New section 35(4) makes clear that subsections (2) and (3) also apply to a person who provides information or produces documents or other things, or attends to answer questions or give evidence, by consent.

New section 36(1) provides that if, during an attendance, it becomes apparent that the person required to attend 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.

New section 36(2) requires a person under the age of 18 years (but 16 years of age or over) to be accompanied by a parent or guardian or an independent person known to the person attending, if they are required to attend in relation to an information gathering notice.

New section 36(3) provides that a person required to attend by an information gathering notice must be accompanied by an independent person if—

- the Auditor-General or authorised person believes that the person attending has a mental impairment; or
- the person attending provides the Auditor-General or authorised person with reasonably satisfactory medical evidence that the person has a mental impairment.

New section 36(4) makes clear that new section 36 applies to a person providing information, documents or other things, or attending to answer questions or give evidence, by consent.

New section 37, which substantially re-enacts section 11F of the Principal Act, outlines the requirements to be met for audio or video recording of attendances. Under this new section, the Auditor-General or an authorised person must ensure that an attendance by a person required to attend by an information gathering notice is audio or video recorded.

New section 37(2) provides that 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—

- the attendance was audio or video recorded; and
- the audio or video recording is available to be tendered in evidence.

However, this is subject to new section 37(3), which enables a court or tribunal to admit evidence of anything said during the attendance by the person required to attend that is otherwise inadmissible because of subsection (2) if it is satisfied that there are exceptional circumstances that justify admitting that evidence.

New section 37(4) provides that the Auditor-General or authorised person must provide the person who is required to attend with a copy of the audio or video recording and any

transcript created, unless the Auditor-General or an authorised person considers on reasonable grounds that doing so may prejudice an audit or assurance review. If the Auditor-General or an authorised person determines not to provide a copy of the audio or video recording and any transcript created under new section 37(4), new section 37(5) requires the Auditor-General or authorised person to allow the person to listen to or view the recording of the person's evidence at VAGO premises at any reasonable time.

New section 37(6) requires that, 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.

New section 38 makes clear that the Auditor-General or a VAGO officer is not required to pay any fees when exercising information gathering powers under Part 7.

New section 39 requires the Auditor-General to give a written report to the Victorian Inspectorate within 3 business days after a person is served with an information gathering notice.

The written report must specify—

- the name of the person to whom the notice was served; and
- the reasons for serving the notice; and
- the purpose of the audit or assurance review.

New section 40 clarifies and sets out the scope of the Auditor-General's ability to override secrecy and confidentiality obligations.

New section 40(2) provides for a person who is requested to provide information, a document or a thing to provide that despite any prohibition or duty of confidentiality under an enactment, rule of law or contract.

New section 40(3) limits the effect of subsection (2) where the document or information is subject to Cabinet confidentiality.

New section 40(4) provides that 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—

- prohibits the person from giving the information or producing the document or other thing; or
- imposes a duty of confidentiality on the person in relation to the information, document or other thing.

New section 40(5) provides that it is a reasonable excuse to refuse or fail to comply with an information gathering notice if it relates to a document or information which is subject to Cabinet confidentiality unless the notice is served for certain specified purposes; being—

- a financial audit under Part 3;
- a performance audit under Part 4;
- an assurance review under Part 5;
- performing the Auditor-General's functions or powers under another Act where the other Act expressly authorises the provision of the information.

New section 40(6) provides that a person is not subject to any civil, administrative or disciplinary proceeding or action only because the person complied with 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 with an information gathering notice.

New Division 2 sets out the requirements relating to the use of documents and things produced to the Auditor-General or a VAGO officer.

New section 41(1) provides that, 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—

- inspect any document or other thing;
- retain the document or other thing for as long as is reasonably necessary for the purpose for which it was produced or provided; and
- take extracts from and make copies of the document or other thing.

New section 41(2) enables 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 to inspect the document or other thing at any reasonable time.

New section 42 sets out requirements relating to the return or destruction of documents by the Auditor-General or a VAGO officer.

New section 42(1) specifies that 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—

- delivered to the person who appears to be entitled to that document or other thing; or
- destroyed; or
- in the case of an electronic document, deleted.

Under new section 42(2), if a document referred to in new section 42(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.

New section 42(3) clarifies that a document provided in electronic form may be delivered to the person who appears to be entitled to that document by electronic communication.

New section 42(4) authorises the Auditor-General to retain a copy of a document used in an audit or assurance review, despite new section 42(1), for any applicable period required by the auditing and assurance standards or by the Principal Act or any other law.

New section 42(5) requires the Secretary to the Department of Premier and Cabinet to provide the Auditor-General or a VAGO officer with access to a document that was delivered to the Secretary under new section 42(2), if such access is necessary for the Auditor-General to comply with the auditing and assurance standards.

Division 3 outlines the Auditor-General or an authorised person's powers to enter and inspect premises owned or occupied by a public body or an associated entity.

New section 43(1) provides that, 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 the Auditor-General or an authorised person considers on reasonable grounds that—

- it is necessary for the purposes of a financial audit or performance audit under this Act; and
- the information and any other things cannot be obtained by consent or by serving an information gathering notice.

New section 43(2) provides that, 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—

- entry and inspection of the premises is for the purposes of a performance audit of a public body under new section 15; and
- the premises—
  - 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
  - contain property of a public body or the State, or property in which a public body or the State has a security interest.

New section 44 provides that, unless consent has been given, the Auditor-General or an authorised person must serve the owner or occupier of the premises with a written notice before entering the premises of a public body or an associated entity under section 43. The written notice must—

- be in the prescribed form (if any); and
- include—
  - a statement that it is an entry notice under section 44 of this Act; and

- a statement that it is an offence not to comply with the entry notice without reasonable excuse; and
- any other prescribed matter.

New section 45 provides the service requirements for an entry notice. New section 45(1) requires an entry notice to 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—

- 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
- the person to whom the notice is addressed consents to the Auditor-General or authorised person entering the premises at an earlier time.

New section 45(2) requires an entry notice directed to a natural person to be served personally or at the person's usual place of work.

New section 45(3) requires an entry notice directed to a body corporate to be served by leaving it with an employee who is apparently at least 18 years of age—

- at the premises that the Auditor-General or authorised person wants to enter; or
- at the registered office or principal place of business.

New section 46(1) requires the Auditor-General or an authorised person to produce proof of identity when requested by the owner or occupier of the premises of a public body or an associated entity, while exercising a power under this Division.

New section 46(2) specifies that if the Auditor-General or an authorised person fails to produce proof of identity on request, the Auditor-General or authorised person—

- is not entitled to enter the premises; and



- 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.

New section 47 requires a person who is served with an entry notice to 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 body or an associated entity—

- the Auditor-General;
- an authorised person;
- a VAGO officer.

New section 48 provides that, 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 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.

New section 49 provides for the protection of privacy and minimisation of disruption. Under this new section, irrespective of whether entry is obtained by notice or by consent, the Auditor-General, authorised person or VAGO officer must take reasonable steps to—

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

New section 50 sets out obligations in respect of vulnerable persons. 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. The Auditor-General, authorised person or VAGO officer must comply with those protocols irrespective of whether entry to the premises is obtained by notice or by consent.

New section 50(3) also defines *vulnerable persons* as including children, the elderly, and persons with a cognitive impairment or a disability.

New section 51 requires that, within three business days after a person is served with an entry notice, the Auditor-General must give a written report to the Victorian Inspectorate specifying—

- the name of the person to whom the notice was served; and
- the reasons for serving the notice; and
- the purpose of the audit.

New Division 4 sets out a number of offences and penalties.

New section 52 provides that a person who is duly served with an information gathering notice must not, without reasonable excuse, refuse or fail to comply with the notice. This section makes clear that a person cannot rely on statutory secrecy and confidentiality provisions as a reasonable excuse. The maximum penalty for this offence is 240 penalty units or imprisonment for 2 years.

Section 53 provides that a person who is duly served with an entry notice must not, without reasonable excuse, refuse or fail to comply with the notice. The maximum penalty for this offence is 240 penalty units or imprisonment for 2 years.

New section 54 provides for two offences.

Under new section 54(1) 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. The maximum penalty for this offence is 240 penalty units or imprisonment for 2 years.

Under new section 54(2) 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. The maximum penalty for this offence is 240 penalty units or imprisonment for 2 years.

However, under new section 54(3) if the Auditor-General or authorised person fails to inform the person that refusal or failure to take the oath or make the affirmation or answer the

question without reasonable excuse is an offence, the person will not have committed an offence under new section 54(1) or 54(2).

New section 55(1) provides that 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. The maximum penalty for this offence is 120 penalty units or imprisonment for 12 months. The note to new section 55(1) makes clear that section 314 of the **Crimes Act 1958** in relation to perjury and section 254 of that Act in relation to the destruction of evidence may be relevant.

New section 55(2) provides that 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—

- indicates to the Auditor-General or authorised person the respect in which it is false or misleading; and
- to the extent practicable, provides the correct information.

The maximum penalty for this offence is 120 penalty units or imprisonment for 12 months.

New Part 8 provides for reporting on audits.

New section 56 provides that the Auditor-General may make a report to Parliament on audits and assurance reviews. This section provides the Auditor-General with the discretion to make a report to Parliament on any audit or assurance review by or on behalf of the Auditor-General under the Principal Act. This report must set out the reasons for opinions expressed in the report, and may include any information and recommendation the Auditor-General considers relevant.

New section 57 provides for the reporting on the annual financial report of the State. The Auditor-General must make a report to the Parliament on each annual financial report.

Under new section 57(2), the report may include any information and recommendations that the Auditor-General considers necessary for more effective and efficient management of public resources, and for the keeping of proper accounts and records of transactions relating to public resources.

Under new section 57(3), after preparing a proposed report, the Auditor-General must give a copy of the report to the Minister who prepared the annual financial report, and ask the Minister in writing to provide comment before a specified date at least 10 business days after the proposed report is given to the Minister.

Under new section 57(4), the Auditor-General must include in the report to the Parliament any comments, or a summary of the comments, made by the Minister before the date specified, in a form agreed between the Auditor-General and the Minister.

New section 58 provides for consultation on reports prepared under new section 56.

Under new section 58(2), the Auditor-General must provide a copy of the proposed report, or part of it, to the entities specified in the section, and 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 that report. The Auditor-General must request, in writing, that any entity that has been provided with a copy of the report, or part of the report, provide comments within 10 business days if the report is in relation to a performance audit, and within 5 business days if the report is in relation to any other audit or assurance review.

Under new section 58(3), the Auditor-General is not required to make a written request for comments where a copy of the proposed report, or part of the proposed report has been provided to the Secretary to the Department of Premier and Cabinet, unless the report relates to an audit or assurance review of the Department of Premier and Cabinet, a prescribed body, or the whole of the Victorian public sector.

Under new section 58(4), the Auditor-General must include in a report any comments, or a summary of comments made within the specified timeframe, in a form agreed between the Auditor-General and the entity that provided the comments.

New section 59 provides for the transmission of reports under new section 56 of any audit or assurance review to Parliament. It substantially re-enacts section 16AB of the Principal Act, and amends it by substituting new section references.

New section 60 provides that the Auditor-General must report to the Parliamentary Committee on assurance reviews. The Auditor-General is required to submit a report on any assurance review that the Auditor-General has conducted within the specified periods, and the Auditor-General must also include the reasons for the assurance review and identify any public body, associated entity or other body included in the assurance review, in the report. This section requires the Auditor-General to submit the report to the Parliamentary Committee no later than 4 weeks after the final day of the relevant period, which is defined to mean—

- the period between the day that this new section comes into operation and the final day of the quarterly cycle of the financial year that day falls within; or
- each quarterly cycle of every financial year following the period as above.

Division 2 provides for the content of reports.

New section 61 provides for reports relating to associated entities and other entities that are not public bodies. New section 61(1) restricts the application of the section to reports by the Auditor-General of performance audits conducted under new section 15, or assurance reviews conducted under new section 21.

New section 61(2) prohibits the Auditor-General from including in the report any recommendation directed to the associated entity or an entity that is not a public body, or any statement or finding about the associated entity or entity that is not a public body that is not directly related to the matters to be determined by the audit or assurance review.

New section 61(3) requires the Auditor-General to 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.

New section 62 provides that the Auditor-General must not include information that discloses a trade secret or is commercially sensitive in any report prepared under the Principal Act or any other Act. This new section does not prevent that information from being disclosed pursuant to new section 64, that is, if it is relevant to the subject matter of a report,

and it is in the public interest to include the information in the report.

New section 63 re-enacts sections 16(5), 16(6) and 16C(5) of the Principal Act, and prohibits the Auditor-General from questioning the merits of policy objectives of the Government in any report it prepares under the Principal Act or any other Act.

New section 64, subject to new sections 62, 63 and 65, allows the Auditor-General to include any information that has been acquired through the performance of duties and functions of the Auditor-General in any report. This is limited to if the Auditor-General considers the information to be relevant to the subject matter of the report and it is in the public interest to include the information.

New section 65 specifies additional information that the Auditor-General is prohibited from including in a report. The Auditor-General must not include in a report under the Principal Act or any other Act—

- any information that the Auditor-General considers would prejudice any criminal proceedings, criminal investigations or investigations by the IBAC or the Victorian Inspectorate; or
- a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
- a recommendation that a specified person be, or opinion that a specified person should be, prosecuted for an offence.

New section 65(2) specifies that if the Auditor-General intends to include any adverse comment or opinion about a 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 must give that person a reasonable opportunity to respond to the public body, associated entity or other entity in relation to the adverse material.

New Part 9 provides for the notification of suspected corrupt conduct to the IBAC and the Victorian Inspectorate, and information sharing.

New section 66, which re-enacts section 19A of the Principal Act, requires the Auditor General to notify the IBAC of any matter the Auditor-General suspects on reasonable grounds involves corrupt conduct, subject to any exemption issued under the **Independent Broad-based Anti-corruption Commission Act 2011**.

New section 67, which re-enacts section 19B of the Principal Act, requires the Auditor-General to notify the Victorian Inspectorate of misconduct in relation to specified officers and entities.

New section 68 sets out the circumstances in which the Auditor-General may provide or disclose information to a specified entity.

New section 68(1) enables the Auditor-General to provide information acquired in the performance of the duties and functions or exercise of powers under the Principal Act or any other Act to a specified entity, if the Auditor-General considers that—

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

New section 68(2) defines *specified entities* for the purposes of new section 68(1).

New section 68(3) provides that the Auditor-General is not permitted to provide or disclose information to specified entities that is contained in an exempt document within the meaning of section 28 of the **Freedom of Information Act 1982**, or that is subject to any restriction on its disclosure under any Act, including a Commonwealth Act.

New section 69, which substantially re-enacts section 16FA of the Principal Act, provides the circumstances under which the Auditor-General may collaborate and share information with an Auditor-General of another jurisdiction.

New section 69(3) provides that the Auditor-General may provide or disclose information 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.

New section 69(5) permits the Auditor-General to share information provided under new section 69(3) that has not already been published 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.

New section 69(6), which substantially re-enacts section 16FA(5) of the Principal Act, requires the Auditor-General to report on the sharing of information under new section 69 in a report of an audit or assurance review, or in the next annual report if the information is shared after the relevant report of an audit or assurance review has been prepared, or the information was not acquired in the conduct of an audit or assurance review.

New section 69(7) defines *another jurisdiction* for the purposes of new section 69 to mean the Commonwealth, another State or a Territory.

New section 70, which re-enacts section 20B of the Principal Act, provides for the exemption of certain documents from the operation of the **Freedom of Information Act 1982**, and makes a consequential amendment so that the new section also extends to documents related to assurance reviews.

New section 70(2) defines *agency* to mean the Auditor-General or VAGO.

New section 71 creates an offence for the improper use or unauthorised disclosure or provision of information. The offence applies only to a person who is, or was a VAGO officer, a person appointed as the independent auditor of VAGO, or a person appointed as the independent performance auditor of the Auditor-General and VAGO. Under this new section, a person is prohibited from making improper use of, or directly or indirectly providing or disclosing any information acquired by the person in the performance of the duties and functions, or exercise of powers under the Principal Act or any other Act. The maximum penalty for this offence is 120 penalty units or imprisonment for 12 months.



Under new section 71(3), a person may provide or disclose information without committing an offence in the following circumstances—

- for the performance of duties and functions, or the exercise of powers of the person in accordance with the Principal Act or any other Act;
- if the information is in the public domain at the time, otherwise than as a result of a disclosure that the person knows or ought to have known was unlawful;
- for the purposes of a proceeding for an offence against the Principal Act or any other Act; or
- as is otherwise authorised or required by the Principal Act or any other Act.

New section 72 prohibits a person who receives or obtains confidential information from VAGO, a VAGO officer or otherwise under the Principal Act from providing or disclosing that information. The maximum penalty for this offence is 120 penalty units or imprisonment for 12 months.

Under new section 72(2) a person may provide or disclose confidential information without committing an offence in the following circumstances—

- for the purpose of making submissions or comments to the Auditor-General on a proposed report;
- for the purpose of obtaining legal or financial advice;
- if the confidential information is in the public domain at the time, otherwise than as a result of a disclosure that the person knows or ought to have known was unlawful;
- if the person is an officer or employee of a public body or an Auditor-General of another jurisdiction and the provision or disclosure is required to perform the person's official duties;
- if the person is a Department Head and the provision or disclosure is required to perform the person's official duties; or

- if the Auditor-General or a VAGO officer consents to the confidential information being provided or disclosed.

New section 72(3) defines *confidential information* as—

- a proposed report or part of a proposed report;
- a draft report or part of a draft report;
- working documents prepared for an audit or assurance review;
- information provided or disclosed as permitted under new sections 68 and 69; or
- any other information provided or disclosed under the Audit Act which is stated to be confidential, or by its nature is confidential.

New Part 10 provides for the accountability of the Auditor-General.

Division 1 sets out the reporting requirements of the Auditor-General.

New section 73, which re-enacts sections 7A(1) to (6) of the Principal Act, provides for the preparation of the Auditor-General's annual plan.

New section 74, which re-enacts section 7A(7) to (11) of the Principal Act, provides for the annual plan to be laid before Parliament.

New section 75, which re-enacts section 7B of the Principal Act, sets out the requirements for the annual report to be prepared by the Auditor-General.

Division 2 sets out other obligations of the Auditor-General.

New section 76, which re-enacts section 7C of the Principal Act, permits the Parliamentary Committee to alter certain obligations or requirements imposed on the Auditor-General or VAGO, and sets out the procedural requirements to make such alterations.

New section 77, which re-enacts section 7D of the Principal Act, sets out requirements with respect to audit priorities, budgets and expenditure.

New section 78(1) requires the application of auditing and assurance standards in the performance of functions and the exercise of powers in relation to audits or assurance reviews under the Principal Act.

New section 78(2) permits the Auditor-General to apply additional auditing and assurance standards to the conduct of audits and assurance reviews under the Principal Act, not inconsistent with the auditing and assurance standards. Any additional auditing and assurance standards applied by the Auditor-General must be summarised in the annual report, as per new section 75(2)(f).

New Part 11 provides for audits of the Auditor-General and VAGO.

New section 79 re-enacts with amendments section 17 of the Principal Act, and enables an independent financial auditor to audit VAGO. New section 79(1) provides that, 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 VAGO other than—

- a person who has a conflict of interest by reason of being engaged by the Auditor-General under new section 7;
- a person who has a conflict of interest by reason of holding a delegation from the Auditor-General under new section 8;
- a person appointed under new section 82 as the independent performance auditor of the Auditor-General and VAGO.

New section 79(2) provides that the independent financial auditor—

- is appointed for a period not exceeding 4 years; and
- may be re-appointed under this section; and
- is appointed on the terms and conditions and is entitled to the remuneration determined by the Parliamentary Committee; and

- in conducting the audit, must comply with directions as to the audit given by the Parliamentary Committee.

New section 79(3) re-enacts section 17(3) of the Principal Act, and provides for the remuneration of the independent financial auditor.

New section 79(4) re-enacts with amendments section 17(4) of the Principal Act by specifying that the independent financial auditor must conduct an audit of VAGO's financial statements at least once in each financial year.

New section 79(5) enables, subject to any directions given by the Parliamentary Committee, the independent financial auditor to exercise any powers of the Auditor-General under new Part 7 to the extent necessary to conduct the independent financial audit.

New section 79(6) authorises the independent financial auditor to apply additional auditing and assurance standards applied by the Auditor-General under section 78(2) to the conduct of audits of financial statements of VAGO.

New section 80 provides that, after auditing the financial statements of VAGO under new 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.

New section 81 substantially re-enacts section 18 of the Principal Act, with amendments to modernise the language of the section for clarity and substitutes new section references.

New section 81(5) re-enacts with amendments section 18(5) of the Principal Act to provide that the independent financial auditor must not include in a report under subsection (1)—

- information that discloses a trade secret; or
- information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose the Auditor-General or VAGO to any material disadvantage; or
- 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

- 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
- a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

New section 81(6) provides that 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 VAGO, the Auditor-General (after receiving a copy of the proposed report or the relevant part of it) must give the person a reasonable opportunity to respond to the Auditor-General in relation to the adverse material.

New section 82 provides for the independent performance audit of Auditor-General and VAGO.

New section 82(1) provides that, 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 Auditor-General and VAGO other than—

- a person who has a conflict of interest by reason of being engaged by the Auditor-General under new section 7;
- a person who has a conflict of interest by reason of holding a delegation from the Auditor-General under new section 8; or
- a person appointed under new section 79 as the independent financial auditor of VAGO.

New section 82(2) provides that the independent performance auditor is to be appointed on the terms and conditions and is entitled to the remuneration determined by the Parliamentary Committee, and in conducting the audit, must comply with directions as to the audit given by the Parliamentary Committee.

New section 82(3) provides that the remuneration payable under the appointment is to be paid from money appropriated to the Parliament.

New section 82(4) requires the independent performance auditor to conduct a performance audit at least once every 4 years to determine whether the Auditor-General and VAGO are achieving their objectives effectively, economically and efficiently and in compliance with all relevant Acts.

New section 82(5) permits, subject to any directions given by the Parliamentary Committee, the independent performance auditor to exercise any powers of the Auditor-General under new 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.

New section 82(6) requires the Parliamentary Committee to 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.

Before finalising a specification for a performance audit, new section 82(7) requires the Parliamentary Committee to—

- 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
- consult with the Auditor-General on the draft specification.

Under new section 82(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—

- the Auditor-General is taken to have no comment on the draft specification; and
- the independent performance auditor may finalise the specification.

New section 82(9) requires the Parliamentary Committee to provide the final specification for a performance audit to the Auditor-General.

New section 82(10) enables the independent performance auditor to apply additional auditing and assurance standards applied by the Auditor-General under new section 78(2) to the conduct of performance audits of the Auditor-General and VAGO.

New section 83 re-enacts with amendments sections 19(6) to (9) of the Principal Act, and outlines the requirements of a report of the independent performance auditor. This section enables the independent performance auditor to make a report of a performance audit conducted under section 82. Such a report—

- may include any information and recommendations the independent performance auditor considers relevant; and
- must set out the reasons for opinions expressed in the report.

New section 83(3) prohibits the independent performance auditor from making a report under new section 83(1) unless—

- 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
- 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
- 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.

New section 83(4) requires the independent performance auditor, within 7 sitting days of making the report, to transmit the report to each House of the Parliament.

New section 83(5) prohibits the independent performance auditor from including in the report—

- information that discloses a trade secret; or
- information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose the Auditor-General or VAGO to any material disadvantage; or

- 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
- 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
- a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

New section 83(6) provides that 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 VAGO, 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.

New Part 12 contains a general provision.

New section 84 enables the Governor in Council to make regulations for or with respect to any matter or thing required or permitted by the Principal Act to be prescribed or necessary to be prescribed to give effect to the Principal Act. This section makes clear the breadth of the regulations under the Principal Act.

New Part 13 sets out the transitional provisions in relation to the Principal Act.

New section 85 inserts a transitional provision in relation to Audit Victoria staff. It provides that, despite its repeal by the Bill, section 25 of the Principal Act (as in force immediately before its repeal) continues to apply to any person to whom it applied on and from 1 January 2000. This is a re-enactment of an existing transitional provision.

New section 86 inserts a transitional provision in relation to the **Integrity and Accountability Legislation Amendment Act 2012**. It provides that despite its repeal by the Bill, section 29 of the Principal Act (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. This is a re-enactment of an existing transitional provision.

New section 87 inserts a transitional provision in relation to the Deputy Auditor-General. It provides that, despite the repeal of section 7 of the Principal Act by the Bill, 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 new section 5 on and from the commencement of that section.

New section 88 inserts a transitional provision in relation to the staff of VAGO. Despite the repeal of section 7E of the Principal Act by the Bill, any employee employed in accordance with that section immediately before its repeal is taken to be employed under new 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.

New section 89 inserts a transitional provision in relation to State indemnity. This section provides that on the commencement of new Part 2, any indemnity by the State under section 7H of the Principal Act as in force immediately before its repeal is taken to be an indemnity under new section 9.

New section 90 inserts a transitional provision in relation to information gathering powers and duties.

New section 90(1) provides that the information gathering powers and duties in new Part 7, on commencement, only apply to the exercise of any power or performance of any functions under the Principal Act or any other Act on and from the commencement of that Part.

New section 90(2) provides that despite the repeal of sections 11, 11A, 11B, 11C, 11D, 11E, 11F, 11G and 12 of the Principal Act by the Bill, these sections continue to apply to any review of estimated financial statements or audit commenced but not completed before the commencement of new Part 7 as inserted by the Bill.

New section 91 inserts a transitional provision in relation to payment of audit fees. This section provides that on the commencement of new section 13, any amount owing under section 10 of the Principal Act as in force immediately before

its repeal is taken to be an amount owing under new section 13, and may be referred to arbitration under new section 13(4).

New section 92 inserts a transitional provision in relation to other auditing functions of the Auditor-General. This section provides that despite the repeal of sections 16D, 16E and 16G of the Principal Act by the Bill, these sections continue to apply to any audit commenced but not completed before the commencement of new Part 6 as inserted by the Bill.

New section 93 inserts a transitional provision in relation to reports made by the Auditor-General, the independent financial auditor and the independent performance auditor.

New section 93(1) provides that on the commencement of new section 59, any report required under sections 16, 16A, 16AB and 16B of the Principal Act as in force immediately before their repeal may be dealt with under section 59 as if it were a report under new Part 8.

New section 93(2) provides that on the commencement of new section 81, any report required under section 18 of the Principal Act as in force immediately before its repeal may be dealt with under new section 81 as if it were a report under that section.

New section 93(3) provides that on the commencement of new section 83, any report required under section 19 of the Principal Act as in force immediately before its repeal may be dealt with under new section 83 as if it were a report under that section.

### **Part 3—Consequential amendments to other Acts**

#### **Division 1—Victorian Inspectorate Act 2011**

- Clause 10 amends the definition of *coercive power* in section 3(1) of the **Victorian Inspectorate Act 2011** to replace "section 11" with "sections 30 and 43" as a consequence of renumbering arising from re-enactment of the section.
- Clause 11 amends section 11(3)(a)(ii) of the **Victorian Inspectorate Act 2011** to replace former section references to the Principal Act with new section references.
- Clause 12 makes amendments to section 41(1) the **Victorian Inspectorate Act 2011** to update the terminology of that Act and insert references to an assurance review.

Subclause (1) amends section 41(1). For "the appearance of a person at a compulsory appearance", subclause (1) substitutes the words "an attendance by information gathering notice". This reflects new terminology in the Audit Act.

Subclause (2) amends section 41(1)(a). For "appeared", subclause (2) substitutes the updated terminology of "attended".

Subclause (3) amends section 41(1)(b). For "appearance", subclause (3) substitutes the updated terminology of "attendance".

Subclause (4) amends section 41(1)(c). For "appearance", subclause (4) substitutes the updated terminology of "person's attendance".

Subclause (5) consequentially amends section 41(1)(d)—

- to replace the word "appearance" (where first occurring) with "attendance";
- to insert after "audit", the words "or assurance review"; and
- to replace "appearance occurred" with the words "information gathering notice was served".

Subclause (6) amends section 41(1)(e). For "attendance", subclause (6) substitutes "appearance".

Clause 13 amends section 43(3)(b) of the **Victorian Inspectorate Act 2011** to replace former section references of the Principal Act with new section references in relation to complaints that can be made to the Victorian Inspectorate.

Clause 14 amends section 46(2)(b) of the **Victorian Inspectorate Act 2011** to replace former section references of the Principal Act with new section references in relation to the Victorian Inspectorate's own motion investigation powers.

Clause 15 amends section 47(8)(c) of the **Victorian Inspectorate Act 2011** to insert after "audit" (wherever occurring), the words "or assurance review" in relation to conduct of an investigation by the Victorian Inspectorate as a consequence of the Principal Act now including assurance reviews.

- Clause 16 amends sections 58(2) and (8) of the **Victorian Inspectorate Act 2011** to insert after "audit" (wherever occurring), the words "or assurance review" in relation to legal representation of witnesses and other persons.
- Clause 17 amends section 88(3)(e) of the **Victorian Inspectorate Act 2011** to insert after "audit" (wherever occurring), the words "or assurance review" in relation to advice to a complainant.
- Clause 18 sets out the amendments to the **Victorian Inspectorate Act 2011** in relation to matters to be included in annual report.
- Subclause (1) amends section 91(1)(g)(ii) to replace former section references to the Principal Act with new section references.
- Subclause (2) amends section 91(7) to insert after "audit" (wherever occurring), the words "or assurance review".

#### **Division 2—Other consequential amendments**

- Clause 19 amends sections 19(2) and 20(5) of the **Health (Commonwealth State Funding Arrangements) Act 2012** to replace "authority" with the words "public body".
- Clause 20 amends section 139(3A) of the **Health Services Act 1988** to replace the reference to "section 12" with a reference to "section 40".
- Clause 21 amends section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** to substitute—
- in paragraph (b) of the definition of *mandatory notification provision*, for the reference to "section 19A" a reference to "section 66"; and
  - in paragraph (d) of the definition of *notification to the IBAC*, for the reference to "section 19A" a reference to "section 66".
- Clause 22 amends section 140(4) of the **Mental Health Act 2014**, to substitute "section 12" with "section 40".
- Clause 23 amends section 14(2)(d)(ii) of the **Parliamentary Committees Act 2003**, to insert after "audit" the words "or assurance review".

Clause 24 amends section 42(3) of the **Public Health and Wellbeing Act 2008** to replace "section 12" with "section 40".

**Part 4—Repeal of amending Act**

Clause 25 provides for the repeal of the amending Act on 1 July 2020.