

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

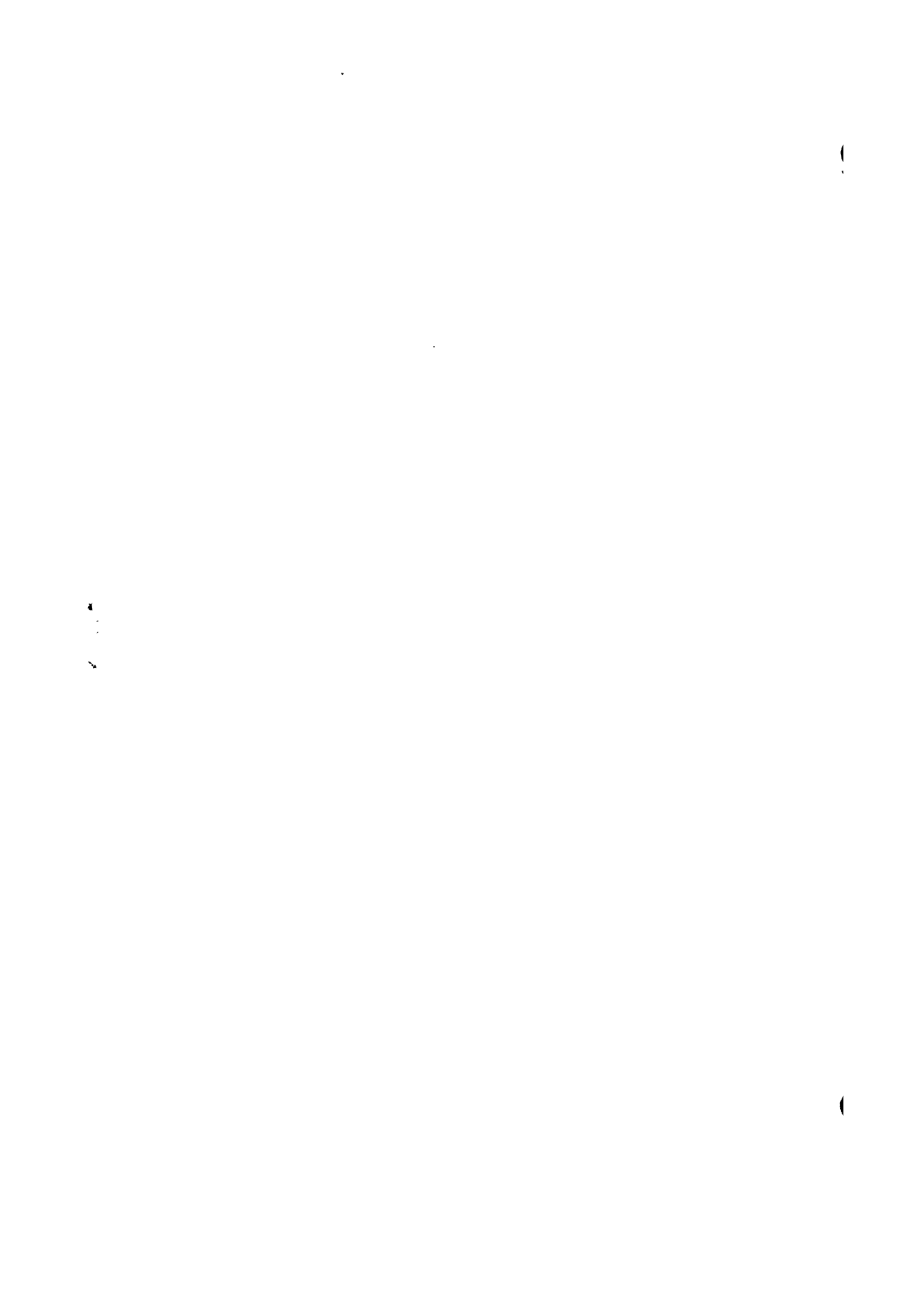
HOUSE OF REPRESENTATIVES

(As read a first time)

AUDIT AMENDMENT BILL 1989

TABLE OF PROVISIONS

Section	
1.	Short title etc.
2.	Commencement
3.	Responsibilities of Secretaries
4.	Commonwealth Public Account etc.
5.	Drawing of money from Commonwealth Public Account
6.	Duties of paying, authorising and certifying officers
7.	Transfer of functions between Departments
8.	Audits of Australian Audit Office
9.	Powers of independent auditor
10.	Reports of independent auditor concerning financial audits
11.	Departmental financial statements
12.	Auditor-General to audit and report
13.	Auditor-General's reports on Departmental financial statements to be given to Minister administering Department etc.
14.	Repeal of section 54 and insertion of new section: 54. Project performance audits
15.	Provisions of Act to apply in relation to Trust Fund
16.	Interpretation
17.	Application
18.	Insertion of new section: 63CA. Application of Part to new bodies
19.	Definitions
20.	Signing reports concerning certain authorities and other bodies etc.
21.	Insertion of new section: 70BB. Audit of subsidiaries
22.	Insertion of new section: 70E. Liability of Auditor-General etc.
23.	Regulations
24.	Insertion of new section: 73. Guidelines by Ministers



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 2 March 1989

(Minister representing the Minister for Finance)

A BILL

FOR

An Act to amend the *Audit Act 1901*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Audit Amendment Act 1989*.

5 (2) In this Act, "Principal Act" means the *Audit Act 1901*¹.

Commencement

2. (1) Subject to subsection (2), this Act commences on the twenty-eighth day after the day on which it receives the Royal Assent.

10 (2) Subject to subsection (3), paragraph 17 (a) and subsection 18 (2) commence on a day to be fixed by Proclamation.

(3) If paragraph 17 (a) and subsection 18 (2) do not commence under subsection (2) of this section within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

Responsibilities of Secretaries

3. Section 2AB of the Principal Act is amended by adding at the end the following subsection:

“(4) Subsection (1) applies in relation to the Australian Secret Intelligence Service as if the reference to the Secretary were a reference to the Director-General of the Australian Secret Intelligence Service and a reference to a Department were a reference to the Australian Secret Intelligence Service.”. 5

Commonwealth Public Account etc.

4. Section 21 of the Principal Act is amended by inserting in paragraphs (1) (a) and (b) “agreements made under” after “in accordance with”. 10

Drawing of money from Commonwealth Public Account

5. Section 31 of the Principal Act is amended by adding at the end the following subsection:

“(2) This section does not apply to the drawing of money from the Commonwealth Public Account to reimburse a bank account opened under section 21 that is designated as a drawing account.”. 15

Duties of paying, authorising and certifying officers

6. Section 34 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection: 20

“(1) An accounting officer shall not knowingly or recklessly cause or permit:

(a) the payment of an amount out of a bank account comprised in the Commonwealth Public Account (other than such a payment out of a bank account to reimburse another bank account opened under section 21 that is designated as a drawing account); or 25

(b) the payment of an amount out of any other bank account opened under section 21 that is designated as a drawing account;

except by way of, or for the purposes of, a payment that has been authorised by a person appointed by the Minister for the purposes of this subsection (in this section called an ‘authorising officer’). 30

Penalty: \$5,000 or imprisonment for 2 years, or both.”.

Transfer of functions between Departments

7. Section 35A of the Principal Act is amended:

(a) by inserting in subsection (1) “, the President of the Senate, the Speaker of the House of Representatives or both the President of the Senate and the Speaker of the House of Representatives” after “Governor-General”; 35

(b) by inserting after subsection (1) the following subsections:

“(1A) A direction by the Minister has effect, or shall be taken to have had effect, from the day on which the function concerned 40

becomes a function of the other Department, whether the direction is given in the same financial year as the year in which that day occurs or is given in a subsequent financial year.

“(1B) The Minister may, in writing, amend a direction given under subsection (1), and the direction as so amended shall be taken to have been given under that subsection and to have had effect on and from the day on which the direction previously had effect.”;

(c) by omitting from subsection (6) “subsection (1)—” and substituting “subsection (1) or amends a direction under subsection (1B):”;

(d) by inserting in subsection (6) “or amendment” after “the direction” (wherever occurring).

Audits of Australian Audit Office

8. Section 48K of the Principal Act is amended by omitting paragraph (2) (b) and substituting the following paragraph:

“(b) to examine the financial statements prepared by the Auditor-General under section 50;”.

Powers of independent auditor

9. Section 48L of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) The Auditor-General shall cause a copy of any financial statements prepared by the Auditor-General under section 50 to be given to the independent auditor.”.

Reports of independent auditor concerning financial audits

10. Section 48N of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following subsections:

“(1) As soon as practicable after the Auditor-General gives to the independent auditor a copy of a financial statement prepared by the Auditor-General under section 50, the independent auditor shall examine the statement and prepare and sign a report, in respect of the statement, that complies with subsection 51 (1) and section 51A.

“(2) For the purposes of subsection (1), subsection 51 (1) and section 51A shall be read as if references to the Auditor-General were references to the independent auditor.

“(3) The independent auditor shall forward a report prepared, under subsection (1), with respect to a statement prepared by the Auditor-General under section 50 to the Auditor-General, who shall cause it to be included in, or annexed to, a report prepared by the Auditor-General under section 11A with respect to the statement.”.

Departmental financial statements

11. Section 50 of the Principal Act is amended by inserting in subsection (1) “prepare and (except where the Secretary is the Auditor-General)” after “Department shall”.

Auditor-General to audit and report

12. Section 51 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Where the Auditor-General is required to sign a report under subsection (1), the Auditor-General may authorise, in writing, an officer to sign the report and, where the officer so signs the report, it shall be taken, for the purposes of this Act, to have been prepared and signed by the Auditor-General under subsection (1).”

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Auditor-General's reports on Departmental financial statements to be given to Minister administering Department etc.

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13. Section 53A of the Principal Act is amended by omitting from paragraph (2) (e) “administering that Act” and substituting “to whom the Department is responsible”.

14. Section 54 of the Principal Act is repealed and the following section is substituted:

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Project performance audits

“54. (1) The Auditor-General may carry out, at such intervals as he or she thinks fit, a project performance audit of any operations of a body that is a body whose accounts and records the Auditor-General is required to inspect and audit in the performance of his or her functions under this Act or another enactment.

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“(2) If, as a result of carrying out a project performance audit, the Auditor-General wishes to recommend any change in an administrative process, a system or an operation of the body concerned, being a change that, in his or her opinion, will lead to better control of resources, to greater efficiency or economy, or to improved performance, the Auditor-General may do one or more of the following:

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- (a) include the matter in a report under section 11A or 51;
- (b) where the Auditor-General is required or empowered to make a report on the accounts and records of the body under an enactment other than this Act—include the matter in such a report under that enactment;
- (c) prepare and give to the Minister to whom the body is responsible, or who administers the Act under which the body is established, a report on the matter.

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“(3) Subject to this Act, a project performance audit of operations of a body shall be conducted by the Auditor-General in the manner that the Auditor-General thinks fit.

“(4) Without limiting the generality of subsection (3):

- (a) a project performance audit of operations of a body may be carried out in conjunction with, and as part of, an inspection and audit of

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the accounts and records of the body that is being carried out by the Auditor-General under this Act or another enactment; and

- 5 (b) any information obtained by the Auditor-General, in the course of carrying out an inspection and audit of the accounts and records of a body, whether as a result of inspecting the accounts and records of the body or otherwise, may, whether or not the Auditor-General was at the same time carrying out a project performance audit of operations of that body, be treated as having been obtained for the purpose of carrying out such an audit.

10 “(5) Without prejudice to the powers conferred on the Auditor-General by any other provision of this Act, the Auditor-General or a person authorised by the Auditor-General under this section:

- (a) is entitled at all reasonable times to full and free access to all accounts and records in the possession of:

- 15 (i) a body whose accounts and records the Auditor-General is required to inspect and audit in the performance of his or her functions under this Act or another enactment;
- (ii) a person employed by, or under the control of, the body;
- (iii) a person employed as a member of the body; or
- 20 (iv) any other person;

being accounts or records relating, directly or indirectly, to operations that have been, or are being, carried on by such a body or to procedures that have been, or are being, followed by such a body for review of such operations; and

- 25 (b) may make a copy of, or take extracts from, any such accounts or records.

“(6) For the purpose of a project performance audit of operations of a body:

- 30 (a) the Auditor-General, or a person authorised by the Auditor-General under this section, may, at any reasonable time, enter any place occupied by the body and carry out an examination of the operations of the body at the place; and
- (b) the Auditor-General, or a person authorised by the Auditor-General under this section, is entitled:

- 35 (i) to inspect, at a reasonable time arranged by the principal officer of the body, any accounts or records relating to the operations of the body that are kept at premises entered by him or her under this section; and
- 40 (ii) to take copies of, or extracts from, any such accounts or records.

“(7) Nothing in this section shall be taken to restrict the operation of any other section of this Act in relation to project performance audits of operations of a body.

“(8) In this section:

‘body’ includes a Department of State and a Department of the Parliament.”.

Provisions of Act to apply in relation to Trust Fund

15. Section 62 of the Principal Act is amended by omitting from subsection (1) “Governor-General” and substituting “Minister”. 5

Interpretation

16. Section 63B of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) A reference in a Division of this Part to an authority shall be read as a reference to: 10

- (a) a body corporate declared by an Act, or by regulations made under this Act, to be a public authority to which that Division applies; or
- (b) a body corporate that is, because of section 63CA, a public authority to which that Division applies.”. 15

Application

17. Section 63C of the Principal Act is amended:

- (a) by omitting from subsection (2) “the Australian Capital Territory or”;
- (b) by adding at the end the following subsection: 20

“(3) This section does not apply in relation to a body corporate that is incorporated for a public purpose after the commencement of section 63CA.”.

18. (1) After section 63C of the Principal Act the following section is inserted: 25

Application of Part to new bodies

“63CA. (1) Subject to subsections (2), (3) and (4), where, on or after the commencement of this section, a body corporate is incorporated for a public purpose by an Act, by an Ordinance of the Australian Capital Territory or an external Territory (other than Norfolk Island) or by regulations made under an Act or such an Ordinance, the body shall be taken to be a public authority to which Division 2 applies, and the provisions of that Division apply in relation to the body subject to such modifications (if any) as are made to those provisions by the Act, Ordinance or regulations, as the case may be. 30 35

“(2) Subject to subsection (3), where, on or after the commencement of this section:

- (a) a body corporate is incorporated for a public purpose by an Act, by an Ordinance of the Australian Capital Territory or an external Territory (other than Norfolk Island) or by regulations made under an Act or such an Ordinance; and 40

(b) the body is declared by the Act, Ordinance or regulations, as the case may be, to be a public authority to which Division 3 applies; the body shall be taken to be a public authority to which Division 3 applies, and the provisions of that Division apply in relation to the body subject to such modifications (if any) as are made to those provisions by the Act, Ordinance or regulations, as the case may be.

“(3) Subsections (1) and (2) do not apply in relation to a body that is declared, by the Act, Ordinance or regulations creating the body, not to be a public authority to which Division 2 or 3 applies.

“(4) Subsection (1) does not apply in relation to a body corporate incorporated under the *Companies Act 1981* or under any Ordinance that is concerned generally with the incorporation of companies.

“(5) In this section:

‘modification’ includes the omission or addition of a provision or the substitution of a provision for another provision.”.

(2) Section 63CA of the Principal Act is amended:

(a) by omitting from subsection (1) “the Australian Capital Territory or”;

(b) by omitting from paragraph (2) (a) “the Australian Capital Territory or”.

Definitions

19. Section 63N of the Principal Act is amended:

(a) by omitting “and” from paragraph (c) of the definition of “body” in subsection (1);

(b) by inserting after paragraph (c) of that definition the following paragraphs:

“(ca) any unincorporated organisation or association formed for a public purpose of the Commonwealth;

(cb) any office held under an enactment;

(cc) an officer who, under an enactment, holds money in his or her official capacity; and”.

Signing reports concerning certain authorities and other bodies etc.

20. Section 70BA of the Principal Act is amended:

(a) by omitting “deemed” and substituting “taken”;

(b) by adding at the end the following subsections:

“(2) Where the Auditor-General is authorised or required to submit a report to a person or body in respect of a company in which the Commonwealth has a controlling interest, being a company declared by the regulations to be a company to which this section applies, a report in respect of the company that is signed by an officer authorised by the Auditor-General to do so may be submitted to the person or body and shall, when it has been so submitted, be

taken, for all purposes, to have been submitted to the person or body by the Auditor-General.

“(3) Where:

(a) an officer is authorised under subsection (1) or (2) to sign a report in respect of an authority or other body, or in respect of a company; and 5

(b) another company is a subsidiary of that authority, other body or first-mentioned company;

a report in respect of the subsidiary that is signed by the officer may be submitted to the person or body to whom a report referred to under subsection (1) or (2), as the case requires, would be submitted and shall, when it has been so submitted, be taken to have been submitted to the person or body by the Auditor-General. 10

“(4) For the purposes of subsection (2), a company shall be taken to be a company in which the Commonwealth has a controlling interest if, were the Commonwealth a corporation, the company would be a subsidiary of the Commonwealth. 15

“(5) The question whether a company is a subsidiary of an authority or other body, of another company or of the Commonwealth shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation for the purposes of the *Companies Act 1981*. 20

“(6) In this section:

‘company’ means any body corporate.”.

21. After section 70BA of the Principal Act the following section is inserted: 25

Audit of subsidiaries

“70BB. (1) Where the Auditor-General is authorised or required to give a report to a Minister in respect of the audit of the financial statements of an authority or other body, the Auditor-General shall audit the financial statements of each company that is a subsidiary of the authority or other body and shall prepare and give to that Minister a report of the result of that audit. 30

“(2) Subsection (1) does not apply in relation to a company if:

(a) immediately before the commencement of this section: 35

(i) the company was a subsidiary of the authority or other body concerned; and

(ii) the company had no auditor, or a person other than the Auditor-General was an auditor of the company; or

(b) the Auditor-General is of the opinion that it would not be cost effective for the company’s financial statements to be audited under this section. 40

5 “(3) The Auditor-General shall inspect and audit the accounts and records of financial transactions of each company in relation to which subsection (1) applies, and records relating to assets of, or in the custody of, each such company, and shall as soon as practicable draw the attention of the Minister concerned to any irregularity disclosed by the inspection and audit that is, in the Auditor-General’s opinion, of sufficient importance to justify his or her so doing.

10 “(4) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (3).

“(5) The Auditor-General shall, at least once in each year, report to the Minister concerned the results of the inspection and audit carried out under subsection (3).

15 “(6) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to all accounts and records of a company in relation to which subsection (1) applies relating directly or indirectly to the receipt or payment of money by the company or to the acquisition, receipt, custody or disposal of assets by the company.

20 “(7) The Auditor-General or a person authorised by the Auditor-General may make copies of, or take extracts from, any such accounts or records.

25 “(8) The Auditor-General or a person authorised by the Auditor-General may require any person to give him or her such information in the person’s possession, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this section.

“(9) A person shall not refuse or fail to comply with a requirement under subsection (8) to the extent that the person is capable of complying with it.

Penalty: \$1,000 or imprisonment for 6 months, or both.

30 “(10) A person shall not, in purported compliance with a requirement under subsection (8), knowingly furnish information that is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

“(11) Nothing in this section:

35 (a) affects the application to a company in relation to which subsection (1) applies of any law in force in a State or Territory relating to:

(i) the appointment of an auditor or auditors of the company; or

40 (ii) the powers and duties of an auditor or auditors of the company appointed under such a law; or

(b) prevents:

- (i) the appointment, in accordance with section 63P, of the Auditor-General as auditor of such a company for the purposes of a law of a State or of a Territory; or
- (ii) the inclusion in arrangements for the purposes of subparagraph 63P (1) (a) (i), or an arrangement made under subsection 63P (2), relating to such an appointment of a provision for the payment of a fee by the company to the Commonwealth in respect of carrying out an audit to which the arrangements relate or arrangement relates, as the case may be.

“(12) The question whether a company is a subsidiary of an authority or other body shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation for the purposes of the *Companies Act 1981*.”

“(13) In this section:

‘company’ means any body corporate;

‘financial statements’, in relation to a company, means profit and loss accounts and balance sheets of the company and includes statements, reports and notes, other than auditors’ reports or directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets.”

22. After section 70D of the Principal Act the following section is inserted:

Liability of Auditor-General etc.

“70E. (1) This section applies to:

- (a) the Auditor-General;
- (b) any member of the staff of the Australian Audit Office; and
- (c) any person in respect of whom an appointment under section 11 is current.

“(2) The Commonwealth shall indemnify:

- (a) a person to whom this section applies against any liability incurred by the person for any act done or omitted to be done; or
- (b) a person who has been a person to whom this section applies against any liability incurred by the person for any act done, or omitted to be done, while the person was a person to whom this section applies;

in the course of performing:

- (c) a function under Part II, VI, VII or XI of this Act;
- (d) a function under any other enactment (other than the *Companies Act 1981*) that is a function relating to the inspection or audit of accounts and records;
- (e) a function under the *Companies Act 1981*, or under a law of a State or Territory that corresponds to that Act, in the person’s

capacity as the auditor of a body corporate in which the Commonwealth or a Commonwealth authority has a controlling interest; or

(f) a service, in the capacity of an auditor, at the request of and on behalf of:

(i) a body whose accounts and records the person inspects or audits under this Act or any other enactment (other than the *Companies Act 1981*); or

(ii) a body corporate of the kind referred to in paragraph (e) whose accounts and records the person inspects and audits under the *Companies Act 1981*, or under a law of a State or Territory that corresponds to that Act;

being a service of a kind commonly performed by auditors.

“(3) Subsection (2) does not apply in relation to:

(a) an act done in bad faith; or

(b) an omission, in bad faith, to do an act.

“(4) For the purposes of paragraph (2) (e), a body corporate shall be taken to be a body corporate in which the Commonwealth has a controlling interest if, were the Commonwealth a corporation, the body corporate would be a subsidiary of the Commonwealth for the purposes of the *Companies Act 1981*.

“(5) For the purposes of paragraph (2) (e), a body corporate shall be taken to be a body corporate in which a Commonwealth authority has a controlling interest if:

(a) where the authority is a corporation—the body corporate is a subsidiary of the authority for the purposes of the *Companies Act 1981*; or

(b) where the authority is not a corporation—the body corporate would be a subsidiary of the authority for the purposes of that Act if the authority were a corporation.

“(6) In this section:

‘Commonwealth authority’ means a body established under an enactment for a public purpose of the Commonwealth.”.

Regulations

23. Section 71 of the Principal Act is amended:

(a) by omitting from paragraph (1) (f) “and” (last occurring);

(b) by adding at the end of subsection (1) the following paragraphs:

“(h) the entering into of commitments for the payment of public moneys by or on behalf of the Commonwealth, and

(j) the procedures to be followed by a Department in making estimates of future expenditure (being estimates prepared in connection with the appropriation of public moneys).”.

24. After section 72 of the Principal Act the following section is inserted:

Guidelines by Ministers

“73. (1) The regulations (including regulations made in accordance with section 63 or 63A) may authorise a Minister to issue guidelines to officers or any other persons performing duties in relation to matters for which that Minister is responsible, being guidelines about any of the matters about which regulations may be made under this Act. 5

“(2) Guidelines shall not be inconsistent:

- (a) with this or any other Act;
- (b) with regulations in force under this Act or any other Act; or 10
- (c) with directions given under section 72.”.

NOTE

1. No. 4, 1901, as amended. For previous amendments, see No. 8, 1906; No. 4, 1909; No. 6, 1912; No. 32, 1917; No. 23, 1920; No. 34, 1924; No. 18, 1926; No. 45, 1934; No. 52, 1947; No. 60, 1948; No. 51, 1950; No. 79, 1952; No. 12, 1953; No. 29, 1954; No. 18, 1955; No. 39, 1957; No. 8, 1959; Nos. 17 and 77, 1960; No. 89, 1961; No. 74, 1962; No. 75, 1964; No. 126, 1965; No. 93, 1966; No. 120, 1968; No. 20, 1969; No. 216, 1973; No. 56, 1975; No. 36, 1978; Nos. 8 and 155, 1979; Nos. 74 and 176, 1981; Nos. 26 and 80, 1982; No. 62, 1983; Nos. 40 and 63, 1984; Nos. 65, 166 and 187, 1985; Nos. 76 and 102, 1986; No. 141, 1987; and No. 73, 1988.

