

NORTHERN TERRITORY OF AUSTRALIA

AUDIT ACT

As in force at 30 October 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 30 October 2002

AUDIT ACT

An Act to provide for the appointment, and powers and functions, of the Auditor-General and the audit of the accounts of the Territory and Agencies, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Audit Act*.

2 Commencement

This Act shall come into operation on the commencement of the *Financial Management Act 1995*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

audit includes the inspection, investigation, examination or review of accounts and systems.

Auditor-General means the person appointed under section 4 as, or otherwise holding the office of, the Auditor-General, and includes a person appointed under section 4(6) to act as the Auditor-General.

Auditor-General's Office means the Agency of that name specified in Schedule 1 to the *Public Sector Employment and Management Act*.

authorised auditor means a person authorised or appointed under section 17 by the Auditor-General to perform an audit.

Treasurer's Annual Financial Statement means the statement prepared annually by the Treasurer in accordance with section 9 of the *Financial Management Act*.

- (2) Where a word or expression used in this Act is not defined in this Act but is defined in and for the purposes of the *Financial Management Act*, then, unless the contrary intention appears, that word or expression has the same meaning in this Act as it has in the *Financial Management Act*.

Part 2 Auditor-General

4 Appointment of Auditor-General

- (1) There shall be an Auditor-General for the Territory.
- (2) The Administrator shall, by instrument in writing, appoint a person to be the Auditor-General.
- (3) An appointment under subsection (2) shall be for a period of 7 years and the person appointed shall not be eligible for re-appointment as Auditor-General.
- (4) The Auditor-General holds office on such terms and conditions, not inconsistent with this Act, as the Administrator determines.
- (5) The Auditor-General may resign office by writing delivered to the Administrator or, in the case of a person appointed under subsection (6) by the Minister to act as the Auditor-General, may resign office by writing delivered to the Minister.
- (6) In the case of illness, incapacity, suspension or absence of the Auditor-General, or a vacancy in the office of Auditor-General, the Administrator or, subject to subsection (7), the Minister may, on such terms and conditions as thought fit, by instrument in writing, appoint a person to act as the Auditor-General during the illness, incapacity, suspension, absence or vacancy.
- (7) An appointment under subsection (6) by the Minister shall be for a period not exceeding 3 months but a person so appointed may be re-appointed to act as the Auditor-General for further periods each not exceeding 3 months.
- (8) A person appointed under subsection (6) shall, for the time for which he or she so acts, have all the powers and perform all the functions of the Auditor-General.
- (9) The validity of anything done by a person acting as the Auditor-General in pursuance of an appointment or purported appointment under subsection (6) shall not be called in question by reason of a defect or irregularity in or in relation to the appointment or on the ground that the occasion for his or her acting had not arisen or had ceased.

5 Salary of Auditor-General

The salary and any annual allowance, and such other allowances, as the Administrator determines under section 4(4) shall be paid by the Territory at such rate as the Administrator so determines, and the Allocation for that purpose is hereby established or increased to the extent necessary.

6 Leave of absence of Auditor-General

Subject to section 4(4), the Minister may grant leave of absence to the Auditor-General.

7 Retirement, suspension and removal from office of Auditor-General

- (1) The Administrator may, with the consent of the Auditor-General, retire the Auditor-General on the ground of invalidity.
- (2) The Administrator may suspend the Auditor-General from office for misbehaviour or physical or mental incapability.
- (3) The Chief Minister shall table a statement of the ground of suspension of the Auditor-General in the Legislative Assembly within 6 sitting days of the Assembly after the suspension.
- (4) Where a statement has been tabled in the Legislative Assembly under subsection (3), the Assembly may, within 6 sitting days of the Assembly, by resolution, declare that the Auditor-General ought to be restored to office and, if the Assembly so resolves, the Administrator shall terminate the suspension.
- (5) If, at the expiration of the 6 sitting days of the Legislative Assembly, the Assembly has not passed a resolution under subsection (4), the Administrator shall remove the Auditor-General from office.
- (6) The Auditor-General shall not be removed from office except as provided by this section.
- (7) The period during which the Auditor-General is suspended from office under this section is deemed to be a period of absence on leave with salary.

8 Saving of rights under *Public Sector Employment and Management Act*

Where a person employed in the Public Sector, within the meaning of the *Public Sector Employment and Management Act*, is appointed to be the Auditor-General, he or she shall, while holding that office, retain all rights and privileges accrued or accruing to him

or her under the *Public Sector Employment and Management Act* as if the service as the Auditor-General were a continuation of service as an employee in the Public Sector, and those rights and privileges shall continue to accrue during his or her tenure of office as the Auditor-General as if he or she had remained an employee in the Public Sector.

9 Auditor-General not to be member of certain bodies

The Auditor-General shall not be capable of being a member of the Executive Council or the legislature of the Commonwealth or of a State or Territory of the Commonwealth.

10 Misbehaviour of Auditor-General

The Auditor-General is guilty of misbehaviour if he or she:

- (a) directly or indirectly engages in paid employment outside the duties of his or her office or any other office to which he or she is appointed by virtue of his or her office as the Auditor-General, or in any trade or business, except:
 - (i) in the case of a person appointed under section 4(6) to act as the Auditor-General – as a partner in a firm of accountants at least one of the partners of which is a registered company auditor under the Corporations Act 2001; or
 - (ii) in any case – as a member of a body corporate;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (c) except on leave granted by the Minister or under section 4(4), absents himself or herself from duty for 14 consecutive days or for 28 days in any period of 12 months.

11 Auditor-General to make declaration

Before a person first commences to perform the functions or exercise the powers vested in the Auditor-General by this Act, he or she shall make and subscribe before the Administrator a declaration in the form contained in the Schedule.

12 Protection from liability

No action or proceeding, civil or criminal, shall lie against the Auditor-General for or in respect of an act or thing done or omitted to be done in good faith by the Auditor-General in his or her capacity as Auditor-General.

Part 3 Audits**13 Duties of Auditor-General**

- (1) Subject to this Act, the Auditor-General shall audit the Public Account and other accounts in such manner as he or she thinks fit having regard to the character and effectiveness of the internal control and recognised professional standards and practices.
- (2) Every audit under subsection (1) shall be performed at such times as the Auditor-General thinks fit but in any case not less than once in each year.
- (3) Notwithstanding subsection (2), the Auditor-General may, in any year, dispense with the audit of an Agency.
- (4) The Auditor-General shall, where he or she dispenses with an audit in accordance with this section, report that fact, and give a statement of the reason for the dispensation, in his or her report prepared under section 24.

14 Special audits

- (1) The Minister may, either generally or in relation to a specific aspect, by instrument in writing, direct the Auditor-General to carry out an audit which the Auditor-General has power under this Act to carry out, in relation to an Agency specified in the instrument, within the time specified in the instrument or within such further time as is reasonably necessary to enable the audit to be completed, and the Auditor-General shall carry out the audit accordingly.
- (2) As soon as practicable after carrying out an audit as required under subsection (1), the Auditor-General shall furnish to the Minister a report on the audit.
- (3) The Minister shall, within 6 sitting days of the Legislative Assembly after receiving a report furnished to him or her under subsection (2), table a copy of the report in the Legislative Assembly.

15 Audit of performance management systems

- (1) The Auditor-General may conduct an audit of performance management systems of any Agency or other organisation in respect of the accounts of which the Auditor-General is required or permitted by a law of the Territory to conduct an audit.
- (2) An audit under this section may be conducted as a separate audit or as part of another audit (including an audit of another Agency or organisation under this section).
- (3) The object of an audit conducted under this section includes determining whether the performance management systems of the Agency or organisation in respect of which the audit is being conducted enable the Agency or organisation to assess whether its objectives are being achieved economically, efficiently and effectively.
- (4) In conducting an audit under this section, the Auditor-General shall have regard to the prescribed requirements, if any, relating to the establishment and maintenance of performance management systems that apply to the Agency or organisation.
- (5) In conducting an audit under this section, the Auditor-General may not question the merits of policy objectives of the Government including:
 - (a) a policy objective of the Government contained in a record of a policy decision of Cabinet;
 - (b) a policy direction of a Minister; and
 - (c) a policy statement in a budget paper or any other document evidencing a policy decision of Cabinet or a Minister.

16 Auditor-General's reports

- (1) The Auditor-General may prepare a report on any audit performed by him or her or an authorised auditor.
- (2) The Auditor-General shall forward to the appropriate Accountable Officer a report prepared under subsection (1) and may, in his or her discretion, forward a copy of the report to the appropriate Minister and/or the Treasurer.
- (3) The Accountable Officer shall pay due attention to comments made by the Auditor-General in a report under this section.

17 Authorised auditors

The Auditor-General may, in writing, appoint a person to be an authorised auditor.

18 Duties of authorised auditor

The Auditor-General may, in writing, direct an authorised auditor to perform an audit required by this Act or another law of the Territory to be performed by the Auditor-General and to report on the audit to him or her, and an authorised auditor to whom such a direction is given shall comply with the direction.

19 Access to accounts to be afforded for audit purposes

- (1) Without limiting the powers conferred by this Act, the Auditor-General or an authorised auditor shall, at all reasonable times, have full and free access to all accounts and records required by the prescribed requirements to be kept and to money of the Territory or public property that is in the possession of any person and may make copies of or extracts from those accounts and records.
- (2) A person who has in his or her possession any accounts referred to in subsection (1), money of the Territory or public property shall, at all reasonable times, on request by the Auditor-General or an authorised auditor, produce to the Auditor-General or the authorised auditor, as the case may be, such accounts, records, moneys or property as are specified in the request.

20 Production of books, accounts, &c.

The Auditor-General may, by notice in writing, require a person named in the notice to appear personally before the Auditor-General at a time and place named in the notice and produce to him or her such accounts, books, documents or writings in the possession or under the control of that person as appear to the Auditor-General to be necessary for the purposes of an audit authorised or required by this Act or any other law of the Territory to be made by the Auditor-General.

21 Information and explanations to be afforded

- (1) The Auditor-General or an authorised auditor may require an Accountable Officer or other employee employed in an Agency to furnish to him or her such information, advice or explanation as the Auditor-General or authorised auditor thinks necessary in relation to an audit, and a person so required shall furnish the information, advice or explanation required to be furnished.

- (2) The Auditor-General or an authorised auditor may, at any time, cause a search to be made of and extracts taken from an account, document or record in the custody of an Agency, without the payment of a fee for such search.

22 ADI officers to give access to accounts

The Auditor-General or an authorised auditor may require the manager or other officer of an ADI in which money of the Territory has been deposited:

- (a) to permit the Auditor-General or auditor to make copies of or extracts from any of the ADI's accounts relating to the money in the custody of the ADI, including any account or record relating to an entry in the accounts of the ADI; and
- (b) to provide to the Auditor-General or auditor certificates or other information that the Auditor-General or auditor requires.

23 Secrecy

- (1) The operation of sections 19, 20, 21 and 22 shall not be limited by any provision (including a provision relating to secrecy) contained in any other law of the Territory (whether made before or after the commencement of this Act) except to the extent to which such other law expressly excludes the operation of this section.
- (2) Notwithstanding anything contained in any other law of the Territory, and notwithstanding the making of an oath or declaration of secrecy, a person shall not be guilty of an offence nor shall any civil action lie against the person by reason of anything done by the person for the purposes of section 19, 20, 21 or 22.
- (3) The Auditor-General and every authorised auditor shall preserve secrecy with respect to all matters and things coming to their knowledge in the performance of their functions or the exercise of their powers under this Act and shall not, except in the course of their duty, communicate to a person any such matter or thing.

Part 4 Auditor-General's reports

24 Reports to Legislative Assembly and supplementary reports

- (1) The Auditor-General shall, not less than once in each year, prepare and submit a report to the Legislative Assembly on those matters arising from the performance of his or her functions or the exercise of his or her powers that, in the Auditor-General's opinion, should be reported to the Assembly.

- (2) In subsection (1), **report** includes a report or reports, supplementary to a primary report, prepared and signed as soon as practicable after the preparation and submission of the primary report.
- (3) The Auditor-General may at any time make a special report to the Legislative Assembly on any matter or thing arising out of an audit to which, in his or her opinion, attention should be drawn.
- (4) The Auditor-General shall not make a report under this section unless:
 - (a) the Auditor-General has:
 - (i) not later than 10 working days before the report is made, given a copy of the report, or a summary of findings and proposed recommendations, to the Agency to which the report relates; and
 - (ii) in writing, asked the Agency for submissions or comments before a specified date, being not earlier than 7 days after the copy of the report is given to the Agency; and
 - (b) the Auditor-General has included in the report all submissions or comments received before the report is made from the Agency or a summary, in an agreed form, of such submissions or comments.

25 Audit of Treasurer's Annual Financial Statement

The Auditor-General shall, not later than 2 months after receiving the Treasurer's Annual Financial Statement, audit the Statement and prepare and sign a report to the Treasurer on the audit.

Part 5 Strategic review and audit of accounts of Auditor-General's Office

26 Strategic review of Auditor-General's Office

- (1) Strategic reviews of the Auditor-General's Office shall be conducted under this section.
- (2) A review under this section shall be conducted not less than once every 3 years.
- (3) A review under this section shall be undertaken by an appropriately qualified person appointed by the Administrator.

- (4) The terms of reference for a review under this section shall be determined by the Administrator.
- (5) Before a person is appointed under this section to undertake a review, the Minister shall consult with the Public Accounts Committee of the Legislative Assembly and the Auditor-General about:
 - (a) the appointment; and
 - (b) the terms of reference for the review.
- (6) The remuneration and other terms and conditions of appointment of a person appointed under this section to undertake a review shall be as determined by the Administrator.
- (7) For the purposes of conducting the review:
 - (a) the person has all the powers that an authorised auditor has under this Act; and
 - (b) this Act applies to and in relation to the person and the review as if the person were an authorised auditor conducting an audit, and the review were an audit, under this Act.
- (8) Subject to subsection (9), on completing a review under this section, the person shall give a report on the review to the Minister and the Auditor-General.
- (9) Section 24 applies to a report under subsection (8) as if the person were the Auditor-General and the Auditor-General's Office were the agency to which the report relates and the matter was the subject of a report under that section.
- (10) The Minister shall table a copy of a report under subsection (8) in the Legislative Assembly within 6 sitting days of the Assembly after it is received by the Minister.

27 Audit of accounts of Auditor-General's Office, &c.

- (1) The Administrator may, from time to time, appoint an auditor, who is registered under the Corporations Act 2001:
 - (a) to audit the accounts of the Auditor-General's Office; or
 - (b) to audit the accounts of an Agency in respect of which the Auditor-General has declared he or she has a conflict of interest.

- (2) Every audit under subsection (1) shall be performed not less than once in a year.
- (3) An auditor appointed under subsection (1), in conducting an audit and preparing a report under this section, has the same powers and is subject to the same requirements as the Auditor-General when conducting an audit and preparing a report under this Act.
- (4) Subject to subsection (5), on completing an audit under this section, the auditor shall give a report of the audit to the Minister and the Auditor-General.
- (5) Where an auditor is appointed under subsection (1) to audit the accounts of the Auditor-General's Office, section 24 applies to a report under subsection (4) as if the auditor were the Auditor-General and the Auditor-General's Office were the Agency to which the report relates.
- (6) The Minister shall table a copy of a report referred to in subsection (4) in the Legislative Assembly within 6 sitting days of the Assembly after it is received by the Minister.

28 Audits, &c., by arrangement

- (1) The functions of the Auditor-General under this Act extend to the carrying out, at his or her discretion, of an audit of the accounts of a body, not being an Agency, in which the Territory or an Agency has an interest:
 - (a) where a Minister requests the Auditor-General to carry out the audit and arranges with the body for its accounts to be made available for the purpose; or
 - (b) in accordance with an arrangement made under subsection (2).
- (2) The Auditor-General may, at the request of a Minister, make an arrangement with a body, not being an Agency, in which the Territory or an Agency has an interest for the carrying out by the Auditor-General of the audit of the accounts of the body and may, with the consent of the Minister, vary or revoke such an arrangement.
- (3) An arrangement under subsection (2) may include provision for the payment of a fee by the body to the Territory in respect of the carrying out of the audit.

Part 6 General**29 Offences**

A person who contravenes or fails to comply with a provision of this Act that applies to him or her is guilty of an offence.

Penalty: \$1,000.

Part 7 Transitional and savings**30 Continuation of appointment as Auditor-General**

The person who, immediately before the commencement of this Act held the office of Auditor-General under the *Financial Administration and Audit Act*, as then in force, shall continue in that office after that commencement, on the same terms and conditions as then applied to and in relation to him or her, including those relating to his or her tenure in office, as if he or she were appointed under this Act.

31 Holders of other offices

A person who, immediately before the commencement of this Act, held an appointment under section 49 of the *Financial Administration and Audit Act*, as then in force, as an authorised auditor shall, continue to hold that appointment after that commencement, on the same terms and conditions as then applied to and in relation to him or her, as if the appointment had been made under section 17 of this Act.

Schedule

section 11

I, _____, do solemnly and sincerely promise and declare that according to the best of my skill and ability I will faithfully, impartially and truly execute the office and perform the duties of Auditor-General according to law.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Audit Act 1995 (Act No. 2, 1995)***

| | |
|-------------|---|
| Assent date | 21 March 1995 |
| Commenced | 1 April 1995 (s 2, s 2 <i>Financial Management Act 1995</i> (Act No. 4, 1995) and <i>Gaz S13</i> , 31 March 1995) |

Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)

| | |
|-------------|-------------|
| Assent date | 2 June 1997 |
| Commenced | 2 June 1997 |

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

| | |
|-------------|--|
| Assent date | 29 June 2001 |
| Commenced | 15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and <i>Cth Gaz S285</i> , 13 July 2001) |

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

| | |
|-------------|--|
| Assent date | 13 September 2002 |
| Commenced | 30 October 2002 (<i>Gaz G43</i> , 30 October 2002, p 3) |

3**LIST OF AMENDMENTS**

| | |
|------|--|
| s 10 | amd No. 17, 2001, s 21 |
| s 22 | amd No. 23, 1997, s 6 sub No. 38, 2002, s 3 |
| s 27 | amd No. 17, 2001, s 21 |