

# AUDIT LEGISLATION AMENDMENT BILL 1992

## EXPLANATORY NOTES

The objective of this Bill is to amend the *Financial Administration and Audit Act 1977*:

- (a) to extend the jurisdiction of the Auditor-General over all Queensland public sector entities including controlled entities;
- (b) to make provision for the Auditor-General to review the adequacy of performance monitoring systems used by public sector entities;
- (c) to enhance the independence of the Auditor-General and the Audit Office in relation to Executive Government; and
- (d) to modernise the law relating to public sector audit in Queensland.

The Bill makes consequential amendments to the *Public Accounts Committee Act 1977*, the *Local Government Act 1936* and the *City of Brisbane Act 1924*.

The Bill addresses recommendations of the Electoral and Administrative Review Commission in its *Report on Public Sector Auditing in Queensland* (1991), the Parliamentary Committee for Electoral and Administrative Review in its *Report on Public Sector Auditing* (1991) and the Parliamentary Committee of Public Accounts in its *Report on Accountability of Government Companies* (1991).

Further background to the Audit Legislation Amendment Bill 1992 is contained in the *Queensland Government Response to the Electoral and Administrative Review Commission Report on Public Sector Auditing in Queensland* (November 1992).

## **PART 1—PRELIMINARY**

*Clause 1* provides the formal citation of the proposed Act.

*Clause 2* provides for the commencement of the proposed Act on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF FINANCIAL ADMINISTRATION AND AUDIT ACT 1977**

*Clause 3* specifies that the clauses of Part 2 of the Bill and of Schedule 1 (Minor Amendments) seek to amend the *Financial Administration and Audit Act 1977*.

*Clause 4* amends section 5(1) of the Act for the purpose of deleting obsolete definitions, updating other definitions and introducing new definitions necessary for the purposes of the amendments.

A new definition of “public sector entity” is inserted for the purpose of specifying the audit mandate of the Queensland Auditor-General (see clause 18, proposed section 73).

A new definition of “authorised auditor” is inserted for the purposes of the proposed new audit provisions of the Act.

*Clause 5* provides for the method of determining when an entity is controlled by a public sector entity and is thereby subject to audit by the Auditor-General. The relevant concepts mirror those now adopted under the Corporations Law to determine when a subsidiary entity is controlled, either directly or indirectly, by a parent entity. They are also used in the proposed legislation to determine when consolidated financial statements are required to be prepared for an economic entity.

*Clause 6* refines the existing “net appropriation” provision so that it no longer inappropriately infers a particular accounting treatment—namely, that receipts for goods and services are credited against the relevant expenditure.

*Clause 7* amends section 36 to clarify that accountable officers have authority to set fees for the supply of goods and services.

*Clause 8* modernises the drafting of the delegation provision for accountable officers.

*Clause 9* removes the requirement for appropriation accounts to disclose previous year comparisons. These comparisons are now made in the Departmental Statements.

*Clause 10* updates the provisions relating to the audit of the Treasurer's Annual Statement.

*Clause 11* brings the concepts and terminology used to determine when departments need to prepare consolidated financial statements into line with those adopted under the Corporations Law.

*Clause 12* inserts a new *Division 9—Formation of companies and acquisition of shares*. The proposed section 44 requires the Treasurer's approval for the establishment of a company by a department or with the use of public moneys.

*Clause 13* will delete an ineffective and inappropriate provision which purports to give Part IIA of the Act paramount effect.

*Clause 14* deletes section 46B which is replaced and broadened by proposed section 75.

*Clause 15* brings the concepts and terminology used to determine when statutory bodies need to prepare consolidated financial statements into line with those adopted under the Corporations Law.

*Clause 16* deletes section 46I which is replaced and broadened by proposed section 73(1).

*Clause 17* makes the Public Finance Standards subordinate legislation. In preparing the Standards (including Standards which propose to relate to internal audit), the Treasurer will be required to have regard to standards issued by appropriate professional bodies.

*Clause 18* replaces Part 3 (AUDIT) with a new Part 5—Queensland Auditor-General and Queensland Audit Office and Part 6—Audit of Public Accounts and Public Sector Entities.

## **PART 5—QUEENSLAND AUDITOR-GENERAL AND QUEENSLAND AUDIT OFFICE**

The purpose of Part 5 is to provide for greater independence of the Auditor-General and the Audit Office from Executive Government. This recognises the principle that the Auditor-General conducts his or her audit responsibilities on behalf of the Parliament.

### *Division 1—General*

**Proposed section 47** establishes the office of Queensland Auditor-General and the Queensland Audit Office.

**Proposed section 48** provides that the Queensland Audit Office is under the control of the Queensland Auditor-General.

**Proposed section 49** states the principle that the Queensland Auditor-General is not subject to any person in relation to the Auditor-General's exercise of powers or audit priorities. (Proposed sections 62 and 65 establish a similar principle in relation to the Deputy Auditor-General and the staff of the Queensland Audit Office.)

### *Division 2—Provisions Relating to the Auditor-General*

Division 2 details the method and terms of appointment of the Queensland Auditor-General. It also provides for the Auditor-General to take leave, resign, or be suspended or removed from office.

**Proposed section 50** provides that the Public Accounts Committee must be consulted on the selection process, and the proposed nomination, in respect of all appointments to the office of Queensland Auditor-General.

**Proposed section 51** reproduces new arrangements for the Auditor-General's tenure made by the *Audit and Parliamentary Committees (Miscellaneous Amendments) Act 1992*

**Proposed section 52** fixes the Auditor-General's remuneration at a level equivalent to the maximum payable to departmental chief executives.

**Proposed section 57**—Executive Government will no longer have the power to suspend the Queensland Auditor-General from office on its own initiative, except where the Legislative Assembly is not in session. Section 57(3) provides that where the Governor in Council suspends the

Queensland Auditor-General out of session, the suspension must be notified to the Legislative Assembly within 3 sitting days. The suspension automatically lapses after 7 sitting days unless the Legislative Assembly moves to suspend or remove the Auditor-General from office. Section 57 provides that the Public Accounts Committee must agree by majority (other than a majority comprised solely of Government Members) to any Parliamentary motion for the Auditor-General's suspension or dismissal.

**Proposed sections 53 and 61** require the Queensland Auditor-General and Deputy Auditor-General to submit a statement of their pecuniary interests to the Speaker. The information contained in the statement must be the same as that required for Members of the Legislative Assembly.

**Proposed section 53(6)** provides for the Speaker to receive allegations from Members of non-compliance by the Queensland Auditor-General and Deputy Auditor-General with the requirements for registration of their pecuniary interests. However, the Bill does not address the procedure for investigation of such allegations. It is considered that the procedure should be left to the Legislative Assembly to determine in the event of an allegation being made.

### *Division 3—Deputy Auditor-General*

Division 3 provides for a Deputy Auditor-General and matters related to that position.

**Proposed section 59** provides for the Deputy Auditor-General to act as Queensland Auditor-General during a vacancy in office or in the absence of the Auditor-General.

**Proposed section 60** provides for the Deputy Auditor-General to be a public servant. However, when the Deputy Auditor-General acts as Auditor-General, the Act applies to the Deputy as if he or she were the Auditor-General. For example, when acting as Auditor-General, the Deputy cannot be suspended from office except in accordance with proposed section 57.

### *Division 4—Staff of the Audit Office*

**Proposed section 63** establishes that the staff of the Queensland Audit Office are appointed as public servants.

**Proposed section 64** gives the Queensland Auditor-General the functions and powers of a departmental chief executive in relation to the Queensland Audit Office.

### *Division 5—Other Matters*

Division 5 deals with the management of the Queensland Audit Office.

Although the staff of the Queensland Audit Office will remain in the Public Service (**proposed section 63**), the powers of the Public Sector Management Commission over staffing matters affecting the Queensland Audit Office will be modified (**proposed section 70**).

The Public Sector Management Commission will have no authority to undertake a management review of the Audit Office, except where invited to do so by the Queensland Auditor-General (**proposed section 71**). It is not considered appropriate that an agency of Executive Government should have the capacity to review the Audit Office, except at the invitation of the Auditor-General.

As an alternative to review by the Public Sector Management Commission, the Bill provides for the Premier to appoint an appropriately qualified person to undertake a strategic review of the Audit Office at least once every five years (**proposed section 72**).

**Proposed section 72(5)** provides for the Public Accounts Committee and the Queensland Auditor-General to be consulted on the terms of reference for the review and the appointment of the person to conduct the review.

*Clause 29* empowers the Public Accounts Committee to report to Parliament on a review conducted under section 72 if it chooses to do so.

**Proposed section 68** requires the Treasurer to consult with the Public Accounts Committee in developing the annual estimates for the Queensland Audit Office.

## **PART 6—AUDIT OF PUBLIC ACCOUNTS AND PUBLIC SECTOR ENTITIES**

### *Division 1—Scope of the Auditor-General's mandate*

**Proposed section 73** requires the Queensland Auditor-General to audit the public accounts and all public sector entities other than the Queensland Audit Office and any entity exempt by regulation under proposed section 74. Under Clause 4, “public sector entity” is defined to include a department, a local authority (including the Brisbane City Council and an Aboriginal and Island Council), a statutory body and any entity controlled by one of these entities.

**Proposed section 74** enables the Governor in Council by regulation to exempt a public sector entity from audit by the Queensland Auditor-General. However, the Governor in Council may not exercise this delegated power without having first consulted with the Auditor-General. Under proposed section 102(d), the Queensland Auditor-General may report to the Legislative Assembly if he or she considers that a regulation made under section 74 or section 5A(1) (“Entities and their Control”) should not have been made or should have been made differently.

**Proposed section 75** ensures that the Queensland Auditor-General is informed where a public sector entity is abolished or an entity becomes a public sector entity. This procedure will apply particularly to statutory bodies and subsidiary entities. It is not considered necessary for this procedure to be observed for changes in departmental arrangements.

**Proposed section 76**—under the Corporations Law, the auditor of a company is appointed by the shareholders. Proposed section 76 places a duty on the shareholders of a public sector entity that is a company to appoint the Queensland Auditor-General as the company auditor. This section will apply to all companies controlled by a public sector entity within the meaning of section 5A, except where the Auditor-General has been exempted from the audit.

**Proposed section 77** recognises that there may be occasions where the Legislative Assembly wishes to request the Queensland Auditor-General to investigate a particular matter. Section 77 requires the Auditor-General to comply with the request notwithstanding section 49.

**Proposed section 78** authorises the Queensland Auditor-General to audit a private sector entity on a by-arrangement basis at the request of a Minister or a public sector entity. Such arrangements are instituted where there is a public interest in having the Auditor-General undertake the audit. The proposed section requires the entity to agree to the audit by the Queensland Auditor-General.

### *Division 2—Conduct of Audits*

Division 2 deals with the manner in which the Queensland Auditor-General conducts audits.

**Proposed section 80** authorises the Queensland Auditor-General to conduct “performance management systems audits” to determine whether an entity's management systems enable it to assess whether its objectives are being achieved economically, efficiently and effectively.

Under this section, the Queensland Auditor-General would have discretion to examine the performance management systems of an entire entity or of part of the entity. Alternatively, the Auditor-General could choose to audit one or more entities together or a class of entity chosen by the Auditor-General.

**Proposed section 82** authorises the Queensland Auditor-General to appoint public accountants from outside the Audit Office to conduct an audit. In conducting an audit, such persons (to be known as “contract auditors”) may exercise all the powers of the Auditor-General provided under proposed sections 84 to 91. Proposed section 97(1)(a)(ii) requires the Auditor-General to prepare standards relating to the selection, engagement and quality control of contract auditors.

**Proposed sections 84 to 91** outline the powers of the Queensland Auditor-General and other authorised auditors to obtain information necessary to conduct audits. These powers have been redefined, inter alia, to provide for appropriate safeguards in relation to self incrimination. Further, the maximum penalty for failure to render assistance or provide information to an authorised auditor has been increased to 40 penalty units. A maximum of 80 penalty units will apply where a person knowingly makes a false or misleading statement to an auditor or obstructs the auditor. The present penalties in the Act are considered to be deficient.

**Proposed section 92** maintains the obligation on authorised auditors and their staff to respect the confidentiality of information obtained in the course of audits and not to divulge such information except where there is a duty to disclose (for example, in the course of reporting matters of significance to the Legislative Assembly under section 99(1)(b)). Significant penalties are imposed for breach of confidence.

The section permits disclosure of audit information to the Public Accounts Committee, the Public Works Committee, the Criminal Justice Commission, a Police officer or a court.

**Proposed section 94** prevents civil action against an authorised auditor for acts or omissions done honestly and without negligence but provides for liability in such circumstances to attach to the State. This personal protection for auditors is considered necessary and appropriate in view of the increased involvement of the Auditor-General in the audit of joint ventures and other commercial undertakings involving third parties.

**Proposed section 95** allows the Auditor-General to charge fees for any audit conducted. In due course, it is proposed that the Queensland Audit Office will become self-funding by means of audit fees.

### *Division 3—Reports to the Legislative Assembly*

Division 3 provides the framework under which the Queensland Auditor-General reports to the Legislative Assembly.

**Proposed section 97** requires the Queensland Auditor-General to report to the Legislative Assembly on the general standards used or proposed to be used in audits. The report must be published and made available to the public.

When reporting on audits to the Legislative Assembly, the Auditor-General will be required to indicate where any audit departed significantly from the published standards.

**Proposed sections 98 and 99** dealing with the Queensland Auditor-General's annual reports introduce a new obligation on the Auditor-General to report action or inaction by auditee management in remedying significant deficiencies noted in previous audit reports.

**Proposed section 102** is designed to encourage the Auditor-General to make separate reports to the Legislative Assembly outside the framework of his or her annual reports. The rationale for this provision is discussed in paragraphs 6.22 to 6.26 of the EARC *Report on Public Sector Auditing in Queensland*.

**Proposed section 103** replaces existing section 75A of the Act. It establishes a general obligation on the Queensland Auditor-General to seek the comments of auditee management and the responsible Minister where he or she proposes to report a matter of significance to the Legislative Assembly, and for such comments to be included in the Auditor-General's report.

Section 103(2) clarifies that the Auditor-General may choose to report a matter without the comments of auditee management or the responsible Minister if the comments are not received within a minimum of 21 days or such longer period specified in the advice from the Auditor-General.

**Proposed section 104** allows for confidential reporting by the Queensland Auditor-General to the Public Accounts Committee where open reporting to the Legislative Assembly might reveal commercially sensitive information, damage inter-governmental relationships or prejudice legal proceedings.

*Clause 19* provides for certain administrative processes—namely the making of special payments and the writing off of losses—to be the responsibility of accountable officers.

*Clause 20* allows the Treasurer to delegate certain powers and also provides for the making of regulations.

*Clause 21* saves a number of references in other Acts and specifies other transitional provisions.

**Proposed section 116** provides for the sections of the Act dealing with the Auditor-General's mandate over local authorities to come into effect on a day prescribed by regulation.

Under the *City of Brisbane Act 1924*, the Auditor-General is the auditor of the Brisbane City Council. However, under the *Local Government Act 1936*, the Auditor-General merely appoints auditors from his or her Department, or from a pool of public accountants, to undertake the audit.

The Bill changes these arrangements by vesting the audit of all local authorities in the Auditor-General. The Auditor-General will be able to contract out the audit to public accountants (under proposed section 82) at his or her discretion.

It is proposed that the detailed arrangements for the audit of the accounts and financial statements of local authorities will be contained in the proposed new Local Government Bill. Proposed section 116 of the *Financial Administration and Audit Act* will be used to enable the over-arching provisions of the Act relating to local authorities to commence at the same time as the relevant provisions of the proposed Local Government Bill.

### **PART 3—AMENDMENT OF CITY OF BRISBANE ACT 1924**

*Clause 22* specifies that the clauses of Part 3 amend the *City of Brisbane Act 1924*.

*Clause 23* removes a limitation on the scope of the Auditor-General's audit.

*Clause 24* removes provisions which have become redundant.

*Clause 25* clarifies the application of the Act having regard to the over-arching audit provision in the *Financial Administration and Audit Act*.

### **PART 4—AMENDMENT OF LOCAL GOVERNMENT ACT 1936**

*Clause 26* specifies that the clauses of Part 4 amend the *Local Government Act 1936*.

*Clause 27* applies the audit provisions of the *Financial Administration and Audit Act 1977* to a local authority and to entities controlled by a local authority. This is necessary as the Bill repeals section 46I to which existing section 52I of the *Local Government Act 1936* is tied.

## **PART 5—AMENDMENT OF PUBLIC ACCOUNTS COMMITTEE ACT 1988**

*Clause 28* specifies that the clauses of Part 5 seek to amend the *Public Accounts Committee Act 1988*.

*Clause 29* allows the Public Accounts Committee to review reports of the Queensland Auditor-General under proposed section 104 and reports furnished under proposed section 72(11).

## **PART 6—AMENDMENT OF FINANCIAL ADMINISTRATION AND AUDIT AMENDMENT ACT 1991**

*Clause 30* amends the *Financial Administration and Audit Amendment Act 1991* in the manner set out in Schedule 2, which deals with the renumbering of a section of the Act which is yet to commence.