

AUDITOR GENERAL BILL 2006
EXPLANATORY MEMORANDUM

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ACRONYMS

Acronym	Meaning
OAG	Office of the Auditor General

OUTLINE

1. The Auditor General Bill is one of two Bills to replace the *Financial Administration and Audit Act 1985*. The other Bill is the *Financial Management Bill*.
2. In summary, the Auditor General Bill maintains the existing role of the Auditor General as the external auditor of government and:
 - (a) provides for appointment, conditions of service, and removal and suspension from the office of Auditor General;
 - (b) establishes the Auditor General as an independent officer of Parliament;
 - (c) provides for the establishment of an office designated Deputy Auditor General;
 - (d) provides for the continuation of the Office of the Auditor General (OAG) as a department of the Public Service;
 - (e) appoints the Auditor General as the auditor of the Annual Report on State Finances submitted by the Treasurer under the *Government Financial Responsibility Act 2000*, and all state agencies and their local subsidiaries;
 - (f) allows the Auditor General to waive annual audits of an agency in certain circumstances;
 - (g) provides the Auditor General with the power to carry out an examination or investigation including, among other things, examining the efficiency and effectiveness of an agency or an agency's compliance with legislative provisions, public sector policies or its own internal policies, or investigating any matter relating to public or other money or public or other property;
 - (h) widens the mandate of the Auditor General to apply his or her power as he or she sees fit to commercial activities of agencies, including partnerships, joint ventures and trusts where these relate to functions performed on behalf of an agency, in partnership or jointly with an agency or as a delegate or agent of the agency;
 - (i) provides the Auditor General with the power to carry out any audit that the Treasurer, Public Accounts Committee or Estimates and Financial Operations Committee requests the Auditor General to carry out;
 - (j) provides the Auditor General with the power to enter into an arrangement with any person or body to carry out an audit for or in relation to the person or body, and the power to provide services to a person or body that are of a kind commonly performed by auditors;
 - (k) requires the Auditor General to report at least annually to Parliament;
 - (l) requires the Auditor General to include in a report to Parliament on an examination or investigation, any submissions or comments made by the Treasurer, an agency or audited local subsidiary, and any other person who, in the Auditor General's opinion, has a special interest in the report, or a fair summary of them;
 - (m) provides the Auditor General with the statutory powers necessary for the conduct of audits and the performance of other functions, information gathering powers and powers to access accounts, information, money and property; and
 - (n) provides for the appointment of an independent auditor to audit the accounts of the OAG.

PART 1 – PRELIMINARY

Clause 1: Short Title

1. When enacted, the Bill will be cited as the *Auditor General Act 2006*.

Clause 2: Commencement

2. The Bill is intended to commence on the same day as the *Financial Management Act 2006*, being on a day fixed by proclamation.

Clause 3: Purpose

3. Sets out the purposes of the Act recognising the independent status of the Auditor General.

Clause 4: Terms used in this Act

4. Contains and defines the various terms used throughout the Act. If this Act uses a term that is used in the *Financial Management Act 2006*, the term has the same meaning in this Act as it has in that Act unless the contrary intention appears in this Act.

Clause 5: Functions under other written laws

5. This clause recognises that functions may be conferred on the Auditor General by other Acts of Parliament. It also provides for the Auditor General's functions under this Act to extend to audits that the Auditor General is authorised to carry out under other Acts of Parliament.

PART 2 – THE AUDITOR GENERAL AND DEPUTY AUDITOR GENERAL

Clause 6: Auditor General

6. Provides that there is to continue to be an office of Auditor General for Western Australia, and whenever that office is vacant, an appropriately qualified person is to be appointed as soon as practicable. The appointment and conditions of service for the office of Auditor General are specified in Schedule 1 to the Bill.

Clause 7: Status and independence of Auditor General

7. This clause recognises the special status and independence of the Auditor General, and that the Auditor General's independence extends to the performance of his or her audit functions. The Auditor General should have unfettered discretion in the performance or exercise of his or her functions, and should not be subject to direction from anyone in the performance of these functions under the Act.

Clause 8: Auditor General to have regard to audit priorities of Parliament

8. This clause recognises that notwithstanding the importance of being seen to be independent, the Auditor General, as an independent officer of Parliament, must have regard to the audit priorities of Parliament.

Clause 9: Application of *Public Sector Management Act 1994* limited

9. This clause provides that the Auditor General is not a public service officer, and that the Auditor General is not subject to certain sections of the *Public Sector Management Act 1994*. These sections relate to the functions of the

Commissioner for Public Sector Standards in the monitoring and reporting of compliance or non-compliance with the principles of human resource management and official conduct, the Commissioner's powers of investigation, and compliance by chief executive officers of certain directions or instructions. All staff of the OAG (other than the Auditor General) will still be required to comply with the Public Sector Management Act, and will continue to benefit from the protection this Act provides and the accountability it requires.

Clause 10: Deputy Auditor General

10. This clause provides for the creation of a permanent statutory Deputy Auditor General to perform functions as directed by the Auditor General. A permanent statutory deputy enhances the independence of the audit function.

Clause 11: General provisions as to Auditor General

11. The appointment, conditions of service, acting arrangements and other matters relating to the Auditor General are specified in Schedule 1 to this Bill.

PART 3 – AUDITING AND OTHER FUNCTIONS OF AUDITOR GENERAL

Division 1 – Functions as to the State, agencies, subsidiary bodies and related entities

Clause 12: Audit of the Public Ledger

12. This clause requires the Auditor General to audit the Public Ledger, which is defined in the *Financial Management Bill 2006*.
13. The Public Ledger consists of the ledger accounts for the Consolidated Account, the Treasurer's Advance Account and the Treasurer's special purpose accounts.

Clause 13: Audit and opinion on Annual Report on State Finances

14. This clause requires the Auditor General to audit and prepare and sign an opinion on the audit of the Annual Report on State Finances submitted by the Treasurer under section 14B(1) of the *Government Financial Responsibility Act 2000*.
15. The Auditor General's opinion is required to state whether the Annual Report on State Finances:
 - (a) has been prepared in accordance with external reporting standards; and
 - (b) has been properly drawn up so as to present fairly the operating results and cash flows of the Government for the budget year and the financial position at the end of the budget year.

Clause 14: Audits of accounts of agencies

16. This clause charges the Auditor General with responsibility to audit the accounts of an agency annually, unless the Auditor General considers it appropriate in the circumstances to dispense with all or any part of an audit of the accounts of an agency in a financial year. This waiver mechanism may be useful where an agency has ceased operation and has few or no assets, but the agency still exists because legislation has not been enacted to abolish it. It would also be useful where an agency has been dormant for an extended period of time. A number of

other Audit offices have similar waiver powers. Before the Auditor General can dispense with an annual audit, he or she must consult with the Treasurer and notify the Public Accounts Committee.

17. Where the Auditor General elects to dispense with an annual audit of the accounts of an agency, he or she must still audit that agency at least once every three years.

Clause 15: Audits and opinions on financial statements and related information as to agencies

18. This clause requires the Auditor General to audit and prepare and sign an opinion on the audit of an agency's financial statements, key performance indicators and other information submitted under the *Financial Management Act 2006*, except where the audit in respect of a financial year has been dispensed with under subclause 14(2).
19. The Auditor General's opinion is required to state whether the financial statements are based on proper accounts and present fairly the operating results and cash flows for the period and the financial position at the end of that period; the controls exercised are adequate; and the key performance indicators are valid and accurate.
20. Subclause 15(5) provides for the transmission of the Auditor General's opinion to the agency's Minister and a copy to the agency's accountable authority.

Clause 16: Audits of accounts of certain subsidiary bodies

21. This clause requires an agency having a local subsidiary that has the power to appoint an auditor, to exercise its control over the local subsidiary to appoint the Auditor General as its auditor. The Auditor General must then audit the accounts and financial statements of that local subsidiary. In doing so, his or her powers and duties under the Auditor General Act 2006 are in addition to the powers and duties imposed under the Corporations Act or any other written law in relation to the audit.
22. If an agency has a foreign subsidiary that has the power to appoint an auditor, the agency is required to exercise its control over the foreign subsidiary to ensure that it appoints an auditor nominated by the Auditor General. The auditor carries out the audits and reports to the agency's accountable authority in the manner requested by the Auditor General.
23. The terms "local subsidiary" and "foreign subsidiary" are defined in subclause 16(1) of the Bill.

Clause 17: Audits of accounts of related entities

24. Under the *Financial Administration and Audit Act 1985*, the Auditor General's auditing jurisdiction was largely confined to departments and statutory authorities (now termed "agencies" under the *Financial Management Bill 2006* and the *Auditor General Bill 2006*), including their subsidiaries.
25. This clause widens the Auditor General's jurisdiction to allow the Auditor General to audit, as he or she sees fit, the accounts and financial statements of any commercial activities of agencies including partnerships, joint ventures and trusts

where these entities are carrying out the functions of an agency either wholly or partly. These partnerships, joint ventures and trusts are referred to as “related entities”.

Clause 18: Examinations and investigations

26. This clause empowers the Auditor General to, at any time, conduct examinations and investigations. These may include examinations of the effectiveness of the accounting and financial management information systems of the Treasurer or an agency, and an agency’s compliance with legislation, public sector policies or its internal policies; or investigations of any matters relating to the accounts of the Treasurer, an agency or an audited local subsidiary, and any matters relating to public or other money, or public or other property. In addition, the Auditor General may examine the efficiency and effectiveness of an agency or an audited local subsidiary, or a related entity of an agency.

Clause 19: Audits at the request of the Treasurer

27. This clause gives power for the Auditor General to audit any accounts requested by the Treasurer. In particular, where a grant or advance of money is made by the Government to a person for specific purposes, the Treasurer may request the Auditor General to audit the accounts of that person to ascertain whether those moneys have been expended in accordance with the purposes for which they were provided.

Clause 20: Audits at the request of committees of Parliament

28. This clause empowers the Auditor General to conduct any audit that the Public Accounts Committee or the Estimates and Financial Operations Committee requests the Auditor General to carry out.

Clause 21: Audit fees

29. The Auditor General has discretion to determine if a fee is to be charged for the conduct of an audit, as well as the amount of the fee to be charged and the person or body who or which is liable to pay that fee.

Division 2 – Other audits, services and functions

Clause 22: Audits and other services by arrangement

30. This clause provides for the Auditor General to enter into an arrangement with any person or body to conduct an audit for, or in relation to, the person or body, or to provide services to a person or body that are of a kind commonly performed by auditors.

31. Audits and services by arrangement may include, but are not limited to:

- an audit of the financial statements or an inspection and audit of the accounts of a person or body.
- an audit of financial statements of revenue and/or expenditure of agencies or third parties where the agency or third party has received a Commonwealth grant, and is required, as a condition of that grant, to provide an audited statement of revenue and/or expenditure to the Commonwealth.
- efficiency and effectiveness examinations of persons or bodies receiving Commonwealth grants, to determine whether these grants have been

- expended in the most efficient and effective manner, and in accordance with the purposes or conditions of the grant.
- joint audits with other State Auditors-General or the Commonwealth in relation to Commonwealth/State activities.
 - provision of services normally performed by auditors and accounting firms including, but not limited to, letters of comfort, provision of certificates of expenditure costings and assistance in matters of financial administration.
32. These arrangements may include provision for the payment of fees for the performance of these tasks.
33. The information gathering and access powers available to the Auditor General under clauses 33 to 36 are not available to audits and other services by arrangement. Because of the broad scope of this section, it is not intended that compulsive powers be available for audits undertaken by arrangement between the Auditor General and other parties. Agreements between the Auditor General and other parties will need to detail the arrangements for the Auditor General to conduct such audits.

Clause 23: Provision of advice or information

34. The purpose of this clause is to make it clear that the Auditor General may provide advice or information to a person or body relating to the Auditor General's functions, and any matter that the Auditor General could consider when performing those functions. For example, proactive advice is often provided to agencies and Members of Parliament, particularly in relation to the conduct of audits and examinations. Comment is also provided to public inquiries, and general information is shared with other accountability officials in Western Australia, as well as with interstate and overseas audit offices.
35. Subclause 23(3) allows the Auditor General to determine if a fee is payable for the provision of such advice or information.

Division 3 – Reporting to Parliament

Clause 24: Reports on performance of functions generally

36. As external auditor of the accounts of government for the Parliament, the Auditor General has a responsibility to report to the Parliament on matters arising out of the performance of the Auditor General's functions that are, in the opinion of the Auditor General, of such significance to require reporting. This must be done at least once in each year.
37. The report is to draw attention to any instance where the functions of accountable authorities were not adequately and properly performed, and include particulars of any major change of approach made by the Auditor General in relation to the extent or character of the audit function.
38. The report may include, but is not limited to, such things as a summary of audit results and explanations of audit qualifications, public sector audit issues and reforms, commentary on control issues such as any significant system weaknesses or control breakdowns, significant breaches of legislation, and specific accounting and contemporary issues.

39. The Auditor General is required to transmit the report to both Houses of Parliament within 14 days after it has been signed by the Auditor General if Parliament is then in session and sitting. However, if Parliament is not in session and sitting within 14 days following the signing of a report by the Auditor General, copies of the report are to be transmitted to the Clerk of each House and the report made available to the public.

Clause 25: Report on an examination or investigation

40. This clause empowers, but does not require, the Auditor General to report to both Houses of Parliament or the Public Accounts Committee on an examination or investigation carried out under clause 18 of this Bill.
41. Organisations and individuals who are subject to an examination or investigation by the Auditor General are entitled to natural justice. Subclause 25(2) requires the Auditor General to give a summary of findings from an examination or investigation, to the Treasurer, agency or audited local subsidiary, as the case may be, and to any other person who, in the Auditor General's opinion, has a special interest in the report. Recipients of a summary of findings have a time limit of 14 days to respond to the Auditor General. The Auditor General must include any submissions or comments, or a fair summary of them, in the report to Parliament or the Public Accounts Committee.
42. The process of considering submissions or comments does not compromise the independence of the Auditor General, but ensures the provision of natural justice and is likely to enhance the quality of the reports.
43. If Parliament is not in session and sitting when the Auditor General signs a report, the Auditor General may transmit a copy of the report to the Clerk of each House of Parliament.

Clause 26: Reports transmitted to Clerks

44. This clause provides that a copy of a report transmitted to the Clerk of a House of Parliament under subclauses 24(4) or 25(4) is taken to have been laid before the House. The laying of a copy of the report before a House is required to be reported to the House by the Clerk and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House after receiving the copy of the report.

PART 4 – POWERS AND DUTIES OF AUDITOR GENERAL

Division 1 – Power and duties generally

Clause 27: Powers

45. This clause provides the Auditor General with all the powers that are necessary for the performance of the Auditor General's functions under the Bill.

Clause 28: Duties of Auditor General as to audits

46. This clause charges the Auditor General with performing audits in a manner that the Auditor General thinks fit having regard to Auditing and Assurance Standards, and the character and effectiveness of the internal control and internal audit of the relevant agency, person or body. In addition, the Auditor General is required to

consider whether the requirements of relevant enactments have been complied with.

Clause 29: Auditor General may appoint person to audit

47. This clause allows the Auditor General to appoint a public service officer or some other person to carry out all or a part of an audit. This provision will allow the Auditor General to continue to draw on auditors from the private sector when performing any audit.
48. A person appointed to conduct an audit is required to report on completion of the audit to the Auditor General.
49. A person appointed to conduct an audit who is not a public service officer is entitled to be paid a fee fixed by the Auditor General.

Clause 30: Power to obtain opinion

50. This clause empowers the Auditor General to seek a written opinion on a question concerning the functions of the Auditor General or a question of law relating to an audit, from the State Solicitor.

Clause 31: Delegation by Auditor General

51. This clause allows the Auditor General by written notice signed by him or her, to delegate certain powers or duties of the Auditor General under another provision of this Bill or under another Act. The clause precludes the Auditor General from delegating the functions of reporting to Parliament, or directing a person to provide him or her with any information, explanation or documents, or to give evidence.
52. A person to whom a power or duty is delegated cannot delegate that power or duty to any other person.

Clause 32: Powers and duties under other written laws

53. This clause recognises that the Auditor General's powers and duties under this Bill are additional to the Auditor General's powers and duties under other Acts.

Division 2 – Information gathering powers

Clause 33: Auditor General may authorise people to perform functions

54. This clause empowers the Auditor General, by written notice, to authorise a person to perform functions under this Division of the Bill.

Clause 34: Power to obtain information

55. This clause empowers the Auditor General to direct a person, in writing, to provide any information or explanation required, attend to give evidence before the Auditor General or an authorised person, or produce any documents in the custody or under the control of the person.
56. The Auditor General is able to direct that the information, explanation or answers to questions be given orally or in writing and, if necessary, be verified under oath or affirmation. The oath or affirmation may be administered by the Auditor General or an authorised person. A penalty of \$50 000 applies if a person fails to comply, without reasonable excuse, within 14 days of receiving the Auditor General's request.
57. Where persons are required to attend to provide information, explanation or answers to questions, the regulations may prescribe scales of expenses allowable to those persons to compensate for their time or out-of-pocket expenses.

Clause 35: Access to accounts, information, money and property

58. This clause entitles the Auditor General or an authorised person, to full and free access at all reasonable times to all accounts, information, documents, systems, records, money and property that is or are in the possession of any person, and to make copies or extracts from any of the accounts, information, documents and records. The Auditor General may also cause a search to be made, and extracts to be taken from, anything in the custody of the Treasurer or in any office of an agency at no cost to the Auditor General.
59. The clause ensures that the Auditor General has the power to access all information necessary for the performance of his or her functions. Access to Cabinet documents would be available and claims of legal professional privilege would not be maintainable.

60. Under the clause, the Auditor General or an authorised person may, at all reasonable times, enter and remain on any premises to exercise the Auditor General's powers, provided the authorised person produces written authorisation signed by the Auditor General if requested to do so by the occupier.
61. Where an authorised person enters, or proposes to enter any premises, the occupier must provide the authorised person with all reasonable facilities for the effective exercise of the Auditor General's powers. A penalty of \$50 000 applies if the occupier fails to do so.

Clause 36: Duty to give information overrides other duties and rights

62. This clause provides that a person must give information or an explanation, answer a question or produce a document even if this may incriminate the person. However, the giving of the information or an explanation, answering a question or the production of the document cannot be used as evidence against the person in any civil or criminal proceedings, other than proceedings for an offence against this Division or proceedings under *The Criminal Code*.
63. A person must give information or an explanation, answer a question or produce a document despite any duty of secrecy or confidentiality that the person has under another written law. By doing so, the person does not commit an offence under another written law.

Clause 37: Powers extend to confidential information

64. *The Financial Management Bill 2006* requires the Minister to cause written notice of the decision not to provide certain information to Parliament, to be laid before each House of Parliament and be given to the Auditor General.
65. Where the Minister decides that disclosure of particular information would be contrary to the public interest and advises the Auditor General of that decision, the Auditor General must not include that information in a report to Parliament. However, the Auditor General may report the information to the Public Accounts Committee.

PART 5 – INDEPENDENT AUDITING OF THE OAG

Clause 38: Appointment of independent auditor for the OAG

66. This clause precludes the Auditor General from auditing the accounts, financial statements, key performance indicators and other information relating to the OAG, and provides for the Governor to appoint a registered company auditor to undertake this function.

Clause 39: Audits of accounts of the OAG

67. The independent auditor must audit the accounts of the OAG at least once in respect of each financial year.

Clause 40: Audits and opinions on financial statements and related information as to the OAG

68. This clause requires the independent auditor to audit and prepare and sign an opinion on the OAG's financial statements, key performance indicators and other information submitted under the *Financial Management Act 2006*.

69. The independent auditor's opinion is required to state whether the financial statements are based on proper accounts and present fairly the operating results and cash flows for the period and the financial position at the end of that period; the controls exercised are adequate; and the key performance indicators are valid and accurate.
70. The independent auditor is required to provide the opinion to the Auditor General, and the Auditor General is to append the opinion given by the independent auditor to his or her annual report to Parliament.

Clause 41: Duties of independent auditor as to audits

71. This clause charges the independent auditor with carrying out the audit of the OAG in accordance with Auditing and Assurance Standards.

Clause 42: Audit fees for independent auditor

72. The independent auditor is entitled to receive a fee determined by the Treasurer for conducting the audit of the OAG.

PART 6 - MISCELLANEOUS

Clause 43: Recommendations by the Public Accounts Committee

73. This clause provides for the Treasurer to have regard to any recommendation made by the Public Accounts Committee in the determination of the OAG's annual budget. Regard is also to be had to any recommendation made by the Public Accounts Committee in relation to the organisational structure or resources of the OAG.

Clause 44: Protection from liability

74. This clause extends protection to the Auditor General, any person acting on the Auditor General's behalf or with the Auditor General's authority, and the independent auditor from actions or claims for damages, except where the act was done maliciously and without reasonable and probable cause. In other words, protection is provided for both what was done and what was not done or should have been done, but not where what was done was done in bad faith.

Clause 45: Information confidential

75. This clause specifically provides for the Auditor General, those persons employed or appointed to assist the Auditor General, and the independent auditor to preserve confidentiality in relation to all matters that come to their knowledge in the course of their employment or duties, except as necessary to discharge those duties or in proceedings under the Bill or *The Criminal Code*. A penalty of \$50 000 applies. The maintenance of confidentiality is a fundamental requirement for effective audit and ensures that information is only used for appropriate purposes.
76. Subclause 45(3) imposes a requirement on the recipient of a summary of findings, to preserve confidentiality in respect to all matters contained in the summary of findings, and not to disclose their contents, except in the course of making submissions or comments to the Auditor General or obtaining legal advice in relation to those matters.

Clause 46: Regulations

77. Regulations may be made by the Governor which prescribe matters required or permitted by the Bill that are necessary or convenient for giving effect to the Bill. The regulations should be consistent with the provisions of the Bill.

Clause 47: Review of Act

78. This clause provides for a review of the operation and effectiveness of the Act by the Public Accounts Committee as soon as practicable after the expiry of 5 years from the commencement of the Act, and a report to the Legislative Assembly by the Public Accounts Committee relating to whether, amongst other things, the legislation is achieving its intended purpose.

PART 7 – TRANSITIONAL AND SAVING

Clause 48: Incumbent Auditor General remains in office

79. This clause ensures that the appointment of the current Auditor General (other than in an acting capacity) under the *Financial Administration and Audit Act 1985* is preserved.

Clause 49: Savings of appointments of persons to audit

80. This clause provides that where an appointment of a person was made under a written law or by the Auditor General under the *Financial Administration and Audit Act 1985*, and was in existence immediately before the commencement of this Bill to carry out an audit or part of an audit, the appointment is regarded as having been made by the Auditor General under section 29 of the Bill.

SCHEDULE 1 – GENERAL PROVISIONS AS TO AUDITOR GENERAL

Clause 1: Appointment of Auditor General

81. This clause provides for the Governor to appoint an Auditor General on the recommendation of the Minister. However, prior to making a recommendation to the Governor, the Minister must consult the parliamentary leader of each political party with party status within Parliament and the Public Accounts Committee. (NB. This change will not affect the appointment of the incumbent Auditor General – refer Part 7 “Transitional and saving”). In addition, the Minister must consult with the Public Accounts Committee as to the appropriate selection criteria for appointment before applications are sought for the appointment.

82. The Auditor General is appointed for a non-renewable fixed term of 10 years. Ten years is considered an appropriate period to allow an Auditor General to make a valuable contribution and to enable periodic change.

83. A person cannot be appointed as Auditor General if the person has previously been appointed as Auditor General under this Bill or the *Financial Administration and Audit Act 1985*.

84. The Auditor General on taking up office for the first time is required to make a declaration before the Governor in the form prescribed in Schedule 2 to this Bill.

Clause 2: Remuneration

85. The remuneration of the Auditor General is to be determined by the Salaries and Allowances Tribunal under the *Salaries and Allowance Act 1975*. The rate of remuneration cannot be reduced during the Auditor General's tenure without the Auditor General's consent.

Clause 3: Other employment

86. This clause prohibits the Auditor General from holding any office or place referred to in Schedule V Part 1 or 2 of the *Constitution Acts Amendment Act 1899*, or from being a member of, or of the governing body of, any commission, council, board, committee, authority, trust or other body referred to in Part 3 of Schedule V of the *Constitution Acts Amendment Act 1899*. This clause also prohibits the Auditor General from taking on any paid employment outside the duties of the office of Auditor General.

Clause 4: Leave and other conditions of service

87. This clause provides that the Auditor General is entitled to such leave of absence and other conditions of service as are applicable to public service officers subject to any determination made by the Governor.

Clause 5: Rights of officers preserved

88. Where the person appointed as Auditor General was a public service officer immediately before being appointed to be the Auditor General, that person is entitled to retain any accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938*.
89. If a person ceases to be the Auditor General and becomes a public service officer, the service as Auditor General is to be regarded as service in the Public Service for the purposes of determining the person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.
90. If a person immediately before being appointed as Auditor General occupied an office under Part 3 of the *Public Sector Management Act 1994* and that person's term of office as Auditor General expires by effluxion of time, then that person is entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* of at least the equivalent classification level as the office that person occupied immediately prior to being appointed Auditor General.

Clause 6: Resignation of Auditor General

91. The Auditor General may resign at any time by giving the Governor a signed letter of resignation.

Clause 7: Removal and suspension from office

92. The Auditor General may be removed or suspended from office at any time by the Governor on addresses from both Houses of Parliament on the recommendation of the Public Accounts Committee. The suspension has effect until the Auditor General is restored to or removed from office by the Governor on addresses from both Houses of Parliament on the recommendation of the Public Accounts Committee.
93. The Governor may also suspend the Auditor General from office in certain circumstances, including incompetence, misconduct or insolvency. Where this

occurs, the Auditor General is restored to office if by the end of the 7th sitting day of a House of Parliament following the day of suspension, a full statement of the grounds of the suspension has not been laid before that House or by the end of the relevant day for a House of Parliament, that House has not passed an address requesting the removal of the Auditor General from office.

Clause 8: Acting Auditor General

94. This clause provides for the Governor, on the recommendation of the Minister, to appoint an appropriately qualified person as an Acting Auditor General during a period when the office of Auditor General is vacant or the Auditor General is absent from duty, suspended from that office or is unable to perform the functions of Auditor General for any other reason. However, prior to making a recommendation to the Governor, the Minister must consult with the parliamentary leader of each political party with party status within Parliament and the Public Accounts Committee.
95. Before performing the functions of Auditor General for the first time, an Acting Auditor General must make a declaration before the Governor in the form prescribed in Schedule 2 to the Bill.
96. While the Acting Auditor General is acting in the office of Auditor General, he or she is to perform all the functions of the Auditor General and has the same immunities and independence as the Auditor General. Clauses 2 to 7 of Schedule 1 apply to an Acting Auditor General.

Clause 9: Deputy Auditor General, or acting Deputy Auditor General, may act as Auditor General

97. This clause provides for the Deputy Auditor General or the acting Deputy Auditor General to act in the office of Auditor General during any vacancy of that office or if the Auditor General is absent from duty, suspended from office or is unable to perform the functions of Auditor General for any other reason, except where an Acting Auditor General has already been appointed under clause 8. However, if the Acting Auditor General is absent from duty, suspended from office or is unable to perform the functions of Auditor General for any other reason, then the Deputy Auditor General or the acting Deputy Auditor General may act as Auditor General.
98. While a person is acting in the office of Auditor General, he or she is to perform all the functions of the Auditor General and has the same immunities and independence as the Auditor General.
99. The actions of a person purporting to act in the office of Auditor General are not invalid merely because the occasion to act had not arisen or had ceased.
100. A person before performing the functions of the Auditor General for the first time, must make a declaration before the Governor in the form prescribed in Schedule 2 to the Bill.

SCHEDULE 2 – FORM OF DECLARATION

101. This sets out the form of the declaration required to be signed by the Auditor General before the Governor prior to performing the functions of Auditor General

for the first time. An Acting Auditor General and the Deputy Auditor General must also do likewise before acting in the office of Auditor General for the first time.