

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUDIT (TRANSITIONAL AND MISCELLANEOUS) AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Finance,
the Honourable Kim C. Beazley, MP)

**THIS MEMORANDUM TAKES ACCOUNT OF
AN AMENDMENT MADE BY THE HOUSE OF
REPRESENTATIVES TO THE BILL AS INTRODUCED**

AUDIT (TRANSITIONAL AND MISCELLANEOUS) AMENDMENT BILL 1995

OUTLINE

1. This Bill proposes the repeal of the *Audit Act 1901* and deals with the transitional and consequential matters arising from the repeal of that Act and the enactment of replacement legislation, namely, the *Auditor-General Bill 1994*, the *Financial Management and Accountability Bill 1994* and the *Commonwealth Authorities and Companies Bill 1994*.
2. The *Audit Act 1901* is a pervasive, operational Act that gives flesh to certain basic Constitutional requirements for the raising and spending of money by the Commonwealth; and, to that end, provides a procedural framework for day-to-day financial administration and audit across the whole spectrum of Commonwealth activities. Its repeal and replacement, therefore, has an extensive impact. This Bill enables an orderly transition to the new framework.
3. In particular, this Bill provides for the formal transfer, as appropriations, of balances from the Audit Act's existing Fund accounting structure to the new structure established by the proposed *Financial Management and Accountability Bill 1994*; the continuation of the appointment of the Auditor-General in office as at 30 June 1995 for a period not exceeding 7 years from that date; the continuation of the existing arrangements for the position of Independent Auditor as auditor of the Australian National Audit Office; the continuation for the time being (until regulations under the replacement legislation come into operation) of the current safeguards, as agreed by Parliament, under section 70D of the *Audit Act 1901*, in relation to the nature of audit and financial reporting disclosures for the security and intelligence agencies; and the making of regulations to cover situations, at a procedural level, that might need to demonstrate legal certainty to support their smooth transition to the new legislative framework - eg, the continuation of the myriad contractual and other arrangements entered into under the authority of the repealed Act, such as operating bank accounts, contract audits in progress, debtors' repayments by instalments etc.
4. The Bill's extensive impact, however, can be seen in the Schedule to the Bill - in the proposed consequential amendments to the relevant provisions of the more than one hundred other Acts which refer in specific ways to the current *Audit Act 1901*. The proposed amendments will replace those Acts' "*Audit Act 1901*" references with provisions that appropriately link them to the framework of the new financial legislation.
5. In relation to those Commonwealth Authorities for which the Schedule specifies consequential amendments to their enabling legislation so as to link those authorities to the proposed *Commonwealth Authorities and Companies Bill 1994*, it should be noted that the list is not exhaustive. The authorities are only those whose enabling legislation reflects Part XI of the *Audit Act 1901*. A further miscellaneous amendment Bill will be necessary to create the necessary linkages to the *Commonwealth Authorities and Companies Bill 1994* for the forty or so Authorities whose enabling legislation does not reflect Part XI.

FINANCIAL IMPACT STATEMENT

6. The proposed amendments have no financial impact.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

Clause 2 - Commencement

Clause 3 - This Act binds the Crown

Clause 4 - This extends to things outside Australia

1. These clauses are largely self-explanatory. This Bill is to come into operation on the same day as the *Financial Management and Accountability Bill 1994* - ie, on 1 July 1995 or an earlier date if one were proclaimed as the commencement day.

Clause 5 - Interpretation

2. The scope and intent of the range of the definitions are self-explanatory.

PART 2 - REPEAL OF THE AUDIT ACT

Clause 6 - Repeal of the Audit Act

3. This clause is self-explanatory.

PART 3 - TRANSITIONAL

Clause 7 - Transfers from old Funds to new Funds

4. The purpose of this clause is to provide, upon commencement of this Act, for:

- money in the Loan Fund established under the *Audit Act 1901* to be transferred to the Loan Fund established under the *Financial Management and Accountability Bill 1994*; and
- money in the Trust Fund to be transferred to components of the Reserved Money Fund and the Commercial Activities Fund established under or for the purposes of clauses 20 and 21 of the *Financial Management and Accountability Bill 1994*.

5. Existing Trust Accounts and Heads of Trust are established either by a Commonwealth Act or under the *Audit Act 1901*. For each Commonwealth Act establishing an account/head in operation at commencement date of the new financial framework, the Schedule to this Bill is to amend that Act to create a replacement component of the Reserved Money Fund.

6. For accounts/heads established under the *Audit Act 1901*, the Minister for Finance would make determinations in accordance with subclauses 20(2) and 21(2) of the *Financial Management and Accountability Bill 1994* to establish replacement components. Determinations for the purpose of the transfer would, as far as practicable, replicate the funding arrangements and purposes clauses of Trust Accounts and Heads of Trust in operation at commencement. The 'transfer' determinations would be tabled in Parliament, but

because they would be repeating and continuing approved arrangements, the disallowance rules set out in subclause 22(3) of the *Financial Management and Accountability Bill 1994* would not apply.

7. Subclause 7(3) is included to ensure that the rights and liabilities of individuals are not affected by the change.

Clause 8 - Auditor-General

8. This clause provides for an incumbent Auditor-General as at 30 June 1995 to remain in office for not more than 7 years from the transitional date, notwithstanding the repeal of the *Audit Act 1901* under which the original appointment was made. The rules in the *Auditor-General Bill 1994* on age limit, remuneration, recreation leave resignation, and removal from office apply in the same way as if he were appointed under the *Auditor-General Bill 1994*.

Clause 9 - Independent Auditor

9. This clause provides for the current arrangements for the position of Independent Auditor to continue as if the arrangements had been made under the *Auditor-General Bill 1994*.

Clause 10 - Exempt accounts

10. The special financial management and auditing arrangements for security and intelligence agencies are complex. Developing new, simplified arrangements for these agencies is expected to require great care; there is a possibility, at least, that the new arrangements may not be completed by the time this Act commences. To avoid any hiatus, this clause provides for the "exempt account" arrangements under section 70D of the *Audit Act 1901*, which are current and working, to continue for the period until the foreshadowed new regulations for these agencies under the three principal proposed financial Acts become operational.

PART 4 - REGULATIONS

Clause 11 - Regulations

11. This clause provides for regulations to be made for the transition of various matters. Reliance on regulations is considered appropriate and practicable in this context, given the extensiveness of the changes from the *Audit Act 1901* to the new legislative framework. For example, the regulations would be able to deal with:

- the fact that existing official bank accounts would not comply, in the short term, with the new account naming rules under section 9 of the *Financial Management and Accountability Bill 1994*;
- the continuation of appointments made under section 11 of the *Audit Act 1901*;
- the continuation of audits, in particular audits of the 1994/1995 financial statements;

- the continuation of financial statements guidelines made under section 50AA of the *Audit Act 1901*, in particular guidelines for the 1994/1995 financial statements.

PART 5 - AMENDMENT OF OTHER ACTS

Clause 12 - Amendment of other Acts

12. This clause is self explanatory.

SCHEDULE

CONSEQUENTIAL AMENDMENTS OF ACTS

AMENDMENTS OF ACTS CONSEQUENTIAL UPON THE COMMENCEMENT OF THE *FINANCIAL MANAGEMENT AND ACCOUNTABILITY BILL 1994*, THE *AUDITOR-GENERAL BILL 1994*, AND THE *COMMONWEALTH AUTHORITIES AND COMPANIES BILL 1994*

1. In relation to the *Financial Management and Accountability Bill 1994* and the *Auditor-General Bill 1994* - the amendments involve:

- the creation of components of the Reserved Money Fund to replace existing "Trust Accounts" and "Funds" established for the purposes of sections 60 or 62A of the *Audit Act 1901* - replacement components are renamed "Reserves";
- the clarification of provisions requiring money to be credited to reserves - that no money is directly credited to a reserve, but that money is transferred to the reserve from the Consolidated Revenue Fund;
- repeal of standing appropriations in Acts that authorise the transfer of amounts from the Consolidated Revenue Fund to reserves - subsection 20(7) of the *Financial Management and Accountability Bill 1994* provides a standing appropriation for the transfers to be made and makes redundant the standing appropriations in other Acts for such transfers;
- the repeal of provisions that place responsibilities on the Auditor-General in regard to the audit of agencies' financial statements, accounts or records - section 58 of the *Financial Management and Accountability Bill 1994* and the *Auditor-General Bill 1994* provide the necessary authority for the Auditor-General to audit financial statements, accounts and records of agencies;
- the repeal of provisions requiring the keeping of accounts and records of agencies - section 49 of the *Financial Management and Accountability Bill 1994* provide sufficient authority for the proper keeping of agencies' accounts and records;
- the repeal of references to *Audit Act 1901* and their replacement with references to equivalent provisions in the *Financial Management and Accountability Bill 1994* and *Auditor-General Bill 1994*;
- a rewording of provisions to bring them into line with the basic principles of the *Financial Management and Accountability Bill 1994*.

2. The *Commonwealth Authorities and Companies Bill 1994* (the CAC Bill) provides a standard set of core requirements relating to the accountability and conduct of directors and executive officers of all Commonwealth authorities currently subject to Part XI of the *Audit Act 1901*. It also provides a standard set of core requirements relating to the accountability of directors of Commonwealth companies which will apply in addition to the requirements of the Corporations Law.

3. The core requirements provided for in the CAC Bill will replace a range of similar requirements scattered throughout Part XI of the *Audit Act*, the enabling legislation of Commonwealth authorities and companies and the constitutional documents of companies.

4. The *Audit (Transitional and Miscellaneous Amendments) Bill 1995* (this Bill) proposes consequential amendments to provisions in the enabling legislation where those provisions:

- refer to, or rely on, the repealed Part XI of the *Audit Act 1901*; or
- overlap with corresponding provisions in the CAC Bill.

5. Typically, the proposed amendments repeal provisions in the enabling legislation where their subject matter is intended to be covered by the CAC Bill, so as to avoid ambiguity and unintended effects. In a small number of instances, specialised requirements have been preserved, either to operate in conjunction with the CAC Bill, or to exclude the application of a particular provision in the CAC Bill that may be inappropriate to the circumstances of a particular body.

6. The repeal of duplicated requirements is intended to allow Parliament to focus on a single set of requirements in the CAC Bill in any future reviews. In the case of a very few authorities, the application of the CAC Bill has been excluded. For example, some authorities are responsible to a Ministerial Council comprising State and Commonwealth Ministers. In such cases the Commonwealth has agreed with the States not to amend the enabling legislation without the consent of the Ministerial Council.

7. It is proposed that a subsequent miscellaneous amendment Bill will extend the application of the CAC Bill to those Commonwealth authorities not currently subject to Part XI of the *Audit Act 1901*. That Bill will also effect consequential amendments, similar to those outlined above, to the enabling legislation of the affected authorities.

8. The following clarification is provided on particular amendments:

Acts Interpretation Act 1901

- Item 88 of the Schedule inserts, into the *Acts Interpretation Act 1901*, definitions of the Consolidated Revenue Fund, Loan Fund and the Reserved Money Fund. The definitions are to apply to these references appearing in all Commonwealth Acts. Standing appropriations of the Loan Fund made before the commencement of the *Financial Management and Accountability Bill 1994* are intended to continue as appropriations of the Loan Fund established under the *Financial Management and Accountability Bill 1994*.

Administrative Decisions (Judicial Review) Act 1977

- Item 92 of the Schedule consequentially amends paragraph (h) of Schedule 2 to the *Administrative Decisions (Judicial Review) Act 1977*. Section 27 of the *Financial Management and Accountability Bill 1994* is the equivalent to sections 32 and 36A of the *Audit Act 1901* and concerns decisions by the Finance Minister to issue money out of the Consolidated Revenue Fund, the Loan Fund, Reserved Money Fund and the Commercial Activities Fund.

Australia-Japan Foundation Act 1976
Australian Centre for International Agricultural Research Act 1982

- Items 105 to 119 and 135 to 142 of the Schedule, among other things, amend the *Australia-Japan Foundation Act 1976* and the *Australian Centre for International Agricultural Research Act 1982* to create components of the Reserved Money Fund that are to replace existing Funds, and to rename the existing Funds as the "Australia-Japan Reserve" and the "Australian Centre for International Agricultural Research Reserve". While the Commonwealth bodies created by these Acts are corporate bodies, the intention is that all money received by the bodies be credited to the Consolidated Revenue Fund and that an equivalent amount be transferred from the Consolidated Revenue Fund to the "Reserves". The bodies deal only in public money that is held in official bank accounts (ie, they do not hold money on their own account). As a consequence, they are not subject to the *Commonwealth Authorities and Companies Bill 1994*. Instead, the bodies are agencies and come within the ambit of the *Financial Management and Accountability Bill 1994*.

Commonwealth Inscribed Stock Act 1911

- Items 388 and 389 of the Schedule repeal sections 51F and 53 of the *Commonwealth Inscribed Stock Act 1911*. Section 51F is repealed because the Head of Trust is defunct. Also, section 53 of the *Commonwealth Inscribed Stock Act 1911* is redundant. The auditing provisions under the *Auditor-General Bill 1994* provide sufficient authority for the Auditor-General to audit the accounts and records of Registries.

Superannuation Industry (Supervision) Act 1993

- Items 858 to 861 of the Schedule amend the *Superannuation Industry (Supervision) Act 1993* to create a component of the Reserved Money Fund that is to replace the existing Trust Account, and to rename the Account as the Superannuation Protection Reserve. The amendment to section 237 of the *Superannuation Industry (Supervision) Act 1993* (ie, Item 861) is made on the basis that the amount is paid from the Consolidated Revenue Fund to the Reserve "in respect of" a levy. Amounts are not paid directly to the Reserve.

Taxation (Interest on Overpayments) Act 1983

- Item 863 of the Schedule repeals subsection 3(3) of the *Taxation (Interest on Overpayments) Act 1983* because it is an unnecessary procedure for an amount to be transferred from the Consolidated Revenue Fund to another Fund on a possibility that a repayment might be required to be made to a person. Section 28 of the *Financial Management and Accountability Bill 1994* provides a standing appropriation to permit money to be repaid to a person entitled under a law to receive a repayment.

