

South Australia

## **Public Finance and Audit Act 1987**

An Act to regulate the receipt and expenditure of public money; to provide for auditing the receipt and expenditure of public money and for examination of the degree of efficiency and economy with which public resources are used; and for other purposes.

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## Legislative history

The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Public Finance and Audit Act 1987*.

### 4—Interpretation

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

*annual Appropriation Act* means an Act (not being a Supply Act) that appropriates money from the Consolidated Account in respect of a particular financial year;

*Auditor-General* means the person for the time being holding, or acting in, the office of Auditor-General;

*authorised officer* means a person authorised by the Auditor-General to conduct an audit or to make an examination under this Act;

*Chief Executive Officer* of a public authority means—

- (a) where the public authority is a government department—the Chief Executive Officer, or a person who has the powers and functions of Chief Executive Officer, of the government department;
- (b) where the public authority is a Minister—the Minister;
- (c) where the public authority is a statutory authority (not being a natural person or a corporation sole) or some other body—the chief executive officer of the authority or other body or, if there is no chief executive officer, the person entitled to preside at meetings of the governing body of the authority or other body;
- (d) where the public authority is a natural person or a corporation sole—that person or the person constituting the corporation;

*deposit account* means an account referred to in Division 5 of Part 2;

*Deputy Auditor-General* means the person for the time being holding, or acting in, the office of Deputy Auditor-General;

*the general ledger* means the ledger maintained by the Treasurer comprising accounts that summarise the financial transactions of the Treasurer;

*government department* means an administrative unit established under, or continued in existence by, the *Government Management and Employment Act 1985*;

*Financial Agreement* means the financial agreement dated the twelfth day of December, 1927, between the Commonwealth and the States, as amended;

*financial year* in relation to a public authority means a period of 12 months in respect of which the authority prepares its accounts;

*imprest account* means an account established under section 9;

**prescribed public authority** means—

- (a) a public authority that is a statutory authority; or
- (b) any other public authority that has been declared by regulation to be a prescribed public authority for the purposes of this definition;

**public accounts** means the Consolidated Account, special deposit accounts, deposit accounts, accounts of money deposited by the Treasurer with SAFA, imprest accounts and all other accounts shown in the general ledger;

**public authority** means—

- (a) a government department;
- (b) a Minister;
- (c) a statutory authority—
  - (i) that is an instrumentality of the Crown; or
  - (ii) the accounts of which the Auditor-General is required by law to audit;
- (d) such other body or person as is prescribed,

but, subject to any other provision of this Act, does not include a statutory authority where the Act by or under which the authority is appointed or established provides for the auditing of the accounts of the authority by a person other than the Auditor-General;

**publicly funded body** means—

- (a) a council or controlling authority constituted under the *Local Government Act 1934*;
- (b) any other body or person that carries out functions that are of public benefit and that has received money from the State by way of grant or loan;

**publicly funded project** means a project or activity entirely or substantially funded out of money provided by—

- (a) the State; or
- (b) a council or controlling authority constituted under the *Local Government Act 1934*;

**repealed Audit Act** means the *Audit Act 1921* repealed by this Act;

**repealed Public Finance Act** means the *Public Finance Act 1936* repealed by this Act;

**SAFA** means the South Australian Government Financing Authority established under the *Government Financing Authority Act 1982*;

**special deposit account** means an account established under section 8;

**Supply Act** means an Act that appropriates money from the Consolidated Account in respect of a particular financial year pending the enactment of an annual Appropriation Act in respect of that year;

**Treasurer's instructions** means instructions issued by the Treasurer under Part 4;

*Treasurer's statements* means the statements prepared by the Treasurer under Division 6 of Part 2.

- (2) In calculating the number of sitting days of a House of Parliament that has elapsed since a particular document was laid before the House, sitting days occurring before and after prorogation or dissolution of the House shall be aggregated.

## **Part 2—Public finance**

### **Division 1—Provisions relating to the receipt and application of public money**

#### **5—Receipt of public money**

Subject to this Act and to any other law to the contrary, there will be credited to the Consolidated Account—

- (a) money received by the Treasurer in repayment of loans and advances made from the Consolidated Account;
- (b) money received by the Treasurer from the Commonwealth;
- (c) money received by the Treasurer from the sale of real or personal property belonging to the Crown;
- (d) money borrowed by the Treasurer for the general purposes of the State (other than money paid to SAFA at the direction of the Treasurer);
- (e) all other revenue of the Crown that is not authorised by law to be credited to any other account.

#### **6—Expenditure of money from Consolidated Account only in accordance with Parliamentary appropriation**

- (1) Money must not be issued or applied from the Consolidated Account except under the authority of—
  - (a) this Act; or
  - (b) an annual Appropriation Act; or
  - (c) a Supply Act; or
  - (d) some other Act of Parliament.
- (2) The Treasurer must, when issuing or applying money from the Consolidated Account, act in accordance with the Act by or under which the money has been appropriated.

#### **7—Money received by instrumentalities of the Crown**

- (1) Subject to subsection (2), money received by an instrumentality of the Crown that should, but for this section, be paid into the Consolidated Account may, without appropriation by Parliament, be applied by the instrumentality in carrying out its functions.
- (2) The Treasurer may direct that money referred to in subsection (1) be paid into the Consolidated Account instead of being applied under that subsection.

- (3) A reference in this section to an instrumentality of the Crown does not extend to any such instrumentality that is a natural person or a corporation sole unless the regulations specifically provide that this section will apply to the instrumentality.

## 8—Special deposit accounts

- (1) The Treasurer may establish a special deposit account for an approved purpose of, or relating to, a government department.
- (2) Money payable to the Crown in relation to an approved purpose must, at the direction of the Treasurer, be credited to a special deposit account opened for that purpose.
- (3) The Treasurer may credit any money appropriated or provided in accordance with law for an approved purpose to a special deposit account opened under this section for that purpose.
- (4) The Treasurer may, without Parliamentary appropriation, issue and apply any money standing to the credit of a special deposit account for the purpose for which that account was opened.
- (5) Any surplus of income over expenditure standing to the credit of a special deposit account must, at the direction of the Treasurer, be credited to the Consolidated Account.
- (6) Subject to this section special deposit accounts must be operated in accordance with the Treasurer's instructions.
- (7) The Treasurer may approve a purpose of, or relating to, a government department for the purposes of this section and may vary or revoke such an approval at any time.
- (8) A reference in subsection (5)—
  - (a) to income extends to income accrued but not received; and
  - (b) to expenditure extends to costs incurred but not paid.
- (9) In this section—

*approved purpose* means a purpose of, or relating to, a government department approved for the time being by the Treasurer under subsection (7).

## 9—Imprest accounts

- (1) The Treasurer may establish an ADI account (an imprest account) in the name of a government department or the Chief Executive Officer of a government department.
- (2) The Treasurer may, without Parliamentary appropriation pay money into an imprest account.
- (3) Money standing to the credit of an imprest account—
  - (a) may be withdrawn for one or more of the purposes of the government department; and
  - (b) must be repaid to the Treasurer on demand.
- (4) Money expended from an imprest account must be recouped to the account from money appropriated or set aside for the same purpose.

**10—Application of money to honour cheques etc**

Money issued from the Consolidated Account may be applied after the end of a financial year to honour cheques or other orders for the payment of money drawn by the Treasurer before the end of the financial year under the authority of an annual Appropriation Act or a Supply Act relating to that year.

**11—Investment of public money by Treasurer**

The Treasurer may, on such terms and conditions as the Treasurer thinks fit, deposit or invest money under the Treasurer's control—

- (a) with the Reserve Bank of Australia; or
- (d) with a bank or any other prescribed ADI; or
- (e) with a dealer in the short term money market—
  - (i) in relation to whom the Reserve Bank of Australia stands as a lender of last resort; or
  - (ii) who has been declared by regulation to be an approved dealer for the purposes of this section; or
- (f) with SAFA; or
- (g) with a prescribed person or a person of a prescribed class; or
- (h) in a prescribed manner.

**Division 2—Appropriation by Governor for previously authorised purposes and appropriation for other purposes****12—Appropriation by Governor**

- (1) The Governor may, in any financial year, appropriate from the Consolidated Account to the public purposes of the State, an amount not exceeding the maximum prescribed by subsection (2).
- (2) The maximum amount that may be appropriated under subsection (1) is—
  - (a) three per cent of the total of the amounts set out in the annual Appropriation Acts for appropriation from the Consolidated Account in respect of the previous financial year; less
  - (b) any amounts previously appropriated under this section and not recouped under subsection (4).
- (3) Money appropriated under subsection (1) may be issued and applied by the Treasurer for the public purposes of the State during the financial year in which it is appropriated.
- (4) Any money appropriated for any purpose by the Governor pursuant to this section in any financial year may be recouped to the Governor's Appropriation Fund out of any money subsequently voted by an annual Appropriation Act that is passed in the same financial year, and thereafter the balance of the Governor's Appropriation Fund will be increased by the amount so recouped.

(5) For the purpose of determining the total amount that may be appropriated by the Governor in accordance with this section each amount so appropriated will be included once only in that determination notwithstanding that it is, for any reason, recorded more than once in the Consolidated Account or in a schedule to that account.

(6) In this section—

*the Governor's Appropriation Fund* in relation to a financial year means the money that the Governor is by subsection (1) authorised to appropriate in that year;

*the public purposes of the State* includes any purpose for which money is, under the provisions of any Act, required to be paid out of money to be provided or appropriated by Parliament.

### **13—Adjustment of levels of appropriation between departments**

Where the amount appropriated for a particular government department or a particular purpose is insufficient for that department or purpose and the amount appropriated for another government department or another purpose exceeds the amount required for that department or purpose, the Governor may apply the excess, or any part of the excess, towards meeting the insufficiency.

### **14—Reduction in level of appropriation by Governor**

The Governor may, at any time, reduce the amount appropriated for a government department or purpose.

### **15—Appropriation by Treasurer for additional salaries, wages etc**

Where by reason of the award, order or determination of a court, tribunal or other body empowered to fix salaries, wages or allowances, additional money is required to meet increases in salaries, wages, allowances, pay-roll tax or superannuation contributions payable to, or in respect of, employees whose salaries, wages or allowances are paid wholly or in part out of public money, the Treasurer may appropriate an amount sufficient to cover those increases from the Consolidated Account.

## **Division 3—Authority to borrow**

### **16—Power to borrow**

- (1) Subject to the Financial Agreement, the Treasurer may borrow on behalf of the State such sums as are required for the purposes of the State.
- (2) Money borrowed by the Treasurer under this section (other than money borrowed by way of overdraft) must be credited to the Consolidated Account or must be paid to SAFA on such terms and conditions as the Treasurer thinks fit.
- (3) The Treasurer must not borrow money by way of overdraft in excess of the limit prescribed for that purpose by an annual Appropriation Act or a Supply Act.
- (4) The Treasurer may issue and apply money from the Consolidated Account—
  - (a) in repayment of money borrowed under this section (other than money borrowed by way of overdraft) and credited to the Consolidated Account and in payment of interest or any other obligation in the nature of interest in relation to such borrowing; and



- (b) in payment of interest or any other obligation in the nature of interest in relation to money borrowed by way of overdraft.

## Division 4—Financial arrangements, guarantees and indemnities

### 17—Interpretation

- (1) In this Division—

*financial arrangement* means—

- (a) a contract or arrangement under which a semi-government authority immediately or prospectively—
- (i) borrows money or obtains any other form of financial accommodation; or
  - (ii) obtains the use or benefit of any other property owned by another person; or
- (b) a contract or arrangement entered into by a semi-government authority for the purpose of—
- (i) managing, protecting against or reducing risks arising from changes in currency exchange rates, interest rates or discount rates or managing, protecting against or reducing any other financial risks; or
  - (ii) managing, obtaining or increasing financial returns from movements in currency exchange rates, interest rates or discount rates; or
- (c) a contract or arrangement entered into by a semi-government authority for any other purpose relating to its financial affairs that is of a kind declared by the Treasurer, by notice published in the Gazette, to be included in the ambit of this definition,

but does not include a contract or arrangement of a kind excluded by the Treasurer, by notice published in the Gazette, from the ambit of this definition;

*guarantee* includes a contract or arrangement of a prescribed kind;

*semi-government authority* means a body corporate—

- (a) that—
- (i) is constituted of a Minister of the Crown; or
  - (ii) has a governing body comprised of or including persons or a person appointed by the Governor or a Minister or other instrumentality of the Crown; or
  - (iii) is financed wholly or in part out of public money; and
- (b) that is declared by proclamation to be a semi-government authority for the purposes of this Act,

but does not include a council as defined in the *Local Government Act 1934*.

- (1a) A notice published by the Treasurer in the Gazette for the purposes of the definition of *financial arrangement* may be varied or revoked by the Treasurer by subsequent notice published in the Gazette.

- (2) The Governor may, by proclamation, declare a body corporate to be a semi-government authority for the purposes of this Act.
- (3) The Governor may, by proclamation, vary or revoke a declaration under subsection (2).

## **18—Financial arrangements**

- (1) Notwithstanding the provisions of any other Act, a semi-government authority may, with the consent of the Treasurer, enter into a financial arrangement.
- (2) Notwithstanding the provisions of any other Act, a semi-government authority must not enter into a financial arrangement without the consent of the Treasurer.
- (3) The consent of the Treasurer under this section—
  - (a) may be conditional; and
  - (b) may relate to a proposed financial arrangement or may relate to financial arrangements of a particular kind or financial arrangements generally, that the semi-government authority may wish to enter into in the future; and
  - (c) may be varied or revoked by the Treasurer at any time in respect of financial arrangements not yet entered into.
- (4) The Treasurer's consent is not required under this section to financial arrangements entered into by the South Australian Asset Management Corporation or SAFA.
- (5) Subject to any express agreement to the contrary, a person who has entered into a financial arrangement with a semi-government authority is under no obligation—
  - (a) to enquire into—
    - (i) the manner in which the semi-government authority applies the money or other property provided under the arrangement; or
    - (ii) the actions of the semi-government authority in relation to any other benefit provided under the arrangement; or
  - (b) to take any action—
    - (i) in relation to any misapplication of such money or property by the authority; or
    - (ii) in relation to the actions of the authority in relation to any such benefit.
- (6) Where under another Act a semi-government authority is not permitted to enter into a financial arrangement without the consent or approval of the Treasurer, the consent of the Treasurer under this section will be taken to be consent or approval for the purposes of the other Act even though the other Act may require consent or approval to the specific financial arrangement.

## **19—Guarantees and indemnities**

- (1) The Treasurer may, for and on behalf of the State—
  - (a) guarantee performance of obligations by a semi-government authority;

- (ab) guarantee performance of obligations by any other person if, in the opinion of the Treasurer, the guarantee will facilitate the carrying out by a semi-government authority of its functions;
  - (b) indemnify any person against loss, expenditure or costs related to a contract to which a semi-government authority is a party, or a contract that is incidental, ancillary, or otherwise related to such a contract.
- (1a) A guarantee under subsection (1) may—
- (a) guarantee performance of existing or contingent obligations; or
  - (b) guarantee performance of obligations for the benefit of a person who does not exist or who cannot be ascertained when the guarantee is given; or
  - (c) guarantee performance of obligations that the semi-government authority incurs or assumes in the future.
- (1b) A guarantee under subsection (1) may—
- (a) refer specifically to the obligations guaranteed or refer to a class to which they belong;
  - (b) be given by the Treasurer by notice in the Gazette or by written contract between the parties to the guarantee;
  - (c) be varied or revoked by the Treasurer in respect of obligations not yet incurred or assumed by the semi-government authority.
- (1c) A guarantee given by notice in the Gazette may be varied or revoked under subsection (1b)(c) by notice in the Gazette.
- (2) The terms and conditions of a guarantee or indemnity under this section will be as determined by the Treasurer.
- (3) As a condition of giving a guarantee or indemnity under this section, the Treasurer may require an indemnity against liabilities that may arise under the guarantee or indemnity.
- (4) The money required to satisfy the obligations of the Treasurer under a guarantee or indemnity entered into under this section or under the repealed Public Finance Act will be paid out of the Consolidated Account which is appropriated for that purpose to the necessary extent.
- (5) This section—
- (a) applies in addition to the provisions of any other Act relating to guarantees and indemnities for the benefit of a body corporate that is a semi-government authority;
  - (b) does not operate to exclude or diminish obligations of the Treasurer under any other Act or law.

## **20—Fees in respect of provision of guarantees and indemnities**

- (1) Subject to subsection (4), where—
- (a) the Treasurer has provided a guarantee or indemnity either under this Act, the repealed Public Finance Act or under some other law; or
  - (b) a guarantee or indemnity by the Treasurer has arisen by operation of law,

the Treasurer may, during the currency of the guarantee or indemnity, charge periodic fees in respect of the provision of the guarantee or indemnity.

- (2) The amount of a periodic fee to be charged by the Treasurer under subsection (1) will, subject to the regulations, be fixed by the Treasurer.
- (3) A fee charged by the Treasurer under this section may be recovered as a debt.
- (4) The powers conferred by this section must not be exercised in relation to a guarantee under section 14 of the *Industries Development Act 1941*.

## **20A—Validity of transactions of semi-government authorities**

- (1) Subject to subsection (2), a transaction to which a semi-government authority is a party or apparently a party (whether made or apparently made under the authority's common seal or by a person with authority to bind the semi-government authority) is not invalid because of—
  - (a) any deficiency of power on the part of the authority;
  - (b) any procedural irregularity on the part of the governing body or any member of the governing body of the authority or on the part of an employee or agent of the authority;
  - (c) any procedural irregularity affecting the appointment of a member of the governing body of the authority or an employee or agent of the authority.
- (2) This section does not validate a transaction in favour of a party—
  - (a) who enters into the transaction with actual knowledge of the deficiency or irregularity; or
  - (b) who has a connection or relationship with the semi-government authority such that the person ought to know of the deficiency or irregularity.

## **Division 5—Deposits**

### **21—Deposits**

- (1) The Treasurer may accept money on deposit from any person on such terms and conditions as the Treasurer thinks fit.
- (2) Money deposited under subsection (1) must be recorded in a separate account maintained by the Treasurer for that purpose.

## **Division 6—Treasurer's statements and statements of public authorities**

### **22—Treasurer's statements**

The Treasurer must, within 2 months after the expiration of each financial year deliver to the Auditor-General—

- (a) the following statements in relation to that financial year:
  - (i) a statement of the estimated and actual receipts to and payments from the Consolidated Account for that financial year classified under the headings and subheadings, and in the form of, the estimates of receipts and payments laid before Parliament supporting the annual Appropriation Act for that year;

- (ii) a statement of the sources and application of money recorded in the public accounts;
- (iii) a statement of the payments of a recurrent nature made from the Consolidated Account for the financial year, classified and arranged to show the net recurrent cost to the Consolidated Account of each of the various functions of Government and the total net cost of all such functions and the funds which have been applied to meet the total net cost;
- (iv) a statement naming the organisations, other than SAFA, with which the Treasurer invested funds during the financial year;
- (v) a statement of—
  - (A) the special deposit accounts opened during the financial year;
  - (B) the special deposit accounts in operation at the end of the financial year and the purpose for which each account was opened;
  - (C) the balance of each special deposit account at the end of the financial year;
- (vi) a statement of the balances at the end of that financial year of all deposits lodged with the Treasurer;
- (vii) a statement of the imprest accounts in operation at the end of the financial year and the amount of unappropriated money paid into each account;
- (viii) a statement of the total indebtedness of the Treasurer;
- (ix) a statement of—
  - (A) the amounts deposited or invested with, or otherwise provided by the Treasurer to, SAFA and the terms and conditions on which they were deposited, invested or otherwise provided;
  - (B) the details of all transactions between the Treasurer and SAFA that are relevant to a proper assessment of the State's financial position;
- (x) the financial statements of SAFA for the financial year;
- (xi) a statement of—
  - (A) the maximum amount that could have been appropriated from the Governor's Appropriation Fund pursuant to section 12;
  - (B) the purposes for which money has been issued and applied from the Governor's Appropriation Fund and the amounts issued and applied;

- (xii) a statement of any amounts that were appropriated for a particular purpose but applied for another purpose in pursuance of section 13 and of the purposes for which those amounts were appropriated and of the purposes for which they were applied;
  - (xiii) a statement of the Acts of Parliament under the authority of which money has been issued and applied from the Consolidated Account and the amounts issued and applied;
  - (xiv) any other statements that the Treasurer thinks necessary; and
- (b) such written explanation of the statements as may be necessary.

### **23—Delivery of financial statements to Auditor-General by public authority**

- (1) Subject to subsections (3) and (4), every public authority must, within 42 days after the end of the financial year of the authority, deliver to the Auditor-General financial statements relating to that financial year that comply with the Treasurer's instructions.
- (2) The Chief Executive Officer, and the officer responsible for the financial administration, of each public authority must provide the Auditor-General (or the Treasurer in the case of the administrative unit established to assist the Auditor-General) with a certificate that the statements are in accordance with the accounts and records of the authority and give an accurate indication of the financial transactions of the authority for that year and, in the case of a prescribed public authority, the financial position of the authority at the end of that year.
- (3) The Treasurer must deliver the financial statements of SAFA to the Auditor-General when delivering the Treasurer's statements under section 22.
- (4) The administrative unit established to assist the Auditor-General in carrying out the Auditor-General's functions under this Act must deliver its financial statements to the Treasurer.

## **Part 3—Audit**

### **Division 1—The Auditor-General**

#### **24—Appointment of Auditor-General**

- (1) There will be an Auditor-General.
- (2) The Auditor-General will be appointed by the Governor.
- (3) The conditions of office of the Auditor-General will, subject to this Act, be determined by the Governor.
- (4) The salary and allowances of the Auditor-General will be determined by the Governor and will be paid from the Consolidated Account which is appropriated for that purpose to the necessary extent.
- (5) The conditions of office of the Auditor-General must not be varied while the Auditor-General is in office so as to become less favourable to the Auditor-General.
- (6) The Auditor-General is not subject to the direction of any person as to—
  - (a) the manner in which functions are carried out or powers are exercised by the Auditor-General under this Act; or

- (b) the priority that he or she gives to a particular matter in carrying out functions under this Act.

## **25—Assistance in carrying out Auditor-General's function**

- (1) The Governor must establish an administrative unit pursuant to the *Government Management and Employment Act 1985* to assist the Auditor-General in carrying out the Auditor-General's functions under this Act.
- (2) The Auditor-General will have the powers and functions of a Chief Executive Officer under the *Government Management and Employment Act 1985* in relation to the administrative unit established under subsection (1) and the provisions of sections 36 and 37 of that Act do not apply in relation to that administrative unit.
- (3) The Auditor-General may, on such conditions as the Auditor-General thinks fit, engage any person to provide services that are, in the Auditor-General's opinion, necessary or desirable to assist the Auditor-General in carrying out his or her functions under this Act.

## **26—Suspension of Auditor-General from office**

- (1) The Governor may suspend the Auditor-General from office—
  - (a) for incompetence; or
  - (b) for mental or physical incapacity to carry out official duties satisfactorily; or
  - (c) for neglect of duty; or
  - (d) if the Auditor-General, without the written approval of the Governor, enters into paid employment, practises a profession or carries on a business on his or her own account; or
  - (e) for failure to comply with the conditions of the Auditor-General's appointment; or
  - (f) for dishonourable conduct.
- (2) The Governor must—
  - (a) when suspending the Auditor-General deliver to him or her a statement of the reasons for the suspension; and
  - (b) within 3 sitting days after the suspension deliver to the President of the Legislative Council and the Speaker of the House of Assembly a copy of the statement and the President and the Speaker must lay the copy before their respective Houses.
- (3) The Auditor-General may deliver to the Governor and to the President of the Legislative Council and the Speaker of the House of Assembly a reply to the Governor's statement and the President and the Speaker must lay the reply before their respective Houses.
- (4) The Auditor-General will be restored to office without loss of salary or other benefits unless, within 14 sitting days after the statement referred to in subsection (2) was laid before both Houses, the Auditor-General is removed from office by resolution of both Houses of Parliament.

## **27—Vacation of office of Auditor-General**

The office of Auditor-General becomes vacant if the Auditor-General—

- (a) dies;
- (b) resigns by written notice to the Governor;
- (c) attains the age of 65;
- (d) becomes a member of Parliament of the State, the Commonwealth or of any other State of the Commonwealth or becomes a member of the Legislative Assembly of a Territory of the Commonwealth;
- (e) is convicted of an indictable offence or is punished for any offence by imprisonment;
- (f) becomes bankrupt, applies (as a debtor) to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his or her creditors for less than 100 cents in the dollar;
- (g) is absent from official duties for more than 30 days in any financial year without the leave of the Governor;
- (h) is removed from office by resolution of both Houses of Parliament.

## **28—Appointment of Deputy Auditor-General**

- (1) There will be a Deputy Auditor-General.
- (2) The Deputy Auditor-General will be appointed under, and will hold office subject to, the *Government Management and Employment Act 1985*.
- (3) The Deputy Auditor-General will act in the office of Auditor-General during any absence or incapacity of the Auditor-General or during a vacancy in the office of Auditor-General.

## **29—Declaration to be made by Auditor-General and Deputy Auditor-General**

Before undertaking their functions under this Act the Auditor-General and the Deputy Auditor-General must make a declaration in the prescribed form before Executive Council to act impartially in carrying out those functions.

## **30—Obligation to assist Auditor-General**

A person who is able to assist the Auditor-General or an authorised officer in conducting an audit or making an examination under this Act by providing accounts, records or other documents or any other information or by giving the Auditor-General or authorised officer access to any premises must give that assistance if requested to do so by the Auditor-General or authorised officer.

## **30A—Protection from liability**

The Auditor-General incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of powers, functions or duties under this Act or any other Act or law.



## **Division 2—Audit of public and other accounts**

### **31—Audit of public accounts etc**

- (1) The Auditor-General must—
  - (a) audit the public accounts in respect of each financial year;
  - (b) audit the accounts of each public authority in respect of the financial year of each authority.
- (2) When conducting an audit under subsection (1)(b) the Auditor-General may examine the efficiency and economy with which a public authority uses its resources.
- (3) The Auditor-General will not audit the accounts of the administrative unit established to assist the Auditor-General in carrying out his or her functions under this Act.

### **32—Examination of publicly funded bodies and projects**

- (1) The Auditor-General must, if requested by the Treasurer—
  - (a) examine the accounts of a publicly funded body and the efficiency and economy of its activities; or
  - (b) examine accounts relating to a public funded project and the efficiency and cost-effectiveness of the project.
- (1a) An examination may be made under this section even though the body or project to which the examination relates has ceased to exist.
- (2) After making an examination under subsection (1), the Auditor-General must prepare a report setting out the results of the examination.
- (3) The Auditor-General must deliver copies of the report to the Treasurer and to the President of the Legislative Council and the Speaker of the House of Assembly.

### **33—Audit of other accounts**

- (1) Where a public authority carries out its functions partly or wholly in partnership or jointly with another person or through the instrumentality of a body corporate or other person or by means of a trust the Chief Executive Officer of the public authority must give written notice of that fact to the Auditor-General.
- (2) The Auditor-General may audit the accounts of a trustee, partner or other person (whether a body corporate or not) relating to functions carried out on behalf of, or in partnership or jointly with, a public authority or relating to functions carried out as the delegate or agent of a public authority, and may examine the efficiency and economy with which the body corporate, trustee, partner or other person carries out those functions.
- (3) Where a public authority is the legal or beneficial owner of shares in a company and the company, or a subsidiary of the company, is the instrument used by the public authority to carry out some or all of its functions, the Auditor-General may audit the accounts of—
  - (a) the company in which the public authority owns shares; and
  - (b) the subsidiary of the company; and

- (c) the companies (if any) in a chain of holding companies and subsidiaries between the company referred to in paragraph (a) and the subsidiary.
- (4) Where the Auditor-General is entitled under subsection (3) to audit the accounts of a company that is the instrument used by a public authority to carry out some or all of its functions, the Auditor-General may examine the efficiency and economy with which the company carries out those functions.
- (5) For the purposes of subsection (3)—
  - (a) a company is the holding company of another if it is the legal or beneficial owner of shares in the other company;
  - (b) a company is the subsidiary of another company if any of its shares are owned legally or beneficially by the other company;
  - (c) a group of companies form a chain of holding companies and subsidiaries if they can be arranged in a line with each company being the holding company of the company following it in the line.
- (6) The Auditor-General may audit the accounts of a company and examine the efficiency and economy with which it conducts its affairs if—
  - (a) a public authority is the legal or beneficial owner of more than 40 per cent of the issued share capital of the company; and
  - (b) the Treasurer has given his or her consent to the audit and examination.
- (7) The Auditor-General must audit the accounts of a company referred to in subsection (6) and examine the efficiency and economy with which it conducts its affairs if requested to do so by the Treasurer.
- (8) This section—
  - (a) is in addition to the provisions of any other Act or law requiring the accounts of a company or other body corporate to be audited; and
  - (b) is not in derogation of any such provisions.

### **Division 3—Auditor-General's powers to obtain information**

#### **34—Powers of the Auditor-General to obtain information**

- (1) The Auditor-General or an authorised officer may, in order to conduct an audit or make an examination under this Act—
  - (a) by summons, require the appearance of any persons or the production of any relevant accounts, records or other documents;
  - (b) inspect any such accounts, records or other documents and retain them for such reasonable period as he or she thinks fit, and make copies of them or of any of their contents;
  - (c) require a person who has access to information that is, in the opinion of the Auditor-General or the authorised officer, relevant to the audit or examination, to provide that information to the Auditor-General or the authorised officer in writing;

- (d) require a person appearing before him or her to make an oath or affirmation (which the Auditor-General or authorised officer may administer) to answer truthfully all questions relating to an audit or examination under this Act and to any accounts, records or other documents that are the subject of, or are related to, an audit or examination under this Act;
  - (e) inspect—
    - (i) any building or other premises; and
    - (ii) any cash or goods situated in or on any building or other premises; and
    - (iii) the operation of any public authority (or any agent, trustee, partner or other person who carries out the functions of a public authority) conducted in or on any building or other premises;
  - (f) enter any building or other premises for the purpose of exercising the powers set out in this subsection.
- (2) If a person—
- (a) who has been served with a summons to appear before the Auditor-General or an authorised officer fails, without reasonable excuse, to appear in obedience to the summons;
  - (b) who has been served with a summons to produce relevant accounts, records or other documents fails, without reasonable excuse, to comply with the summons;
  - (c) who has been required to provide information to the Auditor-General or an authorised officer—
    - (i) fails, without reasonable excuse, to do so in the form directed by the Auditor-General or authorised officer; or
    - (ii) provides information knowing it to be false or inaccurate in a material particular;
  - (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully any relevant question, when required to do so by the Auditor-General or an authorised officer;
  - (e) hinders or obstructs the Auditor-General or an authorised officer in the exercise of any powers under this section,

the following provisions apply:

- (f) the person is guilty of an offence and is liable to a penalty of \$5 000 or imprisonment for a term not exceeding three months; and
- (g) the Supreme Court may, on the application of the Auditor-General or an authorised officer, order the person to take such action, or to refrain from taking such action, as is necessary in the Court's opinion for compliance by the person with this section.

- (3) A person may be required—
- (a) to answer a question put by the Auditor-General or an authorised officer notwithstanding that the answer to that question might result in, or tend towards, self-incrimination; or
  - (b) to produce any accounts, records or other documents notwithstanding that the production might result in, or tend towards, self-incrimination; or
  - (c) to provide information notwithstanding that the information might result in, or tend towards, self-incrimination,

but if that person objects to answering a question the answer shall not be admissible against that person in any criminal proceedings (except in proceedings for perjury or proceedings under this section).

- (4) The Supreme Court need only be satisfied of the facts on which it bases an order under subsection (2)(g) on the balance of probabilities.
- (5) Where, in the opinion of the Auditor-General, a person has contravened, or failed to comply with, a requirement of this section, the Auditor-General must, if in his or her opinion the matter is sufficiently serious, prepare a report setting out details of the contravention or failure and deliver copies of the report to the Treasurer and to the President of the Legislative Council and the Speaker of the House of Assembly.

## **Division 4—Audit of the accounts of the Auditor-General**

### **35—Audit of accounts of the Auditor-General**

- (1) The Governor may appoint an auditor who is registered under the *Corporations Act 2001* of the Commonwealth to audit the accounts of the administrative unit established to assist the Auditor-General under this Act.
- (2) The auditor will, in conducting an audit and preparing a report under this Division, have the same powers, and be subject to the same requirements, as the Auditor-General when auditing, and reporting on, the accounts of other public authorities.
- (3) The auditor must deliver to the Auditor-General and the Treasurer a report of the audit conducted under this section.

## **Division 5—The Auditor-General's report**

### **36—Auditor-General's annual report**

- (1) The Auditor-General must prepare an annual report that—
- (a) states whether, in the Auditor-General's opinion—
    - (i) the Treasurer's statements reflect the financial transactions of the Treasurer as shown in the accounts and records of the Treasurer for the preceding financial year;

- (ii) the financial statements of each public authority reflect the financial transactions of the authority as shown in the accounts and records of the authority for the preceding financial year of the authority and, in the case of a prescribed public authority, reflect the financial position of the authority;
    - (iii) the controls exercised by the Treasurer and public authorities in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities is sufficient to provide reasonable assurance that the financial transactions of the Treasurer and public authorities have been conducted properly and in accordance with law; and
  - (b) sets out any matter that should, in the opinion of the Auditor-General, be brought to the attention of Parliament and the Government.
- (2) The Auditor-General must, not later than the prescribed date, deliver copies of—
- (a) the report; and
  - (b) the Treasurer's statements and the financial statements of public authorities that are, in the Auditor-General's opinion, of sufficient importance to warrant publication; and
  - (c) the financial statements of the administrative unit established to assist the Auditor-General and the report of an audit (if any) made pursuant to Division 4,
- to the President of the Legislative Council and the Speaker of the House of Assembly.
- (3) The Auditor-General may, if the Auditor-General thinks fit to do so, prepare a supplementary report (and annex documents to it) relating to a matter required to be dealt with in an annual report and deliver the report to the President of the Legislative Council and the Speaker of the House of Assembly.

### **37—Recommendations by Auditor-General**

- (1) Where, in the opinion of the Auditor-General, action is necessary or desirable in the public interest in relation to a matter that has come to the attention of the Auditor-General in the course of an examination of the efficiency and economy with which a public authority uses its resources, the Auditor-General must prepare a report recommending the action that, in the Auditor-General's opinion, is necessary or desirable in relation to that matter.
- (2) The Auditor-General must provide the Chief Executive Officer of a public authority with a draft of a proposed report under subsection (1) in respect of that authority and must afford the Chief Executive Officer a sufficient opportunity to reply in writing.
- (3) The Auditor-General must—
  - (a) deliver the report and any reply from the Chief Executive Officer of the public authority in response to the report to the Treasurer and to the responsible Minister; and
  - (b) inform the President of the Legislative Council and the Speaker of the House of Assembly of the matter, either by way of the annual report or by way of a special report prepared for the purpose.

### **38—Reports and other documents to be tabled before Parliament**

The President of the Legislative Council and the Speaker of the House of Assembly must, not later than the first sitting day after receiving a report and other documents from the Auditor-General under this Part, lay them before their respective Houses.

## **Division 6—Audit fees**

### **39—Audit fees**

- (1) Where the Auditor-General audits the accounts of a public authority, publicly funded body or other person the authority, body or person may be required to pay a fee to the Auditor-General.
- (2) The Auditor-General will, with the approval of the Treasurer, fix the amount of the fee.
- (3) The fee may be recovered by action in a court of competent jurisdiction.

## **Part 4—Miscellaneous**

### **40—Treasurer's quarterly statement**

- (1) The Treasurer must publish a statement in the Gazette in respect of each quarter setting out the following—
  - (a) details of the amounts credited to and issued from the Consolidated Account;
  - (b) a summary of differences between those amounts and the amounts of money credited to and issued from the Consolidated Account during the corresponding quarter in the previous financial year;
  - (c) any explanation that the Treasurer considers necessary of differences between the Treasurer's forecasts of the amounts to be credited to and issued from the Consolidated Account and the amounts in fact credited and issued.
- (2) In this section—

*quarter* means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

### **41—Treasurer's instructions**

- (1) The Treasurer may issue instructions—
  - (a) requiring accounts to be maintained and records to be made and kept by the Treasurer and public authorities and setting out the form and content of those accounts and records;
  - (b) setting out the form and content of financial statements that must be prepared by the Treasurer and public authorities pursuant to this Act;
  - (c) requiring that procedures, set out in the instructions, be followed in the course of financial administration by the Treasurer and public authorities;
  - (d) requiring that procedures, set out in the instructions, be followed in the operation of special deposit accounts.

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- (2) A person who contravenes or fails to comply with an instruction issued by the Treasurer under this section is guilty of an offence.  
Penalty: \$1 000.
  - (3) The Treasurer may revoke or vary an instruction issued under this section.
  - (4) When issuing, revoking or varying instructions under this section the Treasurer shall have regard to accounting practices and standards adopted by the Australian Society of Accountants and The Institute of Chartered Accountants in Australia.

#### **41AA—Discretion as to refund or recovery of small amounts**

- (1) This section applies to a fee, charge or other amount that is required under an Act to be paid to a public authority or public officer.
- (2) This section is in addition to, and does not derogate from, a provision of another Act relating to the recovery of amounts payable under that Act or the payment of refunds.
- (3) If for any reason a fee, charge or other amount to which this section applies is overpaid and the amount overpaid does not exceed the prescribed amount, despite any other Act, there is no requirement for the public authority or public officer to refund the overpayment, and the amount of the overpayment may be retained, unless the person who made the overpayment requests a refund within 12 months of the date of the overpayment.
- (4) If for any reason a fee, charge or other amount to which this section applies is underpaid by an amount that does not exceed the prescribed amount, despite any other Act, an authorised person may waive recovery of the underpayment.
- (5) The Minister responsible for the administration of an Act under which a fee, charge or other amount to which this section applies is payable may, by instrument in writing—
  - (a) authorise a specified person, or person occupying a specified position, to waive the recovery of underpayments of the fee, charge or other amount, subject to any conditions specified in the instrument;
  - (b) vary or revoke an authorisation under this subsection.
- (6) This section does not apply to—
  - (a) an expiation fee; or
  - (b) an expiation reminder fee; or
  - (c) an amount that a court or tribunal has ordered to be paid; or
  - (d) a fee, charge or other amount of a kind prescribed by regulation for the purposes of this section.
- (7) In this section—

***authorised person*** in relation to a fee, charge or other amount payable under an Act, means a person acting in accordance with an authorisation given under this section by the Minister responsible for the administration of the Act.

## **41A—Auditor-General to report on summaries of confidential government contracts**

- (1) This section applies to a contract—
  - (a) to which the Crown, a public authority or a publicly funded body is a party; and
  - (b) the contents of which are affected by contractual or other requirements as to confidentiality.
- (2) The Auditor-General must, at the request of a Minister, examine any document prepared for the purposes of this section as a summary of the contents of a contract to which this section applies and report (with reasons, as the Auditor-General thinks necessary) the Auditor-General's opinion on the adequacy of the document as a summary of the contents of the contract, having regard to the requirements as to confidentiality affecting the contents of the contract.
- (3) The Auditor-General may, in preparing a report under this section, consult with any Minister in relation to a matter to which the report relates.
- (4) The Auditor-General must deliver copies of a report prepared under this section to the Minister who requested the report and to the President of the Legislative Council and the Speaker of the House of Assembly.
- (5) The President of the Legislative Council and the Speaker of the House of Assembly must, not later than the first sitting day after receiving a report under this section, lay copies of the report before their respective Houses.
- (6) Without affecting the requirement to comply with subsection (5), the President or the Speaker may, on receipt of a report at a time when Parliament is not in session or is adjourned, deliver a copy of the report to a committee of Parliament inquiring into a matter to which the report is relevant.

## **42—Summary offences**

The offences constituted by this Act are summary offences.

## **43—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) In particular those regulations may—
  - (a) prescribe requirements for the proper management of money by the Treasurer and public authorities; and
  - (b) impose a penalty, not exceeding \$1 000, for contravention of, or failure to comply with, a regulation.

## **Schedule—Transitional provisions**

### **1—Special deposit accounts**

A reference in this Act to a special deposit account includes an account that was a special deposit account, or was deemed to be a special deposit account, under the repealed Public Finance Act immediately before the commencement of this Act.



## **2—Auditor-General and Deputy Auditor-General**

- (1) The person who, immediately before the repeal of the *Audit Act 1921* by this Act, held the office of Auditor-General will be deemed to have been appointed to the office of Auditor-General under this Act (without loss of accrued and accruing rights) on the conditions subject to which that person held office under the repealed Act.
- (2) The first Deputy Auditor-General under this Act will be the person who held the office of Deputy Auditor-General immediately before the repeal of the *Audit Act 1921* by this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Public Finance and Audit Act 1987* repealed the following:

*Audit Act 1921*

*Public Finance Act 1936*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1987	54	<i>Public Finance and Audit Act 1987</i>	7.5.1987	1.7.1987 except s 22(a)(v)(C)—1.7.1988 ( <i>Gazette 25.6.1987 p1610</i> )
1990	18	<i>Statutes Repeal and Amendment (Remuneration) Act 1990</i>	19.4.1990	19.4.1990 ( <i>Gazette 19.4.1990 p1136</i> )
1993	6	<i>Public Finance and Audit (Miscellaneous) Amendment Act 1993</i>	11.3.1993	1.7.1987 except s 3(c) & (e)—1.7.1992 and except ss 3(a), (b) & (d), 4—7, 12—19—11.3.1993: s 2
1994	17	<i>State Bank (Corporatisation) Act 1994</i>	12.5.1994	Sch 4—1.7.1994 ( <i>Gazette 23.6.1994 p1784</i> )
1994	77	<i>Public Finance and Audit (Local Government Controlling Authorities) Amendment Act 1994</i>	8.12.1994	8.12.1994
1996	45	<i>Public Finance and Audit (Powers of Enquiry) Amendment Act 1996</i>	20.6.1996	1.7.1987: s 2
1997	16	<i>Public Finance and Audit (Miscellaneous) Amendment Act 1997</i>	27.3.1997	21.8.1997 ( <i>Gazette 21.8.1997 p408</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 42)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)

2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 28 (s 98)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13.7.2001 ( <i>Gazette</i> 21.6.2001 p2270)
<b>2007</b>	<b>12</b>	<b><i>Public Finance and Audit (Refund or Recovery of Small Amounts) Amendment Act 2007</i></b>	<b>5.4.2007</b>	<b>3.12.2007</b> ( <i>Gazette</i> 5.7.2007 p2966)
2007	32	<i>Public Finance and Audit (Certification of Financial Statements) Amendment Act 2007</i>	9.8.2007	31.12.2007 ( <i>Gazette</i> 6.9.2007 p3663)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
s 4(1)		
Chief Executive Officer	amended by 6/1993 s 3(a)	11.3.1993
public authority	amended by 6/1993 s 3(b)	11.3.1993
	amended by 6/1993 s 3(c)	1.7.1992
publicly funded body	amended by 6/1993 s 3(d)	11.3.1993
	amended by 77/1994 s 2	8.12.1994
publicly funded project	inserted by 45/1996 s 3	1.7.1987
prescribed public authority	deleted by 32/2007 s 4	31.12.2007—not incorporated
<i>s 4(3) and (4)</i>	<i>inserted by 6/1993 s 3(e)</i>	<i>1.7.1992</i>
	<i>deleted by 17/1994 Sch 4 cl 8(a)</i>	<i>1.7.1994</i>
Pt 2		
Pt 2 Div 1		
s 8		
s 8(4)	amended by 6/1993 s 4(a)	11.3.1993
s 8(5)	substituted by 6/1993 s 4(b)	11.3.1993
s 8(7)	substituted by 6/1993 s 4(c)	11.3.1993
s 8(9)	inserted by 6/1993 s 4(d)	11.3.1993
s 9		
s 9(1)	amended by 33/1999 Sch (item 42(a))	1.7.1999
s 9(4)	amended by 6/1993 s 5	11.3.1993
s 11	(c) deleted by 17/1994 Sch 4 cl 8(b)	1.7.1994

**Public Finance and Audit Act 1987—3.12.2007 to 30.12.2007**

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	amended by 33/1999 Sch (item 42(b))	1.7.1999
	(b) deleted by 33/1999 Sch (item 42(b))	1.7.1999
Pt 2 Div 2		
s 15	amended by 6/1993 s 6	11.3.1993
Pt 2 Div 3		
s 16		
s 16(3)	amended by 6/1993 s 7	11.3.1993
Pt 2 Div 4	heading amended by 6/1993 s 8	1.7.1987
s 17		
s 17(1)		
<i>credit arrangement</i>	<i>deleted by 6/1993 s 9(a)</i>	<i>1.7.1987</i>
financial arrangement	inserted by 6/1993 s 9(a)	1.7.1987
s 17(1a)	inserted by 6/1993 s 9(b)	1.7.1987
s 18	substituted by 6/1993 s 10	1.7.1987
s 18(4)	amended by 17/1994 Sch 4 cl 8(c)	1.7.1994
s 19		
s 19(1)	amended by 6/1993 s 11(a)	1.7.1987
s 19(1a)—(1c)	inserted by 6/1993 s 11(b)	1.7.1987
s 19(5)	substituted by 6/1993 s 11(c)	1.7.1987
s 20A	inserted by 6/1993 s 12	11.3.1993
Pt 2 Div 6		
s 22	amended by 6/1993 s 13	11.3.1993
s 23		
s 23(2)	substituted by 32/2007 s 5	31.12.2007—not incorporated
s 23(2a)—(2c)	inserted by 32/2007 s 5	31.12.2007—not incorporated
Pt 3		
s 24		
s 24(4)	amended by 18/1990 s 22	19.4.1990
s 30A	inserted by 6/1993 s 14	11.3.1993
s 32	substituted by 6/1993 s 15	11.3.1993
s 32(1)	substituted by 45/1996 s 4	1.7.1987
s 32(1a)	inserted by 45/1996 s 4	1.7.1987
s 33		
s 33(2)	substituted by 6/1993 s 16	11.3.1993
s 33(3)—(8)	inserted by 6/1993 s 16	11.3.1993
s 34		
s 34(2)	amended by 6/1993 s 17(a)	11.3.1993
s 34(3)	amended by 6/1993 s 17(b)	11.3.1993
s 34(4) and (5)	inserted by 6/1993 s 17(c)	11.3.1993
s 35		
s 35(1)	amended by 23/2001 s 98	15.7.2001
s 36		

s 36(1)	amended by 32/2007 s 6	31.12.2007—not incorporated
s 36(2)	amended by 6/1993 s 18	11.3.1993
s 36(3)	inserted by 16/1997 s 3	21.8.1997
s 38	amended by 6/1993 s 19	11.3.1993
Pt 4		
<b>s 41AA</b>	<b>inserted by 12/2007 s 4</b>	<b>3.12.2007</b>
s 41A	inserted by 16/1997 s 4	21.8.1997

## Historical versions

Reprint No 1—15.11.1991

Reprint No 2—11.3.1993

Reprint No 3—1.7.1994

Reprint No 4—8.12.1994

Reprint No 5—20.6.1996

Reprint No 6—21.8.1997

Reprint No 7—1.7.1999

Reprint No 8—15.7.2001