

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
AUDIT ORDINANCE 1989
ORDINANCE NO. 37 OF 1989

The Audit Ordinance 1989 (the Ordinance) provides the basis for the financial administration of the Australian Capital Territory (the Territory) and for the audit of the public accounts of the Territory.

The Audit Act 1901 of the Commonwealth, suitably modified to reflect a number of features associated with the development of self-government for the Territory, has been adopted as the model for the Ordinance.

Some of the more significant features of the new arrangements are:

- . the role of the Commonwealth Auditor-General as Territory Auditor-General until such time as an alternative arrangement can be made;
- . breaches of procedure which do not have a material bearing on the financial statements will no longer need to be reported;
- . the timing of public reporting has been brought more into line with State practices;
- . certain amendments have been made in recognition of the fact of electronic authorisations;
- . the omission of a separate account comprising moneys raised upon the Territory's public credit; and
- . the establishment of a Trust Account for the general administration of the Territory which will form the platform for the Territory's financial management until the normal budgetary processes are introduced.

The details of the Ordinance appear in the Attachment.

ISSUED WITH THE AUTHORITY OF
THE MINISTER FOR THE ARTS AND
TERRITORIES

DETAILS OF THE PROPOSED AUDIT ORDINANCE

PART I - PRELIMINARY

Section 1 cites the title of the Ordinance.

Section 2 provides for the commencement of sections 1 and 2 on the day on which the Ordinance is notified in the Gazette; for the commencement of Divisions 1 and 2 of Part II on such a date as is fixed by the Minister by notice in the Gazette; and for the commencement of the remaining provisions to coincide with the commencement of section 22 of the Australian Capital Territory (Self-Government) Act 1988.

Subsection 3(1) provides the definitions for the purposes of the Ordinance. Subsections 3(2)-(7) provide for other matters of interpretation relevant to the Ordinance.

Section 4, which applies in relation to the Consolidated Fund and the Trust Fund, deems that the amounts paid into or out of one of the two Funds (whether the amounts are different or the same) are the full amounts of those transactions even though there has been a deduction or set-off through an off-setting transaction.

Section 5 provides that the Head of Administration or an Associate Head of Administration in control of an administrative unit is responsible in relation to that unit for making appropriate arrangements for implementing the Ordinance, the regulations and any relevant directions.

PART II - ADMINISTRATION

Divisions 1 and 2 of this Part, which provide for the appointment of the Territory Auditor-General and the Auditor-General's staff, will commence when the ACT Executive decides to appoint an Auditor-General for the Territory. In the interim, section 14 of the A.C.T. Self-Government (Consequential Provisions) Act 1988 provides that the Commonwealth Auditor-General shall be the Auditor-General for the Territory and each Territory authority.

Division 1 - Appointment of Auditor-General

Section 6 provides for the appointment by the Executive of a person to the position of Auditor-General for the Territory.

Section 7 provides that the Auditor-General shall be appointed for a maximum period of seven years but may be reappointed. A person aged sixty five years shall not be appointed and an appointee's term cannot extend beyond the day on which the appointee reaches sixty five.

Section 8 provides for the remuneration and allowances payable to the Auditor-General.

Section 9 provides that the Minister may, on such terms and conditions as he or she determines, grant leave of absence to the Auditor-General.

Section 10 provides that the Auditor-General may resign from office by signed notice given to the Minister.

Section 11 provides that, where the Auditor-General consents, the Minister may retire the Auditor-General on the ground of physical or mental incapacity.

Section 12 provides for the grounds on which, and procedure in relation to which, the Auditor-General may be suspended or removed from office.

Section 13 provides that, in relation to matters not provided for by the Ordinance, the Auditor-General holds office on such terms and conditions as are prescribed.

Subsection 14(1) provides that during a vacancy in the office of Auditor-General the Executive may appoint a person to act for a period not exceeding twelve months. Subsection 14(2) secures the validity of actions where the Auditor-General's appointment is defective.

Division 2 - Staff

Section 15 provides that the staff required to assist the Auditor-General shall be public servants.

Division 3 - Powers and functions of Auditor-General

Section 16 provides for the appointment by the Auditor-General of persons to carry out, and report to the Auditor-General upon, inspections, examinations and audit of accounts, records or stores and to carry out, and similarly report upon, efficiency audits of the operations of 'relevant bodies' (the definition of which includes administrative units, Territory authorities, certain incorporated companies and bodies established under inter-Government agreement) as required by Assembly law.

Subsection 17(1) provides that, with the exception of the matters arising from an efficiency audit, the Auditor-General shall draw to the Minister's attention matters arising out of the exercise or powers or performance of duties that are of sufficient importance to justify doing so.

Subsection 17(2) provides that with respect to matters arising from an efficiency audit of the operations of an administrative unit or other relevant body, the Auditor-General shall, where it is considered to be of sufficient importance, draw the matter to the attention of the Chief Minister, the Minister administering this Ordinance and the Minister responsible for the administrative unit or matter.

Section 18 provides that the Auditor-General may, upon written notification, require a person to attend and produce accounts and records necessary to carry out an examination, inspection or audit. The section also provides that the Auditor-General may without paying a fee cause a search to be made in, an inspection or copies to be made of, and extracts to be taken from any records in the custody of the Minister or in any public office.

Section 19 provides that where the Auditor-General reasonably believes a person is able to provide information which enables the Auditor-General to properly exercise or perform any of his or her powers, functions or duties, the Auditor-General may administer an oath and examine the person on oath for that purpose.

Section 20 provides that the Auditor-General may exercise a power under section 18 or 19 in relation to a person, whether or not that person is an accounting officer or an employee of the Territory or a Territory authority, if the Auditor-General is satisfied it is necessary to do so for the proper performance of a function or duty.

Section 21 provides that, without affecting other powers under the Ordinance, the Auditor-General or an authorised officer is entitled to have access to all accounts and records in the possession of, or under the control of, any authority, officer, employee or other person where the accounts or records relate to the receipt or expenditure of public moneys, the receipt, custody or disposal of stores or the approval for the expenditure of any public moneys. The Auditor-General may make copies of or take extracts from any such accounts or records.

Subsection 21(2) provides for a penalty of \$2,000 and/or imprisonment for twelve months in the case of a natural person, or \$10,000 in the case of a body corporate, for non-compliance with the Auditor-General's request.

Subsection 22(1) provides that the operation of particular sections of the Ordinance (which concern the exercise of particular powers and functions by the Auditor-General, including the auditing of accounts and records and investigating and access to persons and records for the purpose of conducting efficiency audits) are not limited by Territory law except to the effect that the law expressly excludes the section's operation.

Subsection 22(2) provides that, notwithstanding the provisions of any Territory law and the making of an oath or declaration of secrecy, a person is not guilty of any offence because of anything done by that person for the purposes of those particular sections.

Subsection 22(3) requires the Auditor-General and others to keep confidential information arising from the operation of these particular sections where that information should not, but for this Ordinance, be communicated.

Section 23 provides that the Auditor-General may seek an opinion from the Chief Minister about his or her powers, functions or duties and requires the Chief Minister to respond.

Division 4 - Accounting officers

Section 24 outlines the duties of accounting officers.

Section 25 requires the written authority of the Minister before an overdraft on a public bank account is arranged.

PART III - COLLECTION OF MONEYS AND SECURITIES

Subsection 26(1) provides that the Chief Minister may, upon such terms and conditions as he or she thinks fit, enter into an agreement with any bank for the conduct of the banking business of the Territory. Any agreement exceeding 1 year must provide for termination by either party at any time by written notice specifying a period of less than 6 months for the termination to be effective (subsection 26(2)).

Section 27 provides that the Minister shall, as he or she thinks fit, open and maintain accounts designated 'Territory Public Account', and may, as he or she thinks fit, open and maintain such other accounts bearing a designation describing the purpose of the account. All moneys credited to such accounts shall be deemed to be public moneys and the property of the Territory and to be moneys lent by the Territory to the bank.

Section 28 provides that moneys credited to the Territory Public Account (not being moneys standing to the credit of the Trust Fund) may be invested by the Minister as if they were moneys to which section 86 (ie money standing to credit of Trust Fund) applies.

Section 29 provides for the payment of moneys received by accounting officers in accordance with directions of the Minister, and imposes a penalty of \$5,000 and/or imprisonment of two years for non-compliance.

Section 30 requires the Minister to daily pay into the Territory Public Account all public moneys received by him or her.

Subsections 31(1) and (3) describe the form of the statement required to be furnished where money is transmitted or paid by an accounting officer to the Minister, or another person in accordance with section 29, or into the Territory Public Account. Subsection 31(2) describes the procedure to be followed where money is paid by an accounting officer into the Territory Public Account, and provides for a penalty of \$5,000 and/or imprisonment for two years for breach of the procedures.

Section 32 provides for the collection of private moneys (ie moneys held otherwise than an account of, or for the use or benefit of, the Territory). Such moneys form part of the Trust Fund unless otherwise determined by the Minister, who may direct how those moneys are to be dealt with. Failure by a person to

comply with a direction by the Minister is punishable by a fine of \$5,000 or 2 years imprisonment or both. Provision is made for payment of such moneys that have become part of the Trust Fund to the Consolidated Fund in particular circumstances, and for payment of such moneys to particular persons where the Minister is satisfied they are so entitled.

Section 33 requires each accounting officer on a daily basis, or at such other intervals as directed by the Minister, to transmit all securities collected or received by him or her in accordance with the directions of the Minister.

PART IV - PAYMENT OF MONEYS

Subsection 34(1) provides that where a sub-division in a Schedule to an Appropriation Act for a financial year is not divided into items, the Minister may direct in writing that, for the purpose of this Part and the Regulations, the sub-division shall be taken to be divided into notional items.

Subsection 34(2) provides that the Minister may, at his or her discretion, vary a direction by reducing or increasing the amount in a notional item.

Section 35 provides that where, because of a direction under subsection 34(1), a subdivision is to be taken to be divided into notional items, sections 42, 44, 47 and 48 of the Ordinance have effect as if those notional items were items of that subdivision.

Section 36 provides that money shall not be drawn from the Territory Public Account except as provided by the Ordinance.

Section 37 provides that the Minister may make payments from the Territory Public Account in accordance with an appropriation of the Consolidated Fund (subsection 37(1)). The aggregate of such payments must not exceed the amount generally available for expenditure under the appropriation (subsection 37(2)). The Minister may authorise the administrative head (being the relevant Head or Associate Head of Administration) to draw an amount within the limit of the appropriation from the Territory Public Account in respect of particular services or purposes authorised by the appropriation (subsection 37(3)).

Subsection 38(1) provides that the administrative head may draw an amount from the Territory Public Account and make allocations in respect of services or purposes where the Minister has, under subsection 37(3), authorised the administrative head to do so (subsection 38(1)). Subsection 38(2) deems certain other amounts to be allocated to the authority of the authorisation. Where a payment is made from a bank account comprised in the Territory Public Account, the bank is not required to ascertain whether the payment was authorised under subsection 37(3) (subsection 38(3)).

Section 39 provides that transfers between accounts shall be subject to the usual accounting processes including authorisation and certification.

Section 40 provides that the authorisations referred to in sections 37 and 38 are not required in relation to moneys credited to an account in the Territory Public Account that may be expended through an appropriation of the Consolidated Fund that is to be deemed to be made by virtue of section 44 or a payment out of the Trust Fund.

Section 41 provides that the Minister may make payments to meet expenses relating to the raising, conversion or repayment of loans, by or on behalf of the Territory under this Ordinance or another law of the Territory. The Consolidated Fund is by force of this section appropriated accordingly.

Section 42 specifies the duties of paying, authorising and certifying officers and prescribes penalties of \$5,000 or imprisonment for 2 years or both for breaches of the section.

Section 43 authorises and regulates the circumstance where payments are made otherwise than as required by law (eg act of grace payments).

Section 44 provides that certain amounts or totals of amounts, specified in an item, subdivision or division in a Schedule to an Appropriation Act for a financial year shall be deemed to have been appropriated for the purposes and services referred to therein.

Section 45 deals with the financial management aspect of the situation where responsibility for matters shifts from one administrative unit to another administrative unit.

Section 46 provides that at the end of each financial year appropriations in respect of that year lapse and are ineffective.

Section 47 enables the Minister to direct that expenditure not provided for, or in excess of specific appropriation, may be charged to other heads of expenditure provided funds are available for this purpose in the head entitled 'Advance to the Minister administering the Audit Ordinance 1989' (subsection 47(1)).

The Minister is required as soon as practicable after 30 June each year to lay before the Assembly a statement of all expenditure remaining as a charge to the Minister's Advance (subsection 47(2)).

The Executive may increase the Minister's advance by up to 5% of total appropriations for that financial year or the amount of the excess (subsection 47(3)). In this circumstance the Chief Minister must lay before the Assembly within 6 sitting days a statement setting out the basis for concluding that additional moneys would be available, the amount of the increase and the purpose for which the additional appropriation is proposed to be charged (subsection 47(4)).

Subsection 48(1) provides that money received in a financial year in repayment of expenditure from an annual appropriation is to be

taken in reduction of the expenditure from that appropriation. Subsection 48(2) provides that money received in any financial year in repayment of expenditure from a special appropriation under a Territory law is to be taken in reduction of expenditure from that appropriation in respect of the year in which the repayment is made.

Section 49 provides the Executive with power, by written direction, to vary annual appropriations if the exigencies of the public service make it necessary to do so (subsection 49(1)). Within seven days after such a direction is given, the Chief Minister shall forward a copy of the direction to the Auditor-General (subsection 49(2)). A direction may not however augment or add to any salary specifically appropriated by the Legislative Assembly (subsection 49(3)).

Section 50 provides for the appropriation of the Consolidated Fund to the necessary extent where an amount has been paid into the Consolidated Fund and a partial or full repayment is required or permitted by Territory law and no appropriation of the Consolidated Fund exists to enable the repayment.

Section 51 provides that where an amount is owed by the Territory to a deceased person the Chief Minister may authorise payment, without production of probate or letters of administration, to the person who the Chief Minister thinks should properly receive the payment (subsection 51(1)). The Chief Minister in making this determination must have regard to those entitled to the property of the deceased under a will or a law relating to the disposition of property (subsection 51(3)). The effect of a payment is to discharge the Territory from all further liability in relation to that amount (subsection 51(2)).

PART V - AUDIT AND INSPECTION

Division 1 - Audit and inspection of accounts

Section 52 requires a person in charge of a bank into which public moneys are paid to provide to the Minister or an appointee, or to the Auditor-General or appointee, as directed by instrument, an updated statement of debits and credits to the account together with a certificate setting out the balance of that account.

Section 53 provides that the Minister shall cause proper accounts and records to be kept in compliance with the provisions of the Ordinance and Regulations.

Section 54 requires the Auditor-General to audit accounts and records kept under section 53 and to ascertain whether the moneys expended were lawfully available for expenditure and to determine whether there has been compliance with the Australian Capital Territory (Self-Government) Act 1988, the Australian Capital Territory (Planning and Land Management) Act 1988, this Ordinance and any other Territory law relating to public moneys (subsection 54(1)).

The Minister shall make available to the Auditor-General any records required for the purpose of carrying out an audit (subsection 54(2)).

Section 55 requires the Auditor-General to examine the accounts of the receipts of revenue and other moneys by each administrative unit and the accounts of each receiver of moneys legally payable to the Territory or a prescribed authority.

Section 56 requires the Auditor-General to examine each administrative unit's accounts of expenditure and to satisfy himself or herself that they are faithfully and properly kept and that moneys expended have been properly applied.

Section 57 requires the Auditor-General to examine each administrative unit's stores accounts and satisfy himself or herself that the stores have been properly accounted for and that regulations, directions and any instructions issued by the administrative head about control and stocktaking have been observed.

Section 58 requires an administrative unit to keep records and prepare financial statements in relation to its operations and in such form as the Minister determines (subsection 58(1)). A report in relation to these records and statements must be furnished to the Minister responsible for the unit (the appropriate Minister) as soon as practicable after each 30 June following submission of the financial statement to the Auditor-General, who in turn must report to the appropriate Minister on specified matters in relation to the statement (subsections 58(2) and (3)).

After receipt of the unit's report and financial statements and the Auditor-General's report the appropriate Minister is required to provide copies to the Assembly (subsection 58(4)).

Where the Minister requires an administrative unit to keep particular records and statements before 30 June 1989, the first report provided by the unit shall cover the period from the beginning of the requirement until 30 June 1990 (subsection 58(7)).

Section 59 provides that the Auditor-General may by written notice require a person within a particular period to produce records or accounts or provide information necessary to enable the Auditor-General to exercise and perform his or her statutory powers and functions. Failure to comply with the requirement, without reasonable excuse, incurs a penalty of \$500.

Section 60 permits the Auditor-General to admit certain accounts as satisfactory evidence in support of the relevant charges or credits.

Section 61 allows the Auditor-General to dispense with the detailed audit of any accounts.

Division 2 - Efficiency audits

Section 62 is an interpretative section in relation to the Division.

Section 63 identifies those authorities, bodies and persons considered to be public authorities of the Territory for the purpose of the Division.

Section 64 provides for the carrying out of efficiency audits by the Auditor-General.

Subsection 64(1) provides that the Auditor-General may carry out efficiency audits of the operations of an administrative unit or a Territory public authority.

Subsection 64(2) enables a Minister or the Assembly to request the Auditor-General to carry out efficiency audits of the operations of an eligible incorporated company.

Subsections 64(4) and (5) provide that a Minister may, with the consent of the relevant Government, request the Auditor-General to carry out efficiency audits of a body established by way of inter-Governmental agreement.

Subsection 64(6) defines the Auditor-General's power to conduct an efficiency audit of those responsible for the administration of a fund established by Territory law (other than a fund connected with a public authority of the Territory).

Subsections 64(7) and (8) define the Auditor-General's power to conduct an efficiency audit of those responsible for the application of a grant of financial assistance made by the Territory or a public authority of the Territory.

Section 65 provides that efficiency audits may extend to the examination of the monitoring procedures adopted by an administrative unit or public authority of the Territory responsible for the administration of a grant of financial assistance.

Subsection 66(1) states the general rule that an efficiency audit of the operations of a relevant body (as defined) shall be conducted by the Auditor-General as the Auditor-General thinks fit. Subsection 66(2) provides that such audits may be carried out in conjunction with or as part of a general inspection and audit of accounts by the Auditor-General. Subsections 66(3) and (4) deal with the Auditor-General's access to records and premises.

Section 67 provides that where the Auditor-General performs an efficiency audit a report of the results shall be prepared and signed by the Auditor-General (subsection 67(1)). The report may include such information that the Auditor-General thinks desirable, shall set out reasons for the Auditor-General's opinion and may include recommendations (subsection 67(2)).

Before signing a report the Auditor-General shall furnish it to the body audited for comment (subsection 67(3)). Where comments are received and considered by the Auditor-General, or if 28 days lapse and the body has not commented, the report or amended report may be signed by the Auditor-General (subsection 67(4)).

Subsection 67(5) provides that a certificate may, in certain circumstances, be issued by the Chief Minister to the Auditor-General certifying that disclosure of information or documents would be contrary to the public interest.

Where information covered by a certificate is disclosed to the Auditor-General in the course of an efficiency audit the information may be included by the Auditor-General in a restricted report, but if such a report is produced the Auditor-General must prepare and sign a separate report excluding the certified information (subsection 67(6)).

A restricted report shall be forwarded to the Chief Minister, the Minister administering this Ordinance and the relevant Minister for the audited body (subsection 67(7)).

Subsections 67(8) and (9) describe the circumstances where an unrestricted report may be included in other reports, while subsection 67(10) requires such unrestricted reports to be provided to the body being audited, the relevant Minister and the Head of Administration.

Section 68 requires the Auditor-General to prepare an annual general report covering efficiency audits conducted for each year. The first report will cover the period from the commencement of this section until the expiration of 30 June 1990.

PART VI - STATEMENTS AND THEIR AUDIT

Section 69 is the interpretative section for Part VI.

Section 70 requires the Minister, as soon as practicable after the expiration of each quarter, to publish a Statement of Financial Transactions covering the receipts and expenditure of the Territory Public Account and the financing of surpluses and deficits.

Section 71 provides that as soon as practicable after the end of each financial year each Head of Administration or Associate Head of Administration in control of an administrative unit shall submit a financial statement to the Auditor-General which is prepared in accordance with set guidelines.

Section 72 defines the parameters of the financial guidelines which the Minister may set.

Section 73 provides that as soon as practicable after the end of each financial year the Minister shall prepare an aggregate financial statement, covering the detail of receipts and expenditure of the Consolidated and Trust Funds, which the Chief

Minister shall then submit to the Auditor-General. The first statement will cover the period from the commencement of this section to the expiration of 30 June 1990.

Section 74 provides for the statement of amounts to the next higher or lower dollar.

Section 75 requires the Auditor-General, on receipt of certain unitary or aggregate financial statements, to examine the statements and prepare a signed report as to their accuracy in terms of section 53 and as to whether they accord with the financial statements guidelines. The report shall set out particulars of cases of sufficient importance in which the provisions of the Australian Capital Territory (Self-Government) Act 1988, the Australian Capital Territory (Planning and Land Management) Act 1988 or any law of Territory have not been carried out.

Section 76 provides that the Auditor-General shall include in any report such information as he or she thinks desirable in reports about audits, examinations and inspections.

Section 77 identifies the material to be included in the Auditor-General's reports under section 75 relating to an aggregate financial statement.

Section 78 provides that the Auditor-General shall forward a signed copy of a section 75 report relating to an aggregate financial statement (plus certain accompanying documents) to the Assembly within 15 sitting days or, where the Assembly is not in session, to the Minister within 14 days who must within a further 14 days publish the report and accompanying documents as a public document.

Section 79 provides that a copy of a signed report of the Auditor-General relating to a unitary financial statement shall be furnished to the relevant Minister.

Section 80 provides that the Auditor-General may in a section 75 or special report make suggestions or recommendations to improve the collection and payment of public moneys and the keeping of accounts, or report generally about matters relating to public accounts, moneys and stores. The Minister is required to have regard to any recommendations or suggestions.

PART VII - THE CONSOLIDATED REVENUE FUND

It should be noted that by virtue of section 3 'Consolidated Fund' means the 'Consolidated Revenue Fund'.

Section 81 establishes the Consolidated Revenue Fund which may be appropriated by law for Territory purposes. All public moneys of the Territory except those required or permitted to be credited to a Trust Account established under section 85, are credited to the Consolidated Revenue Fund.

PART VIII - THE TRUST FUND

Section 82 provides that a separate account to be called the Trust Fund shall be kept of all moneys credited to that Fund under such separate heads as the Minister directs.

Section 83 provides that the Chief Minister shall not, unless authorised by Territory law or for the purposes of the Fund, expend Trust Fund moneys.

Section 84 applies the relevant provisions of the Ordinance to the issue and expenditure of moneys credited to the Trust Fund and to moneys collected, received or expended on account of the Trust Fund. The ACT Executive is given the same authority in relation to moneys standing to the credit of the Trust Fund as it has concerning moneys credited to the Consolidated Fund.

Section 85 establishes a Trust Account to provide for the general administration of the Territory (subsection 85(1)), and authorises the Minister to establish other Trust accounts for defined purposes (subsection 85(2)). All moneys credited to an account established for the purposes of this section are taken to be moneys standing to the credit of the Trust Fund (subsection 85(3)).

Subsection 85(4) provides that the Minister may direct the closure of any Trust Account once all liabilities have been met and any residual credits shall be paid into the Consolidated Fund.

Subsection 85(6) provides that moneys lawfully appropriated for the purposes of any Trust Account, receipts from sales or payments for work or services provided with Trust Account money, or moneys paid for the purpose of any Trust Account, may be paid to the relevant Trust Account.

Section 17 of the A.C.T. Self-Government (Consequential Provisions) Act 1988 describes the special position which applies in relation to the Australian Capital Territory Trust Account established under section 62A of the Audit Act 1901 of the Commonwealth.

Subsection 17(2) provides that an amount standing to the credit of the ACT Trust Account on Self-Government Day shall be paid into the Consolidated Revenue Fund of the Territory established under the Territory audit law.

Subsection 17(3) provides that where an amount is payable but yet to be paid into the ACT Trust Account, the amount is payable into the Territory Consolidated Revenue Fund.

To enable the financial administration of the Territory to continue until the normal budgetary processes are established, subsection 85(7) provides that amounts paid into the Consolidated Revenue Fund pursuant to subsections 17(2) and (3) are taken to be transferred to the Trust Account established under subsection 85(1) for the general administration of the Territory.

Subsection 85(8) provides that so long as this Trust Account exists amounts paid in the future to the Territory shall be paid into this Account.

Subsection 85(9) makes it clear that, despite the existence of the Trust Account for the general administration of the Territory, money can still be paid to other trust accounts established for connected purposes, including money from the general administration Trust Account.

Subsection 85(10) provides that money standing to the credit of a Trust Account may be expended for the purposes of the account and subsection 85(11) permits repayments to be made from Trust Fund credits as required by law.

Section 86 provides for the investment by the Chief Minister of moneys standing to the credit of the Trust Fund.

PART IX - FINANCIAL PROVISIONS RELATING TO PUBLIC AUTHORITIES AND CERTAIN OTHER BODIES

Division 1 - General

Section 87 provides for the matters of interpretation applicable to Part IX.

Section 88 provides for matters connected with the general application of Divisions 1 and 2 of this Part to bodies corporate.

Division 2 - Public authorities required to keep accounts in accordance with normal commercial practice

Section 89 provides that a public authority may open and maintain accounts with an approved bank (and shall at all times have at least one such account) into which all moneys received by the authority must be paid. 'Approved bank' is defined by the section.

Section 90 provides that moneys of the authority not immediately required may be invested on deposit with an approved bank, in Territory or Commonwealth securities or in any other manner approved by the Chief Minister.

Section 91 requires that the authority keep proper accounts and records of its transactions and affairs in accordance with the general accounting principles applied in commercial practice. Payments must be correctly made and properly authorised and control must be maintained over assets and liabilities. A penalty of \$10,000 for non-compliance with the section applies.

Subsection 92(1) provides that the Auditor-General shall inspect and audit the authority's accounts and records of financial transactions and assets records and shall draw any irregularity of sufficient importance to the attention of the appropriate Minister. The Auditor-General may, however, at his or her

discretion dispense with the detailed inspection and audit of the records or accounts (subsection 92(2)).

Subsection 92(3) requires the Auditor-General to, at least annually, report the results of an audit or inspection to the appropriate Minister.

Subsection 92(4) provides for the access of the Auditor-General or an authorised person to the authority's accounts and records, while subsection 92(5) enables the Auditor-General or an authorised person to make copies or take extracts from such accounts or records.

Subsection 92(6) requires a person to furnish such information as is necessary for the Auditor-General or an authorised person to perform functions under this Division.

Subsection 92(7) provides that a person shall not refuse or fail to comply with a requirement under subsection 92(6). Failure to do so attracts a penalty of \$1,000, 6 month's imprisonment or both in the case of a natural person, and \$5,000 in the case of a body corporate.

Subsection 92(8) provides a penalty of \$2,000, imprisonment for 12 months or both in the case of a natural person, or \$10,000 in the case of a body corporate, where false or misleading information in a material matter is knowingly furnished.

Subsection 92(9) provides that a person is not excused from furnishing information required under subsection 92(6) because the information may tend to incriminate the person, but any information which is furnished is not admissible in evidence against the person in criminal proceedings other than for an offence against subsections 92(7) or (8).

Section 93 provides that the authority shall as soon as practicable after 30 June each year submit a report of its operations and financial statements to the appropriate Minister in a form approved by the Minister (subsection 93(1)).

Such statements shall in the first place be submitted by the authority to the Auditor-General who is required to report to the appropriate Minister on specified matters connected with the statements (subsection 93(2)). The Minister must then table in the Assembly copies of the report, financial statements and Auditor-General's report (subsection 93(3)).

The first report relates to the period from the commencement of this section and ending on 30 June 1990 (subsection 93(4)).

Division 3 - Public authorities not required to keep accounts in accordance with normal commercial practice

Section 94 provides that the authority may open and maintain accounts with an approved bank, (and shall at all times have at least one such account) into which it shall pay all moneys received. 'Approved bank' is defined by the section.

Section 95 requires that the authority keep proper accounts and records of its transactions and affairs and that payments are properly authorised and correctly made and that adequate control is maintained over its assets and over the incurring of liabilities. A penalty of \$10,000 for breach of the section applies.

Subsection 96(1) provides that the Auditor-General shall inspect and audit the authority's accounts and records of financial transactions and assets records and shall draw any irregularity of sufficient importance to the attention of the appropriate Minister.

The Auditor-General may, however, at his or her discretion, dispense with the detailed inspection and audit of the records or accounts (subsection 96(2)).

Subsection 96(3) requires the Auditor-General to at least annually report the results of an inspection or audit to the appropriate Minister.

Subsection 96(4) provides for the access of the Auditor-General or an authorised person to the authority's accounts and records, while subsection 96(5) enables the Auditor-General or an authorised person to make copies or take extracts from such accounts or records.

Subsection 96(6) requires a person to furnish such information as is necessary for the Auditor-General or an authorised person to perform functions under this Division.

Subsection 96(7) provides that a person shall not refuse or fail to comply with a requirement under subsection 96(6). Failure to do so attracts a penalty of \$1,000, 6 month's imprisonment, or both, in the case of a natural person and \$5,000 in the case of a body corporate.

Subsection 96(8) provides a penalty of \$2,000, imprisonment for 12 months or both in the case of a natural person or \$10,000 in the case of a body corporate where false or misleading information in a material matter is knowingly furnished.

Subsection 96(9) provides that a person is not excused from furnishing information required under subsection 96(6) because the information may tend to incriminate the person, but any information which is furnished is not admissible in evidence against the person in criminal proceedings other than for an offence against subsections 96(7) or (8).

Section 97 provides that the authority shall as soon as practicable after 30 June each year report to the appropriate Minister on its operations and provide financial statements in a form approved by the Minister (subsection 97(1)).

Such statements shall in the first place be submitted by the authority to the Auditor-General who is required to report to the

appropriate Minister on specified matters connected with the statements (subsection 97(2)).

The Minister must then table in the Assembly copies of the report and statement and the Auditor-General's report (subsection 97(3)).

The first report relates to the period from the commencement of this section and ending of 30 June 1990 (subsection 97(4)).

Division 4 - Public authorities audited by company auditors

Section 98 provides the definitions to be used for the purposes of the Division.

Subsection 99(1) provides that the Auditor-General shall, by a notice published in the Gazette, set auditing standards to be complied with by company auditors when inspecting and auditing the records and accounts or reporting upon the financial statements of privately audited bodies.

Subsection 99(2) provides that in relation to a privately audited body the Auditor-General may report to the appropriate Minister on whether the company auditor has complied with the standards set under subsection 99(1), the results and quality of that inspection and audit and such other matters as the Auditor-General considers appropriate.

Subsection 99(3) requires the appropriate Minister to table in the Assembly a copy of the Auditor-General's report.

Section 100 provides that the Auditor-General may inspect and audit the accounts and records of the financial transactions and the assets records of a privately audited body and may draw any irregularity of sufficient importance to the attention of the appropriate Minister. The Auditor-General may report the results to the appropriate Minister.

Section 101 provides that where a privately audited body is required to submit a report of its operations and financial statements to an appropriate Minister it shall provide copies to the Auditor-General (subsection 101(1)).

After considering the financial statements the Auditor-General must either advise the appropriate Minister that he or she is not going to report on the financial statements or report to the appropriate Minister on certain specified matters connected with the statements (subsection 101(2)).

The appropriate Minister is required to table a copy of the Auditor-General's report before the Assembly (subsection 101(3)).

Section 102 entitles the Auditor-General or an authorised person to access the accounts and records of a privately audited body and to relevant papers and reports of the company auditor, and enables extracts to be taken from, or copies made of, any such records (subsections 102(1) and (2)).

Subsection 102(3) provides that the Auditor-General or an authorised person may require any person to furnish information considered necessary for the purposes of the Auditor-General's powers and functions under this Division. Failure to comply with such a requirement attracts a penalty in the case of a natural person of \$1,000, six months imprisonment, or both, or in the case of a body corporate \$5,000. A penalty of \$2,000, imprisonment for twelve months, or both, in the case of a natural person or \$10,000 in the case of a body corporate applies where false or misleading information is knowingly provided (subsections 102(4) and (5)).

Even where provision of such information may tend to incriminate a person, that person is not excused from furnishing it. However such information is not admissible in evidence against that person in criminal proceedings except with respect to offences relating to this section (subsection 102(6)).

Section 103 provides that the Auditor-General shall, as far as practicable, avoid duplication of audit work.

Division 5 - Miscellaneous

Section 104 provides the definitions and other matters of interpretation relevant to the Division.

Subsection 105(1) permits the Auditor-General to audit the financial statements or inspect and audit the accounts and records of a body where requested so to do by a Minister who has made arrangements with the body for this purpose. Subsection 105(2) enables the Auditor-General, at a Minister's request, to make an arrangement with a body for this purpose. In either case, the Auditor-General must report to the Minister on the audit or inspection and audit (subsection 105(3)). The arrangements may provide for the payment of fees by the body (subsection 105(4)).

Section 106 requires a body to pay fees and charges in accordance with an approved scale in respect of particular activities undertaken by the Auditor-General.

Section 107 requires the Auditor-General to report on all cases where the receipt, expenditure or investment of money or acquisition or disposal of assets by a statutory body was not in accordance with the bodies enabling law.

PART X - OFFENCES

This Part provides for the following categories of offences attracting the following penalties:

- misappropriation of public moneys (\$20,000, 7 years imprisonment or both) or stores (\$5,000, 2 years imprisonment or both) (section 108);

- . misuse of Territory credit cards (\$20,000, 5 years imprisonment or both) (section 109);
- . forging or uttering documents (\$20,000, 10 years imprisonment or both) (section 110);
- . signing a document in place of a statutory declaration knowing it to be false (\$10,000, 5 years imprisonment or both) (section 111);
- . failure to attend to give evidence (\$1,000) (section 112); and
- . providing false or misleading information (\$10,000, 5 years imprisonment or both) (section 113).

PART XI - LOSS OF OR DAMAGE TO PUBLIC PROPERTY

Section 114 provides the definitions and other matters of interpretation relevant for the Part.

Section 115 describes the liability of officers in respect of losses or deficiencies in public moneys or losses or destruction of Territory property attributable wholly or partly to their misconduct or gross negligence. The section also details the liability of particular officers, irrespective of misconduct or gross negligence, in relation to:

- . losses or deficiencies in public moneys held by an officer by way of an advance (subsection 115(4));
- . losses or deficiencies in public moneys occurring while under the control of an accounting officer (subsections 115(5), (6) and (7)); and
- . loss, destruction or damage to Territory property occurring while under the control of an officer who agreed to take strict care of the property (subsections 115(8), (9) and (10)).

Section 116 outlines the action to be taken in respect of losses, deficiencies or destruction. Subsection 116(1) provides that where the person in the position of Head of Administration in relation to an officer is satisfied that the officer is liable under section 115, he or she shall determine the amount to be paid. Subsection 116(2) circumscribes the power of the Head of Administration where an investigation has been ordered into the matter, while subsection 116(3) requires that the officer in writing be notified of the determination. A person who is no longer an officer cannot be made liable under this section (subsection 116(4)).

Subsection 117(1) provides a mechanism whereby application may be made to the Territory Administrative Appeals Tribunal (AAT) for a review of determinations made by the Head of Administration under subsection 116(1).

Subsection 117(2) provides that alternatively the subject officer may notify the Head of Administration in writing that he or she wishes liability, quantum or both, in respect of loss, deficiency, destruction or damage to be determined by a court.

Subsection 118(1) provides that where the Territory AAT upholds a determination and/or assessment of an officer's liability for a loss of or deficiency in public moneys or loss, destruction or damage to property, the Territory may recover by action in a court of competent jurisdiction the amount of the assessment.

Subsection 118(2) provides that where the Territory AAT, in reviewing a decision under subsection 116(1), sets aside that determination and remits the matter for reconsideration, and the administrative head makes another determination containing an assessment as to liability, the Territory may take recovery action in relation to the assessed debt in a court of competent jurisdiction.

Subsection 118(3) provides that court proceedings shall not be instituted until the time frame within which an appeal from the Territory AAT to the Supreme Court has expired or, if an appeal was instituted, it has been determined or withdrawn.

Subsection 118(4) provides that section 116 or subsections 118(1), (2) or (3) do not affect the Territory's right to recover, from an officer who does not take advantage of the review mechanisms, in a court of competent jurisdiction, an amount liable under section 115.

Section 119 provides that the burden of disproving liability under section 115 rests with the person disputing the liability.

Section 120 provides that the Territory shall not recover amounts from one officer twice in respect of the same loss, and prevents the Territory bringing proceedings (other than in relation to costs) after a person has discharged his or her liability.

Section 121 applies in a particular manner the provisions of section 115 to 120 to a prescribed authority.

Section 122 provides that, except where otherwise determined by the Minister in writing, a Territory employee shall not be paid remuneration or allowances in cash.

PART XII - MISCELLANEOUS

Section 123 provides that where the Auditor-General is authorised or required under Territory law to submit a report to the Minister about a body to which this section applies, and the report is signed by an authorised officer authorised by the Auditor-General, the report may be submitted to the Minister and shall be so deemed to have been submitted by the Auditor-General.

Section 124 enables the Chief Minister to write-off certain things, such as losses, irrecoverable debts and revenue whose recovery would be uneconomical, and to waive the rights of the

Territory to certain moneys and stores. The Chief Minister may not without considering a report provided by the administrative head waive payment of an amount over \$50,000.

Subsection 125(1) provides the Minister with a general power to make regulations about matters prescribed or permitted by that Ordinance to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Subsection 125(2) provides that the regulations may make specific provision in relation to a number of matters, including the collection, receipt and expenditure of public moneys, the forms required for accounts and records and the disposal of unclaimed property. The regulations also enable the Minister to issue guidelines in respect of the specific matters for which regulations may be made, and may prescribe penalties not exceeding \$500 for offences against the regulations.

Section 126 provides that the Regulations may authorise the Minister, the administrative head and certain other prescribed officers or persons to issue directions in relation to matters for which regulations may be made.

PART XIII - TRANSITIONAL

Section 127 preserves for the purposes of this Ordinance accounts maintained in respect of public moneys relating to the Territory under subsection 20(3) of the Audit Act 1901 of the Commonwealth.

Section 128 preserves for the purposes of this Ordinance bank accounts maintained by an authority to which Part IX applies under section 63D or 63J of the Audit Act 1901 of the Commonwealth.

Section 129 preserves for the purposes of this Ordinance determinations existing immediately before Self-Government Day under section 70AH of the Audit Act 1901 of the Commonwealth (ie determinations enabling a Territory employee to be paid in cash).