



**Tuvalu**

# **AUDIT ACT**

**2022 Revised Edition**

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Tuvalu

## AUDIT ACT

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Tuvalu

## AUDIT ACT

### AN ACT TO PROVIDE FOR THE AUDIT OF TUVALU PUBLIC FINANCES AND PROPERTIES, GOVERNMENT MINISTRIES AND DEPARTMENTS, FALEKAUPULE, STATUTORY BODIES AND OTHER MATTERS<sup>1</sup>

Commencement [13th January, 2017]

## PART 1 - PRELIMINARIES

### 1 Short Title

This Act may be cited as the Audit Act.

### 2 Definitions

In this Act—

“**accountable officer**”, in relation to a public sector entity, has the same meaning as in the Public Finance Act;

“**audit**” includes examination and inspection and has regard to the meaning given by the auditing standards referred to in section 3(4)(a);

“**authorised auditor**” means—

- (a) the Auditor-General; or
- (b) a person to whom the Auditor-General has delegated the exercise of a power under section 14(1);

“**compliance audit**” has the meaning given by the auditing standards referred to in section 3(4)(a);

“**contract auditor**” means an individual or firm appointed by the Auditor-General under section 13;

“**financial audit**” has the meaning given by the auditing standards referred to in section 3(4)(a);

“**financial report**” in relation to a public sector entity other than the Government of Tuvalu, means the financial statements, accounts, financial reports, performance indicators, or other financial or non-financial accountability documentation that a public sector entity is required to have audited;

“**financial year**” means the period for which an entity is required to prepare a financial report for audit;

“**Independent Auditor**” means the auditor appointed by The Public Budget, Accounts and Audit Committee to conduct an audit of the financial statements of the office of Auditor-General.

“**inquiry**” means an inquiry performed under section 27;

“**officer**” in relation to a public sector entity, includes a member or employee or contractor of the entity;

“**performance audit**” has the meaning given by the auditing standards referred to in section 3(4)(a);

“**Public Budget, Accounts and Audit Committee**” means the committee of the Parliament for the time being responsible for examining the public accounts and the reports of the Auditor-General and reporting to the Parliament in relation thereto;

“**public accounts**” are the annual accounts referred to in section 31 of the Public Finance Act;

“**public money**” includes:

- (a) securities and all revenue, loans and other money whatever, collected, received or held by, for, or on account of the Government of Tuvalu; and
- (b) without limiting the generality of paragraph (a):
  - (i) money which, pursuant to any Act, is directed to be paid to or expressed of or part of the Consolidated Fund or the Special Deposits Account; and
  - (ii) such money, or money of such class or description of money, as is prescribed for the purposes of this definition;

“**public property**” means all property, other than public money, held by any person for or on behalf of the Government of Tuvalu;

“**public resources**” includes public money, public property, and any money and property of a public sector entity;

“**public sector entity**” includes a government department; or

- (a) a Falekaupule; or
- (b) a statutory body; or
- (c) a public enterprise; or



- (d) an entity that is controlled by one, or more than one government department, Falekaupule, or statutory body, or public enterprise, or by a combination of government departments, Falekaupule or statutory bodies or public enterprises; or
- (e) an entity controlled by an entity that is a public sector entity under paragraph(e); and

For the purpose of this definition an entity is controlled by one or more other entities if the other entity or entities together:

- (i) control the entity within the meaning of any applicable financial reporting standard; or
- (ii) control directly or indirectly the composition of the governing body of the entity; or
- (iii) hold more than 50% of the voting shares.

“**staff**” means a person, or the persons, employed or engaged by the Auditor- General under section 7.

## **PART 2 – AUDITOR-GENERAL AND THE OFFICE OF AUDITOR-GENERAL**

### **PART 2.1 GENERAL**

#### **3 Auditor-General**

- (1) An office of Auditor-General for Tuvalu is established.
- (2) The Auditor-General has the independence and functions conferred upon him by the Constitution.
- (3) In accordance with section 176 of the Constitution, the Auditor-General’s functions include:
  - (a) performing annual financial audits of:
    - (i) the public accounts of the Government of Tuvalu, the control of public money and public property, and all transactions relating thereto;
    - (ii) the financial reports of any public sector entity, and
    - (ii) any other accounts, financial statements or reports that the Auditor-General is required or authorised by law to audit;
  - (b) performing inquiries, compliance audits and performance audits in relation to public sector entities;

- (c) performing any audit-related service, or provide any assurance, that is reasonably related to any of the functions under subsection (3)(a) or (3)(b) following a request by:
    - (i) Parliament, made by resolution and communicated to the Auditor-General by the Speaker; or
    - (ii) The Public Budget, Accounts and Audit Committee, made by resolution and communicated to the Auditor-General by the Chairperson of the Committee; or
    - (iii) The Executive, communicated to the Auditor-General by the Minister of Finance or the Permanent Secretary for Finance;
  - (d) the performance of subsection (3)(c) shall be at the discretion of the Auditor-General;
  - (e) reporting to Parliament in accordance with this Act;
  - (f) reporting to any person at the discretion of the Auditor General.
- (4) The Auditor-General shall perform his functions in such manner as the Auditor-General thinks fit. The Auditor-General:
- (a) shall use any international auditing standards, subject to any adaptations the Auditor-General considers necessary;
  - (b) shall publish the adaptations made in the Annual Report of the office of Auditor-General;
  - (c) shall have regard to recognised professional standards and practices; and
  - (d) shall comply with any relevant requirements imposed by law.
- (5) The Auditor-General, in the exercise of his functions shall have regard to any:
- (a) waste of public resources; or
  - (b) lack of probity or financial prudence in the management or application of public resources.

#### **4 Office of Auditor-General**

- (1) The office of Auditor-General consists of staff appointed in accordance with section 7.
- (2) The Auditor-General is to be the person who exercises the functions of chief executive officer for the office of Auditor-General.
- (4) In exercising the functions of chief executive officer, he shall exercise financial prudence and sound stewardship of the resources entrusted to the Office.
- (5) The office of Auditor-General is a separate body from the Tuvalu Government.

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## PART 2.2 PROVISIONS RELATED TO THE AUDITOR-GENERAL

### 5 Tenure of Office

The tenure of the Auditor-General shall be in accordance with the Constitution.

## PART 2.3 ADMINISTRATION OF THE OFFICE OF AUDITOR-GENERAL

### 6 Ethical standards

- (1) The Auditor-General and his staff shall conduct themselves in accordance with the requirements of the Code of Ethics in any international auditing standards.
- (2) The Auditor-General shall prepare a Code of Conduct and Ethics for the office of Auditor-General.

### 7 Appointment, suspension, disciplining and dismissal of staff

- (1) The Auditor-General shall employ or otherwise engage such persons as are necessary for the performance of the Auditor-General's functions and duties under this Act and any other law.
- (2) Subject to subsection (1), the Auditor-General shall:
  - (a) determine terms and conditions of employment or engagement, as the case shall be, and levels of remuneration;
  - (b) assign position titles and duties in accordance with the staffing structure set under section 8;
  - (c) promote or demote within the structure; and
  - (d) discipline, suspend or dismiss in accordance with any law.
- (3) The Auditor-General shall at his discretion use the Tuvalu Government processes (including those of the Public Service Commission) to appoint, suspend, discipline or dismiss staff.

### 8 Organisational structure of the office of Auditor-General

The Auditor-General is to determine the:

- (a) organisational structure of the office of Auditor-General,
- (b) remuneration payable for each position within the structure using the Tuvalu Government salary structure.

**9 Staff subject only to direction of Auditor-General**

The staff of the office of Auditor-General is not subject to direction of any person other than the Auditor-General or a person authorised by the Auditor-General.

**10 Auditor-General may draw on administrative services of the Government**

The Auditor-General may draw on the administration services of the Tuvalu Government (including the Public Service Commission).

**11 Assets of the office of the Auditor-General**

The assets of the office of Auditor-General are the property of the Tuvalu Government and to be used at the discretion of the Auditor-General.

**12 Procurement of assets or services and disposal of assets**

The Auditor-General is exempted from any requirements of the Tuvalu Government in relation to the procurement of goods or services or the disposal of assets, but shall:

- (a) undertake all procurement activity (including the appointment of contract auditors under section 13) reflecting transparency and fair processes;
- (b) dispose of assets in a manner that is transparent, achieves best value and is practicable; and
- (c) disclose in each annual report under section 20 all procurements and asset disposals.

**13 Appointment of contract auditors**

- (1) The Auditor-General may appoint qualified individuals or any firm external to the office of Auditor-General under contract.
- (2) The appointment of any person or firm shall at the Auditor-General's discretion either be for general purposes in connection with the Auditor-General's performance of his functions and duties, or limited to a particular audit.
- (3) A contract auditor—
  - (a) is appointed on terms specified in the instrument of appointment;
  - (b) may resign from the appointment by signed notice given to the Auditor-General; and
  - (c) may be dismissed anytime subject to the terms of the instrument of appointment.

## 14 Delegation of powers

- (1) The Auditor-General at his discretion shall delegate any of his powers under this Act to:
  - (a) a member of the staff of the office of Auditor-General; or
  - (b) a contract auditor; or
  - (c) an employee or contractor of a firm.
- (2) The Auditor-General shall not delegate the power:
  - (a) of delegation;
  - (b) of appointment, suspension and dismissal of staff;
  - (c) to report to Parliament;
  - (d) to determine the organisational structure of the office of Auditor-General; and
  - (e) to appoint a contract auditor.
- (3) The Auditor-General shall delegate powers provided to him under any Act (other than this power of delegation) to an authorised auditor.
- (4) A delegation:
  - (a) shall be in writing;
  - (b) shall be made subject to any restrictions and conditions the Auditor-General thinks fit;
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the exercise of a power by the Auditor-General.
- (4) Any person to whom the powers are delegated shall exercise them in the same manner conferred directly on the Auditor-General.

### PART 2.4 PLANNING, BUDGETING, AND REPORTING

## 15 Annual work plan

- (1) The Auditor-General shall prepare a draft work plan 2 months before each financial year which sets:
  - (a) the intended programme of audits and inquiries for the year;
  - (b) the strategic plans and other priorities that determine the choice of audits, including the topics for performance audits, and the areas for inquiry; and
  - (c) the resources intended to be allocated to the programme of audits and inquiries.

**16 Annual budget process**

- (1) The Auditor-General shall prepare a budget proposal based on:
  - (a) the organisational structure;
  - (b) the Auditor-General's annual work plan;
  - (c) the minimum amount of budget allocation; and
  - (d) the budget framework and timetable for the Government.
- (2) The budget proposal shall include:
  - (a) an establishment register detailing the organisational structure, estimated staffing levels, remuneration to be paid using the scales determined by the Auditor-General; and
  - (b) a budget for goods and services to be procured, including contract auditors, and assets to be disposed of.
- (3) The Auditor-General shall send the budget proposal to the Public Budget, Accounts and Audit Committee.
- (4) The Committee shall:
  - (a) consider the budget proposal after consulting with the Permanent Secretary for Finance;
  - (b) give the Auditor-General an opportunity to:
    - (i) appear before the Committee; and
    - (ii) comment in writing on any intention to recommend a decrease in the overall amount of the proposed budget; and
  - (c) send a written recommendation to the Auditor-General, in accordance with a resolution of the Committee, on the overall amount of the proposed budget approved by the Committee.
- (5) The Auditor-General at his discretion shall consider the Committee's recommendation and decide either to amend or not amend the budget proposal before submitting it to the Permanent Secretary for Finance.
- (6) The Government shall not reduce the overall amount of the Auditor-General's budget below the recommended amount by the Public Budget, Accounts and Audit Committee.
- (7) Nothing in this section warrants the Public Budget, Accounts and Audit Committee or the Government to:
  - (a) direct the Auditor-General in relation to the matters determined by the Auditor-General; or
  - (b) amend any budget figures.

**17 Minimum amount of budget allocation of the office of Auditor-General**

- (1) The annual appropriation of the office of Auditor-General shall not be less than 0.6% of the total appropriation of the Government for that financial year.
- (2) In the event the annual appropriation of the office of Auditor-General is less than 0.6% of the total appropriation of the Government for a financial year, 0.6% shall be appropriated from the Consolidated Fund for that year.

**18 Restrictions on Executive influence on the office of Auditor-General**

- (1) The appropriation of the office of Auditor-General shall be in accordance with the amounts and time intervals approved by Parliament.
- (2) The Auditor-General has the responsibility for managing the amounts appropriated as he considers appropriate.
- (3) No reduction to the amounts appropriated for the office of Auditor-General shall be made without the approval of Parliament.
- (4) The Auditor-General shall report to Parliament if the amounts appropriated are insufficient to enable the Auditor-General to discharge his functions under the Constitution and this Act.

**19 Financial statements and audit of office of Auditor-General**

- (1) The Auditor-General shall be responsible for preparing financial statements of the portion of public accounts that relates to the office of Auditor-General for each financial year.
- (2) The Financial Statements shall be prepared in accordance with any international, generally accepted accounting practice for a public sector entity.
- (3) The Public Budget, Accounts and Audit Committee shall, for each financial year, appoint a qualified Independent Auditor to conduct an audit of the financial statements of the office of Auditor-General.
- (4) The Independent Auditor shall be paid from the Consolidated Fund such fee determined by Public Budget, Accounts and Audit Committee for the audit.
- (5) For the purpose of conducting the audit—
  - (a) the Independent Auditor has the powers conferred on the Auditor-General; and
  - (b) the Independent Auditor is subject to this Act and any other laws.
- (6) The Independent Auditor after completing his audit shall provide a report to the Auditor-General and the Public Budget, Accounts and Audit Committee.
- (7) The Auditor-General shall include the Independent Auditor's report and the audited financial statements in the annual report of the office of Auditor-General.

**20 Annual report of the office of Auditor-General**

- (1) The Auditor-General shall prepare an annual report on the performance of his functions, duties and powers during the year.
- (2) The annual report shall include:
  - (a) the financial statements, of the office of Auditor-General and the report of the Independent Auditor;
  - (b) the disclosures required by section 12 (procurement and asset disposal);
  - (c) any description of adaptations made to the auditing standards referred to in section 3(4)(a) for audits performed during the financial year; and
  - (d) any other matter required or authorised by this Act or any other laws to be disclosed or reported.
- (3) The annual report shall be presented to the Speaker within 4 months of the end of the financial year and tabled in the next Parliament.

**PART 3 – AUDIT OF PUBLIC ACCOUNTS AND PUBLIC SECTOR ENTITIES****PART 3.1 FINANCIAL AUDIT****21 General**

- (1) The Auditor-General shall, in relation to each financial year, perform a financial audit of—
  - (a) the public accounts; and
  - (b) the financial reports of, every public sector entity.
- (2) The Auditor-General shall not audit the financial statements of, or any portion of the public accounts that relates to, the office of Auditor-General.

**22 By-arrangement audits**

The Auditor-General at his discretion shall perform a financial audit of a non public sector entity upon request of the entity.

**23 Audit of the public accounts**

- (1) The Auditor-General shall audit the public accounts of the Government for each financial year, within 3 months of the date on which the Minister of Finance transmits the accounts to the Auditor-General.
- (2) The Auditor-General shall within 3 months furnish an opinion stating:



- (a) that the Auditor-General has audited the public accounts for that financial year and whether-
    - (i) proper accounts were properly kept in accordance with law;
    - (ii) proper control and safeguards were exercised over the collection, custody, banking, withdrawal, issue of, and accounting for, public money;
    - (iii) public money received on account of the public accounts was credited to, or charged to, the appropriate fund;
    - (iv) withdrawals from the public accounts were made for lawful and appropriate purposes;
    - (v) proper safeguards were followed to prevent fraud and mistake; and
    - (vi) the requirements of the law relating to public money were complied with in all material respects.
  - (b) whether in the opinion of the Auditor-General the public accounts exhibit a true and fair view of the financial position and financial performance of the Government; and
  - (c) any modifications subject to which the opinion is given.
- (3) An opinion in relation to the public accounts is not to be furnished under subsection (2) unless the Auditor-General has received a written representation signed by the Minister of Finance and the Permanent Secretary for Finance:
- (a) taking responsibility for:
    - (i) the preparation of the public accounts and the judgments made in them;
    - (ii) the establishment and maintenance of a system of internal controls designed to provide reasonable assurance as to the integrity and reliability of financial reporting in relation to the public accounts; and
  - (b) stating whether, in their opinion, the public accounts fairly reflect the financial position and operations of the Government for the financial year.
- (4) Nothing in this section prevents the amendment of the public accounts, with the approval of the Auditor-General, after its receipt by the Auditor-General.

## **24 Audit of financial reports of public sector entities**

- (1) The Auditor-General shall audit the financial report of each public sector entity (other than the Government of Tuvalu or an entity whose financial transactions are reported in the public accounts) for a financial year within 3 months of its receipt by the Auditor-General.
- (2) The Auditor-General shall within a 3 month period furnish an opinion:

- (a) stating that the Auditor-General has audited the financial report of the public sector entity for that financial year;
  - (b) indicating whether the financial report exhibits a true and fair view of the financial position and financial performance of the public sector entity;
  - (c) indicating whether the financial report complies with all applicable accounting standards and governing legislation; and
  - (d) setting forth any modifications subject to which the opinion is given.
- (3) An opinion in relation to the financial report of a public sector entity to which this section applies is not to be furnished under subsection (2) unless the Auditor-General has received a statement made in accordance with a resolution of the public sector entity:
- (a) stating whether, in the opinion of the person or persons by whom the statement is signed, the financial report exhibits a true and fair view of the financial position and financial performance of the entity, or:
  - (b) including such matters as are prescribed by the regulations for the purposes of this subsection.
- (4) The statement referred to in subsection (3) is to be signed:
- (a) in the case of an entity that has a governing body; by at least 2 members of the governing body;
  - (b) in the case of a an entity that does not have a governing body, by the General Manager of the entity or the person who exercises the functions of a General Manager in relation to the entity; or
  - (c) by a person prescribed by the regulations in respect of the entity.
- (5) Nothing in this section prevents the amendment of a public sector entity's financial report, with the approval and receipt by the Auditor-General.

## **25 Return of audited financial report to public sector entity**

The Auditor-General or any authorised person shall send the financial report and the opinion under section 24 to the public sector entity for submission to Parliament.

### **PART 3.2 PERFORMANCE AUDITS AND INQUIRIES**

## **26 Performance and compliance audits**

- (1) The Auditor-General at his discretion shall conduct a performance audit of all or any particular activities of a public sector entity.
- (2) The Auditor-General at his discretion shall conduct a compliance audit of all or any particular activities or transactions of a public sector entity.

- (3) A performance audit or compliance audit at his discretion shall be conducted as a separate audit as part of another audit.

## **27 Inquiries**

- (1) The Auditor-General shall inquire, either upon request or on his own initiative, into any matter concerning the Tuvalu Government or a public sector entity's use of its resources.
- (2) At the Auditor-General's discretion, he shall-
  - (a) collaborate with; or
  - (b) assist another agency, body; or person,in any investigation or inquiry involving the Government; or a public sector entity's use of resources, including the potential misappropriation or loss of public money or public goods and, at his discretion shall disclose such information to that other agency, body or person as the Auditor-General considers appropriate.

### **PART 3.3 CONDUCT OF AUDITS AND INQUIRIES**

## **28 Audits at request of Parliament**

- (1) The Auditor-General shall consider whether to conduct an audit or inquiry upon request by Parliament, into any matter relating to the Government or a public sector entity (other than the office of Auditor-General).
- (2) The Auditor-General shall report to Parliament his reasons if he decides not to conduct the audit or inquiry so requested.

## **29 Responsible Minister to give Auditor-General information relating to public sector entities**

- (1) If -
  - (a) a public sector entity is established; or
  - (b) an entity becomes a public sector entity,the responsible Minister shall give the Auditor-General any information about the entity that the Auditor-General requires.
- (2) This section does not apply to a public sector entity which is a part of, or a department within government ministries.

**30 Auditor-General to be appointed auditor of a company that is a public sector entity**

- (1) The shareholders of a company that is a public sector entity shall—
  - (a) appoint the Auditor-General to be the auditor of the company; and
  - (b) ensure that the Auditor-General remains, at all times, the auditor of the company while the company remains a public sector entity.
- (2) Nothing in subsection (1) limits the application of this Act to the company as a public sector entity.

**31 General**

- (1) The Auditor-General shall conduct an audit or an inquiry in the way the Auditor-General considers appropriate.
- (2) In determining the appropriate way to conduct an audit or an inquiry, the Auditor-General shall consider the—
  - (a) character of the relevant entity's internal control system, to the extent applicable; and
  - (b) recognised standards and practices.
- (3) Subsection (2) does not limit the powers of the Auditor-General.
- (4) The Auditor-General shall disclose, in every report on an audit or an inquiry presented to Parliament, the nature of any relevant adaptations made by the Auditor-General to the applicable auditing standards under section 3(4).

**PART 3.4 REPORTS****32 Reporting by the Auditor-General**

Subject to section 33, the Auditor-General shall report to Parliament, a Minister, a committee of Parliament, a public sector entity, or any person on any matter arising out of the performance and exercise of the Auditor-General's functions, duties, and powers that the Auditor-General considers it desirable to report on.

**33 Annual report to Parliament**

- (1) The Auditor-General shall report to Parliament at least once in each financial year on:
  - (a) the matters specified in section 176 of the Constitution resulting from the audit of the public accounts, public money and property, and transactions related thereto, for the preceding financial year; and
  - (b) the matters specified in subsection (2) of this section.

- (2) For each financial audit in relation to a public sector entity in the preceding financial year, the report under subsection (1) shall—
  - (a) state—
    - (i) whether or not the audit has been completed; and
    - (ii) the results of the audit;
  - (b) draw attention to any case in which the functions relating to the financial management of the public sector entity were inadequately performed and if the matter is of sufficient significance to require inclusion in the report;
  - (c) report on what action (if any) was taken by the public sector entity to remedy significant deficiencies reported in previous reports on audits of the entity; and
  - (d) make such other observations and recommendations as the Auditor-General thinks appropriate.
- (3) If the Auditor-General is of the opinion that any observations or recommendations require attention or further consideration, the Auditor-General shall give them (together with any comments on them) —
  - (a) if they arose out of an audit of the public accounts, to the Minister for Finance; or
  - (b) if they arose out of an audit of a department, to the accountable officer of the department; or
  - (c) if they arose out of an audit of another public sector entity, to the chairperson or equivalent officer of the entity and the person responsible for the financial administration of the entity.
- (4) If the Auditor-General is of the opinion that any observations or suggestions are of significance, the Auditor-General shall also give them (together with any comments received on them from the public sector entity concerned) to the responsible Minister and the Minister of Finance.
- (5) At the conclusion of each performance audit, compliance audit, and inquiry, the Auditor-General shall report to Parliament on the results of the audit or inquiry and make such observations or recommendations arising therefrom as the Auditor-General considers appropriate, and subsections (3) and (4) apply with necessary modifications.

### **34 Comments on proposed reports to Parliament**

- (1) The Auditor-General at his discretion shall report to Parliament any matter of significance and shall give written notice of the matter to the accountable officer of the relevant public sector entity.
- (2) The notice shall include a statement on the matter proposed to be reported and shall request a comment be made in writing within a specified time.

- (3) Pursuant to subsection 2, if any comments are received within the specified time, the Auditor-General must include them or a summary of them in the report.

### **35 Tabling of reports**

- (1) The Auditor-General shall, as soon as practicable after making a report to Parliament under this Act, present the report to Parliament.
- (2) If Parliament is not sitting when the Auditor-General seeks to present a report, he shall present the report to the Speaker of Parliament to be dealt with in pursuance to section 36.

### **36 Documents presented to Speaker of Parliament**

A document which is presented to the Speaker of Parliament in accordance with any provision of this Act is:

- (a) on presentation and for all purposes, taken to have been laid before Parliament;
- (b) to be printed by authority of the Speaker of Parliament,
- (c) for all purposes, taken to be a document published by order or under the authority of Parliament; and
- (d) to be recorded in the minutes of Parliament according to Parliamentary Rules of Procedure.

## **PART 4 – POWERS AND DUTIES OF AUDITORS**

### **37 Power to obtain information**

- (1) For the purpose of an audit or an inquiry, the Auditor-General shall, by written notice, direct a person to do all or any of the following—
  - (a) to provide the Auditor-General with any information or explanation that the Auditor-General requires;
  - (b) to attend and give evidence before the Auditor-General (or a person authorised for the purpose under section 14(1));
  - (c) to produce to the Auditor-General any documents in the custody or under the control of the person.
- (2) The Auditor-General shall direct that—
  - (a) the information, explanation or answers to questions be given either orally or in writing (as the Auditor-General requires);

- (b) the information, explanation or answers to questions be verified or given on oath or affirmation that the information or evidence the person will give will be true.
- (3) The Auditor-General shall appoint an empowered person to administer an oath or affirmation for the purposes of this section.
- (4) The Minister for Finance shall after consultation with the Auditor-General make regulations to prescribe scales of expenses to be allowed to be paid to persons who are required to attend under section 37(1)(b).

### 38 Access to accounts, information, money and property

- (1) In this section—
  - “**premises**” means any land or place;
  - “**written authority**” in relation to an authorised auditor, means a written notice signed by the Auditor-General that states that the person is authorised to exercise powers under this section.
- (2) For the purpose of an audit or an inquiry the Auditor-General, or an authorised auditor, is entitled to full and free access at all reasonable times to—
  - (a) all accounts, information, documents, systems and records that the Auditor-General considers to be relevant to the audit or inquiry; or
  - (b) public money, money of a public sector entity, or other money; or
  - (c) public property, property of a public sector entity, or other property,in the possession or under the control of any person and the Auditor-General shall make copies of or take extracts from any of the accounts, information, documents and records.
- (3) The Auditor-General shall cause a search to be made in, and extracts to be taken from, anything in the custody of the Government of Tuvalu or in any office of a public sector entity.
- (4) Subject to section (3) the Auditor-General shall enter any premises in order to exercise powers under this section.
- (5) If the Auditor-General or any authorised auditor enters, or proposes to enter, premises under this section, the occupier shall provide the authorised auditor with all reasonable facilities for the effective exercise of powers under this section.
- (6) No authorised auditor shall enter any premises unless he is able to produce a legal authority.

**39 Duty to give information overrides other duties and rights**

- (1) No person is excused from giving information or an explanation, answering a question or producing a document under section 38 on the ground that the information, explanation or answer, or the production of the document, might tend to incriminate the person.
- (2) Any person shall –
  - (a) give information;
  - (b) give an explanation;
  - (c) give answer a question; or
  - (d) produce a documentrequired under section 38 unless prohibited by law.
- (3) If a person gives information or an explanation, answers a question or produces a document under section 38-
  - (a) the giving of the information or explanation, answering of the question or production of the document; or
  - (b) anything obtained as a direct or indirect result of the giving of the information or explanation, answering of the question or production of the document,is not admissible in evidence against that person except—
  - (c) proceedings for an offence under this Act; or
  - (d) criminal and civil proceedings under their prescribed laws.
- (4) Despite subsection (3), the person may, in any civil or criminal proceedings, be asked about an answer under the Criminal Procedures Code.

**40 Confidentiality**

- (1) Subsection (2) applies to a person who is or has been —
  - (a) the Auditor-General; or
  - (b) a person employed or otherwise engaged as a member of the staff of the office of Auditor-General; or
  - (c) a contract auditor, or any employee or contractor of a contract auditor that is a firm; or
  - (d) a person appointed to assist the Auditor-General in respect of a particular matter; or
  - (e) the Independent Auditor.
- (2) A person to whom this subsection applies must preserve confidentiality with respect to all matters that come to the person's knowledge in the course of his or her employment or engagement or the performance of his or her duties under this Act or another written law, and must not communicate any information as



to matters of that kind to any person, except as may be required in connection with —

- (a) the administration of this Act or that other written law; or
  - (b) any proceedings under this Act or that other written law.
- (3) This section does not apply to the communication of information to the Public Budget, Accounts and Audit Committee.
- (4) A person who receives a proposed audit or inquiry report, or any other information relating to or arising from an audit or inquiry, must treat the report or information as confidential and comply with any conditions or restrictions imposed by the Auditor-General in relation to the proposed report or information, and must not—
- (a) communicate any information as to those matters to any person; or
  - (b) copy or reproduce any part of the summary of findings of the audit report, unless it is necessary in connection with making submissions or comments to the Auditor-General; or obtaining legal advice as to those matters.

#### **41 Powers extended to confidential information**

- (1) The Auditor-General shall disclose information as the Auditor-General considers appropriate to disclose in the exercise of his functions, duties, or powers.
- (2) The Auditor-General shall consider—
- (a) the public interest;
  - (b) an auditor’s professional obligations concerning confidentiality of information:
- prior to disclosing any information,

## **PART 5 – OFFENCES**

#### **42 False or misleading information**

- (1) Any person who—
- (a) makes a statement to an authorised auditor that the person knows is false or misleading in a material particular; or
  - (b) omits from a statement made to an authorised auditor anything without which the statement is, to the person’s knowledge, misleading in a material particular,

commits an offence and is liable in accordance with the relevant offences under the Penal Code.

- (2) Any person who, without reasonable cause—
- (a) obstructs, hinders, resists; or
  - (b) attempts to obstruct, hinder or resist,
- an authorised auditor commits an offence, and is liable upon conviction under section 45.

#### **43 Impersonation of authorised auditor**

Any person who –

- (a) impersonates any auditor ; or
  - (b) falsely represents himself to be an auditor;
- commits an offence, and is liable upon conviction under section 45.

#### **44 Other offences**

Any person who without reasonable cause:

- (a) fails to comply with a direction given under section 38 within 14 days of receiving it; or
- (b) fails to provide reasonable facilities under section 38(5); or; (c) acts in contravention of section 40(2) or (4);

commits an offence and is liable upon conviction under section 45.

#### **45 Penalties**

The penalties prescribed for offences under this part shall be in accordance with the relevant provisions of the Penal Code.

## **PART 6 - MISCELLANEOUS**

#### **46 Protection from liability**

- (1) The Auditor-General or an authorised auditor shall not incur civil liability for an act or omission done or omitted to be done by him in pursuance of the powers or functions conferred under him under this Act unless he has acted, or omitted to act in bad faith and without reasonable cause.

#### **47 Audit fees**

- (1) The Auditor-General shall charge a fee for an audit conducted or inquiry by the Auditor- General.

- (2) The Auditor-General shall set a structure for fees to be charged under subsection (1).
- (3) The Auditor-General shall determine any fee for an audit or inquiry having regard to the structure set and approved under subsection (2).
- (4) Unpaid fees shall be recovered by the Auditor-General as a debt due to the Crown.

#### **48 Recovery of money and value of property**

- (1) Where there occurs a loss of or deficiency in:
  - (a) public money or other money that has been advanced to an officer of a public sector entity; or
  - (b) public money or other money while that money is under the control of an officer of a public sector entity,

that loss or deficiency will be a debt due to the Crown or public sector entity, as the case shall require, and shall be recovered from the officer as a civil claim in a court of competent jurisdiction.

- (2) Where loss or destruction of or damage to public property or other property occurs while the property is in the care of a public sector entity, the value of the property lost or destroyed or, as the case shall be, the cost of replacing or repairing the damage to that property will be a debt due to the Crown or the public sector entity, as the case shall require, and shall be recovered in a court of competent jurisdiction by civil action brought against:
  - (a) the officer of the public sector entity in whose care the property was at the material time; or
  - (b) another officer of the public sector entity who by culpable negligence or misconduct caused or contributed to the loss or destruction of or damage to the property.
- (3) Where the negligence or misconduct of an officer of a public sector entity was not the sole cause of the loss or destruction of or damage to the property the subject of an action under subsection (2), the Crown or the public sector entity, as the case shall require, shall recover from the officer so much only of the cost of, or the cost of replacing or repairing, the loss, destruction or damage as is just and equitable having regard to the contribution made by the officer to that loss, destruction or damage as determined by the court.
- (4) In this section a reference to an officer of a public sector entity includes a reference to a person who has been such an officer.
- (5) For the purposes of this section:
  - (a) public money or other money is to be taken to be under the control of an officer of a public sector entity if the money has been collected or received by, or has come into the custody of, the officer but has not been

- paid to another person or to the credit of an account with a bank, as required by the provisions of the government financial instructions or the prescribed requirements; and
- (b) public property or other property is to be taken to be in the care of an officer of public sector entity if the property has been delivered to the officer; and has not been returned to a person or delivered to another person entitled to receive it on behalf of the Crown or the public sector entity, as the case shall require.
- (6) Subject to the preceding provisions, the Crown shall not recover amounts from the one officer both under this section and otherwise than under this section, in respect of the same loss, deficiency, destruction or damage.

#### **49 Misappropriation of money or property**

- (1) Any officer of a public sector entity shall not:
- (a) misapply, improperly dispose of or improperly use, any public money, other money, public property or other property; or
- (b) pay any public money or other money into an account other than the account into which the money is required to be paid.
- (2) Any officer of a public sector entity shall not wilfully and unlawfully damage or destroy any public property or other property.
- (3) Any officer of a public sector entity who fails to comply with these requirements commits an offence and is to be dealt with according to the relevant requirements of the Penal Code.

#### **50 Offences—generally**

Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence and shall be liable, where a penalty is not otherwise expressly provided, to a penalty not exceeding \$5,000 or imprisonment for a term of not more than five years.

#### **51 Regulations**

The Minister after obtaining approval from the Auditor-General shall issue Regulations to implement the provisions of this Act.

### **ENDNOTES**

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<sup>1</sup> Act 14 of 2016