

**STANDING COMMITTEE ON  
ESTIMATES AND FINANCIAL OPERATIONS**

**FINANCIAL MANAGEMENT BILL 2006  
FINANCIAL LEGISLATION AND REPEAL BILL 2006  
AUDITOR GENERAL BILL 2006**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 8 NOVEMBER 2006**

**SESSION ONE**

**Members**

**Hon Giz Watson (Chairperson)  
Hon Ken Travers (Deputy Chairman)  
Hon Shelley Archer  
Hon Anthony Fels  
Hon Nigel Hallett**

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**Participating Member**

**Hon George Cash**

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**Hearing commenced at 1.10 pm**

**MURPHY, MR COLIN**  
**Acting Auditor General,**  
**Office of the Auditor General, examined:**

**DOYLE, MR JOHN**  
**Deputy Auditor General,**  
**Office of the Auditor General, examined:**

**ROWE, MR BARRY**  
**Director Standards,**  
**Office of the Auditor General, examined:**

**The CHAIRPERSON:** On behalf of the committee, I welcome you to the hearing. You will have signed a document entitled "Information for Witnesses." Have you read and understood that document?

**Mr Murphy:** Yes, I have.

**Mr Doyle:** Yes, I have.

**Mr Rowe:** Yes, I have.

**The CHAIRPERSON:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones and try to speak into them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. I think we will move straight to some questions.

**Mr Murphy:** I agree; I think that would be appropriate. I am very happy to do that.

**The CHAIRPERSON:** Most of our questions relate to the Auditor General Bill, but we also have some questions about the Financial Management Bill 2006 and the Financial Legislation Amendment and Repeal Bill 2006. I refer to clause 37 of the Financial Management Bill 2006. Do you have a copy of the bill with you?

**Mr Murphy:** No, we do not.

**The CHAIRPERSON:** We will provide you with a copy to assist in this process. In your briefing note to the committee dated 29 May 2006, you recommended that there be regular reviews of the regulations prescribing the manner in which the Treasurer can invest money from the public bank account. Who would you recommend to conduct those reviews?

**Mr Murphy:** We would need to examine that question to give you a response. The Deputy Auditor General can certainly talk about our role and what we currently do, if that would assist.

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**The CHAIRPERSON:** Yes, but please take that question on notice if it is easier. Would the Deputy Auditor General like to tell us what happens currently?

**Mr Doyle:** We would certainly conduct investigations and reviews with regard to the true and fair accounts and the controls on investments by any agency, and in particular the central agencies. However, we do not go as far as to say whether an appropriate return has been made, which is the thrust of the review process that you have described. That is something that should be done by experts in that field. We would like to think that through, find out what was said before and get back to you.

**Hon GEORGE CASH:** You said “experts in that field”. Who do you mean by “experts in that field”?

**Mr Doyle:** I suppose we are talking about the mix of risk and return that is appropriate for moneys of these types.

**Hon GEORGE CASH:** Are you talking about Treasury officers?

**Mr Doyle:** No. I was thinking about external people outside Treasury who would review whether the returns being made on the portfolio were adequate.

**Hon GEORGE CASH:** Perhaps we will have to ask the Treasury people in due course about the current operation under clauses 37 and 38 and how it differs from section 38 of the FAAA.

**The CHAIRPERSON:** We will reserve our questions for them. The next question relates to division 5 of part 3 of the Financial Management Bill. Again, your briefing note to the committee dated 29 May 2006 indicates that the Office of the Auditor General is currently exempt from the requirement to sign a resource agreement. In practice, are you still sent a request to enter into a resource agreement in each financial year?

**Mr Murphy:** I do not believe we are.

**Hon ANTHONY FELS:** I have a quick question about the authorised trustee investment. What, if anything, has changed in the years since the Rothwells debacle in the 1980s? What criteria exist now for what is called an authorised trustee, and is any business that has had a profit for 50 successive years still classified as a trustee investment and could it, therefore, attract deposits from the start that may not necessarily be as sound?

**Mr Doyle:** I am not an expert on that act, but, from recollection, the authorised trustee investment act 1976 was amended, and agencies could use the provisions of that act to invest “spare money” or money that was not required immediately. The range of investments is quite narrow. It must be what we call blue chip-type organisations with a good historical record of dividends being paid over a period. Not many agencies move into that. I think a Treasurer’s instruction prevents most agencies holding shares within the share market in preference to money market-type operations, although it is within their powers. They need the technical expertise to manage that kind of portfolio quite well, and that does not necessarily reside within most agencies in the public sector.

**Hon ANTHONY FELS:** I would be more concerned if a company could claim under the Trustees Act that it was an authorised trustee investment but it may have paid dividends over 50 years, or whatever might be the criteria. Would that company be eligible to attract a deposit from the Treasurer?

**Mr Doyle:** Yes. If it meets the criteria under the Trustees Act, I think it can. Whether it would invest in it is another question.

**The CHAIRPERSON:** We now move to the Auditor General Bill 2006. The bill provides that the Auditor General’s functions, powers and duties include those given to the Auditor General under other written laws, and particularly clauses 5, 7, 16, 31 and 32. What are the other laws that confer

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functions, powers and duties on the Auditor General? You might need to take this question on notice, but we would like a comprehensive list of those other written laws.

[1.20 pm]

**Mr Murphy:** I am aware that the legislation establishing corporate entities will often specify the role of the Auditor General in auditing that agency. If you would like us to provide a more comprehensive list, we would be happy to do so.

**Mr Rowe:** The Water Corporation legislation, the port authorities legislation, the new electricity corporations legislation and the Western Australian Land Authority Act give us the power to carry out an audit role.

**The CHAIRPERSON:** I ask you to provide a complete list at your convenience.

Clause 16 of the Auditor General Bill refers to the audits of accounts of subsidiary bodies and makes reference to local and foreign subsidiaries. Please provide a list of agencies that have local and foreign subsidiaries and the names of the local and foreign subsidiaries. Again, unless you have that answer in your pocket, I understand if you feel the need to get back to us on this question!

**Mr Murphy:** That would be absolutely correct!

**Hon GEORGE CASH:** What is the meaning of clause 7(3)?

**Mr Murphy:** My understanding in lay terms is that the office of Auditor General does not have any of the powers of the Parliament. He is an independent officer of the Parliament, but has none of the powers of Parliament.

**Hon GEORGE CASH:** I do not read it that way. The acting Auditor General's explanation is interesting.

Clause 14 refers to the audits of the accounts of agencies. The word "agency" is defined in clause 3 of the Financial Management Bill 2006. However, the word "accounts" is not defined in either the Auditor General Bill or the FMB. Is there a reason that the word "accounts" is not defined?

**Mr Rowe:** I think this question should be asked of the gentlemen involved in the Financial Management Bill. The meaning of the word "accounts" was contained in the Financial Administration and Audit Act, as you pointed out. I am not sure why it was removed.

**Hon KEN TRAVERS:** If the word "accounts" is not defined, how does that affect your work? How would the Auditor General define "accounts"?

**Mr Murphy:** We would rely on the accounting standards and proceed with the normal understanding of the accounts of an entity.

**The CHAIRPERSON:** Clause 21 refers to audit fees and provides that the Auditor General has discretion to determine whether a fee is to be charged for an audit, as well as the amount to be charged, and the person or body that is liable to pay that fee. What criteria will be used to determine whether a fee will be charged?

**Mr Murphy:** Certainly we have been moving to a position in recent times where it is normal practice to charge a fee for the attest audit function. We do not charge an audit fee for performance or compliance audits. That is the position we have been moving to.

**The CHAIRPERSON:** How will the cost of an audit be determined?

**Mr Murphy:** My office maintains records of both the hours that go into an audit, together with the cost of the auditor's time and any ancillary costs. Those costs are collated within the office to assist us to arrive at the cost of an audit, which enables us to determine the fee.

**The CHAIRPERSON:** How is the fee to be calculated?

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**Mr Murphy:** By taking into consideration the number of hours and the cost to us of those hours, together any other costs that are associated with the audit. Of course, an audit might be carried out under a contract arrangement and we would take into consideration the cost of the fees charged by the contractor to provide that audit service.

**Hon GEORGE CASH:** I am interested to know how the Auditor General recovers unpaid fees.

**Mr Murphy:** I am not aware that we have any unpaid fees.

**Hon GEORGE CASH:** Do you have the power to recover unpaid fees?

**Mr Murphy:** Not that I am aware of.

**Hon GEORGE CASH:** Do you think that that provision should be included in the Auditor General Bill, particularly since you will have the power to audit departments that are not government departments? How do you anticipate recovering unpaid fees?

**Mr Murphy:** The resources that are provided to the office are in part from government and in part recovered from audit clients. To the extent that there is any shortfall in the amounts recovered from audit clients, that shortfall would need to be made up by government.

**Hon GEORGE CASH:** Is the Auditor General a body corporate, and does the Auditor General have standing in a court to recover?

**Mr Murphy:** I do not believe so.

**Hon GEORGE CASH:** Is that a shortcoming in the bill?

**Mr Murphy:** Given that the audit clients are government agencies, I do not believe so.

**Hon GEORGE CASH:** But it extends further than government agencies, does it not?

**Mr Murphy:** It extends to subsidiaries and related entities. The amount of that work has been limited to the point at which I do not believe that the Office of the Auditor General has charged private sector bodies for that work. I do not believe that there is any intention to proceed with charging such entities for that work.

**Hon KEN TRAVERS:** You charge all agencies for the attest audits of their financial statements.

**Mr Murphy:** Yes, that is correct.

**Hon KEN TRAVERS:** However, you do not charge for performance or compliance audits. What is the rationale for charging for one and not the other?

**Mr Murphy:** There are a number of different reasons for that position. In many cases a performance or compliance audit extends across a range of agencies and it would be difficult to attribute costs. The other factor is that in many cases there might be a matter of considerable public interest involving considerable public resources, and the entity being audited may well be small and may experience great difficulty bearing the cost of such an audit. Given that audits are not scheduled years in advance and given that agencies do not receive advice about such audits so that they can make provision in their budgets, they would have difficulty in doing that. It is fairly accepted practice within government agencies and the private sector that the agencies and entities can expect an audit. They can plan for it and have some idea of what the cost will be. It proceeds on a cyclical basis. However, compliance and performance audits are very different in nature. They can arise at any time and affect more than one agency. It would be a disincentive were we to also lodge a fee to the agencies for doing that work.

[1.30 pm]

**Hon KEN TRAVERS:** Are you full cost recovery for attest audits, or do you still get a contribution from the consolidated fund?

**Mr Murphy:** We seek to recover in full the cost of the attest audits; that is the aim.

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**Hon KEN TRAVERS:** Does your budget allocation purely deal with compliance and performance audits - the cost of those?

**Mr Murphy:** In effect, the budget allocation from government deals with those other activities. There are other activities like investigations, research and such things that are not covered.

**Hon KEN TRAVERS:** But in terms of the actual audit, the signing off on the audit statements each year for an agency is on the full cost-recovery basis.

**Mr Murphy:** That cost is recovered; absolutely.

**Hon KEN TRAVERS:** My only other question is: what protections are there from a rogue auditor? I am not suggesting you have one or have ever had. I understand that you will give regard to audit standards, but under this structure, you are not required to comply with them. What mechanism is there to put a check or a stop on the auditor from suddenly deeming that your audits are going to be far more rigorous than they had ever been before, and then sending a bill to government agencies to fund them?

**Mr Murphy:** Firstly, my understanding is that if there were to be a departure from the standard, the Treasurer needs to be advised.

**Hon KEN TRAVERS:** It is to be advised, but there is not a sign-off on it. Is it just an advisory thing, not an approval process?

**Mr Doyle:** It is not an approval because the Auditor General has the authority to do that. The issue is whether the Auditor General wishes to depart from the generally accepted accounting and auditing standards. We do not see that we would want to do that, so the issue really is how can we efficiently and effectively conduct attest audits with the right level of risk and propriety. We test ourselves against the profession. A number of audits are contracted out to chartered accounting firms - both first and second tier firms. We can test ourselves as to how well they operate, the number of hours and the costs, and how well we are operating. For every engagement we have, there is a set budget and cost that is matched to the fee. We also have a standards section that conducts reviews on a regular basis to ensure that the work we undertake is in compliance with both the auditing standards and best practice. We also have quality assurance processes that take place during the conduct of the audit and also as a post-audit review. All those things are in place, not to increase the price, but to make sure that the work done is appropriate, and ranks alongside the work that is being undertaken by the profession.

**Hon KEN TRAVERS:** I understand that. If you were to change your views on what the audit standards should be, what would stop you then just passing on that cost? What is the rigorous accountability mechanism?

**Mr Doyle:** Changing the auditing standards would be an attempt to reduce costs, not increase costs. To meet the auditing standards -

**Hon KEN TRAVERS:** I understand your intention, but what would stop someone who had a different view? I do not suggest that you would want to do it, but if someone else got into the job and decided that a tougher test needed to be applied -

**Mr Doyle:** The corporate immune system would prevent us.

**Mr Murphy:** I am not aware of any legislative provision or any mechanism that would prevent that, but I have to say that there is certainly a tension between our office and the auditee as to what the appropriate audit fee should be. We advise entities before we commence an audit what the fee is. That provides the initial opportunity to enter into a dialogue with them throughout the course of the audit, and at the conclusion of the audit there can be further dialogue. There is certainly a lot of pressure on my office from the auditees to keep those fees low. I think the fees are also benchmarked, as the deputy has mentioned, against fees in other jurisdictions and fees that are

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passed on by private sector auditors. While there are no mechanisms in place, there are certainly tensions and pressures to try to keep those fees to a minimum.

**The CHAIRPERSON:** My question follows on from that. When the money is received for these attest audits, where does it go?

**Mr Murphy:** I believe it goes back to the -

**Mr Rowe:** The consolidated account at Treasury.

**Mr Murphy:** Yes.

**Hon GIZ WATSON:** Okay. While we are talking about the various agencies and bodies that can be audited, which agencies and bodies are not covered by this bill? You may need to -

**Mr Murphy:** Provide that by supplementary. Certainly the corporatised entities - as we mentioned earlier - are covered by their separate legislation; they are not covered under this particular piece of legislation. This purely covers government departments, statutory authorities that are listed in schedule 1 at the back of the Financial Management Bill, and also under the Government Financial Responsibility Act 2000 that provides for us to audit the annual report on state finances.

**The CHAIRPERSON:** As to clause 23, "Provision of advice or information", subclause (3) provides that the Auditor General may determine that a fee is payable for the provision of advice or information provided under subclause (2) to a person or body related to the Auditor General's responsibilities. Why is this subclause included and who is the provision intended to capture?

**Mr Rowe:** I think the intention of this is that often the Auditor General may be asked to provide advice to various committees or public enquiries. The Auditor General, therefore, has a discretion to determine whether the fee is payable and who is responsible for payment of that fee for the provision of that advice. Often we provide proactive advice to agencies and members of Parliament where required, but, at the end of the day, the Auditor General has the discretion whether he believes a fee is warranted for that advice.

**Hon KEN TRAVERS:** When you talk about committees, are you talking about parliamentary committees?

**Mr Rowe:** Yes, parliamentary committees could be seeking advice.

**Mr Doyle:** Sometimes agencies want technical advice. It is a similar situation to what a lot of companies have - that is, they want technical advice so they go to a chartered firm and they ask for that technical advice. We might have already developed that advice and we could make it available. We felt that we could charge a fee for that advice, but we do not actually see it as one of our income streams into the future. We cannot think of many examples where we would actually use this clause at all.

**Mr Murphy:** That is correct; it is not a provision for which there is an expectation there would be high usage. I have been trying to think of circumstances in which people would seek advice. There are quite a number, even from overseas and other jurisdictions, in which it would be useful for us to provide advice, but there would be a cost for that to the office. In those sorts of circumstances, it may be quite appropriate, with appropriate legislative backing, to be able to carry out that work and to also charge a fee. I would certainly hasten to add that the normal business of providing advice to Parliament and its committees is the core work of the Auditor General and his or her office, and there is certainly no intention to have a fee associated with that work.

**The CHAIRPERSON:** We are greatly reassured. We were just checking for loose change in our pockets!

**Hon KEN TRAVERS:** It is okay; the chair has to pay for that!

**The CHAIRPERSON:** Just to follow on that, if it is not the intention to charge Parliament for that advice, would there be a problem with making that clearer?

**Mr Murphy:** I would certainly have no objection to that.

**Hon GEORGE CASH:** Clause 24(1) refers to “a report”. Is this the annual report or is it a report other than the annual report?

**Mr Rowe:** This is a report other than the Auditor General’s annual report. It is the report to Parliament on the result of our audits for the year, separate from the annual report.

**Hon GEORGE CASH:** Clause 25(1) says that the Auditor General may prepare and sign a report on an examination or investigation carried out under section 18 and may submit the report to various entities, which are listed there. Why is that discretionary?

**Mr Murphy:** In carrying out the work of the Auditor General, there is a range of matters that the Auditor General looks at and it goes to the very heart of the independence of the Auditor General to be able to exercise judgment as to whether those are matters that need to be reported to the Parliament. There are often other matters that are not considered of such significance or public interest that they need to be reported to the Parliament; however, they may be of interest to a particular committee or another body. That is my understanding of why that discretion is afforded.

**Hon GEORGE CASH:** If there is a discretion in respect of whether you should or should not report to the Parliament, I point out that in clause 25(2) you are required to report a summary of findings to the Treasurer. In that case it is mandatory; the word “must” appears.

**Mr Murphy:** Yes. I think that is a justice provision.

**Hon GEORGE CASH:** Where is the justice provision?

**Mr Rowe:** Natural justice.

**Hon GEORGE CASH:** Yes, in respect of clause 25(2)(a). I thought clause 25(2)(b) was the natural justice issue.

**Mr Rowe:** I think they are probably both linked. Basically this proposed subsection formalises our current natural justice processes that we have in place. It was not previously in the Financial Administration and Audit Act and I think we felt it was something that warranted being formalised.

**Hon GEORGE CASH:** I understand what you are saying in respect of clause 25(2). I then ask the question, if it is to do with natural justice between the parties - the paragraph talks about any other person who, in the Auditor General’s opinion, has a special interest in the report - do you not think that that could include a committee of the Parliament?

**Mr Murphy:** I do not understand that to be the intention of proposed subsection (2). To me, proposed subsection (2) is the natural justice provision that requires the Auditor General to provide details on his or her findings to the auditee, the party who has been the subject of the investigation, and that is why it is listed as “the Treasurer, agency or audited local subsidiary”. Paragraph (a) is about providing that report and paragraph (b) is about giving them the opportunity to comment on it. Quite often in the conduct of an investigation, particularly concerning a government agency, there are other related parties. It could be an individual, it could be a firm, and it could be somebody associated with that review who is not actually a part of the entity being audited. My understanding of that provision is that it is to ensure we provide the same natural justice opportunity to those third parties.

**Hon GEORGE CASH:** That is in respect of clause 25(2).

**Mr Murphy:** Yes.

**Hon GEORGE CASH:** Subclause (3) says the Auditor General “must include in a report prepared under subsection (1)”, and it goes on, and subclause (4) talks about providing a copy to the Parliament. Is that about natural justice?

**Mr Murphy:** No, I do not believe it is.

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**Hon GEORGE CASH:** Then why is it discretionary?

**Mr Murphy:** Because the natural justice element is not discretionary. Subclause (4) gets back to the reporting discretion again, which is the Auditor General's judgment as to whether a matter is of such significance that it should be reported to the Parliament in full or whether it should have some other reporting mechanism.

**Hon GEORGE CASH:** But subclause (3) talks about a fair summary of the findings.

**Mr Doyle:** That is a fair summary of the comments from the agency.

**Hon GEORGE CASH:** Yes.

**Mr Doyle:** The objective of this suite of clauses is to give the auditee the opportunity to at least comment at the same time as the Auditor General tables his or her views of the situation, and that would then balance both sides, or provide both sides with the issue if there is in fact conflict. That natural justice process has been in place but not enshrined in legislation before and is considered to be a very useful way of making sure that the quality of the information that is provided to Parliament is enhanced.

**Hon GEORGE CASH:** I understand what you are saying about that and I understand it is something that is done in practice now. This is really formalising what is occurring in practice, but I am interested in the discretion versus the mandatory requirement. I do not understand why it is discretionary.

**Mr Murphy:** The discretion really goes back to subclause (1). That is a matter of the Auditor General's judgment as to whether a matter is of such significance and public interest that it should be reported in full to the Parliament or whether it is not of that level of significance, in which case it would choose to report to the committee.

**Hon GEORGE CASH:** Can you give us examples of what you would consider to be significant and examples of issues that are not significant?

**Mr Murphy:** Certainly the reports that the office produces are considered to contain matters of public interest so all of the reports that the office tables with respect to performance examinations, compliance audits and those sorts of things, single out issues that have been identified as being matters of significance. Those items are reported routinely to the Parliament and the office is currently working on a suite of reports that will go through to the Parliament. They are readily available and accessible for people to see what are considered matters of public interest that would be reported to Parliament.

**Hon GEORGE CASH:** How does the Parliament ascertain how many insignificant matters were discussed? The reason I am asking is that I do not understand the distinction between an insignificant issue and a significant issue. There does not seem to be a benchmark that you are relating to. It seems to me that as long as it was in the Auditor General's mind, that that was good enough.

**Mr Murphy:** I think that is correct, and I think that goes to the independence of the Auditor General.

**Hon GEORGE CASH:** But is that not an excuse in not being accountable as an Auditor General, just saying that that is to do with independence?

**Mr Murphy:** I believe the Auditor General is always accountable -

**Hon GEORGE CASH:** To whom?

**Mr Murphy:** To the Parliament, but certainly if there are matters that come to the Auditor General's opinion that are provided to the Public Accounts Committee and it has a view that they are matters that should have been reported to the full Parliament, then it has -

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**Hon GEORGE CASH:** How would the committee know if it is discretionary?

**Mr Murphy:** If it were reported under -

**Hon GEORGE CASH:** Clause 25(1). But if it is not reported -

**Mr Murphy:** The Auditor General in his work and in his office has come across issues on a daily basis that are not reported to Parliament. That really goes to the heart of the work that we do.

**Hon GEORGE CASH:** That is what I am trying to ascertain. I am aware of that and I would not expect that everything was reported, but you seem to be attempting not to want to distinguish between what is significant and what is insignificant. I am asking for examples.

**Mr Rowe:** I suppose a very simple example might be if the Auditor decides he wants to check the cash on hand at an entity and it is out by a dollar. He is not going to take that any further, particularly if it is over by a dollar. I suppose it is the materiality of the issue. It is not something that I believe the Parliament would be interested in. That is a very simple example, I admit, but I suppose it is the type of thing which would not be classed as significant and the Parliament would not be interested in our reporting a whole lot of minor issues of that nature.

[1.50 pm]

**Hon GEORGE CASH:** That would be an investigation under clause 18, would it not?

**Mr Rowe:** No. That could be just part of an attest audit; for example, where we want to verify the cash on hand.

**Hon GEORGE CASH:** This relates to clause 18.

**Mr Doyle:** Is the issue how does the Parliament find out about whether it was reported only to the Public Accounts Committee, or is the issue the discretion of reporting to either? If the issue is how does the Parliament find out, the reports that the Auditor General produces account for all major work done by the Office of the Auditor General. We report twice a year: once in November and once in April. The reports detail all investigations conducted, and everything else that has occurred. Also, in the annual report we provide information about investigations conducted. An example would be public interest disclosure, which is separate legislation, but parallel. In the annual report we actually mention - but do not provide any details at all - the work that has been undertaken, and sometimes the costs that have been associated with that work. The office endeavours to be open about what has been done. However, the office does not always necessarily consider the detail of what has been done should necessarily be made available; it should be kept within our working papers. The capacity for the office to talk with agencies and to bring about change would be impaired if every single thing that we discussed was included in the reports that we produced. Therefore, we actually work along the process of trying to bring about change in a collegiate way rather than in an enforcement style.

**Hon GEORGE CASH:** That helps me understand what it is intended to mean. I am still not sure about the difference between significant and insignificant, but I understand where you are coming from.

**Hon KEN TRAVERS:** If we can go to clause 18, are you aware of any examinations or investigations under subclause (2)(d),(e) and (f) that have not been reported to the Parliament? I imagine that under paragraphs (a), (b) and (c) there might be minor matters with regard to the financial accounts. Are there ever any compliance audits and effectiveness audits that you conduct that you do not report to the Parliament?

**Mr Murphy:** Certainly there could be. I am really grappling with trying to draw the line between where a matter is so significant that it is to be reported to the Parliament and where it does not pass that test. As has been discussed, a complex array of criteria are used, so at the end of day it would be a matter of judgment, not a matter of formula. Having said that, when the Auditor General's

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reports are tabled in both houses of Parliament, there are often calls that matters are too insignificant and should not have been reported. There will always be some debate around whether a matter should or should not be reported. At the end of the day it is those matters that are reported by the Office of the Auditor General that should be used as a judgment as to whether appropriate matters are being reported or not.

**Hon KEN TRAVERS:** I am not talking about what is in the report, because that is obviously at your discretion. The question is about whether you would ever start an investigation under paragraphs (d), (e) and (f). Perhaps you could look at that and get back to us on that.

**Mr Murphy:** I can state confidently that we may begin a preliminary investigation of some areas, and we then determine that it is not really a good use of the office's resources to pursue that any further, so we cease that immediately. There would be a large number of such cases.

**Hon KEN TRAVERS:** This question goes back to clause 25 and the process of giving an agency 14 days in which to provide comment, and then including in your report a fair summary of those comments. There does not seem to be any provision for you to actually change your report as a result of those comments. Is that what is intended? If an agency came back and said, "In our view you are wrong on this, this and this", and you looked at it again and said, "You are right", how would you see that playing out? Would you change your report?

**Mr Murphy:** That is absolutely what is intended to happen in practice. I guess the legislation cannot be prescriptive in that sense as to what will happen, because at the end of the day it will have to be the Auditor General's judgment as to whether the report is changed or not. This really moves us a step forward in that it enshrines in legislation the requirement for the office to provide the draft report, and to receive back comments from the entity, which is a step forward from where we are in terms of legislative compliance. What actually happens in effect is that the office has worked with the agency throughout the course of the audit. This is a final step, rather than the total process of consulting with the agency. So, the agency would be aware, and we would be very hopeful that we would be getting a positive accepting response from the agency with respect to the audit material, and that if there were any points of disagreement, they would be ironed out before we got to that stage.

**Hon KEN TRAVERS:** But there might be occasions when they would be able to provide you with evidence that they were not able to provide earlier in the process and that would change your opinion?

**Mr Murphy:** That is correct.

**Hon KEN TRAVERS:** The way this is structured, I would have thought that you would still be obligated to include in your report the agency's comments on your draft report, and that might restrict you from being able to change it or from putting it in a way that would then leave the door open for a member of Parliament to try to suggest that something untoward had happened, in that the report that was tabled was not the same as the report that you had sent off two weeks ago, and why did you change your mind. You would then get embroiled in a political debate at the same time rather than just being able to change your mind and provide that as the final report to the Parliament, based on your audit judgment.

**Mr Murphy:** Certainly if there were to be a change or an acceptance of the agency's comments, it would be open for us to make that statement within the body of the report and to say, "Having received this response from the agency, we accept items (a), (b) and (c)." It could be documented in that manner to avoid having conflicting points of view. Certainly it is not the desired outcome, but it could be that different points of view were expressed by the auditor in the final report that was tabled in the Parliament.

**Hon KEN TRAVERS:** Do you expect that this will be a confidential process?

**Mr Murphy:** Yes, it is, and it needs to be a confidential process.

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**Hon KEN TRAVERS:** That is not provided for.

**Mr Rowe:** I think it is covered in clause 44.

**Hon KEN TRAVERS:** If it is covered later in the bill, that is fine. Would an agency be in a position to then be able to advise its minister of that if it is confidential, or would it be restricted?

**Mr Murphy:** We do not have any problem with the agency discussing the matter with the minister. In fact, agencies regularly advise their ministers that an audit is in progress, and about the nature of the findings and those sorts of things. However, provision of the formal documentation I believe is protected. It is confidential at that stage until it is tabled. There is no difficulty with the agency discussing the nature of an audit or report. However, the draft document itself is confidential.

**Hon KEN TRAVERS:** So if you are about to come down with an adverse finding on an agency, you would provide a draft copy of that adverse finding to the agency, and the agency cannot show that adverse finding to the minister, but it can talk about the general terms of the adverse finding?

**Mr Rowe:** That is my understanding.

**Hon KEN TRAVERS:** You would expect an agency to be the one that advises the minister at the beginning, when you start to conduct the audit?

**Mr Murphy:** The agency needs to exercise judgment in that sense. There are some routine audit matters that proceed where the agency deems it not appropriate, and it will exercise some judgment in the extent to which it advises its minister about audit activity. Certainly it is the practice of our office, when a serious criticism is being made either through a qualification in an attest audit or a performance examination, that we would provide the opportunity for our office to provide a separate briefing to a minister as part of our processes. As far as the agency providing advice to its minister, it needs to exercise some judgment in that process.

[2.00 pm]

**Mr Rowe:** It may be worth quoting from subsection 45(3) -

A person to whom a summary of findings is given under section 25 must preserve confidentiality with respect to all matters that are in the summary of findings 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,
- except as may be necessary in connection with making submissions or comments to the Auditor General under that section or obtaining legal advice as to those matters.

**Hon GEORGE CASH:** That is now 45(3) in the new bill is it not?

**Mr Rowe:** You are right, yes.

**Hon KEN TRAVERS:** But that would prevent the person from providing the minister with information would it not?

**Mr Murphy:** A range of activities is associated with an audit, not simply the summary of findings. The agency would have no prohibition in discussing that information or providing a briefing to the minister on the progress of an audit or the nature of the findings in general terms.

**Hon GEORGE CASH:** I am a bit confused. Are we saying that if there is an issue that clearly could be raised in Parliament, the minister would not be entitled to know about it?

**Mr Murphy:** Absolutely not. We would provide a briefing to the minister before a serious matter was reported to Parliament.

**Hon GEORGE CASH:** The purpose of our extending this is so that a minister is not put in a position in which the minister must say to the Parliament "I was not entitled to be told". As you will be aware, there are some issues under the Corruption and Crime Commission Act whereby a

party to a discussion with the CCC is not in a position to discuss it with another party. That is interesting in itself, and I understand the reasons for that. However, I wonder whether this is the same. It seems to me that if you did not provide the minister with a briefing, the minister could argue that clause 45 prevented the minister from being aware of the nature and, indeed, the facts of a particular issue. I am not sure that that was intended.

**Mr Murphy:** I need to make a distinction between the natural justice process, which occurs prior to the Auditor General finalising a draft report, gathering information, seeking advice and producing a final draft. That process takes place without the involvement of the minister. Once that draft report is finalised, a separate process then proceeds so that the minister is aware of the content of the report and can be in a position to respond once that report has been tabled in Parliament.

**Hon KEN TRAVERS:** The report is finished by that stage. If the minister says, "It's outrageous that my agency is doing that; if I'd known that, I would have instructed it six months ago to stop doing it". All the minister can do is wait until you table that report and then make that statement. The minister does not have a chance to intervene at an earlier stage and say, "From a government point of view we are not happy that that is what the agency has been doing". An agency that wants to keep it from the minister might be able to use these clauses in support of that. They may not read the exchange shown in this transcript, and tell the minister that it was not able to advise him because of the confidentiality clause.

**Mr Murphy:** The opportunity for the minister to be aware of issues arises through the agency.

**Hon KEN TRAVERS:** The agency could use clause 45(3) and say it was bound not to tell the minister on the basis that this clause says it cannot disclose it to any other person.

**Mr Murphy:** Clause 45(3) refers to the draft summary of findings, not to the other various correspondence and exchanges that occur as part of the audit, such as management letters, which we routinely use to both identify findings and to get feedback from the agency about those findings. So there are a number of other steps throughout the audit process that are not captured by these provisions. I think the deputy is pretty keen to provide additional -

**Hon GEORGE CASH:** Does clause 45(2) enable an officer to advise his minister that an investigation is in progress? I am talking about the exception.

**Mr Doyle:** That applies only to the Auditor General's staff.

**Mr Murphy:** I believe the confidentiality provisions relate to the summary of findings only. There are many aspects of an audit. The summary of findings is a final document produced very close to the conclusion of an audit. There are many interim steps, including correspondence with the agency and management letters exchanged with the agency identifying the issues and seeking its responses, and there are no confidentiality requirements around those documents whatsoever.

**Hon GEORGE CASH:** Is it fair to say that the bill does not prevent a minister being told that there is an audit investigation under way in his department?

**Mr Murphy:** That is correct.

**Hon GEORGE CASH:** I think that is important.

**The CHAIRPERSON:** Clause 29 - "Auditor General may appoint person to audit" states -

- (1) The Auditor General may, in writing, appoint a public service officer or some other person . . . to carry out all or a part of an audit.

In what situation will this provision be used or applied?

**Mr Murphy:** I believe that is the provision that empowers the Auditor General to contract out audits so that they can be conducted by professional firms.

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**The CHAIRPERSON:** Can you give us any clarification for when this provision is likely to be used or applied?

**Mr Rowe:** We have been contracting a number of our audits out for a number of years. Prior to the financial year just passed, we have usually contracted out in the order of 35 per cent of our audits. In the financial year 2005-06, we found that there was a need to expand the number of audits we contracted out to, I think, about 55 per cent due, principally, to the fact that, as you may be aware, we had earlier reporting time lines for the first time due to amendments to the Financial Administration and Audit Act, which required that we use that clause in the FAAA to get the audits done in time.

**Mr Murphy:** The majority of audits that this provision relates to are those in the attest area that are contracted out. There are significant parts of the public sector, for example, insurance and superannuation activities that are fairly specialised and it makes a lot of sense to contract out that work. However, the provision is broad so that, for example, in an investigation that required us to contract an individual or even a member of the public service who had the necessary skills to assist us, we could use those resources.

**The CHAIRPERSON:** Thank you.

**Hon GEORGE CASH:** Clause 32 refers to the powers and duties under other written laws. Are you able to provide us with a list of the other written laws that are being referred to so that we can get a complete understanding of that clause?

**Mr Murphy:** Yes, but our understanding is that that largely relates to corporatised entities that specify the Auditor General as their auditor. We will provide that list but we expect it to be largely government trading enterprises.

**Hon KEN TRAVERS:** Are there any government entities that do not specify the Auditor General as its auditor?

**Mr Murphy:** Not that I am aware of.

**Hon GEORGE CASH:** Clause 34 refers to the power to obtain information. Clause 34(1)(a) states -

to provide the Auditor General with any information or explanation that the Auditor General requires;

Is that “any information or explanation” restricted or limited to the purpose of the audit?

[2.10 pm]

**Mr Murphy:** I would certainly have understood it that way.

**Hon GEORGE CASH:** It is restricted and limited. It starts off with the words “For the purpose of an audit” but the limiting factor is that you have to be able to show that the information or explanation is required in respect of the audit.

**Mr Murphy:** Yes, I would have understood it that way.

**Hon GEORGE CASH:** Are there appeal provisions if someone believes that the Auditor General has gone outside the scope of that clause?

**Mr Murphy:** I do not believe so.

**Hon GEORGE CASH:** Should there be?

**Mr Murphy:** Speaking from the practice of the office, it is useful to enshrine in legislation the power to obtain information, but it is extraordinarily rare for the office to ever rely on those provisions. The sector is generally most cooperative in providing the information, as are people generally. It is a rarely used provision, but it is certainly important to have it enshrined in

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legislation in this manner. I would have thought appeal provisions for the misuse of this sort would be even more rare or remote.

**Hon GEORGE CASH:** I understand why it is in the legislation, because it gives you the authority to require any information or an explanation to be provided. What I am asking you is whether there are any appeal provisions if a person believes that you have gone beyond the scope of this clause.

**Mr Murphy:** I am not aware of any.

**The CHAIRPERSON:** Clause 34(5) provides that where persons are required to attend to provide information, explanations or answers to questions, the regulations may prescribe scales of expenses allowable to those persons to compensate for their time or out-of-pocket expenses. By way of clarification, what scale of expenses is proposed under this subclause?

**Mr Murphy:** Again, my understanding would be that that is a provision that exists should it become necessary. It is certainly not a routine part of our operations. I can envisage circumstances in which we might require somebody from a remote part of the state to attend, but it is certainly more our practice for us to go to seek out the information from the individuals wherever they are, and to try not to incur costs. Again, I think this is a provision that exists in case the need should ever arise, but my expectation is that it would be rarely, if ever, used. We have not done significant work in determining schedules of fees for these sorts of events.

**The CHAIRPERSON:** Clause 37 relates to powers extending to confidential information. Clause 82 of the Financial Management Bill 2006 requires the minister to cause written notice of a decision not to provide certain information to Parliament to be laid before each house of Parliament and given to the Auditor General. Where the minister decides that disclosure of particular information will be contrary to the public interest and advises the Auditor General of that decision, the Auditor General must not include that information in a report to Parliament. However, the Auditor General may report the information to the Public Accounts Committee. In what circumstances would the Auditor General report information to the Public Accounts Committee that the minister has declared should be kept confidential?

**Mr Murphy:** It would be where, in the Auditor General's opinion, the matter was of such significance that it should be reported to the Public Accounts Committee.

**The CHAIRPERSON:** In your view, why has the Auditor General been given discretion on whether to report to the Public Accounts Committee?

**Mr Murphy:** This is similar to the response I gave earlier about matters that are not significant. It is really a matter of taking up the time and effort of the committee with matters that are not considered significant.

**Hon GEORGE CASH:** Further to that, if something is of such significance that the minister decides it should not be reported to the Parliament because it is not in the public interest, surely that in itself is a matter of significance.

**Mr Murphy:** If the Auditor General had already made the decision that the matter was of significance and the minister had determined that it should not be reported, then you would be correct. It would be correct if the Auditor General had already taken that decision.

**Hon GEORGE CASH:** What would the Auditor General then do?

**Mr Murphy:** Report the matter to the Public Accounts Committee, as required by the legislation. The way the provision currently exists, the transparency is that the minister must advise the Parliament in the first place, so that the Parliament is aware that the provision of the legislation had been used, and the Auditor General would provide advice through the Public Accounts Committee.

**Hon GEORGE CASH:** One of the concerns I have about confidential information is that a number of agencies enter into contracts and have, within those contracts, a provision for confidentiality.

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Only recently I was told that the minister could not answer a question because the agency was not prepared to provide the information. Obviously, that is something for us to take further, but what is the Auditor General doing to determine whether the decision of the minister not to provide the Parliament with information was in fact a proper decision?

**Mr Murphy:** As the legislation currently exists, the Auditor General does not have any power other than to report to the Public Accounts Committee on that specific issue. I would say that the provisions of the legislation more generally do not preclude the Auditor General from making public comment about confidential material. In fact, the Office of the Auditor General has written reports about matters such as agencies entering into contract with commercial-in-confidence information, and shares some of the concerns that you have.

**Hon GEORGE CASH:** Has that stopped them entering into those confidentiality arrangements?

**Mr Murphy:** I think there has been some change in practice within the sector, and there are a number of major contract of which I am aware that are fully public. I would like to think that work from our office and other Auditors General has contributed to that change, but, yes, it is not universal practice. I believe that, while the Auditor General would not be able to reveal information that was required to be kept confidential under the legislation, the Auditor General would be able to make public comment about whether the provisions of the legislation were working effectively and more generally about the confidentiality of information.

**Hon GEORGE CASH:** Whether or not that is adequate remains to be seen, because it seems to me that, for instance, clause 24(2) could have an additional paragraph (c) requiring the Auditor General to include an opinion in the report to Parliament on whether a decision by a minister not to provide to Parliament information concerning any conduct or operation of an agency is reasonable and appropriate. We are bringing in some other matters that have not been previously dealt with. At the moment we tend to be bringing in only half the provision, so to speak, rather than going all the way. You will notice that clause 81 of the Financial Management Bill contains a requirement for an agency to ensure that no action is taken or omitted to be taken and no contractual or other arrangement is entered into by or on behalf of the minister or agency that would prevent or inhibit the provision by the minister to Parliament of information concerning any conduct or operation of the agency.

[2.20 pm]

Clause 82 provides the minister with an opportunity to withhold certain information. Who determines whether the decision by the minister is reasonable and appropriate? At the moment your act does not require you to do that.

**Mr Murphy:** That is correct. My understanding is that the matter would be reported to the Public Accounts Committee so that it would be aware of the use of that provision. It would be aware of both the information and the discretion that has been exercised by the minister. The only other power that the Auditor General would have is to make comment more generally about the use of that provision and whether it was being exercised properly but without citing specific examples because that would be precluded under the legislation.

**Hon GEORGE CASH:** It is my view that the Auditor General should be considering these matters. Someone has to do it. At the moment it is a halfway house.

**Hon KEN TRAVERS:** The PAC ultimately becomes one of the bodies that can, if the Auditor General refers a matter to it.

**Hon GEORGE CASH:** The problem is that that is discretionary in clause 37.

**Hon KEN TRAVERS:** Except in the circumstances, as the Auditor General has outlined, that he would refer it to the PAC.

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**Hon GEORGE CASH:** “Would” and “being required to” are two different things. I raise the issue with you because it was taken up with the previous Auditor General.

**Mr Murphy:** It is a very difficult issue. We have certainly examined how it is dealt with in other jurisdictions. There are a number of different ways. I think it is for the Parliament to decide the appropriate mechanism. I simply restate that the provisions in the current legislation are that the minister must disclose to the Parliament that he or she has exercised this power. The Auditor General may report it to the Public Accounts Committee. If it were a serious matter, it most certainly would be reported. In my view, under the legislation the Auditor General has the capacity to be able to comment generally about the operation of this provision.

**Hon GEORGE CASH:** I agree with what you have said.

**Mr Murphy:** It is whether it should go further.

**Hon GEORGE CASH:** That is right.

**The CHAIRPERSON:** I have some questions that relate to schedule 1, which deals with the general provisions as to the Auditor General. Clause 7(1) of the schedule states -

The Auditor General may, at any time, be removed or suspended from office by the Governor on addresses from both Houses of Parliament made on the recommendation of the Public Accounts Committee.

Clause 7(2) states -

If the Auditor General has been suspended from office under subclause (1), the suspension has effect until the Auditor General is restored to or removed from office by the Governor on addresses from both Houses of Parliament made on the recommendation of the Public Accounts Committee.

Why has this power been given to the Public Accounts Committee?

**Mr Murphy:** This is an extremely rare event, so rare that we would hope it would never occur. You would be aware of the role of the Public Accounts Committee and the legislation in other areas. This is simply consistent with that - to provide an avenue, a body that has the capacity to examine the particular issues and to bring it to the Parliament. Beyond that, I do not think there is anything particularly special about it, other than the Public Accounts Committee has a particular role in the legislation, in its oversight and relationship with the Office of the Auditor General.

**The CHAIRPERSON:** The penalties for people committing an offence under the Auditor General Bill 2006 have increased significantly from the equivalent provisions under the Financial Administration and Audit Act. Is there a reason for this increase?

**Mr Murphy:** I do not believe so. I do not believe the penalties have ever been invoked. It is merely a matter of keeping pace with modern times and keeping pace with other aspects of the legislation.

**The CHAIRPERSON:** Has anybody been prosecuted under the provisions of the FAAA?

**Mr Murphy:** To the best of my knowledge, no.

**The CHAIRPERSON:** Gentlemen, that concludes this part of the hearing. Thank you very much for your time this afternoon. If we could have the answers to those questions that you took on notice at your earliest convenience, that would be fantastic.

**Mr Murphy:** We are aware that you are working under a very tight timetable. We will do everything we can to help you.

**Hearing concluded at 2.25 pm**

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