

PUBLIC ACCOUNTS COMMITTEE

FINANCIAL MANAGEMENT BILL 2005 AUDITOR GENERAL BILL 2005

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 27 FEBRUARY 2006**

SESSION TWO

Members

**Mr J.R. Quigley (Chairman)
Mr D.T. Redman
Mr A.D. McRae
Dr S.C. Thomas**

Participating Member

Mr P.B. Watson

Hearing commenced at 1.00 pm.

MARNEY, MR TIMOTHY MICHAEL

Under Treasurer, Department of Treasury and Finance, examined:

BARNES, MR MICHAEL ANTHONY

**Acting Executive Director (Finance),
Department of Treasury and Finance, examined:**

JOLOB, MR MICHAEL

**Acting Director Financial Policy,
Department of Treasury and Finance, examined:**

NETOLICKY, MR JOSEF

Assistant Director, Department of Treasury and Finance, examined:

The CHAIRMAN: Good afternoon and welcome. Before I go through all the introductions, I will read out the formalities, which you have probably heard before at these committee hearings. However, it is incumbent on me to read them and I will do so as quickly as I can. Before we commence this part of the hearing, I am required to advise that the committee hearing is a proceeding of the Parliament and warrants the same respect as the sittings in the house itself demand. Even though you are not required to give evidence under oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed the "Details of Witness" form?

Mr Marney: Yes.

The CHAIRMAN: Do you understand the notes attached to it?

Mr Marney: We do.

The CHAIRMAN: Have you read the information for witnesses form briefing sheet regarding giving evidence?

Mr Marney: Yes.

The CHAIRMAN: Please state the capacity in which you appear before the committee?

Mr Marney: I am here as a public servant, the Under Treasurer; Mr Jolob is Acting Director Financial Policy; Mr Michael Barnes is the Acting Executive Director for the finance business unit of the Department of Treasury and Finance; and Mr Josef Netolicky is assistant director, accounting operations and also the head of the project team.

The CHAIRMAN: I will introduce the committee. My name is John Quigley, MLA, member for Mindarie and chairman of the Public Accounts Committee. To my left is the member for Riverton, Mr Tony McRae. Further around is Mr Peter Watson, the member for Albany, who appears this afternoon as a member of the Legislative Assembly. He has not been voted onto this committee, but is the Labor Party nominee to take over Mr Marlborough's seat on this committee. Therefore, although he can ask questions, he cannot take part in any deliberative discussion this afternoon. However, if all goes well next week in the Assembly, the Assembly will vote him onto this

committee next week and he will take part in the preparation of the final report; that is why we have invited him here this afternoon.

I will continue with the formalities for a moment, Mr Marney. As you are aware, the committee is conducting a review of the Financial Management Bill 2005 and the Auditor General Bill 2005. I particularly thank you for the very detailed and informative answers you provided to the questions that we put to you before this hearing; they have been very helpful, Mr Marney. I appreciate that they would have required you to divert valuable resources in your office from other significant responsibilities and we appreciate the effort you have gone to in answering our queries on the bill for this hearing. Before we ask any questions, are there any particular issues you would like to bring to the committee's attention?

Mr Marney: Just a couple of introductory comments, if I may.

The CHAIRMAN: Certainly.

Mr Marney: Firstly, thank you very much for the opportunity to come and talk to you today and address your queries on the bill. We thank you for the opportunity of addressing some questions in advance, to which you have had a response. As you are aware, we are looking at two new pieces of legislation to replace the FAAA - separating it into a financial management act and an audit act. This separation is consistent with a number of reviews: the Commission on Government, the royal commission into commercial activities and so on. I think it is also consistent with deliberations of previous Public Accounts Committees. The Department of Treasury and Finance - in fact, these three gentlemen - instructed on the Financial Management Bill and worked closely with the Auditor General in the instructions and consideration of drafts of that bill. In fact, I think the Auditor has made comments to the committee in respect of his views of the draft bill and has been quite supportive in that respect.

The CHAIRMAN: He has.

Mr Marney: In developing the bill, we were really after two key outcomes. One is bringing the financial management legal framework for the public sector up to modern accounting standards and practices. A case in point is in the FAAA, the existing legislation, which has provisions to enable cash payments up to 10 days past the close of the financial year to be recognised and paid out of cash for the previous year. Under an accrual framework that sort of provision is completely irrelevant. So what we are trying to do in this bill is bring it up to the framework that is in place and the current accounting standards and practices that are prevalent across the sector.

The CHAIRMAN: Similar to the Auditor General Bill?

Mr Marney: Yes. The second component, and again similar to the Auditor General Bill, was to enhance the accountability framework across the public sector, so that if there is deviation from sound practice, then there are steps and accountability mechanisms in place to deal with that, which is something that the Auditor and we are extremely passionate about. One such accountability measure, which we hope will be to the benefit of Parliament, is to close out the reporting framework with, for example, a report back to Parliament on resource agreements to reflect on what was budgeted and what was actually spent - the resource agreements being agreements between the relevant minister, the director general and the Treasurer - so that there will be a closing out of the whole financial planning and management process happening transparently before Parliament. That is one of the enhancements to accountability that we have tried to emphasise in the new bill.

We have consulted fairly widely on this legislation with more than 40 public sector agencies - these being the larger agencies across the sector and the State Solicitor. We have also consulted with the major accounting bodies, and although there are still some areas on which they would like further emphasis and probably amendment to, we think we have gone a long way to accommodate their needs in the bill as you have it before you. I guess we are very much looking forward to hearing your queries and working with you to progress the bill.

The CHAIRMAN: We have already thanked you for addressing the written questions that we forwarded to you previously. We have a target date now. Originally, the Treasurer was hoping that we would report back to him by the first week of March, as it was his ambition that this legislation pass through both houses of Parliament and be ready to be fired up on 1 July for the next financial year. However - this is no criticism of the Department of Treasury and Finance - it was flagged that this legislation would come before Parliament as a green bill in about July or August and the committee would receive it in September or October. However, we did not receive it until near as good as Christmas eve in terms of work; so we had to say that our earliest possible date to report back to the Treasurer - you may have seen this correspondence - would be 6 April when it will be tabled in the chamber. The aim of the Treasurer in the covering letter sending the green bill to us was that, if possible, any aspect of it could be teased out in committee hearings and, hopefully, the opposition parties could bring their concerns forward and have them dealt with in the party room, which would facilitate the legislation's smoother passage through the Assembly and Council.

[1.10 pm]

Each Monday we have been meeting to consider various submissions, send off the questions and consider the answers that have come back from you. We decided to send you a list of indicative questions for today's hearing so that we can stay on course and focused and not meander.

The member for Capel will join us shortly. He will be the only opposition person here when he arrives. He has also gone through these questions and assisted in formulating them. If the opposition member is not here, it will not make a huge difference because he has settled these questions as well. As the Chairman I will turn to the indicative questions, because that will keep us on line, and from time to time I am sure my colleagues may have a question to flesh out.

The first question that occurred to this committee is: what are the entities to which you think the Financial Administration and Audit Act and Financial Management Bill do not apply?

Mr Jolob: The entities to which they do not apply are basically two groups. The first group is what we colloquially refer to as the corporatised entities, of which there are 12. They are the commercial entities that we have within government - the likes of the Water Corporation, Western Power and the Western Australian Land Authority. They are not subject to the FAAA and will not come under the FMB because they are seen as being required to operate in a commercial manner. Therefore, their accountability requirements are drawn from the Corporations Act and are actually embedded into a schedule under their legislation.

The CHAIRMAN: We had this discussion with the Auditor General this morning. Even though they are not incorporated under the Corporations Act, their reporting requirements are drawn in through the Australian Securities and Investments Commission legislation.

Mr Jolob: That is right. We have specific provisions taken out of the Corporations Act that are included in their legislation and they are subject to only those specific provisions that are in their legislation. Of course, they are subject to audit by the Auditor General and that is embedded in individual enabling statutes.

The CHAIRMAN: Can my staff ring you later for a list of the 12 so that we can include the 12 in the report?

Mr Jolob: We will provide that information.

The CHAIRMAN: The report will then indicate the 12 by name. It will facilitate the argument in the Assembly.

Mr Marney: The simple answer is that they have their own accompanying legislation. That sets them up as corporatised entities and that takes a superior position to the FMB.

The CHAIRMAN: You said there is a second group.

Mr Jolob: Yes, and colloquially I refer to them as the trade and regulatory bodies. There is a group of agencies - I call them agencies loosely. It is a group of entities that is established by statute to achieve an end that Parliament or governments have seen as being desirable in the public interest. However, these particular entities do not receive any direct budget funding. They are all entirely reliant on members' fees. I can give an example of a few of these. We do not have an exhaustive list here, but it includes the Architects Board of Western Australia, the Hairdressers Registration Board of Western Australia, the Painters Registration Board and the Veterinary Surgeons Board WA. The government has established a mechanism that allows for the setting up of an entity that sets membership requirements and the particular academic requirements that may be needed to be accredited as a member of one of these bodies. Generally, by regulation, they impose fees on their members and there is no requirement for or reliance on government funding.

The CHAIRMAN: It is like the Legal Practitioners Board. It generates its own funds through registrations and practitioners. It is really the profession's fund it is administering, although it is carrying out a public purpose.

Mr Jolob: Yes. They are still accountable to Parliament because through their enabling statute there is a requirement to report and prepare financial statements in accordance with accounting standards.

The CHAIRMAN: Do you have an exhaustive list of those?

Mr Jolob: No, not in front of us.

The CHAIRMAN: Does a list exist within Treasury?

Mr Jolob: On the Department of Premier and Cabinet web site there is an exhaustive list of what it sees as being entities, and there are about 640. A lot of those are nothing more than statutory position holders.

The CHAIRMAN: We can refer to that in our report.

Mr Jolob: I will provide you with the hyperlink to that.

The CHAIRMAN: Then we can refer to it in the report and anyone in the Assembly who wants to find out what are included in those 600-plus will have a pointer to where they can see the list.

The second heading is to do with prescribed receipts. I refer to clause 23 of the proposed bill. What are the current reporting requirements for prescribed receipts and will this clause make it better?

Mr Jolob: The Financial Management Bill continues the existing appropriation arrangements that are in existence under the FAAA. The reporting that is currently required is outlined in budget paper No 2, volume 1. Chapter 2 provides a summary listing of all net appropriated revenues. It includes last year's. We are looking at a budget paper - the previous and prior years' actual net appropriated revenues received - and then we get the estimated actual out-turn for the current year, the estimated revenues for the budget year coming up and then we extend it out to the three out years. There is an exhaustive effectively five-year coverage of the net appropriation revenues in that summary. That is supported in the agency detail where the budget information is provided agency by agency. There is also a summary of net appropriation revenues by each agency. The reporting is then rounded off by the agencies having to report net appropriated revenue or own-source revenue in their annual reports. In the event that there might be a significant variance between what is estimated and what is actually received, they have to explain the variation in their annual report in the notes to the financial statements.

The CHAIRMAN: Clause 25 deals with transfers of items of appropriations and again we go back to the reporting requirements there - transfers of appropriations. Do you see that?

Mr Jolob: Yes.

The CHAIRMAN: Is this putting into legislation what is already the practice?

Mr Jolob: Yes. It is already the practice under the FAAA wherein it is referred to as section 25 transfers - it is covered by section 25.

The CHAIRMAN: So it will be section 25 under the proposed act.

Mr Jolob: Under some strange coincidence.

The CHAIRMAN: Are you happy with the reporting requirements?

Mr Jolob: Yes. What currently happens is that in the event there is a transfer of function from one agency to another, the Treasurer can allocate that aspect of the budget from the agency from which the function is moving to the other agency.

The CHAIRMAN: Can we follow that in a report?

Mr Jolob: Yes. The first thing that will happen is that expenditure will appear in the recipient agency's estimated out-turn for the year. If it is material, we actually go further than that and we recast last year's actuals and cast the budget estimates to reflect it as though this had actually happened in the budget process at the start of the year.

Mr Marney: So you get comparability between years.

Mr Jolob: Also, again, the agency will have to report in its annual report on any differences between estimate and actual.

The CHAIRMAN: Because of what is picked up?

Mr Jolob: Yes, and if it is material, it will report that.

Mr A.D. McRAE: If you are looking only for the budget papers to reveal that, that would not be apparent. You will have to go to the agency. If it is a material and substantial variation, will you have to adjust the actuals for the previous year?

[1.20 pm]

Mr Jolob: Yes.

Mr A.D. McRAE: So you would not read in that year's budget papers -

Mr Marney: The adjustment would be fully noted and disclosed.

The CHAIRMAN: Just for your convenience, I have the following indicative questions. I am down to 2(c) - the temporary financing of works and services, clause 28. Could you just explain to us the reporting mechanism for the temporary financing of works and services?

Mr Netolicky: That is covered by the normal reporting requirement that agencies have; the provision of a working capital facility. For instance, if you look at the DPI's annual report for last year, they have a current liability Treasurer's advance of \$2 million outstanding and repayable to the Treasurer. It is just the provision of temporary financing for an agency, and has to be reported like any other asset or liability in their financial statements.

The CHAIRMAN: It should be pretty easy to pick up.

Mr Netolicky: Yes, it is specifically identified as a Treasurer's advance.

The CHAIRMAN: I do not know why I put them back-to-front. The Treasurer's advance was clause 27, the clause before. As for the Treasurer's advance, the reporting requirement is once a year, is it not?

Mr Netolicky: In the reports there are two legs to the Treasurer's advance: one is the temporary financing, which is clause 28 and your question (c), and then question (d) is the supplementary funding. The reporting part is again shown in the annual report's explanatory statement as a

supplementary receipt for capital and/or recurrent purposes, but on top of that, unlike question (c), there are also, as you are no doubt aware, appropriation bills 3 and 4.

The CHAIRMAN: Which we dealt with just before Christmas this time.

Mr Netolicky: Yes, it is in the upper house. It then lists all the agencies and the supplementary funding again provided on recurrent -

The CHAIRMAN: That will be the same.

Mr Marney: You have the same two points of disclosure: one the annual report and the other the bills 3 and 4.

Mr A.D. McRAE: May we just go over that again? In what used to be the Treasurer's appropriation act that came in quite separately, we would see the reporting on each allocation under those appropriations reported in the quarterly statements and in the annual budget papers.

Mr Netolicky: No. The Treasurer's advance gives the Treasurer a discretion over and above appropriation bills 1 and 2 of up to \$300 million currently. He has a discretion, depending on what happens, for unforeseen circumstances. Then agencies can apply for supplementary funding. Once that is approved by the Treasurer and they receive it, it is reported in their annual reports as part of the normal annual reporting, and on top of that it goes back to Parliament in appropriation bills 3 and 4 for retrospective approval.

The CHAIRMAN: Can you explain for me the three per cent variation again? What is the reporting on the three per cent variation?

Mr Barnes: That is really the only change between the FAAA and the FMB in terms of the Treasurer's advance. The structure of the Treasurer's advance and the reporting requirements are unchanged. What has changed is how the limit of the Treasurer's advance is defined.

The CHAIRMAN: As to three per cent?

Mr Barnes: Yes. Currently it is defined by the annual Treasurer's Advance Authorisation Act that was mentioned. In the past few years the Treasurer would go forward with that bill to Parliament, and that would typically seek a \$300 million authorisation limit for the financial year for unforeseen things that happen during the course of the year. That is all that bill does. It just sets the dollar limit. What the FMB does is replace that with an automatic authorisation that is built into the legislation. That automatic authorisation is three per cent of the previous year's appropriation.

Mr A.D. McRAE: There would be a line item in volume 2 that shows three per cent?

Mr Barnes: What it equates to?

Mr A.D. McRAE: Yes.

Mr Barnes: Yes, it would be reported most likely in a new report that we are developing called the annual report on state finances. This is one of the changes that came out of the Financial Administration Legislation Amendment Act last year. It is replacing a couple of other reports and consolidating them into one report, and in that report it will show the Treasurer's advance.

The CHAIRMAN: What we are really looking to, Mr Barnes, is: how do we pick up the occasions upon which the Treasurer has exercised his discretion under that three per cent?

Mr Barnes: Over the three per cent?

The CHAIRMAN: Under the three per cent and when he uses the three per cent.

Mr A.D. McRAE: And, indeed, over the three per cent as well.

Mr Barnes: If the FMB becomes law, he will automatically have that authorisation to spend up to the three per cent and he will continue to report on that through appropriation bills 3 and 4 as to what makes up the three per cent.

The CHAIRMAN: He will continue to report on the appropriation of three per cent in money bills 3 and 4?

Mr Barnes: Yes, that is right.

The CHAIRMAN: It gives him that discretion within that three per cent on an interim basis until we get that legislation before the Parliament. Is that right, Mr Marney?

Mr Marney: The key issue is how you set that limit, and essentially going back to Parliament each year to redefine the dollar limit is probably a little bit of a waste of Parliament's time.

The CHAIRMAN: So you express it as a per centum.

Mr Marney: Yes, and it enables that limit also to ratchet up over time with the size of the state's overall spend, and that is something that I guess has been a frustration.

The CHAIRMAN: The three per cent being a reasonably modest amount of the total budget?

Mr Barnes: Yes, that is right, and an amount which currently equates roughly to \$300 million.

Mr Marney: It is equivalent to roughly where the dollar figure is.

The CHAIRMAN: To where we are at the moment?

Mr Marney: That is right.

The CHAIRMAN: As we go forward it will ratchet up with inflation. As the budget gets bigger so will the three per centum become bigger. However, all members can be assured that the reporting line of the three per cent will come up in money bills 3 and 4, where they will have full opportunity to argue the exercise of the discretion.

Mr Marney: Absolutely, yes.

Mr A.D. McRAE: What authority is required to spend more than three per cent?

Mr Barnes: If three per cent proves insufficient, the Treasurer will have to come before the Parliament with a stand-alone Treasurer's Advance Authorisation Bill.

Mr A.D. McRAE: The reporting will still be the same as with money bills?

Mr Barnes: Yes.

The CHAIRMAN: We have a little bit of confusion over supplementary funding with TAA. What is the unforeseen circumstance and where do we put the unforeseen circumstance; is it a transfer or is it the three per cent?

Mr Jolob: At the time when we - when I say "we" I mean when parliamentary council and I - were looking at wording to recognise circumstances where you either have not anticipated sufficient funds in the budget or, for whatever reason or government imperative, you are going to overrun it, or you may not have started a new initiative or a new program at the time when you are framing the budget, we tried to find words that would allow all of that to fit in without in any way constraining us. The best we could come up with was "extraordinary and unforeseen". "Unforeseen" means we have not expected that initiative; "extraordinary" means expenditure over and above what we expected. There is no specific meaning to it other than to give a general message of continuing what we have now, which is that governments need flexibility to be able to operate and react to changed economic situations as they occur.

Mr A.D. McRAE: The "unforeseen" is a political debate in itself, is it not?

The CHAIRMAN: It is unforeseen by a reasonable person.

Mr Marney: Yes. It is unforeseen stuff you did not know about when you brought the budget down.

The CHAIRMAN: You could not reasonably have been expected to know about it?

Mr Marney: That is right, whether it be events -

The CHAIRMAN: It could be bushfires or anything.

Mr Marney: Bushfires, floods or whatever.

Mr A.D. McRAE: There was some debate around, for example, seat belts in school buses. For some years there has been debate. A crash in which miraculously no child was seriously injured or killed triggered a broader public debate.

[1.30 pm]

That is why I say it is our problem more than it is yours. One might reasonably argue that it was foreseeable that this debate would come on; that there was bound to be a bus accident at some point.

The CHAIRMAN: Yes, but you could argue that the policy was against seatbelts on buses. The unforeseen thing was that the Premier would change his mind on a weekend. Bang; there was a policy change.

Mr Marney: At the point of formulating the budget, that policy change was not on the agenda. Therefore, it was not factored into the forward estimates. The fact that the government subsequently thought it appropriate to change its position on that policy is what governments are elected to do.

Mr A.D. McRAE: Absolutely. I do not have a problem with the job we have. I was just trying to match it to the interpretation of "unforeseen".

The CHAIRMAN: I move now to the powers of our honourable Treasurer and Treasurers to come. Clause 13(2) involves directing an agency to open a bank account outside the public bank account. Are there any criteria for allowing that?

Mr Jolob: We have a public bank account, the contract for which is currently with the Commonwealth Bank. If an agency wanted a bank account and it could be accommodated through that arrangement, that is where it would sit.

The CHAIRMAN: What circumstances would be involved in the Treasurer saying that an account could be opened outside the public account?

Mr Jolob: There are a number of circumstances. Departments have no power to open bank accounts; it all works through the FMB. Statutory authorities have general powers within their legislation. Invariably, that requires them to sit within the public bank account as well. For example, we have a number of Agents General in London, Tokyo and, I think, New York. They need bank accounts in those locations to pay their general -

The CHAIRMAN: To keep it on point, and I make no criticism of you as you are right on point, in your submission of 16 February you included at page 49 a list of examples of where this has happened. I want to know whether we can encapsulate in our report any criteria that the Treasurer might use to direct an agency to do that, rather than just the examples that you have helpfully provided. What are the determining issues?

Mr Marney: One of the fundamental issues would be that the existing public bank account arrangements were not feasible in some way for that entity due to its location or operations.

Mr A.D. McRAE: There are no Commonwealth Bank branches in New York or London.

Mr Marney: That is right. The public bank account is the default. There would need to be some practical, logistical reason as to why something would fall outside that arrangement.

The CHAIRMAN: The member for Riverton gave a fair example of an overseas bank account.

Mr Jolob: Yes.

Mr A.D. McRAE: What would be another circumstance? Can you give me another example?

Mr Jolob: Some departments require a bank account in a regional location purely to hold funds in safekeeping and, again, the Commonwealth Bank does not have a branch there. It is basically the exceptional situation outside their normal operating account. They just need to demonstrate that there is a sound basis for having that account. We look at it on that basis.

The CHAIRMAN: I will move to the next point, which is on trying to identify the criteria that the Treasurer will use to permit the overdrawing of an agency's bank account per clauses 14 and 19 of the Financial Management Bill. What are the criteria for overdrawing?

Mr Netolicky: They are similar to those outlined in the previous point; that is, for the operational needs of an agency. The only approval that is outstanding now is for the Forest Products Commission. Because of the nature of its business and the seasonality of its revenue and expenditure, it is in overdraft for four to five months of the year before the sales kick in.

The CHAIRMAN: Before the forest product is sold and it receives revenue, like a lot of businesses, it must trade on an overdraft in the interim.

Mr Marney: It is in those circumstances in which there is an expected, abnormal cash flow pattern that needs to be accommodated by an overdraft facility.

The CHAIRMAN: Okay. Is clause 19 the same?

Mr Netolicky: That is the trust funds.

The CHAIRMAN: The clause is headed "Special purpose accounts not to be overdrawn unless approved by Treasurer". Does the same explanation apply?

Mr Netolicky: It is the same. It is seasonal. For example, if funds need to be paid out to a research project before funding from the commonwealth is received, they have access to overdraw a trust fund with prior approval.

The CHAIRMAN: I suppose I should have asked this question of the Auditor General. I refer to clauses 14 and 19. Are the Treasurer's approvals for overdrafts reported on at all? Does the public or the Parliament know when this power is exercised?

Mr Netolicky: The bank account overdraft is reported in the annual report as a line of credit available from -

The CHAIRMAN: Which would need to be approved by the Treasurer.

Mr Netolicky: Yes.

The CHAIRMAN: When a line of credit is outlined in a report, sitting behind that will have to be a Treasurer's approval. That is really a question of vigilance by the opposition; it needs to say, "There is a line of credit. Does that have the Treasurer's approval?"

Mr Netolicky: And the Auditor General will audit those approvals during his annual audit.

Mr Marney: If an agency seeks to establish a line of credit or overdraft facility and does not have the Treasurer's approval for that, that will more than likely be picked up and reported on by the Auditor General.

Mr A.D. McRAE: What is the equivalent facility for that now? Is that in the Financial Administration and Audit Act?

Mr Jolob: The exact same provision exists now. I think it is section 13 of the FAAA, which states that no bank accounts shall be overdrawn without the express approval of the Treasurer.

Mr A.D. McRAE: What is the experience of compliance with that? In other words, has there been any experience of noncompliance?

Mr Netolicky: We had an occasion when the library board expected money from overseas, so it drew a cheque against expected revenue but it came through later. Somebody is occasionally

overdrawn for one or two days, but it is fairly rare. Unlike in the other case, where it is a consistent thing; that is, months and months of being in overdraft.

Mr A.D. McRAE: And that occurs every year and is part of the normal operations.

Mr Netolicky: Yes. So you need approval up-front before you can have it.

Mr A.D. McRAE: Okay. Do the ones that go into overdraft inadvertently and in reasonably unforeseen circumstances notify the Treasurer post the event? Are they obliged to do that?

Mr Netolicky: We do not have retrospective approval.

Mr A.D. McRAE: They could not get approval for it if they did not know about it.

Mr Netolicky: We monitor bank accounts every day. We are on the phone the very same morning to see what the situation is. We fix it within a day or two. It is just an operational thing.

Mr A.D. McRAE: A cash flow matter, really.

Mr Marney: But one that is protected and monitored by our systems that monitor the public bank account.

The CHAIRMAN: We are dealing with the Treasurer's criteria for undertaking certain actions. Under clause 20, the Treasurer has the discretion to exercise his power to transfer excess money from special purpose accounts. Once again, we are looking at the criteria upon which the Treasurer would make such decisions. Would it be a case of an agency having too much money?

Mr Barnes: That is the short answer to my long answer.

Mr Marney: And that never happens!

Mr Barnes: As you would have seen from our initial discussion paper and our response of 16 February, we believe that the magnitude of cash sitting in agencies' trust accounts - they are called special purpose accounts in the FMB - as well as the increase in that level of cash over the past few years is an issue. To date, cash management in the WA public sector has been quite passive. Essentially, we have been relying on agencies to voluntarily transfer excess cash back to the consolidated fund. Not surprisingly, such transfers are not all that common. Clause 20 of the FMB provides the Treasurer with the power to direct agencies to transfer excess cash from their special purpose accounts to the consolidated account. That power will allow for a more proactive approach to cash management across the public sector. DTF will need to develop a cash management policy to operationalise that provision. That policy will need to be developed in consultation with agencies and obviously the Treasurer. Without wanting to pre-empt the outcome of that, one option might be to set a general working capital threshold for agencies. For example, we could allow agencies to retain up to five per cent of their annual net cash flow in their operating accounts. Under such an arrangement, any amount above the five per cent threshold would be deemed excess to an agency's requirements.

The CHAIRMAN: That beds the criteria set by the Treasurer informally, and not within the legislation.

Mr Barnes: That is right.

The CHAIRMAN: He will look at anything over five per cent.

Mr Barnes: Yes. I have highlighted that as being one option. We will need to develop a policy to operationalise that power from the FMB. As I mentioned, we are keen to take a more proactive approach to this issue.

Mr A.D. McRAE: Why would we not include a provision that obliged an agency to report an excessive amount? It does not matter what you consider to be excessive - it could be three per cent, five per cent or 10 per cent of its gross allocation. It seems to me that we are still relying on

Treasury and Finance to find it, and it is still relying, to some extent, on good detective work rather than establishing an obligation on agencies.

[1.40 pm]

Mr Barnes: We collect data on agencies' cash balances, so we know how much cash agencies have. What we do not know is the detail of that cash. For example, some of it may be restricted cash that we would not want to claw back into the consolidated fund. We do not have that detail currently. Under one of the other provisions in the Financial Management Bill the Treasurer has the power to direct agencies to provide information to him. He may use that power to direct an agency to give him information on its cash balances so that we can determine whether any of it is excess and we can claw some of it back into the consolidated fund. Those two powers together in the FMB are quite useful from our point of view and also should allow a more proactive approach to this issue.

Mr Marney: I think Michael's answer highlights why it is very difficult to have a prescriptive percentage threshold, because the cash is held for a vast array of purposes, and for any one agency or entity it is very difficult to find the right sort of percentage that would apply sensibly across the whole sector.

Mr A.D. McRAE: I do not have a problem with the need for that provision to provide a bit of flexibility. I am more concerned about where the onus rests and who has to do the legwork to establish it. You say you have sufficient monitoring tools to be able to keep this up. Is that daily, weekly or monthly?

Mr Barnes: It is pretty much daily.

Mr A.D. McRAE: That is what I thought you said.

Mr Barnes: We have the basic data on the cash position of agencies, and it would be up to us to monitor that data. However, if we identified at face value that an agency was holding excess cash we would need to work with that agency and delve into the reasons why, and whether there were any restrictions on that cash.

The CHAIRMAN: Could a surplus of money in the account be indicative of the fact that the objectives of the agency were not being met; in other words, it was not getting out there and spending the money to deliver the service? Is that ever a concern?

Mr Barnes: I think we have identified in our response that in some cases agencies receive an appropriation for the year but do not spend that entire appropriation, for a variety of reasons.

The CHAIRMAN: For example, it could not get the environmental approval to build something.

Mr Barnes: It might not be able to recruit suitably qualified staff to pursue it, for example. In those sorts of cases, unspent cash from that appropriation will be sitting in their bank account. We believe that is one cause - not the only cause - of the build up of cash balances over time.

The CHAIRMAN: With regard to money that the Treasurer has directed be transferred, could an agency claw any of it back by saying the money had been earmarked for a particular project, and things have now come on line and the environmental approval has come through, and we would like to get it back so that we can complete the project? This is probably a bad example, because it is the Water Corporation. However, if the Water Corporation had set aside money to build a sewerage plant on the coast in Mindarie, but it could not get environmental approval, and the money was therefore directed to be transferred, could it claw that money back later if it did get environmental approval?

Mr Barnes: Not really. If the money has been transferred from the agency into the consolidated fund there would need to be another appropriation.

Mr Marney: There would need to be a new approval.

The CHAIRMAN: Is that once it had been clawed back?

Mr Marney: Yes. However, if we knew that, for example, it was in the process of seeking environmental approval for the water treatment plant, we would assess the time line for approvals and we would not claw it back because we would know that at some point it would happen. However, if it was knocked back on the approval, we would claw it back.

The CHAIRMAN: I am taking a bit of time with this because some of these points relate to point 5 on page 2. Clause 31 deals with payments from the public bank account interest earned account. Subclause (1) states "if the Treasurer so determines". Is there any policy paper on the parameters or criteria under which the Treasurer would operate?

Mr Netolicky: The normal mechanism is to transfer interest earned on the balances to revenue once a year at year end. It is a mixture of two streams. The PBA has consolidated money and also money on which interest is payable to various parties, such as the State Planning Commission, the State Housing Commission or the Water Corporation, that are either entitled to interest or have money on deposit, or whatever, so that is not the government's money but is somebody else's money, and that interest is collected

The CHAIRMAN: Surely if interest is attached to those particular funds the agencies are entitled to that interest.

Mr Netolicky: We pay the interest to the investors or agencies that are entitled to it, and the rest of the money is transferred once a year to the consolidated fund.

The CHAIRMAN: So there will not be a general disbursement of that interest. The interest that is identified as belonging to a particular investment or holding will go back to that entity, and the rest of the interest accrued will go to the consolidated fund, so it is pretty straightforward. I just wanted to clarify that.

Clause 45 deals with directing an agency to modify a resource agreement. Subclause (1) states -

The Treasurer may return a draft resource agreement to the accountable authority of an agency and request the accountable authority -

- (a) to consider or further consider any matter and deal with the matter in the draft resource agreement; and
- (b) to revise the draft resource agreement in light of that consideration or further consideration.

What criteria will the Treasurer use to determine whether he will return a draft resource agreement? It might be as easy as saying the resource agreement is unsatisfactory.

Mr Barnes: We envisage that clause 45 would be used only as a last resort. In the vast majority of cases, if not all, resource agreements will be finalised by mutual agreement between DTF and the agency. While I think it is unlikely to eventuate, one circumstance in which the Treasurer might use this power to direct under clause 45 is if either the agency CEO or the relevant minister has a different interpretation from that of the Treasurer about decisions of the Expenditure Review Committee relating to that agency, because it is those decisions that feed into the resource agreement. The relevant minister may have one interpretation of what those decisions mean, and the Treasurer may have a different interpretation. As I have said, this is probably a rare circumstance, but just to provide some illustration, in that sort of case I think it would be appropriate for the Treasurer to use his power under clause 45 to direct that the resource agreement be modified, particularly as the Treasurer is also the chair of the Expenditure Review Committee and ultimately signs off on the Expenditure Review Committee decisions.

The CHAIRMAN: The Treasurer's power to direct is outlined in subclause (2); namely that if the accountable authority and the Treasurer have not reached agreement within one month, the Treasurer can exercise his authority.

Mr Barnes: That is right.

The CHAIRMAN: Clause 79 deals with the Treasurer's power to gain information. Subclause (1) provides that the Treasurer may require the accountable authority to provide any information relating to the financial management of the agency that the Treasurer thinks necessary for the purposes of this act. What criteria will the Treasurer use to determine when he will require information? I do not want to suggest an answer to you, but I guess it will be when he needs it!

Mr Marney: There would obviously need to be some form of question unanswered by the available information that would require the Treasurer to seek further information.

Mr Barnes: Apart from a few minor wording changes, clause 79 replicates section 58A of the FAAA. To the best of our knowledge, no direction has ever been made under section 58A of the FAAA. In light of that, it is a bit difficult to say under what circumstances a direction might be made under clause 79. One possible example is one I gave, around cash management. If an agency is not cooperating in providing details of its cash holdings to the Department of Treasury and Finance, the Treasurer might direct that agency to provide that information.

[1.50 pm]

Mr Marney: I think in relation to that clause and the previous one we discussed, their mere existence takes away the necessity for their execution.

The CHAIRMAN: "We've got the power, CEO - just tell us! We don't have to give you any direction. It will all come to mud if you do not tell us."

Now I move to a section close to my heart being a politician and counsel for Andrew Mallard, who just jumped the wall last week when he got out after 12 and a half years - that is, act of grace payments. However, that is not why this question appears in the list of indicative questions, because they were drawn up before Mallard jumped the wall, so to speak. A committee person has asked us to put a question as to whether there are any criteria for act of grace payments. Act of grace payments, as I recall, do not have an actual criterion; it is a question of judgment of justice, is it not?

Mr Barnes: Pretty much. Given the nature of the payments we -

The CHAIRMAN: It is not to meet a legal liability.

Mr Barnes: No, it is not. It is effectively to meet a situation in which the government believes it has a moral obligation, rather than a legal obligation to pay.

The CHAIRMAN: I can remember a case of a sergeant, who will remain nameless. He went in to eject some Aboriginals from a hotel at Fitzroy Crossing. He was so severely hit with a flagon that it injured his brain for life. He did not have a suit against anyone - there was no legal liability - but they were looking at this person who was enforcing law and order, and ended up maimed for life.

Mr Marney: There was also the case of the mental health nurse at the Swan District Hospital who also received an act of grace payment. It is really, as Michael said, where a government feels as though it is a just and fair thing to do, and it has some form of moral obligation. As such, they are rarely used.

The CHAIRMAN: They are often quite contentious, too.

Mr Barnes: There is actually a Treasurer's Instruction that provides a bit of guidance on act of grace payments. It is Treasurer's Instruction 319. It states basically what we have said, that although not legally bound to do so, a government might provide an act of grace payment when it considers that it has a moral obligation to compensate for a loss or damage, or it has a responsibility

to relieve a person of a financial hardship. Really, that is the only sort of guidance that is given about these matters.

The CHAIRMAN: They are not made regularly. We could call them exceptional payments, could we not?

Mr Marney: There are probably less than a handful every year. It is very exceptional.

The CHAIRMAN: Less than a half a dozen a year. I will go to point 5. A lot of this has been covered already in the answers you have given, but I will just go through to check that we have covered it all, if that is all right with you. In relation to transfer of excess amounts from the special purpose account, your response of 17 February to the Public Accounts Committee indicates that increases in any agency cash balances in recent years reflect at least partly the accumulation of unspent appropriation money drawn from the consolidated fund over a period. Please give examples of unspent appropriations. Does Parliament get information about unspent appropriations? If so, where and how regularly? I think we will look to you for an answer to that last part of the question. Where do we find unspent appropriations in the reports?

Mr Barnes: They would be reflected in a rising cash balance, which would be reported in the agency's annual report to Parliament in its balance sheet.

The CHAIRMAN: A rise in cash balance could indicate to members, for example, that the agency had some other unexpected income, which caused the balance to rise. How would we members and, behind us, the media and the public, know that an agency was not spending its appropriations?

Mr Barnes: The rising cash balance would be a signal to start asking questions about what is causing that increase in cash. The other point I would make is that the agency would also be expected to include, in its annual report, an explanation of any significant underspend in its appropriation for the year.

The CHAIRMAN: Is that a requirement, or would it just be an expectation?

Mr Barnes: I believe it is a requirement under Treasurer's Instruction 1101.

Mr Jolob: They are required to report actual against estimated.

The CHAIRMAN: That is Treasurer's Instruction 1101.

Mr Barnes: I believe it is 1101A.

The CHAIRMAN: We will follow that up with you and just check it, but is that the requirement to report underspends? Is it more than a three per cent underspend? We have that variation at the top end.

Mr Barnes: I think it is just significant or material, which has a general definition in the accounting world. It is generally about five per cent.

The CHAIRMAN: Just to go through this point 5 again, will the Treasurer be required to report to Parliament, separate to the annual budget papers, details of excess amounts clawed back from the agencies; that is, these transfers across that will take place under clause 24 or 29? We have just been dealing with all these Treasurer's transfers. Will the Treasurer have to report to Parliament that agency A clawed back \$20 million from agency B? Where will we find that?

Mr Barnes: The short answer is no. The Treasurer will not be required to report details of excess amounts clawed back from individual agencies, but the agencies will be required to do so. A transfer of cash from an agency's operating or other special purpose account back to the consolidated account -

The CHAIRMAN: - will have to be covered in that agency's accounts?

Mr Barnes: Yes, and it will be reflected in their accounts.

The CHAIRMAN: You are probably looking at me and saying “Simple Simon”, but I want to get these questions down onto the transcript for the benefit of all members.

Mr A.D. McRAE: Can I just follow that up? The Treasurer’s giving a direction for the variation of an agency’s budget back into the consolidated fund is only the agency’s responsibility - there is no obligation on the Treasurer to explain why that direction was given.

Mr Barnes: Is that in terms of reporting? That is right. It will only be the agency that reports that information. It reports it as a contribution to owner in its financial statements.

Mr Jolob: They are also required to report the nature of that contribution back to the owner. The explanation will be in the notes to their financial statements, as to why the Treasurer has required them to repay the money.

Mr A.D. McRAE: I am just trying to pick up the scheme of it, and following on from the Chairman’s opening of this area. In other areas of administration, if a minister gives a lawful direction - not in all cases, but in quite a number of areas, where an agreement has been signed or a regulation made, there is provision for a minister to give a direction that varies the operational behaviour of an agency - the minister has the responsibility to report on the nature of the instruction, the reasons for the instruction and the outcome of the instruction, but are we not doing that in the case of the Treasurer?

Mr Jolob: In the other instances, I think you would appreciate that, in the general operational environment, there are a lot of things that a minister may desire of an agency that will occur not as a direction, but merely as a consultation process between the agency and the minister.

Mr A.D. McRAE: Is that the implementation of policy?

Mr Jolob: Yes. The requirement for the direction to be in writing and then to be tabled, in a situation where there is an agreement and the agency may have some resistance to what is being proposed, is obviously a mechanism for transparency and accountability, and to protect the agency as well.

Mr A.D. McRAE: The provision as it exists now generally applies where an agency has some authority post-agreement to implement the policy or the agenda, and that any variation to that needs to be transparent because Parliament is given a degree of responsibility for the agency for the implementation of its program. I am not necessarily opposing that; I am trying to understand the difference.

Mr Jolob: I think the other issue is that these other requirements are invariably related to operational issues. Therefore, in framing those provisions, it was seen that Parliament ought to be apprised at the time the direction is given so that it can debate the merits of that direction. In this case, we are looking at something that will not necessarily impact on the ongoing operation of the agency at that point in time. We are just clawing back some cash; it is not as though it will be devoid of operational cash.

Mr A.D. McRAE: Is that money it needs for current operating expenses?

[2.00 pm]

The CHAIRMAN: It is money they need for current operating expenses. It is their lazy money.

Mr Jolob: We are also conscious of how much information we impose on the Parliament. We are always fairly careful that we do not require additional reporting at that point that will further overload the Parliament.

The CHAIRMAN: But you will pick it up in the accounts later.

Mr Jolob: We will pick it up in the accounts. In this particular case, we did not see it as anything contentious.

Mr A.D. McRAE: The critical thing is that we are not talking about an instruction that varies the operations of the agency.

Mr Jolob: That is correct. As a further explanation, we framed some of these provisions on what happens with statements of corporate intent and strategic development plans. They invariably relate to commercial entities. Where there is disputation between a minister and the agency in terms of their operational planning and there is an agreement and the minister then directs, that impacts the agency from day one for that upcoming year.

Mr A.D. McRAE: It impacts upon?

Mr Jolob: It will impact on that agency's ability to operate on a commercial basis, or the board may see that. In that case, there is a requirement to table that by the minister.

The CHAIRMAN: We have already answered the question relating to (c). That is to do with the clawing back. Under (d), I suppose the answer could be a bit obvious, but your submission says that if the cash is left with the agency, they could exceed their total operating expenses by using that cash and letting government expenditure grow. A member has asked whether it is true that there is still a risk that the government's expense growth and operating surplus targets will be exceeded. That is possible. The surplus targets might be exceeded if you are clawing money back.

Mr Barnes: The answer to that is no. Once the cash goes back into the consolidated account, it can only be spent from that account with an appropriation authorised by parliament.

The CHAIRMAN: The answer is no. I forgot about that gate. We have discussed that before.

Mr Barnes: That is the basic answer. Just to elaborate a little, there are standing appropriations which the Treasurer can use to apply consolidated fund cash for various purposes. They are things like paying off debt and paying off superannuation liabilities. He has standing appropriations for that. If we were to claw back excess cash from agencies' bank accounts and put it into the consolidated fund, the Treasurer might use those standing appropriations to pay off debt, but it will not impact on the government's expense or operating surplus targets.

Mr A.D. McRAE: Strictly speaking, it is possible that excess amounts transferred will change the operating surplus targets, but that would be approved. If your question goes to whether it will be approved, yes, it will be.

Mr Marney: Only if it is separately approved to apply from consolidated revenue.

The CHAIRMAN: Yes, there has to be approval.

Mr A.D. McRAE: You might vary the operating target, but it will be an approved variation anyway, so it will not happen by accident.

Mr Marney: It is a possum trap - you can get in pretty easily but it is a lot harder to get out.

The CHAIRMAN: Like prison, as I found out.

Mr Barnes: The point is that the Treasurer cannot spend the money willy-nilly.

The CHAIRMAN: Once it is clawed back, it will come back and go through the process, going through the appropriation etc.

Mr Marney: The only discretion he does have is that which contributes towards the earlier achievement of those financial management targets.

The CHAIRMAN: I now turn to ministers' powers as write-offs. We are dealing with division 6, 47(3).

Mr Barnes: I believe it is clause 48(3).

The CHAIRMAN: That is right. It states -

The minister may, with the prior approval of the Governor, write off relevant amounts that are greater than the monetary limit prescribed for the purpose of subsection (2), subject to any conditions prescribed by the regulations.

What are the reporting requirements in relation to this?

Mr Barnes: Again, there is a specific Treasurer's Instruction on write-offs. That is Treasurer's Instruction 807. That does provide some guidance. It states that the circumstances that may lead to a write-off of revenue, other debts or public property include receivables that are irrecoverable - for example, where an individual or business owes funds to an agency for services provided and that individual or business is subsequently declared bankrupt - and instances where there is a loss, theft or major damage to public property which causes the total loss of the asset. They are the circumstances in which a write-off is permitted under Treasurer's Instruction 807. Clause 48 sets the monetary limits around that.

Mr A.D. McRAE: The fact that it is an Executive Council minute means that it will be published anyway.

Mr Barnes: Yes. To answer your other question on the reporting requirements, Treasurer's Instruction 807 requires that all write-offs must be reported in the agency's annual report.

The CHAIRMAN: I now turn to decisions not to inform Parliament. Under clause 82, when do you think it is reasonable or appropriate for a minister not to provide certain information to Parliament and what criteria will be used to define "reasonable" or "appropriate" under clause 82? It states -

If the Minister decides that it is reasonable and appropriate not to provide to Parliament certain information concerning any conduct or operation of an agency, then within 14 days after making the decision the Minister is to cause written notice of the decision -

- (a) to be laid before each House of Parliament or dealt with under section 83; and
- (b) to be given to the Auditor General.

The notice under 1(a) is to include the minister's reasons for making the decision. Ultimately, the minister will have to give those reasons, but given the drafting instructions for this legislation, what did you anticipate would be reasonable and appropriate?

Mr Jolob: This provision is intended to replicate an intent of what is already in existence in the FAAA. Owing to a difference in opinion as to what the existing provision is actually intended to provide, we have sought in the FMB to provide greater clarity. The intent of the existing provision and also the current clause 82 was to prevent agencies and ministers from standing behind the veil of contractual confidentiality and saying, "I'm sorry, I can't give you this because that contract precludes me from doing it."

The CHAIRMAN: Take us through the scheme of that again.

Mr Jolob: The intent was to preclude ministers from standing in Parliament, in answer to a parliamentary question, and saying, "Well, I'm sorry, I can't give you that information because the agency can't give it to me or I can't give it to you because we have commercial confidentiality written into a contract and I'd be in breach of that contract in providing it."

Mr A.D. McRAE: We are not talking about an assessment where there is some trading or service information relating to a private business that, through its revelation, will disadvantage that business. We are talking about a contract that has a confidentiality clause in it, covering everything, regardless of whether it is commercially sensitive to the business or not.

Mr Jolob: It may be for any aspect of an arrangement or agreement between the state and an external party. That is the first step.

Mr A.D. McRAE: The point I am trying to get across is that there is no judgment in that veil, as you call it, as to whether the revelation of that material would disadvantage or damage a business. It is by virtue of the fact that there is a clause in a contractual agreement. Somebody has written in a clause just so they never have to speak about it.

Mr Jolob: The legislation then still tries to preserve the discretion or the ability for a minister to choose to exercise their judgment and to say, "Even though I can provide you with this information, I choose not to for reasons of commercial confidentiality or whatever." The current wording of the FAAA was interpreted to mean that a contractual arrangement cannot preclude the provision of that information unless the minister decides that you can have that, and that was not the intent of the legislation.

[2.10 pm]

The CHAIRMAN: The minister must first decide that the contract can include that.

Mr Jolob: No. That was the way the royal commission interpreted it.

The CHAIRMAN: The FAAA?

Mr Jolob: Yes.

The CHAIRMAN: The minister must first agree to a commercial-in-confidence arrangement.

Mr A.D. McRAE: It should not be a matter of standard.

Mr Jolob: We sought a Solicitor General's opinion, which said, "No; the legislation says, firstly, a contract cannot stop the minister from divulging it, but at the same time it does not preclude the minister from exercising judgment not to give it." But it was read the way you just worded it. Given that difference of opinion, we have tried to make it clear in the bill. We have split it into two parts. The first part - no contract can preclude a minister from providing the information.

The CHAIRMAN: Where is that?

Mr Jolob: It is clause 81, which is explicit. It reads -

The CHAIRMAN: I have got that.

Mr Jolob: It provides that a contract cannot be written that a minister can hide behind.

The CHAIRMAN: The bill reads -

If the Minister decides that it is reasonable and appropriate . . .

Mr Jolob: We then take it a step further by saying -

The CHAIRMAN: Lay it on the table of the Parliament and advise the Auditor General.

Mr Jolob: Absolutely.

The CHAIRMAN: Do you anticipate the provision of the information under those circumstances will simply be, "I regard this as commercial and in confidence" and nothing further needs to be explained?

Mr Jolob: I cannot anticipate what a minister might say but I assume that that would be the case.

The CHAIRMAN: I am wondering what instructions were given to the parliamentary draftsman in anticipation of the fact that the minister would give that notice to the chamber.

Mr Jolob: One would assume it would be something along those lines based on previous examples.

The CHAIRMAN: You cannot go too far; otherwise, you would reveal your hand anyway.

Mr Jolob: That is right. Then there is a safeguard that does not exist now.

Mr A.D. McRAE: Reading this in a dry fashion, there is no requirement for an explanation of how the minister came to the decision that it was reasonable and appropriate not to provide -

The CHAIRMAN: When we were discussing the Auditor General Bill this morning, were we not talking about the Auditor General and the minister advising the PAC as well?

Mr A.D. McRAE: It is exactly the same provision.

Mr Jolob: There is a mirror provision.

The CHAIRMAN: Under that provision, they have to advise the PAC, do they not?

Mr Jolob: Yes.

The CHAIRMAN: They do not have to advise the PAC under this legislation.

Mr Jolob: Advising the Public Accounts Committee is under the Auditor General Bill, but the two measures sit hand in glove.

Mr A.D. McRAE: It would be: minister decides, is required to lay that decision without necessarily an explanation about how the decision was reached before both houses and must simultaneously advise the Auditor General. The Auditor General then makes a further assessment and judgment about whether in the circumstances that was reasonable for the purposes of protecting whatever information.

The CHAIRMAN: Clause 36 of the AGB reads in part -

- (2) If it would not be in the public interest for information mentioned in subsection (1) to be disclosed, the Auditor General is not to include it in a report to Parliament but may report it to the Public Accounts Committee.

We must debate whether “may report it to the Public Accounts Committee” is sufficient or whether it should be a matter of compulsion; that is, “will report it to the Public Accounts Committee”.

Mr A.D. McRAE: We should have asked that this morning.

The CHAIRMAN: We still can.

Mr Marney: Essentially, it recognises the abnormal nature of such arrangements and the need for judgment case by case.

The CHAIRMAN: There should be something reflecting democracy, though.

Mr A.D. McRAE: There is. As the appropriations debates come around, that is where that point of engagement is.

The CHAIRMAN: I am saying whether it “may” or “will” be provided.

Mr A.D. McRAE: That is a matter for deliberation of the committee.

The CHAIRMAN: Okay.

Mr Jolob: That clause provides a safeguard that does not exist now.

Mr A.D. McRAE: It certainly increases the onus on the minister to default to “no barrier to disclosure” as the first point and then to establish a reason in his or her own mind for why a barrier to disclosure might be put up.

Mr Jolob: Yes. It was the intent of the legislation to make that distinction.

The CHAIRMAN: We have turned into the last half page of the indicative questions. There is an invitation for to you comment on a submission we have received from a private interest group on clause 17 of the Auditor General Bill, which gives the Auditor General a new power to audit the financial statements of a related entity of an agency to the extent that they relate to the functions that are being performed on behalf of or in partnership with or as a delegate of the agency. Concern has been raised about the potential intrusiveness of this power into the operations of the private

entity, particularly when those operations are not connected to the entity's relationship with an agency.

We put this to the Auditor General this morning. He thinks the powers under his legislation give him the power to do only an attestation audit to see where the public money went to in the agency; and that the legislation does not give him the power to kick in the door to roam generally through that private entity's accounts. He has the power, however, to track the public funds into the corporation, which then has its own requirements for auditing and account reporting through ASIC. Do you have a comment on the sufficiency or otherwise of the reporting trail of the Auditor General?

Mr Barnes: It is an appropriate power for the Auditor General to have. If a private entity is performing functions on behalf of, in partnership with or as the delegate of a government agency, it is likely the performance of those functions involves public money or public property.

The CHAIRMAN: That is not the committee's concern; it is a concern that has been put to the committee by a private group.

Mr Barnes: In light of the use of public money or public property in the functions being performed by the private entity, we think it appropriate that the Auditor General have that power under the Auditor General Bill.

Mr A.D. McRAE: Can you make some distinction between those three kinds of relationships: performed, partner and delegate? In my mind, performed implies contractual obligation of behaviour of a private entity. Partner suggests still that the public sector agency is in control of its own agenda. However, delegated responsibility is something else again. That seems to imply the passing over of maybe some statutory power to be performed by another agent. In the latter circumstance I agree and enthusiastically support the role of the AG to go in and understand what the agency does if it is behaving with delegated power and authority. I am reading this as an implication. I am not so certain about "performed" and "partnered".

Mr Barnes: I see the distinction you are drawing. I suppose the key issue for us is whether public money or public property is involved.

Mr A.D. McRAE: If it is performed or partnered, the public agency still - I am reading this in - has an implied authority; that is, direct performance authority, either contractual or through a joint operation. It would retain its capacity and obligations.

Mr Marney: The point of audit under those arrangements is delivery of the contractual arrangement or the partnership arrangement.

Mr A.D. McRAE: That would still rest with the public agency.

Mr Marney: Yes, but the auditor general can audit those arrangements through those contractual terms and the delivery thereof.

Mr A.D. McRAE: Yes, but the submission to us was that there is sufficient accounting obligation on the public sector agency to determine whether a thing is being done properly. When you talk about delegated responsibility, whether it is an action, service or whatever, that implies the passage of authority or power from a public sector agency to a private sector agency. I understand the distinction.

[2.20 pm]

The CHAIRMAN: To be fair and to put this in perspective, the concern came from CCI that it would intrude too far into private corporations. However, when we wrote to CCI asking it to amplify its concerns by directing us to a practical example of how this might unfairly intrude into the operations of a private entity, we got no further reply. In other words, it was put up that this would give the AG all these intrusive powers into private companies; but we were talking about

tracking it only through that element of a private company that is expending public money. However, when the committee wrote to CCI and asked it to show us how this concern might impact adversely in a practical sense, we had no reply. I think it was thrown up as a theory more than anything.

Mr Marney: In some respects the same onus of proof could be placed on the Auditor General, as to how could you not satisfactorily audit these arrangements through delivery of contract terms, delivery of partnership agreements and so on.

The CHAIRMAN: That is right, because he does those performance and effective audits.

Mr Marney: So it becomes a matter of judgment and, essentially, how much scrutiny you enable of public moneys wherever they be spent.

The CHAIRMAN: I thought the Auditor General was doing that. He did that with all the fleet leases and reported on them.

Mr Marney: Some would say he does too much of that!

The CHAIRMAN: But he was doing it, was he not? He was reporting on the effectiveness of fleet leasing and some the vehicle arrangements.

Mr Marney: Yes, which at that time was an outsourced activity and the audit was around -

The CHAIRMAN: Into the private sector.

Mr Marney: The audit was around delivery of those contractual terms and whether or not that was in the interests of the state.

The CHAIRMAN: Okay.

Mr A.D. McRAE: Another issue, so that it is part of the record on the committee's discussion, would occur when we are trying to encourage compliance in the employment of apprentices as a condition for securing a government contract. It is alleged fairly widely, in the building industry in particular, that a lot of evidence of compliance is done only for the purposes of the contract and does not exist in fact if you inquire into the company that has been awarded the contract. In those circumstances I can understand why you would want to be able to go down further.

Mr Marney: But it would be appropriate that those powers be restricted to the areas of the public spend only.

Mr A.D. McRAE: Absolutely!

The CHAIRMAN: The last series of questions, 11 through 14, centre around the role of the chief financial officer of agencies. The first is the requirement that a CFO be a member of a recognised accounting body. However, some agencies would be too small to have a full-time CFO.

Mr Marney: That is exactly the reason for the Treasurer's discretion to exempt an agency from that requirement. Some agencies have fewer than 10 FTEs.

The CHAIRMAN: I do not know them; can you give me an example?

Mr Marney: The State Supply Commission would be one.

The CHAIRMAN: It has fewer than 10 people?

Mr Marney: Yes.

The CHAIRMAN: So it does not need a full-time financial officer?

Mr Marney: It may not need a full-time financial officer. In fact, its financial officer is probably a lot of other things at the same time, but it certainly does not need someone, and it is probably not feasible to even recruit someone to those sorts of roles, who has a fully-fledged professional accounting body qualification.

Mr Barnes: It should be noted that the CEOs of agencies can seek an exemption from this new Treasurer's Instruction 824 on CFO qualifications, just like they can for any other Treasurer's Instruction. Treasurer's Instruction 824, therefore, is not unique in the ability of agencies to request an exemption. We acknowledge, as the Under Treasurer said, that there will be circumstances, primarily in very small agencies, when you would not want to enforce the requirement that the CFO be professionally qualified. Taking that a step further, the regional development commissions would be a good example. They are very small agencies in regional or remote locations. I think it would be unreasonable -

The CHAIRMAN: - to have a full-time CFO as a member of an accounting body.

Mr Barnes: That is right, for those sorts of agencies. We carefully considered whether we would put some guidance in the Treasurer's Instruction about the circumstances in which the exemption could be given, but we decided against that because we were concerned that -

The CHAIRMAN: You could not shift it?

Mr Barnes: It would encourage a tick-the-box mentality from agencies seeking exemption. They may read the Treasurer's Instruction and say, "Oh, good, there's an out. If we can just tick these boxes here, we can get an exemption." We did not want to encourage that because we want this Treasurer's Instruction to have as wide an application as possible across the sector.

The CHAIRMAN: The Information Commissioner has been an acting CEO for quite a long while.

Mr Marney: That is correct.

The CHAIRMAN: Maybe the acting CEO for two or three years.

Mr A.D. McRAE: CFO?

The CHAIRMAN: No, she is the CEO.

Mr Marney: Yes.

The CHAIRMAN: She is the Acting Information Commissioner. I do not know whether she has a CFO down there. However, people can be in acting roles for significant periods. What about acting CFOs? Should they be members of accounting bodies?

Mr Barnes: This is an area in which we actually have some sympathy for the view that has been put.

The CHAIRMAN: Which is?

Mr Barnes: Which is extending the requirement for the CFO to be a member of a professional accounting body, even if he or she is acting in the position, but only if it is a long-term acting arrangement. There are many circumstances in the public sector of short-term transitional arrangements and the agencies going out -

The CHAIRMAN: Do you have any idea of what you would be looking at - would it be longer than three months?

Mr Barnes: Probably six months.

The CHAIRMAN: Longer than six months? What about appointing someone and saying, "We are going to put you in that chair for a while and we're going to advertise the position", but it does not happen. Where do we go after six months? Do we say, "You had better get out of the chair?"

Mr Barnes: They would need to seek an exemption. If the acting arrangement goes beyond six months and they have not got a permanent occupant yet, they would need to seek an exemption.

Mr Marney: The six months is in line with the redeployment regulations and processes as well as to the extent to which we would go to appoint an acting officer.

The CHAIRMAN: Will you be reporting these exemptions?

Mr Marney: No.

The CHAIRMAN: There would then have to be a question in Parliament.

Mr Jolob: No. The current arrangements for exemptions from Treasurer's Instructions are that we notify the accountable officer or authority - that is, the agency - and we also notify the Auditor General.

The CHAIRMAN: Is that so the Auditor General is notified that there is an exemption on foot?

Mr Jolob: In respect of the Treasurer's Instructions, it is because he may have to audit against specific instructions and he needs to be notified.

The CHAIRMAN: At least we have that reporting line.

Mr Jolob: Yes.

The CHAIRMAN: And members of the Assembly, to whom we are reporting, will know that the Auditor General has a list of those exemptions.

Mr Jolob: Yes.

The CHAIRMAN: When he comes in and audits an agency, he is auditing against that list.

Mr Jolob: That is right.

The CHAIRMAN: That is an important matter for members of the Assembly to know.

Mr Marney: Presumably if the Auditor's judgment was that the list had become too long, he would highlight that.

The CHAIRMAN: You can see questions 13 and 14. I have to be frank with you, I have forgotten the purpose of those two questions. Question 13 reads -

The role of the CFO does not adequately reflect the scope of responsibilities and accountability expected of a CFO in a contemporary business environment.

Can members recall what we were driving at there? I do not know who raised that issue.

Mr Barnes: I suspect it might have been raised by the Institute of Chartered Accountants, with which we have been in discussions for a long time around this definition of the CFO position.

The CHAIRMAN: I think you are right about the chartered accountants. I have their letter right here. Thank you, Mr Barnes.

Mr Barnes: If I could just address this question and take you back to last year before the Financial Administration Legislation Amendment Act passed through Parliament, the equivalent position in the FAAA was the principal accounting officer, the PAO. We changed that to the CFO. The change is much more than just a re-title. We have really changed the focus of the position from a very mechanistic role for the PAO, which was really a bookkeeping role and nothing else, to a strategic advisory role for the CFO. We strongly believe that that is much more reflective of contemporary business practice than the old PAO role. We have deliberately tried to elevate the status and the importance of the CFO position in the legislation. So, to be perfectly frank, I am very surprised that the Institute of Chartered Accountants has raised these concerns.

The CHAIRMAN: Have you seen its concerns?

Mr Barnes: Yes.

[2.30 pm]

The CHAIRMAN: I will read them to you again so that they are read onto the transcript, for anyone who is following these proceedings on the transcript, and your comments can relate directly to what I am reading. I will read from page 2 of the submission of the Institute of Chartered Accountants, which deals with clause 57, "Chief financial officer". The submission in full states -

The Institute's views are more fully outlined later in this submission and its attachments. In essence, we are concerned that the Financial Management Bill might not provide an adequate framework to enable the CFO to safeguard the financial and non-financial assets of public sector agencies from risk, breakdowns in internal controls and fraud. This has implications for both the quality of financial information reported to Parliament and the systems of internal controls that protect public funds.

As an overriding comment, the Institute highlights the following input from one of its members arising from a survey of chartered accountants in 2004:

“The roles specified appear to lack any element of accountability, which is a major aspect of any CFO role.”

They are worried about the accountability of the CFOs. To continue -

The Institute also concluded from its survey that the “provision of advice” aspects of the role were vague and loose, and member feedback expressed concern that the CFO could become an ineffective role.

That is the institute's submission. Do you have a comment?

Mr Barnes: In terms of the accountability of the CFO role, I would like to make a couple of points. You mentioned in reading from that submission issues around financial controls in the agency. One of the specific accountabilities of the CFO position in clause 57 is the provision of advice on the effectiveness of accounting and financial management information systems and financial controls in meeting the requirements of the agency. That is specifically addressed in clause 57.

Clause 57 also makes it clear that the CFO is accountable for the preparation of financial information to facilitate the discharge of the statutory reporting obligations of the agency. It basically means that the CFO signs off on the agency's annual accounts. That is in clause 57. In our view those accountabilities are very clear. They are much more high level and critical to the agency than the old PAOs' roles and responsibilities.

Another key factor that I believe the Institute of Chartered Accountants has not taken into account is the need for a clear distinction between the accountabilities of the CFO and the accountabilities of the CEO. The CEO accountabilities are spelt out in clause 53 of the Financial Management Bill. We have been very careful to make sure that there is no blurring of the accountabilities between these two positions. Some of the recommendations that we have previously seen from the Institute of Chartered Accountants would blur those accountabilities between the CFO and the CEO. Therefore, we are not keen on those. It is very important for accountability to have clearly defined and distinguished roles and responsibilities, which we believe the FMB does.

I will make one more point on the issue of accountability: I refer you to the Auditor General's Office's submission to the committee on the Financial Management Bill that indicated its support for the CFO position.

The CHAIRMAN: He made that clear this morning in his evidence. I wanted to give you the opportunity to comment on the Institute of Chartered Accountant's submission so we can take your comments on that submission into account when we prepare our report.

Mr Barnes: We have had a long history with the institute on this issue. After much toing-and-froing we have agreed to disagree.

The CHAIRMAN: I have now expended the list of questions from which I was reading. I ask my colleagues whether they have additional questions.

Mr A.D. McRAE: My question relates to the last area of discussion. Mr Marney, in your opening statement you mentioned that some accounting agencies wanted further advance in some areas, but

you believe that the bill is balanced. I imagine, given that we have had a discussion about the CFOs, that that may have been one of the issues of difference you were talking about.

Mr Barnes: That is correct.

Mr A.D. McRAE: Are there any others?

Mr Barnes: That is the principal one. The differences of opinion are really around the extent of the qualification requirement as per Treasurer's Instruction 824. We have mandated in that TI that CFOs must be a member of a professional accounting body. The Institute of Chartered Accountants would like to go one step further and say that all finance professionals who report to the CFO must also be a member of a professional accounting body. It is our view that this change to mandate CFOs being a member of a professional body is a big change for the public sector. Approximately only half of CFOs are members of a professional accounting body; therefore, the other half will have to become, after the transitional period, members of a professional accounting body. It is a big change and a big step forward and to go the extra step and say that everyone else who reports to the CFO must also be a member of a professional accounting body is, in our view, going way too far way too fast. Let us see how this change goes, bed it down after a few years and then we can reassess it.

Mr A.D. McRAE: Are there any other areas?

Mr Marney: No, they are the main areas.

The CHAIRMAN: Before I go into the formal concluding remarks, which I am required to read to you, there is something else I would like to inform you. Regrettably, we are trying to get this matter completed within a time frame so the legislation can be put before the Parliament, and I am sure you are anxious as the Treasurer is anxious that that happen and that there be a 1 July fire-up, we have had to have these hearings during parliamentary recess. Unfortunately, for whatever reason, the member for Stirling, Mr Redman, and the member for Capel, Dr Thomas, are not with us this afternoon. They are the two opposition representatives on this committee. Obviously they have other pressing business and I make no criticism of their not being here. One was here this morning.

Mr A.D. McRAE: It indicates their trust in us.

The CHAIRMAN: Indeed. Nonetheless, so that hopefully we can smooth the passage of this legislation through the Parliament - I will read to you in a moment what you do to correct the transcript whereby the transcript must come back to us within 10 days - as soon as the transcript comes back, I will flick-pass it to the two members who are not with us and see that I have covered all the points that they wanted to cover. If there one or two questions additional to that we will send you a letter and ask you to respond quickly. I want to massage this through to make sure that all their queries have been addressed.

Mr Marney: We will do anything you ask of us.

The CHAIRMAN: Thank you very much.

This concludes your part of today's hearing. The committee will send you a transcript of the oral evidence that has been presented today along with a letter that explains the process for making any corrections. Alterations must be confined only to the correction of errors. If there are points that you have made in your evidence that you think may need clarification or you have inadvertently omitted you may, if you wish, refer this additional information in writing to the committee. This will be incorporated into our records as a supplementary submission. You have 10 working days to return your corrected transcript to the committee office. If the transcript is not returned within this time, it will be deemed to be correct. Thank you very much and that concludes this afternoon's proceedings.

Hearing concluded at 2.38 pm
