

JOINT STANDING COMMITTEE ON AUDIT

REVIEW OF THE FINANCIAL MANAGEMENT ACT 2006

TRANSCRIPT OF EVIDENCE TAKEN AT PERTH FRIDAY, 20 MAY 2016

Members

Hon Ken Travers (Chair)
Hon Alanna Clohesy
Mrs G.J. Godfrey
Dr K.D. Hames
Mr W.J. Johnston
Hon Peter Katsambanis
Hon Rick Mazza
Hon Helen Morton
Mr M.H. Taylor
Mr B.S. Wyatt

Hearing commenced at 10.41 am

Mr MICHAEL COURT

Acting Deputy Under Treasurer, Department of Treasury, sworn and examined:

Ms KAYLENE GULICH

Executive Director, Infrastructure and Finance, Department of Treasury, sworn and examined:

Mr ANTHONY SMITH

Assistant Director, Financial Policy, Department of Treasury, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take the oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of the evidence will be provided to you. To assist the committee, 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 talk into them. Ensure that you do not cover them with papers or make noise near 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 publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would anyone like to make an opening statement or are you happy for us to go straight to questions?

Mr Court: I am happy to go to questions.

The CHAIR: As a general question, how does the quality of the state’s financial legislation architecture compare to that of the commonwealth and other states, and are there any gaps that you have identified in that legislature compared to other states?

Mr Court: I think it is very comparable. I do not think there are any significant gaps. I think that there are processes in place to ensure consistency in financial reporting by all jurisdictions and following all the Australian accounting standards.

Ms Gulich: Just to add to that, one of the variances that we did identify through the course of or during the FMA review was around the expenditure and the controls on expenditure that were different in WA compared to the bulk of the other states and territories.

The CHAIR: And that is picked up in the recommendations —

Ms Gulich: That is picked up; that is one of the recommendations.

The CHAIR: — about disciplinary action for expense limits.

Ms Gulich: Just explicitly stating expenditure limits is part of our fiscal management and control mechanism and then having a mechanism for discipline for on-flow of those.

The CHAIR: Obviously, the FMA does not cover government trading enterprises. There is apparently some talk of umbrella legislation for government trading enterprises. Are you able to give us any idea of where that is up to?

Mr Court: Some work was progressed on that but it is not active at the moment.

The CHAIR: Is that a gap in our legislation that we do not have overarching umbrella legislation for those GTEs?

Mr Court: I think the issue there is that the enabling legislation for the particular GTE covers how it operates and reports. I guess what has happened is that there have been various reforms and changes to the enabling legislation for GTEs—for example, with disaggregation of Western Power some time into the four entities and then subsequent mergers, and then other things that have happened perhaps in the water sector where the Bunbury and Busselton Water Boards have been moved. I think what we were aiming to do was to try to get more consistency across them in some of the key aspects of the enabling legislation. That is not to say, though, that there are huge differences, but it was just trying to streamline it so that you had a very common set of arrangements across each of the agencies.

Ms Gulich: The other thing there is that over the course of changes to the enabling legislation and the GTEs in the last three to four years, particularly in the port space and the energy entities, we have been engaged with the drafting and had a look for where there was consistency, where appropriate, between the existing legislation and with the underlying principles of the FMA. So there is an intent or an endeavour to keep them as closely aligned as we can, recognising the differences in the sector.

Mr W.J. JOHNSTON: There is, of course, an overlap in that the state budget includes the state's balance sheet, and the GTEs are part of that balance sheet, are they not?

Mr Court: Yes.

Mr W.J. JOHNSTON: You are reporting on behalf of the entire consolidation, not through their operations, but their capital value, if you like—their carrying value on the books of the state, so that is an issue that comes within the FMA. You are reporting it through the budget papers to Parliament, are you not?

Mr Court: Yes.

Mr W.J. JOHNSTON: You must therefore look inside the entities, even though they are covered by their own legislation through the prism of the FMA?

Mr Smith: No; I just have to correct you there. That would come under the prism of the Government Financial Responsibility Act. So the Financial Management Act covers off a large portion of the public sector, but when you actually consolidate those, it then comes under the auspices of a separate piece of legislation, which is the Government Financial Responsibility Act.

The CHAIR: The appointment of the review was done in August 2011. That was then finalised in March 2014 but not tabled in Parliament until September 2015. A couple of issues arise from that. I am keen to get some indication from you as to what was the reason for those delays, but also then, is the review still current? Has anything changed since that review was completed in March 2014? What is the current position with the review and is the government already starting to implement any of the recommendations of the review, and, if so, where are we up to with those?

[10.50 am]

Mr Court: There are probably a few factors behind the timing that you are referring to in your question. The review was finalised. We took it through the cabinet processes, which included the

implementation of the review as well, so not just finalising the review. During consideration through that process, there was another round, I suppose, of further consultation required. That probably indicates why there was that delay in the tabling of the report. I think there was quite a bit of discussion, particularly with the Public Sector Commission, around the recommendations and how they would then be implemented through the amendments to legislation, so that involved quite a bit of consultation. During the course of that, too, there were also some significant resourcing issues for the department, with some of the key people involved in the review leaving the department. I guess resource pressures is another reason for the timing. I suppose it is fair to say, too, while the FMA itself gives the overarching power for financial management, there is a number of subordinate instruments and arrangements that are in place and we would put more effort into that in many respects.

I guess the earlier question around expense limits, while we do not have that formally in the legislation compared to other states, is something that is an active practice—managing to expense limits. In that regard, the practical administration of the state's finances is not different to other states, even though there might be some differences in how that power is enacted. Things have been progressed that were alluded to in the FMA review perhaps. I was referring back to the PSC example. We have worked with the PSC around how we can improve or strengthen the current practice around CEOs adhering to expense limits. We have made changes to “Treasurer's Instructions 808”, which is around resource agreements, so that resource agreements are kept live and that the Public Sector Commission has also made reference to CEO performance agreements, including the information that is required in resource agreements to be part of the CEO's performance agreement. I suppose that work happens in the background to the timing between the report finishing and being tabled in Parliament, so we have actually made that change, and that has led to some positive improvements in terms of resource agreements being kept live and being completed in a more timely fashion, as well as the Public Sector Commission adopting that as a key part of CEO performance.

The CHAIR: My take of what you have just told us is that the government has already taken a position about which recommendations it is going to accept, reject or modify. Is that a fair statement, because you said it has been through the cabinet process to determine, and you have had negotiations for implementation? Is there a document that outlines what the government's response to the review is and what their action plan is?

Mr Court: Obviously it is cabinet-in-confidence, I suppose, but we have gone through to try to get cabinet approval to draft the amendments to the FMA, so it is at that stage at the moment.

Ms Gulich: But, noting, basically, the legislative profile and priority that we have got at the moment in terms of the next couple of months of government, what we have endeavoured to do since finalising the report is look at what we can do within our existing mechanisms, so below that hierarchy of the FMA, using our TIs, using our resource agreements. The other fundamentals, or the other foundations of our fiscal management, is what we can do in those ones to actually give effect to either the recommendations that were quite clear and already in place. There are certain things in the review that you have got in front of you that we just cannot do in the absence of legislative reform, but there is stuff that we can put in practice and we have endeavoured to keep moving on those to the extent possible.

The CHAIR: Have all of the recommendations been accepted by government for implementation or not, then?

Mr Court: I guess that is subject to cabinet-in-confidence.

The CHAIR: All right, maybe then what I will ask is if we can take that on notice, and I will give that A1. If you can provide us with, through the minister, a report on which recommendations have been accepted, rejected or modified, and also what you are doing to implement the

recommendations; and, also, if you are taking interim measures, as was just outlined to us, to keep it moving, what those interim measures are in respect of each of the recommendations.

[Supplementary Information No A1.]

The CHAIR: I want to turn to the issue around expense limits and, obviously, you have made some recommendations there. The questions I had were: How frequently do agencies breach their expense limit? Do agencies give you sufficient notice of a potential breach in an expense limit?

Mr Court: I guess there are different reasons behind where an agency may sit in its expense limit. Obviously, yes, we work closely with agencies to understand how they are tracking to their budgets. That is done through the formal processes also with the midyear reports, the annual reports and then midyear review, and then subsequent budget. There is a constant budget cycle where we are liaising with agencies around how they are tracking against their budget and we are working with them to understand where there are unforeseen issues that might be arising that are outside their control or where we might have concerns around their financial management. So, there are two ways they could breach their expense limit, if you like, is that things happen—demand increases, so that they may be in danger of breaching the expense limit—or they may not be managing their finances.

The CHAIR: I understand that people are tracking towards breaching their expense limit and, often, generally, what that means they end up going through cabinet and getting a decision to increase their expense limit. Is this aimed at trying to cap those agencies coming back to get an increase in their expense limit or is it where agencies—I know Health, I think a few years ago, clearly exceeded their expense limit. So which one are we looking at? How often do we have situations where an agency actually exceeds their expense limit as opposed to highlights that they are likely to exceed their expense limit and therefore comes back through the cabinet process to get an increase in it?

Mr Court: It is both, and that is why we are keeping the resource agreements live, so that CEOs are aware of what their expense limit is and that they can manage to that accordingly. Then, I guess, we will require them to come to EERC and go to cabinet if they need an increase. That is then a government decision as to whether they grant that or put other conditions on the agency.

Ms Gulich: I think that is the key point. By trying to put the pressure in there, they are highlighting expense limits as a financial tool where you try to encourage ministers, DGs and agencies to be making a conscious decision prior to just having a breach at year end. There are a lot of reasons why at year end it might have been unforeseen at that point in time—actuarial may come in very late; it may be that your accruals came in a lot higher than what you expected; invoices came in at the wrong time. It is trying to understand where their breaches have occurred—because of poor fiscal management or because of unintended consequences, or something in between. That was the challenge in defining how you can then set disciplinary arrangements around something to make sure that they are targeting those who have got poor management as opposed to those who have just been caught, basically, between 30 June and 1 July on a timing issue.

In terms of frequency, it happens. In terms of that breach outside of an approval process, where we have come finalising of 30 June they are over and above what their approved expense limits were. I recall, Commerce was quite maturely over, two years ago, and that largely came out of their non-consolidated account funding areas where their own-source revenue was higher than anticipated and the expenditure matched that. Part of what we have done, both in identifying expense limits through the FMA review and working with agencies through their resource agreements, is we have increased our inter-year oversight of agencies' budgets. We do what we call quarterly actual reports now, where we use the data that comes in that feeds into the quarterly publications and our analysts use that to analyse year-on-year trend, year-in-year trend against budget on expense approp, FTE salaries—so a raft of information using the data. And going into the budget cycle in the February–March area, that becomes part of the analysis where the analysts in Treasury are going back to the agencies saying, “You’re tracking 75 per cent year to date; do you need to be looking at your

expenses? You were tracking 50 per cent last year or 30 per cent.” So we try to increase that analytics to give agencies the tool to make sure that they have live consideration of their expenditure prior to year end.

The CHAIR: Are there any examples of where agencies have exceeded their expense limits where ministers have not been aware of it; and, if not, why is there nothing in here? You know, there is disciplinary action on the authority, but, surely in the case of Health, the minister, from what I can gather, approved the agency taking that action, why would you only take disciplinary action against the public servant and not also some disciplinary action against the minister who approves it? Was that considered as part of the review?

[11.00 am]

Mr Smith: It did come up in terms of our discussions with the Public Sector Commission and that is where, I guess, in negotiating a way forward in terms of giving effect to the recommendations, we have to tread carefully because of the point that you actually raised in your question. So it has, but those discussions took place subsequent to the finalisation of the report, because that was circulated and then that was where we were getting the comments back from, in this particular case, the Public Sector Commission. Therefore, that was where, as part of negotiating that process, you have to be mindful of affording accountable authorities and ministers natural justice, instead of it just triggering, “You have strictly breached your expense limit and, therefore, there is a strict liability or a strict disciplinary process.” That would not really go to the natural justice side of things. Certainly, when we go back to this particular point where we will need to have further—in terms of implementing the administrative arrangements, we will have that very much at the forefront of our minds.

Mr Court: I think it is safe to say that the terms of reference for this review did not look at ministerial disciplinary action.

The CHAIR: Are expense limits and the exceeding of those ever publicly disclosed?

Mr Court: Yes. The *Annual Report on State Finances* has an appendix on the public ledger and identifies where excesses and new items have been approved, so that is the spending above what was in the original appropriation.

The CHAIR: In a case like Health where they do not get an approval under the Treasurer’s advance—I think that is where it is reported, the excess, those figures, in the state finances, is an account of the Treasurer’s advance, is it not?

Mr Court: Yes.

The CHAIR: So are there any examples other than Health where they have exceeded it and they never had approval? In those cases they are actually approved before the end of 30 June, are they not? They have exceeded it but they have got an approval, so, technically, they have not exceeded their expense limit.

Mr Court: So Health would be reporting their original budget and their actuals in their annual report.

Ms Gulich: There are some recurrent changes that were put in during the last reporting period under the accounting standards that is going to increase that level of scrutiny, budget compared to actuals. That will be in each individual agency’s annual report. So, it is in our TI 945 on annual reporting and reflecting WASB 1055. So, it has just tightened up the variance analysis and focusing on materiality. It requires each annual report now to include in the financial statement side of it the budget and then the final actual outcome and then material variances around the five per cent —

The CHAIR: So how will that work with Health where it is already complex enough with three and we are now going to five annual reports?

Ms Gulich: Excellent question.

The CHAIR: Can you explain to me how that is going to happen for Health?

Ms Gulich: I am going to get Mr Smith to do that one.

Mr Smith: There is a provision under the Financial Management Act, section 40, regarding annual estimates. Therefore, one of the requirements of those new health service provider entities will be to publish in their annual report the next year's estimates for that entity and, therefore, then through the Treasurer's Instructions, which is really just extending the requirements under the accounting standards in that regard to then—whatever their actual comes in against those estimates, then again any material variances will need to be reported in the following year's annual report.

The CHAIR: Why is that in their annual reports and not as part of the budget papers?

Ms Gulich: It is based on the Department of Health in the budget papers, based on the votes we provide for.

The CHAIR: Yes, I know. So we will not have that at the time of the budget, have a breakdown as to the five separate agencies; we will just have the service delivery areas.

Ms Gulich: Yes.

The CHAIR: And in theory they should all add up; those estimates in the five reports should equate to what is in the budget?

Ms Gulich: Yes. You will see counterparty transactions, which will be interesting to see how they work that through. This is going to be a very large challenge, but once it has landed, I think the level of transparency we will see in those five areas will be increased and it will again give that point of reference for where you are starting to see material variances against that initial section 40 estimate.

Mr W.J. JOHNSTON: It is slightly to the side of what we are discussing, but let us say we have got a person with a \$5 million authorisation who can approve contracts up to \$5 million and they approve a \$10 million contract; is that actually lawful? Does that bind the Crown if they have exceeded their delegation?

Mr Court: It would probably come down then to the nature of the contract.

Ms Gulich: I think there is some work going on at the moment. Certainly, our findings when we did the review was we wanted to tighten up both the delegations, so the delegation list of who can do what, and we wanted to limit where contracts were entered into in the absence of appropriate delegation and in the absence of appropriate expense approval to spend that money. I think what you find at the moment is that whilst it is not entirely appropriate, there is limited recourse when it occurs. That again is where we were looking at disciplinary behaviours or disciplinary actions in the event that those things occur.

Mr W.J. JOHNSTON: But you are still saying it binds the Crown nonetheless.

Ms Gulich: I think it will come back down to the intent —

Mr Court: Potentially, yes.

The CHAIR: In terms of the expense limits, if we wanted to get a list of the expense limits, they would all be shown in the statement of annual finances. That would give us the full list, would it, of all examples where expense limits have been exceeded?

Mr Court: In budget paper No 2 there will be the expense limit, the total cost of services, and you would have the actual for the previous year, so you could see how that tracked both by going back through the budget papers —

The CHAIR: And apart from Health there are no other examples where they have exceeded it without getting approval from Treasury?

Ms Gulich: The Department of Commerce one I spoke about was an example.

The CHAIR: Maybe if you could give us a list going back to the date of when the review started in 2011.

Ms Gulich: December 2011.

The CHAIR: A list of agencies that have exceeded their expense limits.

[Supplementary Information No A2.]

Ms Gulich: The only thing with that, we would just caution the committee, again, some of the exceeding expense limits will be because of natural timing issues and so that is where the nuancing of what has actually driven the expense —

The CHAIR: If you want to provide information that explains why it happened; I am more than happy for that to occur as well.

Moving on, I think takes on some of the stuff that Bill Johnston was raising. So, are you aware of any instances where an agency has entered into a financial commitment without prior approval; and, if so, can you provide examples of where this occurred?

Ms Gulich: It is a good question.

The CHAIR: Apart from Health, obviously.

Ms Gulich: I was going to say Health. Unfortunately, none of the three of us were involved in the initial scoping of the work so when we picked up the ownership of the report, the recommendations made sense in terms of tightening discipline to prevent it from occurring. We would probably have to go back and identify were there any exact instances that gave rise to this concern or was it more an absence of control in the underpinning legislation that drove us to want to tighten it up, basically.

Mr Court: There would be examples, and I am probably struggling to come up with them off the top of my head, where agencies have entered into things that have been alluded to already around contracts. It might be leases for accommodation and the like where it has probably exceeded the budget that they have allocated and that has been reported back to government and there has been a conscious decision there around the nature of the circumstances where that has happened, and there could have been a value-for-money justification as to why the agency did it, but it probably should have informed the minister and government. The government may have then accepted that and approved that increase in expenditure. There would be other examples where they have been asked to wear it and they have been able to re-prioritise within their budget to still stick within their expense limit. I think your question is really referring to examples where they have entered into something where they did not have approval for it and subsequently breached their expense limit.

[11.10 am]

The CHAIR: Not necessarily breached their expense limit, but they did not have approval to enter into the contracts of the size that they did, because the report talk about putting controls on authorisation of major expenditure.

Ms Gulich: One of the other things we have done outside of the FMA review—and it will come into practice early in the next financial year—is the new Treasurer's Instructions on contract management. We are looking for each agency to be required to hold a contract register that identifies all contracts over a certain materiality—who is the contract manager, who is the counterparty in terms of conditions, any milestone payments in there, cessation dates, any extension to the contract. The best practice register, you will find a lot of the agencies already have this information but might not necessarily have it in the one spot. That will then hopefully identify where contracts have been entered into that then become inconsistent with the delegation authority, and just the idea that we are going to be tracking it and scrutinising it in itself will help tighten up some of those discipline concerns.

Mr B.S. WYATT: Is there any capacity for those larger contracts that allow for delegated spends, where the partner, whoever the contract is entered into, so they are contractually aware who can actually authorise—in terms of protecting the taxpayer, we are talking about, in the end, you discipline the public servant but realistically the money has gone. In terms of other end, where the organisation providing the service also understands that, under the terms of the contract, if the authorisation is not by a set range of people—positions perhaps—then they cannot rely on that.

Ms Gulich: So they do not take advantage, so to speak. I think arguably you can contract any conditions into a contract; it comes down to what you are paying off in negotiating that type of structure. Whether that adds to a feeling that there is distrust between the parties or that the process that supports the contract is not appropriate, it might be not desirable.

Mr B.S. WYATT: I am just thinking in terms of how do you protect the taxpayer from that when there has been a breach of that delegation? Is the private sector partner that the Department of Health, for example, is contracting with also under an obligation to ensure that, okay, if there is a variation to the contract and that is a big variation, can that private sector partner just rely on anyone in the health department or are they required themselves to satisfy?

Ms Gulich: A lot of the big contracts will have a variation schedule on who needs to authorise the variations to be of certain materialities, so it is, I guess, making sure on both sides that that schedule is followed. It should also have a strong degree of separation of duties in your project management sitting behind contracts on both sides of it so that the person negotiating is not necessarily the person authorising, and certainly not the person paying. That is definitely what we see in our larger contracts that we run through strategic projects, for example.

The CHAIR: One of the things there is that it is very much focused on, obviously, internally the executive understanding what is happening in individual agencies, but some of these contracts could last for an extended period of time and lock the state into ongoing obligations before money has been appropriated by Parliament. What check is there to stop an agency entering into a long-term contract that commits the state to expenditure prior to there being an appropriation from Parliament to authorise that expenditure? What would happen if Parliament then refused to authorise that expenditure?

Ms Gulich: For that purpose—good question.

Mr Court: I think they would tend to go back to the original inception of that contract and that when that procurement of that service or good or infrastructure is made, that through the budget process it is being signed up to in the original decision of government to go down that path. On the capital work side of things, we are trying to get a longer term look through the strategic asset management framework, where we have 10-year capital investment plans and maintenance plans, because it is probably in maintenance plans where you might have some of those longer contracts. Similarly, we are trying to improve that goods and services procurement planning side as well so that agencies prepare procurement plans, which then also have the procurement process.

The CHAIR: But that is all about control for executive; you still have not answered the issue around how does the Parliament—and what authority are those long-term contracts entered into when you do not have an appropriation from Parliament for that expenditure?

Mr Court: I am not sure, though, that there would be that many in any case.

Ms Gulich: Materiality —

The CHAIR: I can think of two just off the top of my head; in fact, I can probably think of three as I start going down the list.

Mr W.J. JOHNSTON: Let us assume that Parliament did not authorise the payment of the bill, there is actually nothing that the counterparty could do, is there, because they could not sue the Crown for the enforcement of the contract?

Ms Gulich: I think they can.

Mr Court: They can.

Mr W.J. JOHNSTON: How? Because the Crown cannot make the payment without the authorisation of Parliament, so how would—they might sue them, but they could not succeed. Indeed, this is an issue that UBS in advising the New South Wales government about the privatisation of the power poles has not attempted to give any protection to the purchasers for a capricious Parliament seizing the asset in the future. So in New South Wales—and there might be many reasons for them not to do it—a future Parliament is completely entitled under that privatisation to seize the asset and pay no compensation. So if there was no authorisation for expenditure, there is nothing anyone could do to get the money out of the Crown, is there?

The CHAIR: Unless they enter into a contract with excessive break clauses, and an opposition says, “We won’t honour that when we get into government,” what is the legal authority to pay it?

Mr W.J. JOHNSTON: There would not be. There might be political persuasion not to do it because of all the sovereign risk issues, but, in fact, at law there would be nothing that the counterparty could do.

The CHAIR: But if it is declared before the contract is signed that a future Parliament will not accept that, if the Parliament changes—I am trying to work out if there is anything in the act that actually provides for that, and it focuses very much about accountability back to the executive, but nothing to Parliament. Obviously, we are here as representatives of Parliament, not the executive, today.

Mr Court: That is what the focus of the review has been around, the accountability to the executive.

Mr W.J. JOHNSTON: So the counterparty could sue the minister for false representations, but the Crown would be protected?

Mr Court: Yes, I guess. I think you referred to it as entering into areas of sovereign risk and getting a good business investment environment for the state and so on.

Ms Gulich: Certainly, what we endeavour to do through the FMA and through the various mechanisms in government is, through government procurement, having standardisations for unique-type contracts that do have those exit clauses; having project management for large capital works projects where the project is approved through the discipline of a business case, a PDF and then going through the tender; and then it is the stuff that falls sort of outside of that material —

Mr W.J. JOHNSTON: Sure, so you are looking at the recommendations of both the commonwealth and Victorian Auditor-Generals in respect of the east-west—or whatever it was called.

Ms Gulich: East West Link.

Mr W.J. JOHNSTON: Yes; in Victoria, where both the commonwealth and state Auditor-General strongly criticised the public service for not having written advice to the ministers where the minister wanted to proceed with the project, which was opposed by the opposition. In the lead-up to an election there was specific criticism of public servants for not providing written advice about those risks. Is that something that is being considered in respect of this financial management approach?

Mr Court: It was not specifically considered in this review, no.

Mr W.J. JOHNSTON: Are you going to start considering those recommendations?

Ms Gulich: We have the 2017 review of the FMA commencing early next year.

The CHAIR: To move things on, I think there are a range of issues and it is clear that you probably were not able to answer a number of the questions that we put to you just then. So what I might do is make A3, so that if you want to come back to us with broad comment on the issues that we have raised today in this area about those accountability issues, you can come back with that as supplementary information. If you do not have anything further to add, but I would certainly invite you to come back and provide us with further information in those areas. As part of that, before I go to individual members to ask questions, you talk about the need for it but you do not give any idea about the scale and the scope of the problem, so whether as part of that supplementary information you could give us some sort of indication of what is the scope of the problem, how often does this occur and the examples of where it has occurred in terms of people entering into contracts without authorisation. So all of that is part of A3.

[Supplementary Information No A3.]

The CHAIR: What I might do now is go around the table and give members the opportunity to ask any questions.

[11.20 am]

Hon ALANNA CLOHESY: I would like to talk about universities, particularly because recommendation 8 talks about universities. In relation to that recommendation about removing public universities from the FMA, how would universities establish and report their performance indicators if they were removed from the FMA?

Mr Smith: I can answer that. What would be proposed would be that that would be contained in their own enabling statutes, so rather than them being subject to the FMA per se, as they currently are—I would just like to make the point that universities are not consolidated into the state's finances as well, so they kind of sit outside. Most of the funding that they receive would come from the commonwealth, but because they are set up under state statute, they are audited by the Auditor General and come under the auspices of the FMA. However, there is also another movement in that space in that I think just this week, or very recently, the Universities Legislation Amendment Bill has been introduced into the lower house; I think it is second read there.

Mr W.J. JOHNSTON: The minister has second read.

Mr Smith: Yes. That has been happening in parallel with when this report was being prepared, so we want to have a look at what the final outcome is of that legislation, because there could be some things in there that may require some modification to what we are recommending in here. But the general idea was that they would still have to produce an annual report in accordance with accounting standards and be audited by the Auditor General and be tabled in Parliament by the appropriate responsible minister. The other thing, too, is that they are under a lot of reporting requirements from the federal department of education, or whatever that is called, because of the large funding that they get from the federal government body there. Therefore, the FMA overlaying with the requirements for reporting at the federal level sometimes conflicts—there was one time where they were looking at producing almost two annual reports. It is about also streamlining governance but without losing any transparency or accountability over the universities. What we are saying is scope them out of the FMA, but still have that transparency and accountability contained within their own enabling statutes.

The CHAIR: Effectively make them a GTE.

Hon ALANNA CLOHESY: That was going to be my next question. Would that not have the same problem as GTEs do, in sort of having an overarching form of accountability, instead of going to individual enabling acts, knowing what the kind of broad responsibilities and accountabilities are across the universities? Would it not have the same problem if you just put it all back in their enabling act?

Mr Smith: I mean, a lot of it is in the enabling act as well, and that is why we want to have a look at —

Hon ALANNA CLOHESY: Streamlining it.

Mr Smith: Yes, and also at what transpires out of the current legislative program with the amendment bill, and that will inform us also, because then that is looking at changing certain elements within the respective universities.

Ms Gulich: On balance, part of looking at this was where can we be streamlining both our own responsibilities and the provisions within the legislation, and it was felt, given the alternative under their enabling legislation and the scrutiny they get from other sources, that there was no persuading benefit to add that level of duplication onto the universities, and that was something that they made strongly in their representations to the review.

The CHAIR: Who is ultimately liable for any debts incurred by a university if it is unable to meet them itself? Is it the state?

Ms Gulich: It depends on borrowings. They have got borrowings guaranteed by the state.

The CHAIR: And they pay their borrowings levy. But ultimately, if it is other than borrowings—if they incur any other debts—is the state held liable for them because they are a state instrumentality, or are we completely sure that they are at arm's length from the state in terms of debts if they incur them—if they enter into a contract that goes sour and they have to meet the repayments?

Ms Gulich: I am going to say that I am almost completely sure that it would be arm's length, given that they are not consolidated into our statements and we are limited by the extent of the guarantee on the borrowings. I cannot think of any that we would be responsible for.

Mr Smith: The only other exposure would be that there are a couple of universities that have the unfunded superannuation schemes, so there would be —

The CHAIR: We guarantee those as a state, do we?

Mr Smith: Yes.

Ms Gulich: They are part of our broader liability.

The CHAIR: In terms of the debts, is that recorded as a debt—is the liability for that held within the WATC accounts?

Ms Gulich: Yes.

The CHAIR: Is it held as a debt and then an asset, so it nets itself out, rather than actually recording the real level of the debt that we might be liable for, because I assume we are just making the assumption, then, that the debt will be repaid?

Ms Gulich: Yes. It is part of the gross borrowings that the state holds—it includes the universities.

The CHAIR: But you need to have an asset.

Ms Gulich: You have a financial asset that offsets that, yes, from a net debt perspective.

The CHAIR: In terms of the loan guarantee fee, how is that then recorded in the accounts of the state to make provision for the risk? You have clearly increased the loan guarantee fee—you are taking that as revenue—but is there somewhere in the state accounts that records the risk of those debts not being repaid?

Ms Gulich: I do not believe so.

Mr W.J. JOHNSTON: It is free income.

The CHAIR: Supposedly to carry a risk. It is the same for local government. I might make that a supplementary question to confirm. If there is not, why is that not held, and should that be something that needs to be put in the FMA if it is not there now?

[*Supplementary Information No A4.*]

Mr B.S. WYATT: Can I just ask a question on the Treasurer's advance—just moving on to a different topic for a minute. One of the things that surprises me is that the Treasurer's advance is for extraordinary or unforeseen circumstances. Does that term actually limit what can be spent through the Treasurer's advance? Is there a legal definition or a legal advice that Treasury has obtained about what is extraordinary and unforeseen? It has always struck me that that does not seem to actually limit what can be spent through the Treasurer's advance.

Mr Court: No. I think that has been an issue of some uncertainty, so we are looking at making some amendments to the act to remove that terminology.

Mr B.S. WYATT: So that would specifically be removed for the Treasurer's advance. What would be the proposal then—just to make it any spend?

Mr Court: Yes.

Ms Gulich: Yes, capped by the three per cent limit on total expenditure. We put those words in initially when we moved from the FAAA to the FMA to intend it to be broad to capture all circumstances. The unintended consequences of using unforeseen and extraordinary is we try to define what they are every time we go through the appropriation bill process. I do not think it has been helpful for how the actual TA works in reality. So the intention here—the recommendation of the review—is remove those and just focus on the fact that a TA is set at three per cent of the previous year's appropriation.

Mr B.S. WYATT: Does any other state have limiting language in their equivalent of the Treasurer's advance?

Mr Court: I think it was not the intent to be limiting languages; it was actually supposed to be to keep it broad. But I think it has been interpreted as trying to limit it to things —

The CHAIR: I think a future Treasurer who might see the state of the finances and want to limit agencies' expenditure might want to have it limited. Sorry!

Mr B.S. WYATT: I will take that as a comment! So the only limit would be the three per cent?

Mr Court: Yes.

Mr B.S. WYATT: In other states, is it a three per cent limit? Again, how does the three per cent come around, or is that just simply historically, or do other states —

Mr Court: I think it is historical, and I think there are probably some similar arrangements in other states—I know there are—but I think there is some variance amongst the states as well, though.

Mr B.S. WYATT: Are there proposed changes to the Treasurer's advance from Treasury in respect of perhaps line agencies' accountability around that spend?

Mr Court: I am sorry; I misunderstand.

Mr B.S. WYATT: Are there any proposed changes? You made the point that you are wanting, in the recommendation, to remove extraordinary and unforeseen?

Mr Court: Yes, just to remove the confusion around what that means. So, it is not to provide another limitation; it is just to remove the definition as it was seen to be unnecessary.

Mrs G.J. GODFREY: Under section 77, it talks about delegations. There is a statement there that there is no legislative requirement for delegations or authorisations in maintaining record keeping. In local government there are. I am just wondering what is your view on recording delegations and authorisations?

[11.30 am]

Ms Gulich: Section 77—sorry?

Mrs G.J. GODFREY: It actually says that delegations are to be in writing by the person making the delegation. But there is no follow-up to actually maintain record keeping for the authorisation.

The CHAIR: It is covered in your recommendation 6.

Ms Gulich: As we say here, we would recommend trying to close that and actually create more structure.

Mrs G.J. GODFREY: So are you suggesting that it should be, even though you just made the comment that there is none?

Ms Gulich: If I understand you correctly, you are saying the current “if” and “may” under section 77 leaves it open in terms of maintaining a record of delegations. Our recommendation in the FMA review is to tighten that and to require a list of delegations to be kept and maintained accurately.

Mrs G.J. GODFREY: Okay; good. My second question is: what sort of a structure is RWWA?

Ms Gulich: A public non-financial corporation.

Mrs G.J. GODFREY: How do you deal with that?

Ms Gulich: They provide what we call a statement of corporate intent and an SDP—a statement of development plans—on an annual basis that aligns with the budget cycle, so in both the SCI and the SDP they indicate what their next 12 months’ of expenditure and revenue assumptions were and then some of their broader four to five-year time horizons, picking up AIP and broader trends in their revenue and expenditure. That goes through to the minister, who endorses it and provides it to the Treasurer for concurrence. The Treasurer will normally provide his or her concurrence on advice from us about the alignment of the financial impact with broader state aggregates.

Mrs G.J. GODFREY: And one of those is not made public, I believe.

Ms Gulich: The SDP, being a longer-term strategic document, will often have policy options and sensitive business scenarios based on where they think some of these markets are going, and given our GTEs are operating in a very commercial environment, sometimes you are not necessarily wanting that discussion between the entity, the minister and the Treasurer to be publicly available.

Mr Court: That is the same for all the SDP/SCI arrangements for other government trading enterprises. Their four-year capital works programs are published in budget paper No 2.

Mrs G.J. GODFREY: My last question is around the Department of Housing. You have made a statement that the Auditor General found that the Department of Housing was an inactive entity.

Mr Smith: I can answer that. I guess there is a little bit of a history lesson here. The Housing Authority is a statutory authority, so it has actually got its own enabling statute that creates the legal entity. Many years ago, you may have been familiar with the Department of Housing and Works, and so that banner sat over the top of both the Housing Authority and the then department—they came in under that umbrella. When the works function moved to the then Department of Treasury and Finance as Building Management and Works, that left nothing in the Department of Housing, as it had to be rebadged, and that, I guess, administrative entity continued on, but it was like a shell, so hence it did not have any assets or liabilities, but it still existed as an administrative entity, which meant that it needed to be subject to audit. The Housing Authority is where all the assets and liabilities of the Department of Housing are, because they used that badging, as I understand it, and now more recently they have kind of discarded that badging of Department of Housing and now are going out more with Housing Authority. So, there is still the department in name only, but that does not necessarily mean that all those assets and liabilities of the Department of Housing are somewhere out in the ether; they are now under the legal entity or the statutory authority called the Housing Authority.

The CHAIR: So why has the department not been abolished, because surely that would be able to be done as an administrative action of just abolishing it or amalgamating it into another department, would it not?

Mr Smith: I could not answer that.

Ms Gulich: We have got a couple of anomalies.

The CHAIR: Are you sure there is no debt—it is not that they have got some kind of ongoing liabilities or commitments?

Hon ALANNA CLOHESY: There was something explained to us in the annual report hearings about this, but I cannot recall it right now.

Mr Smith: Yes. When we have looked at it, it is a nil return, so if there was a bona fide liability pertaining to the department, it should be recorded in the balance sheet and therefore be audited accordingly, but there is not any.

Ms Gulich: Certainly with something like this we would anticipate that if that was to proceed, we could flush out any issues like that and we could then resolve them, because it may be part of that transition of abolishing that department.

The CHAIR: We were talking earlier about those delegations and authorisations. Are there any instances where non-delegated or non-authorised parties have exercised power?

Ms Gulich: Not that I am aware of. In the absence of a register and having that kept up to date and documented, it means that it is difficult to know, but we expect it does occur both at the minor levels between purchasing cards.

The CHAIR: Is that one where it has been done by an administrative function requiring actions, or is an amendment to the FMA act required to make it happen? Surely you could achieve that through a TI or some other administrative function, and have you done that; or why would you not do that pending a backup of the FMA being amended?

Mr Court: That is on our work program, to look at doing a TI to require this. As I think Kaylene mentioned earlier, we have put some effort into the register of contracts, so we saw that as a priority, and now that we have got that one almost finished we will look to doing a similar exercise on the delegations.

The CHAIR: Unless any other members have any other questions that they definitely want to have asked today, I might draw it to a close, as members have other important activities they need to move on to. We do have other questions but we will submit those in writing to you. Is there anything else you want to make comment on before we bring the hearing to a close?

Mr Court: No.

The CHAIR: All right; and there is nothing else that members want to raise. Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript. If you want to provide additional information or elaborate on particular points you may provide supplementary evidence for the committee's consideration when you return your corrected transcript. If there are any matters that are going to take longer than the time for returning your corrections, if you can just provide those that you can, and indicate those that you cannot and just provide those when you are able to. With that, I thank you very much for your attendance today.

Hearing concluded at 11.39 am
