

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Victoria's Audit Act 1994

Melbourne — 7 April 2010

Members

Mr R. Dalla-Riva

Ms J. Graley

Ms J. Huppert

Mr W. Noonan

Ms S. Pennicuik

Mr G. Rich-Phillips

Mr R. Scott

Mr B. Stensholt

Dr W. Sykes

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Chair: Mr B. Stensholt

Deputy Chair: Mr K. Wells

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Executive Officer: Ms V. Cheong

Witnesses

Mr D. Pearson, Auditor-General,

Dr P. Frost, Chief Operating Officer, and

Mr M. Bini, Director, Policy and Coordination, Victorian Auditor General's Office.

The CHAIR — I declare open this Public Accounts and Estimates Committee hearing on the inquiry into Victoria's Audit Act 1994. On behalf of the committee I welcome the Victorian Auditor-General and members of the Victorian Auditor-General's Office: Mr Des Pearson, Auditor-General; Dr Peter Frost, chief operating officer; and Mr Marco Bini, director, policy and coordination. Members of the public and the media are also welcome.

In accordance with the guidelines for public hearings, I remind members of the public that they cannot participate in the committee's proceedings. Only officers of the secretariat are to approach PAEC members. Departmental officers, as requested by the Auditor-General, can approach the table during the hearing. Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council Committee Room.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. There is no need for evidence to be sworn. All evidence given today is being recorded. Due to delays that will be experienced in the transcription by Hansard of the hearings, witnesses will be provided with proof versions of the transcript by the end of April, which should be verified and then returned within three working days of receipt. In accordance with past practice, the transcripts and any presentations will then be placed on the committee's website.

I now pass to the Auditor-General for any opening comments. Committee members will ask questions regarding the discussion paper and VAGO's submission to the committee. Generally the procedure followed will be that relating to questions in the Legislative Assembly, but we will probably be a little freer than what we have been in the past.

I ask that all mobile telephones be turned off.

I will just note for the record that we received a submission this morning from the Secretary of the Department of Innovation, Industry and Regional Development. We have accepted that submission and made it available to the public.

Mr PEARSON — Thank you, Chair. I would like to take the opportunity to introduce my approach to this by making the point that VAGO has made a very comprehensive submission for the committee's consideration and, until this morning, we were aware of five other submissions, which I was expecting we would be discussing today.

I think it is appropriate to highlight three thematic issues that go through VAGO's submission. The first one is the erosion of mandate, the second is the gap in mandate, and the third I see as the range of issues with implications for the independence and operation of the audit function.

Briefly, if I turn to the first issue, the erosion of mandate, the committee will recall that we raised this in June 2008 at the completion of the preparation of our 2008–09 annual plan, where it came to notice. I suggested to the committee that the central question arising is whether the standard of public officials' accountability — and I stress that — for program delivery should change when delivery mechanisms are varied. As I see it, the source of funds remains the same; it is taxation. The purpose of the program remains the same; it is delivery in the public interest and for the public benefit. Invariably the service is not delivered in a competitive marketplace; that is the nature of government services — it is what the private sector is unwilling or unable to provide. It is against that context that I note that the public sector audit mandate has traditionally been very wide and has always embraced coercive powers or had coercive powers made available to it, recognising the nature of public sector operations and the lack of a marketplace.

On the second issue, the gap in mandate, I see the central question to be answered as: why should some users of public resources be treated differently from the normal approach to oversight of the expenditure of public resources? At a wider, though related, consideration in the context of the current review of the integrity system as it operates in Victoria, that raises questions as to what impact the lack of universal audit coverage has on the foundations of such a system.

Thirdly, in relation to the range of issues with implications for audit independence and operation, I see the central question as whether the appropriate balance has been struck. There is no denying as the independent

external auditor that there is a need to be accountable, but equally we need to bear in mind that the function has to operate independently and reach independent conclusions.

Finally, in concluding these opening remarks, I would emphasise the significance of this very rare opportunity we are embarking on of reviewing audit legislation. Reviews of audit acts are very infrequent. If I look at it systemically, this current review represents the third wave since the Federation of Australia. In that context I think we all need to redouble our efforts to consciously address and pay attention to the principles of public sector accountability, because this rare opportunity will influence the standard of public accountability, which will underpin the operation of the Victorian public sector for the foreseeable future.

The CHAIR — Thank you very much, Des. Given that this is the third wave of change and you have mentioned erosion of mandate, gap in mandate and also seeking balance, I thought I would start off by asking where, in a contemporary perspective, you see the role of the Auditor-General. I notice that in your submission you were quite firm in rejecting the concept of the Auditor-General being the agent of Parliament. In your submission and in some other submissions there was a very strong emphasis on independence. I am not suggesting therefore that you think the Auditor-General is above Parliament or indeed is seeking to be a fourth arm, but do you wish to comment on where you see contemporary philosophy in terms of the role of the Auditor-General in respect of its place in the Westminster system?

Mr PEARSON — I find that hard to answer in a way because I find it difficult to see it as different from what it has been historically. Powerful is not the right description because there is no executive authority, but the auditor has traditionally had a very wide remit to review the operations of the public sector, as the eyes and ears of Parliament, one might say, and to report independently to the Parliament. The only sanction the auditor has is to put the spotlight of publicity on a report by making it public.

That is an important tenet of our system of democracy that operates with a reasonable level of transparency and a check and balance so that all stakeholders in the system can rely on the information they are being provided. In a sense that is reflected partially in terms of stewardship by this universal audit of financial reports. In terms of performance, that is why the second wave of reform of the audit acts codified the approach to performance auditing. When you look back over history, public sector auditors both in Australia and in the Westminster system generally have always had that wider remit of varying things — of probity, avoidance of waste and extravagance, and the proper use of public funds. In that sense, I do not see it as changing, but it is very important for that function to be able to be discharged reliably, for the auditor to operate reasonably as a free agent. I think that is where we come back to the balance in the oversight.

As I have said in the submission, I see a very clear role for consultation with the primary client, the Parliament, in relation to the annual audit plan, because that is strategic planning of the audit operations. To me that is the appropriate time for the Parliament to make known views or thoughts and considerations, and conversely, apart from the ongoing oversight of the office by committees such as PAEC, the periodic performance audit of the office is a legitimate, independent report back to the Parliament of how it is operating. Some of the areas we might come back to and discuss is the extent to how close we get to the operational side of the office.

The CHAIR — Yes, I guess that is something we wanted to discuss, particularly as your submission basically says that under the current arrangements, particularly between this committee and the Auditor-General and the Auditor-General's office, that needs to be rebalanced and that the Public Accounts and Estimates Committee should be less involved.

Mr PEARSON — Certainly in the submission I raise the issue about the involvement in individual audit specifications. That is clearly a one-off, and I have raised it for consideration.

Mr DALLA-RIVA — I just want to go to the issue of the funding. In particular, you mention you are wishing to have some autonomy in determining the level of funding free of executive influence. Do you just want to maybe expand a bit more on that? I know it is in the submission, but how does that impact on you in the operation of your office when you are constrained by, I guess, the bureaucracy determining what you can and cannot spend on?

Mr PEARSON — It is not determining what I can and cannot spend on, but it is the certainty of the flow of funding, because the audit program, while statutory, is an annual program. We have brought it out to a four-year program to provide for more informed consultation with the committee as well as the clients we audit and to

better engage other stakeholders. In raising it, there is certainly the issue of funding but equally there is the issue that happened over the last couple of years with our budget where there was a need to re-establish the base. Notwithstanding the statutory provisions of consultation and involvement of the PAEC, the executive government exercised a straight executive role on it. Again this is another area of rebalancing the impost or controls on the office. On one hand it could be perceived as double jeopardy; at the other extreme I suppose people say, 'You are using public funds. That is a cross you have to bear'.

Mr DALLA-RIVA — When you do audits and performance audits and you do the annual reports, you charge a fee. Is there not a capacity for maybe getting more from that or is it not as simple as that?

Mr PEARSON — No, it is not as simple as that in the sense that in the current legislation, if you look at it holistically, our office is 60 per cent financial statement audits, and under the Audit Act we are required to recover the reasonable costs of conducting those audits from the subjects. The other 40 per cent that represents performance audit is funded by appropriation. While the total budget we consult with, the part that is coming out of the budget is the one that greater attention is put on. That is where I am grateful the committee in my time has, after consultation, asked the questions and has supported our bid. In respect of that we have to deal with an executive government that has to balance a budget, it took a decision at variance and replicated some of the checks that had already been imposed. I suppose I just questioned the reasonableness of that.

Mr DALLA-RIVA — What is a good example of another Auditor-General's office where it has probably got the perfect system for funding?

Mr PEARSON — It is a difficult one to say the perfect system, but in New Zealand the presiding officers take the budget to the Parliament and move it. I think in other jurisdictions that the PAC recommends the budget. It is a bit like the appointment of the Auditor-General; they recommend the budget, and the government of the day is obligated to provide it.

The CHAIR — But I mean no agency — perhaps agency is the wrong word — or no body or anyone is not subject to the executive arrangements in respect of budget management, because they are in a number of acts. The Parliament itself does not have the privilege that you are requesting for the Auditor-General.

Mr PEARSON — No. I think the issue I am questioning is there is a statutory process provided.

The CHAIR — But the Parliament does not have that statutory process.

Mr PEARSON — No, but in the Constitution Act and the Audit Act, in trying to enshrine and protect the independence of the Auditor-General, there was a statutory process prescribed that was followed and then it was overlaid with an executive intervention.

The CHAIR — Sure. I was just pointing it out. We will take it up with Treasury and Finance as well.

Mr NOONAN — I wanted to ask about one of the central issues in all this — that is, the audit of public money and property and access to third-party premises. It is variously described as 'following the dollar'. You rightly point that out in your submission. You go to this in detail and you refer to the proposed amendments as 'first order issues' for the Auditor-General. I think you make the point that service delivery models of government increasingly involve partnerships, alliances and other service delivery models. You also make some comments about the use of contracts and terms of contracts between government and private parties and those being relied upon in terms of individual contracts to provide a level of access. I think that you also indicate that that access is unreliable in practice.

Just finally, you make the point that the Western Australian and Tasmanian jurisdictions have done a lot of work and made some changes in this area. What I would be interested in your providing to the committee are some general comments about these issues and also how the committee might consider the sort of ring-fencing concept around access, which has been put forward in other submissions, in that it seems to be concerned about open access to third-party premises and what you may or may not have access to and how that could be better catered for within amendments to the Audit Act.

Mr PEARSON — Essentially the underpinning to it comes back to the auditing standards and auditing evidence, that fundamentally it is just not good enough to take someone's word. The obligation on the auditor is

to find corroborating evidence or complementary evidence that provides a higher level of assurance that what you are being told is reliable. What we are looking for is the ability to continue to be able to do that. We are able to do it within the public sector and within programs delivered by the not-for-profit sector. The act already provides for that access, and it is operating quite satisfactorily and without issue.

In terms of the reliance on the contracts, we see that as problematic in a couple of respects. The legal advice is that because we are not a party to the contract, we are then subject to the discretion or the cooperation of the government party, which then impacts on your independence and ability.

The other one is that the performance of the sector in making provisions in contracts has a very checkered history. Notwithstanding policies, principles and guidelines, what I might call the success rate or reliability rate is quite low. Whether it is consciously or unconsciously, it gets overlooked and, in fact, I have had it put to me by some others that it provides an unnecessary leverage in negotiations that it can then become part of, and we are subordinating public accountability to an individual transaction's negotiation.

If I take the final thing, the fairest way all round is to set the universal rule in the legislation. People are then aware of the rule, it is non-negotiable and experience elsewhere has been that it does not impact on people's willingness to trade or treat with the public sector. I suppose, in summary, I see this debate as a re-run of the commercial-in-confidence debate that happened in the 1990s, that contracts had to be kept commercial and the auditor could not look at them. They are safe but parallel arguments were run and I can only say that I see it as a repeat of that.

Mr NOONAN — You make the point that there is no incentive for either party in a government and private party contract arrangement to enforce a clause essentially to rule in your favour around access. Has that been the experience and, if so, can you elaborate?

Mr PEARSON — There is no specific example at the front of my mind.

Mr BINI — There is not a specific example that comes to mind. If you have a look at page 16 in our submission you will see there is a range of reasons we have gone through as to why the contractual approach has a range of problems. Again, a specific example does not come to mind but suffice to say where you have a government party and a private sector party who have signed a contract to which the Auditor-General is not a party and there is a clause in that contract that ostensibly for one of those parties — more likely both of those parties — there is not going to be a clear incentive for them to want to enforce that particular clause, especially when it is for the benefit of a third party, that is, someone who is not a party to the contract.

The other thing I should mention is that if you look at some of the standard clauses that are supposed to be inserted in government contracts, they actually talk about access by the department and not access for the Auditor-General. So, as Des says, there is a range of problems with the contractual approach which we have tried to spell out in the submission. At the end of the day you need a rule in the legislation that says the Auditor-General will have access and then you avoid these issues about incentives and — —

The CHAIR — Has there been any problem to date in terms of access?

Mr PEARSON — My reading to date is to the extent we have accessed private organisations they have been cooperative, but my fear as the auditor is that when things are looking regular people are inclined to be cooperative. If things are looking less than regular there is an incentive both for the administering department and the commercial partner not to be so cooperative. This is where I bring us back to my exhortation to address the principles, and the hitherto established principle of public sector accountability is that you provide in legislation for the oversights and slips. I would stress that they are used in an exception but it is a bit like the saying that the best contracts are the ones that are never resorted to. The best legislation is the one that is rarely used, and I come back to the coercive powers of the act. They are rarely used but there is an important message to the system and an underlying provision to maintain the capacity for independent audit by enshrining those sorts of provisions in the legislation.

Ms PENNICUIK — Following on from that point, what is of interest to me in particular is if the act is not amended to allow you to follow the dollar, as it is and, as you have put it, public money or public property in the hands of private sector contractors. Also in your research you are saying that the amount of expenditure has

increased from \$5 million 10 years ago to \$1.46 billion now of public money going into these PPPs and alliances.

If the act is not amended, what would be the situation where you would come to the view that there was a signed contract, that perhaps your hearing is not going quite so well and there is a closedown — the contractors and the department start to refuse you access — where does that leave you as the auditor?

Mr PEARSON — It would effectively leave the auditor saying, ‘I am unable to complete my audit and therefore I can’t form an opinion’. But I think it would then take us back and it would be something we would have to consider in the consultations on the annual plan. But as we have had discussions, in areas where I am only entitled to audit in the gap areas by protocol or agreement but I am subject to direction of the people inviting us in, in terms of priorities I am really questioning whether it is responsible to embark on audits that are out of mandate.

Ms PENNICUIK — Can you elaborate on your submission where you say that there is a paucity of publicly available data precluding identification of exact levels of expenditure. What sort of publicly available data do you think there is on these?

Mr BINI — We commissioned an academic to do some research for us and he made numerous inquiries of DTF for particular data he needed for the research. At the end of the task he formed the view that either the data was not available because the department was not willing to provide it or, alternatively, the data was in a particular state where it was not able to be easily collated or put into a single approach. In the end he used what publicly available data there was to come up with the figures you have in the submission.

Obviously there are difficulties with definitions around this material as well, when you start talking about expenditure and the difference between capital and expenses and so on, but basically he ended up having to use the publicly available data and he found there was not a great deal of it around in relation to these particular types of contracts.

Ms PENNICUIK — Most people have found that.

The CHAIR — I would disagree.

Ms HUPPERT — I am talking again on the same topic. I have just read the submission we received this morning and the views of the department under general comments on page 2, which I have only just had a chance to skim as well. It says that if legislation were introduced which exposed all contractors engaged by government to the potential of audit of their operations, it would be a disincentive to contracting with the government.

I just want your views on whether or not it is possible to construct a legislative power that does not go too far. In other words, how far do you want the audit powers to go — investigative, just follow money or the total operations of the contractor? I just want your views on what type of power. I mean to expand further on the specific powers you are seeking and how it could be ensured that they are limited only to the operation, following government public money and policy rather than generally, which seems to be the fear, that that would lead to a general audit of the contractor’s operations.

Mr PEARSON — I confess up-front that to me it is a very simple equation or delineation. Maybe I am too close to it because I get frustrated at how people misconstrue it and misrepresent it. Typically it gets misrepresented as us wanting to audit the private sector. While the specifics of the legislation, to me, come back to the parliamentary draftsman, it is really a provision that enables the auditor to access partners in service delivery that are subject to a commercial contract to obtain essentially information or assets of or in relation to the delivery of public sector programs. In a sense we do not want to audit the books of a private provider. To me it is a very marginal impost. The contractor will be dealing with the host agency on an operational basis. From time to time there can be an audit and to the extent that we as auditors cannot find sufficient evidence within the public sector department we want access to the private provider to obtain the corroborating evidence. It is really an entitlement to interview and talk to them about their systems or whatever.

I do not want to make it dramatic but probably the simplest example to use would be the audit that my counterpart in New South Wales did a few years ago of the on-time running of the public transport system. My

reading is that because in Victoria it is contracted out, undertaking that audit is liable to be fraught. If I come to the very basics of on-time running, you would like to understand on what basis the trams and the trains collect their source data and begin the reporting system.

I am sure the Department of Transport would have a reporting system, but the extent to which they have an audit regime or some rigour over how the report is prepared and the quality was assured would be the first threshold. I hope that is covered in the contract, but if it was not, that would be an immediate requirement for an audit to go back to source and establish the veracity of the reports that we are reviewing. So it is very much in that context of while we are engaging the private sector to participate in the delivery of programs, they are being paid for that and part of the overhead they obviously accommodate in there is their relationship with the contracting department. What we are talking about here is a very minor overlay on an exception basis that from time to time the auditor might also want to talk to them separately rather than through the department that we are auditing.

In this respect I suppose I would say two things. In our discussions as we move around talking to stakeholders preparing the annual plans and talking to people at VECCI, they do not see it as an issue.

Dr FROST — Infrastructure Australia.

Mr PEARSON — Infrastructure Australia is on the record in that respect. Similarly, where it is already existing, the act provides for it, the access we are requesting in relation to non-commercial contracts. So where the service is being delivered by a not-for-profit entity, we have been operating, I think since 2003, with this provision without exception.

Mr BINI — Can I also make a comment about the point you are raising from the submission? I accept, obviously, there is an argument about there being a disincentive for contractors. But could I put the alternative view, that there might actually be an incentive simply because if you are a contractor going through the normal tendering process for contracting with government and you have previously done a contract which was audited by the Auditor-General and was found to be efficient and effective and all the rest of it, I would assume that is something you would want to bring to the attention of the department that you were contracting with the next time, so it could actually act as an incentive. I accept there is an argument about disincentive, but why could it not act as an incentive, because what better situation for a potential contractor than to be able to say, ‘The Auditor-General looked at this program, said that it was delivered on time’, et cetera, et cetera? That would be something that I am sure a contractor would want to draw to the attention of government the next time they are going to tender.

The CHAIR — What you have said, though, is that you are auditing the government body. You are not auditing the private provider; the private provider would not be able to make that claim.

Mr PEARSON — I agree.

Dr FROST — I think they could, because they would make a claim that they are successful partners in public sector program delivery.

The CHAIR — It is an issue, whether you are following the money which goes into the private sector or are you actually checking the performance of a contract, and you are checking the performance of a government contract — —

Mr PEARSON — The closest we would come to checking the performance of a contract would be checking the department’s management of that contract.

The CHAIR — Is that a reasonable definition of ‘following the money’?

Mr PEARSON — I am not a draftsman, but to me the starting point would be to revisit the drafting that has worked for the non-commercial contracts. That is the precedent.

The CHAIR — I guess the issue is if you are talking about following the money and you would want to put that sort of thing in legislation, which is Jennifer’s question, it is a very vague concept.

Dr FROST — Chair, it is also important that in our discussions that Des has just alluded to with VECCI and Infrastructure Australia, they have absolutely no problem whatsoever with it. The only issue that they asked is, so long as the rules are actually clear. In principle, there is absolutely no problem whatsoever with this. If you look at this in the UK experience and WA, the sky actually has not fallen in in terms of this now operating successfully.

Ms HUPPERT — Have you looked at the New Zealand example, because they do have some provisions which enable them to check — go through documents from their contracts with private entities? Have you formed any view on the operation of their provisions?

Mr PEARSON — Not specifically, but on the principle — and that is what we are talking about and asking for — I suppose the only other comment I can make is I suppose it is a logical option to say it could be a disincentive. But if you apply practice, elsewhere it has not operated as a disincentive, I would say a bigger test would be the not-for-profits. I would argue that even where the public sector is alleging full funding, it will not be total funding, and the not-for-profits have normally got some skin in the game and they have continued to participate. But equally I would then ask the reverse principle question: if you have a contracting party that does not want to be accountable, does not want to demonstrate or contribute to demonstrating successful achievement, are they the sort of trading partner you would want to deal with?

Dr FROST — The other issue, again to recapitulate on Des's remarks, is: why should this particular money, with PPPs and partnerships, be treated any differently? What is the case to make an exception for, in this case the \$1.46 billion, in terms of the public money? Why should that be made an exception?

Ms PENNICUIK — Good question.

Dr FROST — Why should it be separated out? Obviously our contention within the submission is that it should not.

Mr WELLS — Can I just follow up, capping on a number of points that have already been made. I guess from my point of view, the more companies bidding, the better value and better quality for money that the taxpayer will receive. If we take a balanced look at this, how do we put forward what you want to propose and not scare off the private sector? How do we send that message to the private sector that this new regime is not going to scare the horses, so instead of there being 10 people bidding for a government sector job, there are going to be only three?

Mr PEARSON — I find that a difficult proposition to begin to address because the precedent and practice elsewhere is that that scenario has not eventuated. Again I come back to the drafting. I do not have the act with me, but we would be looking for parallel words to the non-commercial contracts.

The CHAIR — But you could also say that the current system in Victoria works very well because it has the most comprehensive and most competitive system of contractual management.

Ms PENNICUIK — Yes, but someone is not being audited.

Mr PEARSON — But you have no independent assurance of that. There are claims of that, but you have got no independent assurance.

The CHAIR — You have audited virtually all the contracts. You have said you have had no problem in terms of access.

Mr PEARSON — With the letting of the contracts. That is why it came up in 2008–09, when we said, 'We are a decade into this. We should now be looking at how effective are they in operation'. While it is important to set up contracts reliably and it is a reasonable indicator of success, it is not a guarantee of ongoing value for money.

Mr WELLS — I guess it gets back to the main premise of my question. Given that we all accept that what you are wanting to do is going to ensure following the public dollar and doing the right thing by the taxpayers, how do we send that message back to the private sector, that this is not going to alter the way they do their business with the government and that they will be encouraged to bid? I am sort of in the middle at the moment; I am not sure which way to go.

Mr PEARSON — I would welcome being directed to anybody who is raising that issue, other than government departments and central agencies who are the people who are the ones that are going to be held accountable.

Mr WELLS — It gets back to what Jennifer said about the submission put forward this morning, saying that there will be a disincentive for the private sector to bid. I guess from your point of view you are saying that their fears and concerns will be unfounded because nothing will change; it should be in place, anyway?

Mr PEARSON — I can only ask the committee to pursue that line of inquiry, and ask the proponents to substantiate that claim with hard evidence.

Mr WELLS — My second question, just following on: if you were to go into the private premise of a large company and you are chasing the public dollar or chasing a contract and the evidence to support the information that you require, I guess one of the concerns that I see from the private sector is that if you are looking at the way they do their business, which is commercial in confidence and it gives them a competitive edge over other business, but you cannot ignore that part of it to provide a fair and proper audit, how do you deal with that? I guess if I am running a business and I have a competitive edge over everyone else because I dig holes in a particular way and it is more efficient than everyone else and you come along and you are seeking information about how you I do the business to perform your audit, how do you deal with the commercial-in-confidence part of my business?

Mr PEARSON — Can I qualify that I find it difficult to see that I would end up in that situation in a private body, because we have to be there to corroborate evidence that a public official has given us to demonstrate how well they are going.

My short answer is: we do that effectively every day of the week, in accordance with the auditing standards that guide our behaviour, our approach and the confidentiality. Within the office it is peer reviewed, as professional practice; another professional looks over the shoulder and second guesses or reviews the logic of what the primary person has done. We have a robust system of QA, with external people coming in and reviewing a selection of our jobs. We have the PAEC's performance audit which comes in and does a selection. So aside from our own honesty and adherence to professional standards, there are three or four levels of control on that.

At the other end I would say that we are handling sensitive things like that routinely in a range of audits, where I would argue that is working well. I can think of an instance. The public report on integrity of data had very severe threshold issues. The way we have handled that has been in a way to put the issues on notice, but not to put in the public domain a basis for people to attack the systems. That is grist for the mill for an auditor.

Mr WELLS — My last question: have we come to this point because of the current government's inability to write contracts properly?

The CHAIR — I think that might be outside the reference.

Mr PEARSON — I think I can say no. We have come to this point from a public sector accountability perspective and recognising that the means of service delivery have changed but I have not had a signal that the standard expected of the accountability of public officials has changed and we are looking for a means to maintain the capacity to continue to provide the historical level of assurance about the reliability of reporting by public officials.

Mr WELLS — But if the government were doing the right thing by contract management and keeping up-to-date with public sector accountability then we would not be in this position now?

Mr PEARSON — No, I think my counter argument is: as the legislation currently stands, the government is unable because there is the inability for the independent auditor to provide independent assurance as to the reliability of reports and claims.

Ms GRALEY — I was interested in chapter 6 of the paper and the matters raised by the Department of Treasury and Finance. I read that with great interest because you made some rather forthright comments there, with a fairly resounding finishing paragraph. I note that you believe that any of the amendments suggested by

DTF were not appropriate and you did not particularly support them. I want to give you the opportunity maybe to expand on your reasons for those rather solid comments.

Mr PEARSON — I notice that you will be talking to the secretary of the department and I will be interested in his response because his private response to me about the attribution of comments in the paper was somewhat different. But at a principle level a lot of the proposals in there are really exporting to the independent auditor, that has no executive authority, an obligation to take an executive role and drive performance.

I see it as one of these things that if you take it very strictly and blindly, we as auditors should just identify the problems, put them on the records and walk away. But the system has worked to 'Let's be reasonable' and whatever, and 'We've done a lot of research; let's put it on the table'. That is why in our vision we say we want to be a catalyst for positive change, we want to look at the right things, provide assurance where things are going well and encourage others to emulate that practice. Where things are going wrong we draw it to attention and make recommendations for improvement. While it is not our role to go in and help them to do it, we do voluntarily try to leverage or capitalise on the knowledge we have to save them rework.

At the end of the day, under our system of government, the primary responsibility rests with the executive agency that is primarily responsible and the admin orders. That is their job to do it. Many of the things that are attributed to DTF — I am not saying the auditors should do it — come within the definition of what a central agency should do within the public sector where a central agency like DTF and the DPC have got two levels of responsibility. They have their primary responsibility for their Treasury or their Premier-type function, but they also have a coordinating and a monitoring function to draw the sector together. That is certainly a direct central agency responsibility. I also notice that you are talking to the State Services Authority. That is another facilitative body that is part of the executive but its charge is to improve the delivery, so that is where the primary responsibility lives.

The role of the auditor is overseeing all that, or surveilling all that and drawing to attention matters of significance. I think it is just: how far do you push the pendulum? You can go beyond the base remit of just saying, 'These are the problems', full stop, to 'These are the problems and this is how it can be fixed' and 'These are the good practices that should be spread across'. But it is not our role to go and drive that.

That is where I interpreted that particular chapter as proposing a more executive role for the auditor that would compromise our independence because, again, part of our independence is not owning the establishment but coming in with a fresh mind, reviewing how it is done and reaching a conclusion. No matter how good or conscientious you are, if you have been involved in the setting up of the principles and procedures and you then come in to review it, you are biased in terms of the foundation.

The CHAIR — Can I follow that up, because the last page of our discussion paper, which you did not comment on — you commented on everything else — states that it is the committee's view that the role of the Auditor-General is to improve the performance of the public sector, not just to shoot the wounded but to create positive relationships, cultures, strong performance and outcomes. It is really how far the pendulum goes, in the words which you used.

On some of the issues raised by the Department of Treasury and Finance, whether it be in terms of risk management or other things, while you are not there to drive it, are you seeing yourself as having a role? You are not just recording what has happened, but also to provide some suggestions for improved performance.

I have brought in a number of these reports and indeed this committee has commended a range of these, including, for example, the records management checklist, the principles into practice in public sector IT, and recently we had a discussion in one of our private meetings about the move you are making in terms of providing these sector reports, whether they are on local government, public hospitals, water entities et cetera, and commenting not just in terms of their financial performance but also their general performance in terms of structures and processes.

I am looking for your view. I know you have put this view here, but in some terms your practice is somewhat different from your response here to the Department of Treasury and Finance.

Mr PEARSON — I would disagree. I would argue our practice is the product of audit activities and our only sanction is to table a report. What the system does with it is up to the executive government, the Minister

for Finance's response, this committee's follow-up and the Parliament's more general follow-up. But to say the role of the Auditor-General is to improve performance, I have great difficulty not seeing that as an executive instruction. We are neutral in the system. We audit what is and what is happening against established criteria or reasonable better practice and form an independent view of whether it complies or does not.

The CHAIR — But surely you move. We are talking about a third wave here, and auditing is moving well beyond compliance now. We are moving into performance sort of review. Even these things are more than just talking about compliance. You are suggesting improved processes and things like that.

Mr PEARSON — Yes, those are our recommendations. As an auditor, from time to time, you get offended about shooting the wounded.

The CHAIR — That is all right. We would not wish you to be offended.

Mr PEARSON — Because at the end of the day, you are looking at it.

The CHAIR — We are looking at constructive relationships.

Mr PEARSON — Yes, but again, okay, we are raising that there are deficiencies and our recommendations are not a direction; they are an indication of a means of redressing. It is the executive that has to weigh up that recommendation, assess it and then implement it.

The CHAIR — So do you see there are some parallelisms between your role and the SSA?

Mr PEARSON — Not really. I see our role principally and primarily as Parliament's eyes and ears to surveil and review the operation of the public sector and on a without fear, favour or affection-basis.

The CHAIR — I can put it another way.

Mr PEARSON — To report on the matters of significance, be they positive or negative.

The CHAIR — Do you see that in practice that there are some similarities between the work that you are now doing and what the SSA does?

Mr PEARSON — Clearly there are some — —

The CHAIR — I am not saying it is a bad thing.

Mr PEARSON — Clearly I am saying there are some similarities, but these sort of comments and the comments attributed to DTF worry me.

The CHAIR — They put them there for discussion.

Mr PEARSON — We are being taken way too far.

Dr FROST — There is a difference, Chair, surely between what seems to be the burden of the DTF recommendation. It seems to be pushing the Auditor-General into the guise of the consultant-general, and we think that there is a difference. There is an important difference. The reports that you have mentioned effectively are the IT one and a couple of the others that you are talking about, when really ones in which after a series of audits what we were doing was effectively putting the sum of the learnings across a number of reports through there, and through that method I believe that is the catalytic effect that we think the office's proper role is to do.

The CHAIR — It can be important later on, because if you are doing a follow-up audit or some other audit, are you auditing against what DTF and DPC have set up as the appropriate benchmark and standards, or do you say, 'These standards are insufficient, and therefore you need to be doing your performance against other standards'?

Mr PEARSON — Our preferred approach is to audit against what the central agencies specify, and the world is never perfect, but all too often there is a shortage of those.

The CHAIR — This is continuous improvement.

Mr PEARSON — That is where we draw upon broader literature searches and reviews — OECD publications and other indications of reasonable criteria to apply — and that is when we apply them. But, as Peter has mentioned with the couple of better practice guides, in my terms the records management one was a pretty poor situation across the sector, and from the feedback we got a number of approaches commending the audit and wanting insight as to how to begin to do it.

Fundamentally what we did there was we turned our audit program that had been developed in consultation with not only this committee but the Public Record Office and other experts in record management; we converted our audit program into a checklist to assist in the improvement, but the responsibility to improve records management I argue rests with individual agency heads and the keeper of public records. It is inappropriate to say it is the Auditor-General's — —

The CHAIR — In effect you have a role in facilitating continuous improvement, but you would not wish to put it into the act because that would interfere with your independence.

Mr PEARSON — Yes. There is no denying we are a participant in the system, and it is not an absolute purist, but we have to be very careful and that is one of the operational issues that resource are always tight and in the absence of advice from other areas — people who seek us out — we go to great pains to be civil and cooperative, but to stress that we are happy to talk to someone about a program, but we have not done an audit. We would have a conscious chat and note anything that we see as a particular exception, but equally we have not done an audit.

If we come back and do an audit we will do deeper research and come at it far more thoroughly, notwithstanding it is at a superficial level. We might have said, 'Yes, that is sound, it is reasonable and looks cohesive'. When we can do an audit we might come up with a different view, and we have got to reserve that right.

Dr FROST — Chair, one of the other points that is posed under '6.2 — Continuous improvement' that I think has been puzzling to us is the middle dot point on page 87, which talks about:

Recent audit practice has shown that the focus of audit reports has been on matters of compliance.

The questions posed by DTF is:

Should the focus of audit be only on compliance with frameworks, or on matters of performance, which is the primary focus of public sector entities?

It is puzzling from two standpoints. One is that we do not believe that what we are currently doing somehow represents our focus on compliance only. We do some performance audits, and it is puzzling again that we get no kind of indication about just exactly what does this mean.

There is an annual plan. We look at performance across a number of sectors, so I find this incredibly puzzling about why someone could actually conclude that the focus of this office, certainly in recent years, is on compliance. It is quite the contrary.

The CHAIR — Thanks for that.

Ms PENNICUIK — On the point about the role of the Auditor-General in achieving performances, everybody has got a role, but what I am hearing the Auditor-General say is they have got a certain role, which is not then to take further steps and that there are other agencies, and indeed us in our follow-up audits et cetera, to actually take that further.

Mr PEARSON — Thanks. I appreciate that point, because I think there is a real danger here that the people who are responsible and should be accountable do not slip out from under. They are the ones that should be held to account and should be delivering, and should be stepping up rather than passing the buck.

The CHAIR — I guess our concern is to try and identify what respect it provides. It may well be a series of Venn diagrams where there are overlapping responsibilities, but it is quite clear what the central responsibilities are in terms of the centre of the Venn diagram.

Mr PEARSON — But if you do that in that sense I would be arguing between the individual agency and the central agency there would be solid lines. I think the SSA role would be dotted lines. I had better not get into the governance, but I think they have got direct executive authority over an entity. They could make recommendations, and they could do it through the Premier to get something to happen. But ours is definitely non-executive, and the challenge we have got, in consultation with the committee, is informing our program, to fit the important issues a further catalyst for achieving the stated outcomes and providing assurance where they are working well and by drawing attention as early as possible in areas where it is not working as well as it might.

The CHAIR — Sure.

Mr PEARSON — To maximise the value of the taxpayers money. But that is a very vague dotted line, because we are surveilling the whole system.

The CHAIR — As I said, our view is to develop and maintain a culture of strong performance and outcomes achieved.

Mr PEARSON — Yes, that has got to start with the program managers.

The CHAIR — With everyone; with everybody contributing to whatever tasks you are trying to delineate exactly what each various agency is contributing. That is something that should be understood certainly by the Parliament, because it provides funding for these organisations.

Mr DALLA-RIVA — On the issue relating to a fairly light chapter — chapter 4, about the courts and auditing of the courts — I am curious about your response. You support the amendment, as you note on page 12 of your submission. In particular you say:

The Auditor-General seeks clarity on the type and extent of audits he can undertake in the courts in order to assure Parliament that public funds are being used appropriately ...

You are seeking clarity from us. I am trying to work out what your response was there. Maybe you can expand as to what you are seeking clarity on to give us guidance in respect of the whole issue about auditing courts, given the views expressed by the Chief Justice of the Supreme Court et cetera?

Mr PEARSON — The situation that exists in Victoria, as I understand it and read it, is that the audit provisions do not overtly apply to the courts, so the statute does not cover it. Over time there has been a protocol, I think, developed, or a memorandum of understanding, that purports to —

It says the Auditor-General can come in and do audits but subject to the veto by either the chief justice or the Attorney-General. Given we are reviewing the legislation, I am raising that as an issue, because when I look at the normative model in every other jurisdiction the courts are subject to audit.

At the other level, I as the current Auditor-General have a reservation — if I am an independent officer of the Parliament and Parliament is my primary client — my consideration is whether I should be better respecting the letter of the law. If Parliament has not given me the authority to go into the courts, why am I going in there? I have more than enough work to do elsewhere.

I have put it on the agenda for consideration as part of this review. It comes back to my second point about the gaps in the legislation. Courts are spending public funds that have been raised by tax, so why should they not be equally accountable for providing assurance and the Parliament being assured as to why it has been spent. The obvious challenge would be judicial independence, but that is akin to the Auditor-General not questioning the merits of policy directions. The Auditor-General audits policy implementation and does not — —

Mr DALLA-RIVA — You could try to assess the performance of the court, but, for example, there might be a murder trial that may go for six months.

Mr PEARSON — I would argue you would not audit the operation, the judicial function of the court.

Mr DALLA-RIVA — So what are you seeking to audit? If the administration of the courts — I am trying to get clarity on what you are seeking. You said you want to audit the courts, but when you get to the specifics —

how do you assess them? A court may be inefficient because it may have five murder trials on the go that just happen to drag out for six months for whatever reason, or the jury might deliberate for a month, which could blow out the expense.

Mr PEARSON — That example I would argue is a judicial discretion area and beyond the — —

Mr DALLA-RIVA — So how do you differentiate between what is a judicial discretion and — —

Mr PEARSON — What are the administrative functions of the courts?

Dr FROST — There have been a couple of recent audits that we have done on that.

The CHAIR — We have also suggested to you that there are some areas that need to be followed up, particularly the increase in terms of the number of cases outstanding.

Mr PEARSON — That is an area that has been done in a number of other jurisdictions. I have not embraced it here — I do not know what the attitude of the judiciary is, but in other jurisdictions the court listings have been audited and seen as an administrative function. The actual listing and the schedule at the start of the trial is seen as administrative — I had better not oversimplify it, but in a sense — —

Mr WELLS — Say it, Des, say what you were going to say.

Mr PEARSON — I would have thought that a starting point for where you could impede on judicial discretion would be once a trial starts, because then it is clearly a judicial area. In terms of the scheduling of court space, for instance, or things like that, sound administrative functions, there is a range of those sorts of audits, and, as the chairman mentioned, your committee would like us to do some audits, but I have got a real question mark, given the act does not provide for it, as to why I should do it, especially when I am supposed to be the independent auditor. The memorandum of understanding covering it says that for the chief justice or the Attorney-General I have to cease and desist.

The CHAIR — What is your suggestion then? Do you have any specific suggestion in terms of wording?

Mr PEARSON — No, I think that is a drafting issue, but the principle — —

The CHAIR — I know it is a drafting issue, but — —

Ms HUPPERT — What drafting instruction would you give?

Mr PEARSON — That the administrative functions of the courts are subject to audit.

Ms HUPPERT — But you would not have any suggestion as to how you would define the administrative functions? The issue is where you draw the line in the sand. I do not think the concept is the difficulty; the difficulty is where you actually draw the line between administrative and judicial functions.

Mr PEARSON — Yes. All I can claim there is that in every other jurisdiction that has not been — —

Ms HUPPERT — In other words, other jurisdictions with that type of power — —

Mr PEARSON — Every other jurisdiction in Australia has it.

Ms HUPPERT — They have not just looked how many paperclips have been purchased by the department but have actually looked at — —

The CHAIR — Following the money.

Ms HUPPERT — They have looked at how the listing systems work.

Mr PEARSON — The effectiveness and efficiency and the use of public funds in administrative functions.

The CHAIR — Have we got a copy of the protocols?

Dr FROST — Yes.

The CHAIR — Not the Parliament but of the court, do we?

Mr BINI — We can provide that.

Mr PEARSON — I am raising it as a principle. We expect audit legislation to be holistic. I am raising on review that ideally I would be looking at a piece of legislation, not a piece of legislation and a couple of side deals.

Ms HUPPERT — I think we understand that.

Ms PENNICUIK — I just want to ask about the case listing because I am interested in that point of it being an administrative function. I can see it as an administrative function but I think it is a cross-over area, and you might be able to help me out. I see it a little bit like a triage system. If you were going to go into a hospital and audit the nursing unit manager as to how she has triaged patients — you really would not want to do that because that — —

Mr PEARSON — If we got to that, we would engage with the profession. I have a memory of a previous experience in another jurisdiction where we did do the listings of the courts. It was a magistrates court and it was in consultation with the Chief Magistrate.

The headline thing that I remember from it was twofold. We did the audit with no problem. The headline finding I recall is that at the time everyone would turn up at 10 o'clock, and what was happening was that three-quarters of them got sent away, and in a couple of cases they were going to do it from 11 o'clock on. Figuratively speaking, the underutilisation of the magistrates and the courts — we made recommendations around that, which were adopted and implemented, and then my next biggest problem was the chief justice chasing me to do a parallel audit in the District Court, to which my response was, 'Sorry, but you got the principle' — —

The CHAIR — 'You got the principle so you can follow it and apply it to the other courts'?

Mr PEARSON — As I said, it is in other jurisdictions, and there is a range of those sorts of experiences.

Mr NOONAN — It is a part follow-up, and it extends I suppose to the Parliament's administrative functions — I guess what you are saying is that, as you do with the courts, you believe there is a role for the Auditor-General there. You might make a few comments on the Parliament. I have a two-part question, Chair; I hope it is okay.

The CHAIR — Kim had three.

Ms GRALEY — Three questions — what are you talking about: three parts!

Mr NOONAN — You might want to answer that first, and then I will pose the second one.

Mr PEARSON — I think it is a parallel argument that the Parliament employs a lot of people, spends a lot of money, and we audit the financial statements by invitation, but again the principle of universal audit mandate is that it should be subject — and I recall some audits were suggested in the Parliament, but we have declined them due to a lack of cover and the nature of the invitation.

Mr NOONAN — When was the last performance audit?

Mr PEARSON — I cannot recall that we have done one. I personally cannot recall one in the Parliament.

The CHAIR — You have never done one.

Mr PEARSON — But equally I would argue there that — again like the equivalent policy direction question and the judicial discretion issue — there is no way you would want to do an audit of the operation of the chamber.

Ms HUPPERT — It is more on Parliamentary Services and — —

Mr PEARSON — It is the administration of the Parliament. I am sorry to hark back to the thing about finding access to information on assets of the state in the hands of private providers, but it is not to audit the private provider, it is to obtain corroborating evidence to enable the audit of a public official.

Mr NOONAN — Is it just New South Wales and Victoria that do not have those provisions?

Mr PEARSON — Yes, that is my understanding. Every other piece of legislation treats the administration of Parliament as an entity that is scheduled and listed for audit.

Mr NOONAN — The second question I have is really about the issues that you outlined initially in your introduction, and that goes to the gaps and the issue of contemporary practice. You make a point in chapter 7 around additional proposed amendments and joint investigations. One might argue that this is an emerging or contemporary issue, perhaps more so in the last couple of years, in terms of partnerships between the commonwealth and the state governments in the delivery of projects.

Mr PEARSON — Yes.

Mr NOONAN — You made the comment that there is no power under the act for joint investigations. I just wonder whether you could comment on the practice as opposed to the powers? If you believe there is probably an argument for amendment, would this then require interstate audit acts also to be amended to cater for what might be provided here in Victoria?

Mr PEARSON — I would answer in reverse order. That is the direction you would be seeking, because I think probably for the right reasons at the time, our legislation over and above the professional kind of information covering confidentially, our legislation requires to us keep it secret, so it gets to the ridiculous situation, and we have one currently where the commonwealth under the — —

Mr BINI — Building the Education Revolution.

Mr PEARSON — The BER initiative is doing some audits in schools here in Victoria, and under their legislation if they find a real problem or they see a real problem, they cannot alert us to it because of their secrecy provisions, so in a sense, in the way commonwealth–state funding is going, we have raised it. We have to begin somewhere.

We facilitate cooperation at a professional level in the public interest. Clearly — and on your way through you asked what do we do in practice — in practice, we are responsible statutory office-holders. We obey our legislation. We do, however, share in planning audits and things like that that do not disclose specific information, so we leverage; at that level we cooperate across the country, but that is a joint investigation, both with other states but also with, say, the Ombudsman and police integrity. At the moment we are all respectively required to keep it secret.

Mr NOONAN — So it would trigger a need to amend other interstate acts or acts which regulate the Ombudsman or the OPI's activities?

Mr PEARSON — Yes. Clearly it is only within Victoria's remit to do it within Victoria; that is an executive decision. You would have to do it by influence to get it to happen elsewhere.

Mr NOONAN — Thank you.

Mr PEARSON — I see that is the way it is going, and I observed both in the UK and Canada that it is a very open and free flow of information across jurisdictions.

The CHAIR — Maintaining the secrecy provisions?

Ms PENNICUIK — I was interested in that question, but I think it has been pretty well covered.

Mr NOONAN — Thanks, Sue!

Mr DALLA-RIVA — Which one? We have lost count.

Ms PENNICUIK — The question regarding joint investigations across agencies and across states and with the commonwealth. I was going to ask a follow up about whether this happens in other jurisdictions currently, but I think — —

Mr PEARSON — Within Australia it does not because under the standards in Australia, we are all required to keep it secret, but I think the way the trend is going, it needs to be opened up, but as I say, in the UK and Canada they are very open and they basically adhere to the professional standard of treating it sensitively and confidentially, but they facilitate each other's work. You can go to the other extreme, to the French system, where it is an integrated one, where the equivalent of your state Auditor-General is part of the national court of accounts and vice versa, so it cascades down.

Ms PENNICUIK — I suppose the comment is that we are trying to get some uniformity and consistency across so many other areas that it seems to have these silos, the state auditors. I was interested in the other issue that you raised about consultative councils established under the minister to do with the Public Health and Wellbeing Act.

The CHAIR — This was your last point, was it?

Ms PENNICUIK — Yes.

Mr BINI — Would you like me to expand upon that?

The CHAIR — Access to information on page 25; is that right?

Mr BINI — Yes, that's right. To be honest with you, I came across this by accident as part of some other personal research that I am doing; suffice to say that provision specifically excludes the audit mandate. The consultative councils you are talking about are a couple of — there is a council on paediatric morbidity and there is another one on anaesthetic morbidity as well, which are consultative councils that are comprised of predominantly surgeons, to my understanding. That provision was in the previous act which was when the new Health and Wellbeing Act came in in January this year. We were not consulted.

We knew nothing about it, and there it is. It is in the submission to draw to your attention again, this issue about why are these particular entities being treated any differently? They are appointed by the minister, ostensibly on the part of the executive. I do not know whether they have public money or not, but I could foresee situations where we are doing performance audits in the Department of Health, some of their documentation may be relevant; the provision in that act specifically excludes us. This is not a case of, you need to make an argument about whether you have got access or not; it specifically excludes us.

Our concern is obviously that that sort of provision starts appearing elsewhere, because it is a specific threat to the mandate rather than the examples we were talking about in the courts and the parliaments where it is at a much more generic level, whereas this is tailored for specific entities. It is in the submission just to draw your attention to it.

Ms PENNICUIK — I wanted to follow up because these are consultative councils established by the minister. Elsewhere in your paper, and I do not have the page in front of me, you talk about auditing ministerial offices. Can you talk about that and how that may or may not work in other jurisdictions?

Mr PEARSON — Again, that was in the aspect of clarifying, where ministerial offices are spending public moneys, why should they not now be audited against the compliance with policies, guidelines and requirements?

The CHAIR — But isn't the ministerial office — certainly my understanding is that the funding and the management of them is essentially the responsibility of the secretary of the department?

Mr BINI — I think a majority of it is run out of the central agencies.

The CHAIR — Correct.

Mr BINI — But I could not tell you whether the coverage is complete or not.

The CHAIR — I am just going from my experience as a parliamentary secretary that the Secretary of the Department of Treasury and Finance was responsible, and therefore any audit of the department in terms of performance or otherwise, and certainly the financial one, included what funding was made available for the minister's office, so it is not as if they are discrete entities in my understanding.

Mr BINI — That is correct, they are not discrete entities.

The CHAIR — So they are already covered fully in terms of the department?

Mr BINI — I'm not sure that they are covered fully. I would have to have a look at it.

Ms PENNICUIK — It is certainly something for us to think about it.

The CHAIR — It is; perhaps we can take it up with the central agencies.

Ms PENNICUIK — Yes.

The CHAIR — They would provide a view on that, I am sure.

Ms HUPPERT — I wanted to ask a question about the auditing standards, and currently the provision in the legislation is that you have to apply the current standards and you have raised an issue about whether they are necessarily appropriate for the type of audits you are doing. I wonder if you could expand on that aspect?

Mr PEARSON — Yes. The control we were looking for there was more to have regard to the standards and acquit where we feel they are inadequate and be explicit about what we did differently rather than being subservient to them because while they are stated to be sector neutral standards, they are largely retrofitted commercial standards, and the commercial standards are based on operating in a competitive marketplace, with people having a choice over whether they participate, so you can choose to buy shares or choose to trade and work.

In the public sector it is difficult to exercise that choice here, I believe, in Victoria and the relocation costs are very prohibitive, and again on the financial statement side, the standards are all around verifying the quantum of the number because the bottom line is a pretty reasonable indicator of how well you are operating, because if you making a big profit you are doing well; if you are making losses, something is not right, you have a trigger. But in the public sector your financial statements only cover stewardship.

They basically tell you how much revenue you have got for, say, DTF and the expenditure you have made for DEECD and health and human services, so they do not give you the performance dimension, so I suppose the area, if I had my druthers, would be to do a bit more work in the revenue and expenditure side than required by the standards, but I would probably do less on the balance sheet side because in the public sector we do not tend to securitise our assets and trade in them. I would come at it from the point of view that once you have captured them, you are reasonably sure that they are there.

Ms HUPPERT — Have you done some research on how auditors in other jurisdictions are dealing with the issue of accounting standards?

Mr PEARSON — Yes, basically the standard across Australia is having regard to the standards. It is either have regard to the standards or promulgate your standards and the practice is they build off the standards but they tailor them to the — —

Ms HUPPERT — There has been work done, I understand, on internationalising the accounting standards.

Mr PEARSON — That has only been done at the commercial end.

Ms HUPPERT — But only at the commercial end? So the auditors-general must look — —

Mr PEARSON — That is a dilemma. The international accounting standards are commercial only. In Australia we call them 'sector neutral' but we have applied them to the public sector. There is a major project beginning on the Standards Board but that is going to take three to five years according to speculation.

Ms HUPPERT — Is that on the international standards?

Mr PEARSON — No, on the Australian standards, because they are transitioning our standards to I think they call them ‘topic-based standards’. There used to be a standard on government departments; ‘infrastructure assets’ is a topic base; they are going now to revenue expenditure and things like that. There has been difficulty in transitioning the old public sector standards into the mainstream standards. The board is about to announce a program, or consult on a program, to revisit and map those standards across.

Ms HUPPERT — I guess the advantage of having a requirement to use particular cover standards is that you do get the consistency across the country and you will be able to do comparisons.

Mr PEARSON — Yes.

Ms HUPPERT — Whereas if you are applying standards slightly differently than public sector auditors are in other jurisdictions, then you lose that ability to do comparison work?

Mr PEARSON — I agree. We do consult. We and Queensland developed a financial audit methodology between us based on the current standards. The ACT and Tasmania are already using it. South Australia and Western Australia are proposing to use it. Why I would like the flexibility is to tailor the standards and the further refinements in methodology to more specifically address the public sector issues.

The CHAIR — So that is in terms of auditing, though. In terms of accounting standards?

Mr PEARSON — I would argue it is both; but it is probably more the accounting standards.

The CHAIR — Victorian practice has been to follow the national ones.

Mr PEARSON — Yes, but it is how you do it. We have specified ‘you will do it’. Most other jurisdictions have said they will ‘have regard to’. No, we have said, we will have it.

The CHAIR — From memory, the ACT said it will do it too, have they not?

Mr PEARSON — I would have to check.

The CHAIR — In terms of the proposals for auditing and accounting standards, do you see value in you having some discretion?

Mr PEARSON — Yes. For instance under the accounting standards, and I think in the current auditing one there is a separate standard, when we do an opinion on financial statements, while we have to have regard to controls we do not have to form an opinion. When you are operating in a competitive marketplace controls probably are not as important, because you have a leveller. But when you are a single entity, controls are a replacement for the marketplace, and that is another area where I would argue we are not doing as much work as, in my judgement, I would like us to do. We are complying with the standards, but that is where I think they are deficient in the public sector application.

The CHAIR — Okay, we will have to have a look at that.

Mr DALLA-RIVA — I have a quick question in relation to the appointment of an acting Auditor-General on page 33. I notice your response on page 6, in which you say:

The Auditor-General considers that such a change would enhance the independence of the Acting Auditor-General and reinforce the Parliament’s established role in relation to the appointment of the auditor.

In what way? I am trying to get some clarity about what you are asserting. How would it enhance the independence of the Acting Auditor-General? You say you agree with the amendment because it would enhance the independence, but I do not know why.

Mr PEARSON — For me the stark contrast is the Auditor-General is appointed on the recommendation of the PAEC. If an Auditor-General resigns or retires and the replacement has not been triggered, the executive government would appoint the Acting Auditor-General.

Mr DALLA-RIVA — Right.

Mr PEARSON — So the principle is that if PAEC is involved in the appointment of the Auditor-General, why should it not be involved in the appointment of an Acting Auditor-General?

Mr DALLA-RIVA — But the submission was signed by an Acting Auditor-General.

Mr PEARSON — Yes.

Dr FROST — The Acting Auditor-General — —

Mr DALLA-RIVA — Is the Auditor-General.

Mr PEARSON — Our motivation here was that was a short-term absence of a couple of weeks. But say I resigned tomorrow, the committee technically may not have an involvement in the appointment of an Acting Auditor-General who is likely to be there for 6 to 12 months while you do a search and find an Auditor-General.

Mr DALLA-RIVA — But you are already the Acting Auditor-General.

Mr PEARSON — Except there is precedent. I am not sure, I cannot speak for this jurisdiction, but across jurisdiction where the government of the day says, 'By the way, we have a deputy secretary of Treasury' or something, 'Put him in'.

Mr WELLS — I guess the issue is if you are away for a week, do you have the right to appoint the Acting Auditor-General?

Mr PEARSON — Yes.

Mr WELLS — Or should it be through legislation that that is more formalised, so we know who is the Acting Auditor-General? I guess that is the issue we need to come to.

The CHAIR — There are two issues really.

Mr PEARSON — I have to say you know we would write you a letter and tell you. The point we are making here is there is incidental acting, without taking away from the role, as part of normal operations.

Mr DALLA-RIVA — We do this every day in Parliament.

Ms GRALEY — Speak for yourself.

Mr PEARSON — Sorry, I missed that. The act provides for PAEC involvement in the appointment of the Auditor-General, but it is silent on what could be a long-term arrangement. Typically it takes 6 to 12 months to fill.

The CHAIR — There is a long discussion on this in the submission we have had from the ACAG or whatever you call it.

Mr PEARSON — The Australasian Council of Auditors-General.

The CHAIR — The issue is, should the deputy become automatically the acting Auditor-General in that sort of situation.

Mr PEARSON — A number of jurisdictions have a statutory deputy. That is part of the argument there: when you have a statutory deputy, the argument is the deputy steps in at any opportunity and it is all statutory.

The CHAIR — The other alternative is that this committee is involved in the appointment of an acting one, which would not necessarily be — with due respect to the chief operating officer — the deputy, depending on what the local arrangement is.

Mr PEARSON — Again it depends on the context and the circumstances. But again I think that is an area where I would ask for specific consideration of the checks and balances.

The CHAIR — Sure, that would be my view, too.

Mr PEARSON — There is a role in appointing the Auditor-General, but if you get involved in day-to-day executive functions, that is another issue.

Mr DALLA-RIVA — Are you suggesting we need to go through some sort of process?

Mr PEARSON — For long-term acting, yes — or where there is a vacancy in the position of Auditor-General.

Mr DALLA-RIVA — No, but if we legislated to have an Acting Auditor-General, would you be expecting the decision to appoint an Acting Auditor-General be made by you or would it be made by the committee?

Mr PEARSON — I think the distinction I make is where the Auditor-General is no longer there, the committee should be involved in the appointment of the Acting Auditor-General. So if I go on leave next week, I see that as operational and an internal operational decision.

The CHAIR — It depends on whatever arrangements can be made.

Mr PEARSON — If I resign today, I would argue that the PAEC should be involved in appointing the Acting Auditor-General pro tem until the permanent selection process is done.

The CHAIR — Process is organised.

Mr DALLA-RIVA — Where do we get the Acting Auditor-General from? From within VAGO?

Mr PEARSON — That is your recommendation; that is at your discretion.

Mr DALLA-RIVA — But then why would we not just advertise for an Auditor-General?

Mr PEARSON — That is going to take you three to six months.

Mr DALLA-RIVA — But how long would it take to get an Acting Auditor-General?

Dr FROST — Two weeks.

Mr PEARSON — Yes. We are into speculation, but I would have thought you would consider the — —

Mr DALLA-RIVA — Yes, but I am trying work out if you legislate for it, what is — —

Mr PEARSON — You would consider the internal applicants, then the executive government — or you might want to advertise across the sector and consider an appointee from a department.

The CHAIR — There could be circumstances, of course, when it could be six months.

Dr FROST — Yes.

Mr PEARSON — Easily, I think.

The CHAIR — If you happen to resign after the writs are issued for an election, then it could be up four or five months before the Public Accounts and Estimates Committee is reconstituted.

Mr PEARSON — That complicates things because there might not be a PAEC. When is the election?

The CHAIR — It could be up to four or five months before the public accounts committee reconstituted.

Mr NOONAN — Are you resigning?

The CHAIR — No, but it is useful.

Ms GRALEY — I was interested in chapter 7, where you propose some additional amendments. Specifically the one about constituting the office as a statutory authority: I see that ACPAC supports that idea. I was just wondering what you thought would be the advantages of establishing VAGO as a statutory authority, and how that would maybe impact on the culture of the organisation or the staffing situation.

Mr PEARSON — Selfishly as a manager, I would be strongly supportive of it. It reinforces the purity of the independence of the office. It separates it a little bit from the public sector, because we do get assertions and allegations to our people — ‘You will never get a job back into the sector’ — because they are doing their job as auditors. It separates it out.

As with New South Wales, it is a statutory authority. They have their own award, so they are able to take greater consideration of market factors and forces in their remuneration. In fact they have far less turnover of their staff. It is a more purist model.

Again if we go back to the UK and Canada, that is a standard model. I would have to check. In a number of jurisdictions in Australia, that is the model they have taken with the ombudsman’s office, the more recent creation. All I can say is New South Wales is the only one in Australia that is done on that basis. That was an amendment in the early 90s, reflecting better practice around the world and began in the context of a review. That is an area of consideration.

The CHAIR — But how does it make you more independent?

Mr PEARSON — The staff are recruited to the office rather than being VPS people made available to the office.

The CHAIR — But you recruit them, do you not? They are not recruited by somebody else.

Mr PEARSON — No, we recruit them, but the VPS conditions are a given, and yet we are trying to run a professional practice using the public sector.

The CHAIR — But you are part of the public sector.

Mr PEARSON — Yes, but you could argue that about a range of other authorities, I would imagine. Victoria has sold off — the traditional example is the electricity authorities and public utilities.

Ms HUPPERT — I guess your issue is more about being able to pay staff more competitive salary.

Mr PEARSON — And conditions.

Dr FROST — New South Wales has its own award.

Mr PEARSON — We have things to do with leave provisions — flex leave, things like that — that work differently in a professional office.

Ms HUPPERT — For example, the Victorian Government Solicitor Office works in a professional services environment and employs people as public servants. They seem to be able to manage, too.

Mr PEARSON — Yes.

The CHAIR — It can provide problems. I know the secretariat cannot have access to the building after hours, because they were refused access by the Parliament. Maybe some independence there is needed.

Mr PEARSON — Again, it is a consider item that I certainly raise. If you want more on it, I am prepared to do it — from a running, professional office and getting the culture and that sort of thing, it has a lot a attractions. A separate award, while on one side is a detractor for maintaining it, you have to weigh up that, but there are range of what I would argue are inappropriate provisions in the VPS award that impact on my efficiency and reflect on us.

Ms HUPPERT — The other issue of course is the statutory authority, you might have greater administrative expenses, and that would cut into your operating budget.

Mr PEARSON — Yes.

The CHAIR — There might be a trade off.

Ms GRALEY — I am interested in you thinking, because it is a statutory authority, that you may attract better staff. I would have thought the Auditor-General's office was a particularly esteemed place to work.

Mr PEARSON — It is attractive, but that is one of our challenges. It is almost too attractive, because you provide very good foundation training, and by standards, I think — and someone might have to correct me on this — we pay reasonably well. From a graduate level we pay quite well.

We pay reasonably well through about levels 4 or 5, but at the 5 and 6 levels we go right off the pace, and at the executive level we are just not in the ball park. Yet we have then got the complication of people at the 5 or 6 levels where I would expect them to be value-adding and really positively contributing.

In a professional practice environment you could drive that, but when you are looking at it in a VPS context, that is certainly one of our management challenges. It is down to things like flex leave. Flex leave is as simple as there is a provision for flex leave, but it balances every fortnight or month.

Mr BINI — I could not tell you that.

Mr PEARSON — Whereas a professional practice, with a distinct busy period, would have an annual retainer.

The CHAIR — I am sure that provides a more balanced work/life balance.

Mr PEARSON — What is that — flex?

The CHAIR — A more frequent accounting of it rather than just at the end of the year, so you work everyone to death.

Mr PEARSON — You have got occupational, health and safety if you want to work them to death. A number of other officers, even with their own award and providing awards with more flexibility, do have annualised hours.

The CHAIR — It depends on the internal sort of work culture, does it not? Can I ask you about the reporting, because this comes up in a number of areas? This committee has expressed the view in the past that all the Auditor-General reports should be tabled in Parliament. The current act talks about May, and there is some discussion on this regarding whether they should all be tabled or whether there are some so sensitive that they should just be sent to PAEC, a bit like some of the federal ones where the Secret Squirrel organisations call someone in for a briefing, and everyone is sworn to secrecy et cetera. Do you want to elaborate a bit more on your views on this?

Mr PEARSON — I think it is more a thing you do in your review. That is an area that some other legislation provides for direct reporting to PAEC for that extra sensitive thing. It is in that context that I put it forward. It is one that I cannot recall a specific need. This is as much your raising the issue was the motivation for saying, 'Yes, that can be an issue, and it should be provided for'.

I would wary of it being interpreted the other way, though — that everything should be reported, because again, while in effect all our financial audits are acquitted by an opinion and a summary report on the results, all our performance audits are covered and/or reconciled with the annual plan, a report to parliament. The extent that circumstances change and we do not proceed with an audit, we acquit that in direct communications with PAEC and I am pretty sure in our annual report. I think, if you take the hypothetical example, we put an audit on the program, we embarked on it, and very early in the piece it was a non-issue. I suppose my contention is the —

The CHAIR — There is no report.

Mr PEARSON — There is no report, and the acquittal or the explanation is that the operational level it is on the quarterly report to PAEC and in the annual report. When you initially raised it, I thought it was not the issue about providing a means of handling a highly sensitive issue.

The CHAIR — No, looking at the act, it says 'may'. I think we said this a few years ago, that it seemed to us to be unusual — that it actually should be required to provide the reports.

Mr PEARSON — Whereas I would counter that the norm is ‘may’ and that is complementary to the independence and the discretion given to the Auditor-General to audit as they see fit and to have full discretion in what they report.

The CHAIR — Right, but you auditing as an officer of Parliament.

Mr PEARSON — An independent officer of Parliament.

The CHAIR — An independent officer of Parliament.

Mr PEARSON — I think that is the important thing in the Constitution Act; it is not just an officer of Parliament, it is an independent officer of Parliament. That bears out the traditional view of the audit.

The CHAIR — That you are doing audits on behalf of Parliament or that there should be a reasonable expectation.

Mr PEARSON — We are getting into semantics today. I am not sure that is on behalf of Parliament.

The CHAIR — There should be a reasonable expectation that the report you do should be tabled in Parliament.

Mr PEARSON — And they are, but my fear is that if you flip it and say, ‘You must report’, what is an audit?

The CHAIR — It is either a performance audit or a financial audit. You have been very strict which, I think, this committee commends, rather than starting to create a whole new range which is what the previous Auditor-General seemed to do. You are sticking very closely to the legislation which this committee has said it most appropriate, but by the same token if you undertake a performance audit or a financial audit it should be reported to Parliament because you are an officer of Parliament.

Ms PENNICUIK — Not directed by Parliament.

The CHAIR — No-one is here compromising your independence at all. You have a role to do and the role is to be an officer of Parliament doing audits.

Mr PEARSON — Yes, and we are doing that and we are reporting.

The CHAIR — Therefore your accountability is to produce them to Parliament. I do not think that affects your independence at all

Mr PEARSON — I am just a bit worried about you turning the ‘may’ into a ‘shall’. The ‘may’ is there and — and I do not think it is just in my term — in a sense everything of substance has been tabled. There could be issues you might want to cover in your annual report rather than in an audit report. There could be thematic or trend things.

The CHAIR — I am not sure that our experience in the last decade or so gives us sufficient assurance having ‘may’ there is more preferable to having ‘will’. It is no reflection on the current administration.

Just in terms of the reporting, there is this issue of the publication of the agencies responses. I know we have had a little bit of a differing interpretation of the current act. My interpretation has been that the agency can provide their comments. It has to be in a form agreed which makes sure that they do not have open slather and say what they like.

Mr PEARSON — No, I am sorry, there is no control in that respect. I would argue that it is the reverse. The auditor is rightly required to accord with auditing standards and evidentiary standards. There is no equivalent requirement on the agency in their response, yet the auditor is required to incorporate in whole or an agreed summary which I would argue impinges on the independence of the auditor and the auditor’s ability to report. The central question to me is: if the rest of the system can be trusted on procedural fairness and natural justice, which is part of our administration today, why is the auditor, who has a higher standard of report preparation, singled out for a particular variant of procedural fairness?

The CHAIR — I do not necessarily see it as a higher standard. I would see it as them having to provide their comments in a professional way under their responsibilities and accountability under the appropriate act.

Mr PEARSON — The question I ask is: what is the requirement to do it in a professional way, because they are not bound by the standards?

The CHAIR — They are bound by public sector standards.

Mr PEARSON — Which do not really address evidentiary levels or the foundation of an audit opinion. We are providing a free forum in the primary report when, arguably, they have a range of other avenues. There is an obligation on the auditor to do procedural fairness, there is no denying that, but they have a range of other avenues to make their views known. Where I take exception is where we have audit evidence to support a thing and an agency can just willy-nilly say, 'We do not agree and we think ...' and write a press release and I have to include that in my report. It just does not seem to contribute to a professional presentation.

The CHAIR — I would not be too derogatory of press releases. Sue, do you want to call this one?

Ms PENNICUIK — I do. In fact I want to raise that particular issue, because I have found in reading some of the reports that some of the comments by the agencies are quite concerning. I am wondering how that can be addressed. What I thought could be done was that the agencies not be allowed to comment in the actual report but be able to give a response. There are obviously government responses to things. They could give a later response but with some sort of — as we have just been trying to discuss — professional standard applied to their response or their response be according to why they do or do not agree with the recommendations based on accounting standards or some other way.

I have been concerned by quite a few of the comments from the agencies. It is raised by the Secretary of the Department of Transport in his submission, that he is fully supportive of that remaining but on reading them, I have been concerned. Is there some other way that could be accommodated?

Mr PEARSON — Clearly it is a matter for the committee. My position, I suppose, is how many controls and constraints do you put on? I agree that the auditor must accord with the auditing standards because that is the foundation of our work. We have professional obligations in how we do that.

I agree that in today's world we do procedural fairness, and I am obligated to do that professionally but I suppose my argument is that it is an audit report and that is where it should stop. Again, we have our internal professional processes of peer review and QA. The PAEC impose a performance audit to keep us honest on that and the agencies have their own avenues to make known their views.

The CHAIR — So you think it derogates from your independence?

Mr PEARSON — Yes.

The CHAIR — Or you just do not think it is professional enough — or both?

Mr PEARSON — Both — all of the above.

The CHAIR — I am not trying to put words in your mouth, I am just trying to — —

Mr PEARSON — All of the above. It comes back to those principles we have given. One of the clear ones about an independent audit is the ability to form a view and make it known.

The CHAIR — Irrespective of that, though, do you think that the departments providing their comments is useful in terms of moving the show along?

Mr PEARSON — All through the audit we provide the opportunity for that. Part of our audit approach is to understand where the agency is coming from. Typically we provide progressive briefings; there are two to three briefings in every performance audit. In addition to that, if there are matters of significance arising, at the earliest opportunity there is a separate issues paper on that. Apart from an unavoidable minority we do not engage until they see where we have landed and then it is a rebuttal without a substantial base.

Ms HUPPERT — I have a couple of issues that stem from that but we have gone onto a tangent. One relates to when you are doing a performance as opposed to a financial audit and the controls you are using are, perhaps, more subjective than a financial audit control which is an accounting standard. In some respects I think one of the reasons why the departments are concerned about having their views is that they may have some disagreement with you on the question of control.

Mr PEARSON — I accept that.

Ms HUPPERT — I guess that leads then into the second part which is that the audit subcommittee then has a role. You have resisted the idea of the audit subcommittee and its role in specific audit standards.

Mr PEARSON — I just raised it as to whether it is too operational.

Ms HUPPERT — Just your views on that. But obviously because the controls and the methodology for a performance audit is more subjective, that to me is the reason why there should be a role for the audit subcommittee in looking — —

Mr PEARSON — But the audit subcommittee does not get involved in that.

Ms HUPPERT — No, but just in terms of the direction, obviously. I have sat on one subcommittee only but clearly there was a role in terms of the direction your audit was taking. It is just another aspect of why the performance audits are treated differently to financial audits.

Mr PEARSON — It might be a selfish thing but rather than controlling the audit I would prefer to see the onus go back on the entity to be more specific about their framework and their approach. That is a common area of contention when we arrive — it does not exist. To a degree I accept that the world is never perfect but in the main agencies now are getting two to four years notice of an audit.

I would have thought, if there is a published plan that has been prepared in consultation with PAEC and other stakeholders, an indication of prudent management would have been anticipation of the audit and a preparedness to engage at a professional level at the start. That is where I would prefer to see the emphasis.

Ms HUPPERT — Back then to the issue of the audit subcommittee. You seem to see that as a hindrance to your operations?

Mr PEARSON — In one sense, it takes a couple of hours a month to bring it through. I suppose when I revisit it in a principle theme, I think it is very valuable having the engagement of PAEC as a representative of the Parliament in the formulation of the plan, but I suppose I am thinking that the contribution of Parliament and PAEC is at the strategic level, and we are always going to have complications.

I think you probably get to look at the specifications at the one-third to halfway mark of any audit. I cannot see a way of avoiding that. While we do a bit of research to firm up the proposals for the annual plan and we are getting better at having the paragraph a bit more specific so that it is more predictable, I think if we assist ourselves over the years we are finding the one we are currently working on is setting quite a good standard and behind that in the office we now have a first draft of the specification.

But we have to bear in mind that that is done without any real, substantive fieldwork; it is at a high level of discussion, website searches and things like that. When you actually come to start the audit, you have effectively finished the planning stage before you are in a position to put the draft spec forward, and then by the time it is looked at, it is probably at the halfway mark of conduct. I am really questioning, in terms of contributions where the — —

The CHAIR — What value do you see in the consultative arrangements as they occur now in a practical sense?

Mr PEARSON — What consultative arrangements?

The CHAIR — On the spec.

Mr PEARSON — On the spec? I think they provide an assurance.

The CHAIR — That is a bit of a 360-degree here.

Mr PEARSON — It is a loaded question. I do not know, in a sense, how you judge it. We take on board the comments but I do not know that they change the fundamental direction of audits. I suppose just my judgement is that the real value is the annual strategic, when we are talking about directions and plans and priorities. To me the spec is too transactional for an oversight body and the nature of parliamentarians' business and requirements versus the nature of an operational audit office.

On the other hand, it is a couple of hours a month. It is the paperwork coming over. I think it is working effectively at the moment but probably the real question is: in terms of value for money and real contribution, is it the best intervention?

The CHAIR — I cannot speak for my colleagues, but four of us are on the audit subcommittee. We obviously put a bit of effort into this, and you probably get some good ideas at times, I would have thought.

Mr PEARSON — Yes, I think we do get some, but equally we also get good ideas at the briefings with a wider, different cross-section of the Parliament. There are some common, but there are some different. Again, it just comes to value of use at the time. If you give me the opportunity, I would say from an audit accountability perspective that if the equivalent amount of time was put into additional inquiries following on from reports, that might be more productive for the sector.

Mr NOONAN — Just as a follow-on, under your own performance audits you make the recommendation that section 19 of the act be amended to provide your office with an opportunity to comment on the terms of reference for your own performance audit. At the same time, PAEC is being asked to consider removing that from the performance audits that take place on a regular basis for the 30-plus audits that happen each year.

Rather than going down that path again, I just wonder whether or not you might expand on what value the Auditor-General's office would bring to that consultation on the terms of reference — what we might better be given as a committee as a result of having that conversation built into the legislation?

Mr PEARSON — My purpose in raising that was just the principle of today's level of engagement is procedural fairness — I suppose that is one level I am asking about — but at the other level it can come down to operational issues. I think even with the latest financial audit, as I understand it, some initial dates were just too unrealistic for the sake of consultation that would have been fixed prospectively. Again, I just encourage an openness in those sorts of areas.

We have had a couple of occasions where, in inquiry reports, the committee has recommended something that has already happened in one case. I recall another review — do not ask me the specifics — which was recommending we do something that was executive, that arguably, from an audit perspective, was inappropriate. I would have preferred the opportunity to raise that issue before it was settled rather than in response.

Mr NOONAN — Are they matters that would normally play out during the course of the audit, as opposed to setting the terms of reference and, as you say, better targeting the terms of reference to go to the performance of the office? Is there not a distinction? You made a couple of points, without necessarily being specific, which went to essentially the process which was already undertaken in order to make recommendations at the conclusion, rather than the issue about the terms of reference as the starting point.

Mr PEARSON — No. I have been back, and that is where I accept that in relation to audit clients, I have an obligation of procedural fairness. You share with them adverse conclusions or recommendations that are going to impact on them and take into account their consideration. I think the point I am making is that that courtesy or principle is not working with an audit. If I take it back to the performance audit of my office, in one sense it is like a transaction in that it is annual.

I think maybe the committee could be informed by knowing what we have been doing, where we are at and what exists, and that could influence the scope or the specificity of the terms of reference the committee is proposing.

Mr NOONAN — And might essentially adopt.

The CHAIR — Thank you very much for that. That concludes the consideration of the evidence provided by the Auditor-General and the Victorian Auditor-General's Office. I thank Mr Pearson, Dr Frost and Mr Bini for their attendance today.

Where questions were taken on notice — I am not sure there were any, actually; it was a full, frank and fearless discussion — the committee will follow up. I thank you very much for your attendance today.

Witnesses withdrew.