

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Victoria's Audit Act 1994

Melbourne — 7 April 2010

Members

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Mr M. Blake, Auditor-General, Tasmania; and member, Australasian Council of Auditors-General.

The CHAIR — I inform all present that the committee is taking evidence from Mr Mike Blake by telephone. Welcome, Mike.

I declare open the Public Accounts and Estimates Committee hearings on the inquiry into Victoria's Audit Act 1994. On behalf of the committee I welcome Mr Mike Blake, Auditor-General of Tasmania, and member of the Australasian Council of Auditors-General. 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 can approach PAEC members. 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 protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. Mr Blake, you are okay because your voice will be heard here.

There is no need for evidence to be sworn. All evidence given today is being recorded. Due to delays experienced with the transcription of hearings by Hansard, witnesses will be provided with proof versions of the transcript by the end of this month. That should be verified and returned within three working days of receipt. According to the past practice, any transcripts and any presentations will then be placed on the committee's website.

I now invite you, Mr Blake, to make any opening comments you wish to make. Committee members will ask questions related to the Audit Act inquiry and will probably take it in turns to ask questions. I ask that all mobile phones be turned off. You may wish to make an opening statement, Mr Blake.

Mr BLAKE — Thank you, Chair, and thanks to the members of the committee for enabling me to talk to you about our submission. I also applaud the committee for the very thorough discussion paper, which I think I said in the written submission, but it certainly was an easy one to try to respond to because most of the groundwork had already been done. So it is over to you for any questions.

The CHAIR — My first question is, I guess we can look at the discussion paper, and it has headings in the form of numbers. The section at 3.2.2 relates to the frequency of parliamentary performance audits. There have been variations of between three years and five years. I think in your paper you are suggesting five years. Do you want to reinforce your argument for the use of five-year frequency?

Mr BLAKE — Since writing this or being involved in putting this submission together I have now read the Victorian Auditor-General's submission, which I read yesterday, and he would appear to be suggesting a cycle consistent with a parliamentary cycle of four years. I suppose in our submission we said five years or up to five years, or something along those lines. I am not wedded necessarily to five years, but I think three years is perhaps too short.

Whilst my legislation in Tasmania is set up for five years, or not more than five years, I have not had one done yet. I have not had that provision enacted as yet. In my own case I have voluntarily arranged for reviews of my office every three years, and I have found that even that is tight in terms of trying to deal with the recommendations that may arise. I suppose I am saying 3 years is too short and 5 years would be great, but 4 years is okay.

The CHAIR — We have three years at the moment. It has to be done at least every three years under the current act. I think you also suggested in your report that the Parliament's performance auditor is precluded from commenting on findings, decisions or recommendations. Can you clarify what you are looking at there?

Mr BLAKE — No, is that what I said? I thought it was a good practice, in the case of a performance audit of some sort or an audit or review being done of an audit office, that the Auditor-General be given the opportunity to comment on the failings and recommendations — —

The CHAIR — Do you mean during the course of one of the Auditor-General's audits?

Mr BLAKE — That is right. I think it is good practice, if a review is done under this provision, that the auditor is given a chance to comment on the reviewers findings before it becomes a final document. That is what I was getting at. I do not know if that is the way it has come across.

The CHAIR — I think it reads that the reviewer should be precluded from commenting on audit findings, decisions or recommendations reached by the Auditor-General.

Mr BLAKE — I beg your pardon, sorry. I suppose I would expect that the review be done of the activities, efficiency and effectiveness of the office, but a reviewer should not be looking at audit files and saying, 'Well, Auditor, your conclusion about a particular performance audit or compliance audit or financial audit was wrong'. My view is that that review should be looking at the quality control processes that an Auditor-General might have, but not trying to second-guess the findings and recommendations of the auditor on a particular project.

The CHAIR — Presumably the performance review should be able to comment on the evenness and the quality of performance audits. If they said there was quite a difference between a series of reviews and another series of reviews, that would be reasonable, would it not?

Mr BLAKE — No, I would have thought not. I think the auditor, the person who is appointed to review the efficiency of the Auditor-General's Office, should be able to look at things like whether there are effective quality control processes in place, for example, in accordance with the APESB quality control framework and be satisfied that those sorts of frameworks apply and are applied consistently. But I do not believe the reviewer should be asked or be expected to comment on whether or not the reports that are submitted achieve a particular standard. I would have thought that would be beyond their scope.

The CHAIR — So you would not see the performance auditor actually giving a judgement on — —

Mr BLAKE — No, I think that is irrelevant. Surveys of members like yourselves, who are in a position of having been asked to do a survey of the usefulness of reports on whatever criteria are used, are in a better position to say, 'Yes, that was a good report', or, 'No, it was not', and then to discuss that with the Auditor-General later. I would have thought that was a better way to go about establishing whether or not those reports hit the mark.

The CHAIR — I think we are more interested in the efficiency and effectiveness of the office, and therefore the quality of — —

Mr BLAKE — Yes, the quality. For example, in my own case when I asked a reviewer to look at my office — and admittedly it was a voluntary review and not a compulsory one — I did ask that reviewer to look at how effectively I was completing my compliance and performance audit projects.

In other words I wanted him to look at things like: did I have a budget, was I hitting the budget, was I meeting my own time lines in terms of completing those in a timely manner — within eight months is my own benchmark. He came up with some good ideas as to how I could improve my practices in those areas, but he did not comment on the quality or otherwise of my findings.

Mr DALLA-RIVA — Just in relation to page 33 of the discussion paper and particularly the response of the Australasian Council of Auditors-General about the position of acting auditor-general, we have had some discussions about it today. Interestingly, the submission about auditor-generals by the acting Auditor-General raised the issue about how they appoint the acting Auditor-General. I note you say ACAG does not support any participation by the Governor in Council as it would leave the acting position vulnerable to the executive influence. I guess what we are trying to find out is what is the preferred model in ACAG's view, given that we have a situation here that is different, as you know? We are trying to work out how the appointment is made.

You suggested in your submission:

ACAG is also of the view that in the absence of the A-G for any reason, and for any period, the appointed Deputy A-G should automatically be the Acting A-G ...

I am just trying to get some clarity on how it works in other jurisdictions, such as Western Australia, which you mentioned.

Mr BLAKE — In the example I have provided, Western Australia provides the acting A-G with the same responsibilities, powers and immunities; so if that is what the powers are going to be for the acting A-G, then I think there should be some independent process by which the acting A-G is appointed. In your case I suppose the minimum should be in the same manner that the A-G is appointed, which I think is what you are proposing.

I think if you are going to go to a process of some independent manner in which the acting Auditor-General is appointed, then that should be the same or similar to the manner in which the Auditor-General is appointed, especially if that person is then going to be automatically the Auditor-General when the Auditor-General is away. Am I going around in circles? That is what I am saying.

In my own case I recommend the appointment of the acting Auditor-General to the Premier. In Tasmania the acting Auditor-General is a senior public servant and he or she fits under the Premier's authority, but I recommend that appointment and so far it has never been turned down. If I am not here, then that person automatically acts, regardless of the period, and I think that is a good model.

Mr DALLA-RIVA — Is the appointment process at the same time as the Auditor-General — you would appoint the Auditor-General and the deputy Auditor-General? I am trying to work out the process of the appointment by us. I still do not have clarity on how that is done.

Mr BLAKE — The two things do not necessarily happen at the same time; invariably there will be an overlap. When an Auditor-General is appointed, a deputy may already be in place and have been appointed under the previous regime.

Mr DALLA-RIVA — Would they run the same period of time? If there is a five-year period, how would that run; would one overlap the other?

Mr BLAKE — Again, it depends on timing. You might find a deputy Auditor-General resigns when an Auditor-General resigns or retires, in which case the new Auditor-General may have some influence in the appointment of his or her deputy, but I think that would be unusual. In my own case I am appointed on a 10-year fixed term whereas my deputy is appointed on a 5-year renewable contract arrangement so those two time periods may not coincide.

I suppose what I am saying is that whatever the process or the time frame is, the process should be similar so that the deputy has the same level of powers and immunity as does the Auditor-General.

The CHAIR — It could be also possible that the acting Auditor-General may not be the deputy Auditor-General.

Mr BLAKE — Yes, that is something I have tried to avoid so that the deputy is automatically the acting Auditor-General. If there has been a proper process to appoint the deputy in the first place, then why should that person not also automatically act?

The CHAIR — Yes, point taken.

Mr NOONAN — I am interested in your response to 5.2.1, 'right of access to premises and records of private sector contractors'. This has been the subject of questions to almost all of our witnesses today. Your position as a council very much, in summary, supports the position that the Victorian Auditor-General has put today. Obviously you would have been personally involved in the Tasmanian review but can I assume that the council you represent today was involved in the Western Australian and Tasmanian review?

Mr BLAKE — Yes.

Mr NOONAN — One of the issues that then arises is how far those powers should extend and whether or not, if there was an amendment to be made to the act, some limits or boundaries should be put around access, and you make the point on page 42 of your submission that you are not necessarily opposed to that. Can you talk us through, in the case of Tasmania and Western Australia, how that essentially fell out of the review and what boundaries, if any, exist now in those two jurisdictions?

Mr BLAKE — This is an important issue, and thanks for raising it. If I could just talk about my own case, I drew up the submission that ACAG put into the Western Australian legislation when it was being reviewed. I did not make a submission when the Tasmanian legislation was being reviewed.

The boundaries are important. I like to link the boundaries to the level of expenditure being made to the private sector. If a public sector agency has outsourced a particular activity, whether it be via a contract or a PPP or any other mechanism, the boundaries should be limited to the level of expenditure that is paid to the private sector operator and then to the outcomes that they are expected to achieve with those funds. I have done this on one occasion in my jurisdiction.

It is what we call 'follow the dollar'. I followed the dollar on one occasion, and it was a very small one compared to the sort of money you might be talking about. An appropriation of \$2 million over two years to a private entity to provide for some research into education was made and an initial payment of \$250 000 was made. I saw some difficulties with how that money was being spent and managed, and chose to make some inquiries into it but I limited myself only to the \$250 000 that had been paid across to that entity.

In my inquiries of the board of directors of that entity I limited myself to that money and to what they had achieved with that money. I did not in any way look at their other activities although I did look at, for example, some of the governance arrangements they had implemented more broadly because the governance arrangements they had implemented for the entity as a whole affected the amount of money they had received from the government for which they were being held to account. So I suppose if there is going to be any boundary, it needs to be around the actual money provided and the outcomes anticipated to be achieved with that money.

Mr NOONAN — Just by way of follow up, the example you just gave was conducted after the act was reviewed, I presume, in Tasmania?

Mr BLAKE — My act previously had that provision in it but it was vague. When the audit act was rewritten I asked for it to be clarified and that has happened. In the previous version of my act I believe I could have actioned the 'follow the dollar' principle that was in there but I thought it might have been challenged so I never did anything. I simply wanted that to be clarified.

Mr NOONAN — That capacity you saw you had was presumably again under the contract that existed between government and the outside private entity arrangements in the contract?

Mr BLAKE — That was one of my findings. One of my findings was that there was a lack of a contract in that the moneys had been passed across in advance of a contract having been finalised, so I cannot tell you what the contract would have said but, yes, I would have expected there to be a contract and there was not. I would have expected the contract to have spelt out things like how to manage risk; what are the expectations of the various parties, what each should deliver and what outcomes were expected from the money being provided. I would have expected that that should have been in the contract but in this case it was not.

Mr NOONAN — Thank you.

Ms PENNICUIK — I have another question about a different issue but just to follow up on that, you were saying that there was no contract there. One of the arguments that seems to be being put in resistance to the amending act here so that it has a similar provision to the Tasmanian act is that if there is a contract in place and the contract is being managed and there is no need for — —

Technical interruption.

Ms PENNICUIK — Before the phone disconnected, I was listening to what you were saying — that was that in that particular instance there was no contract. I was outlining to you that in our previous discussions today one of the issues raised was amending the Victorian act to have a similar provision to the Tasmanian act and the New Zealand act.

Mr NOONAN — Western Australia.

Ms PENNICUIK — What did I say?

Mr NOONAN — Victoria.

Ms PENNICUIK — I mean the Victorian act is similar to the Tasmanian and Western Australian acts — and New Zealand, I understand, has a provision. Resistance to that is that where there is a contract in place between the government department or agency and a private provider there is no need for this particular provision. I wonder what you would say about that.

Mr BLAKE — The contracts are between perhaps the government departments in most cases and the private providers and not between the Auditor-General and the private providers. I think this is probably not appropriate in the sense that the Auditor-General has to rely on the good wishes or goodwill of the two parties or the right words to be included in a contract that provides him or her with access to information.

I am not sure that that is always possible and the Auditor-General could be expected to always be involved in the developing of those contracts or to know what questions not thought of at the time may arise two to four years later. It seems to me that the best way to make sure that there is appropriate access is to provide the Auditor-General with those powers in his or her legislation and then to make sure that they do not abuse those powers. I do not know why they would. I think under the current service delivery arrangements as exist in Victoria, which perhaps other states are moving towards, some sort of power over this would be preferable in my view than to honour the contract.

Ms PENNICUIK — I suppose what I am picking up is that around the world, and given the changes in procurement practices, this would be starting to become more common rather than less common. Would you have a comment on that?

Mr BLAKE — I do not know. In our state we have not moved to the extent of public-private partnerships, as you have. We may do in the future, I do not know. At this point in time the level of outsourcing certainly in my small jurisdiction is quite small. That may change. It would appear to be changing more quickly in places like Queensland, New South Wales and Victoria. I suppose in most situations some broad legislative authority for the Auditor-General would be a simpler way to try to address that.

Ms PENNICUIK — Thank you.

Ms HUPPERT — I wanted to pick up on something that you mentioned in your answer to Ms Pennicuik's earlier question, which was that you would expect that the Auditor-General would not go past the necessary powers in order to look at following the public money.

One of the things that has been said to us in evidence today and is in the submissions we have received is that it would be difficult to fence off those powers. In other words, whatever powers would be given to the Auditor-General would necessarily be so broad that they would be able to actually audit more than just the use of particular public money and end up in a broader audit of a private contractor. You clearly do not see that as a danger?

Mr BLAKE — I think it is a low risk, because in developing the scope of a project, which may then seek to get access to information that is prepared by a private contractor in response to the service that they are providing, in setting the terms of reference and developing the criteria, there would have to be a sit-down and discussion with that party to make sure we get the priorities right. Your committee also can have a role in that because you look at the audit plan that the auditor puts together and could perhaps say, 'This appears to be going beyond scope, auditor, why are you doing so?'

I think there are mechanisms to make sure that that cannot happen. When I did the project that I referred to here I did not make public the objectives of my work or the criteria that I was going to use until I sat down with the chairman — in this case it was the chairman of that entity — and agreed on the scope of the project and then made it public. I think there are ways to make sure that we do not go beyond the boundaries. Clearly my act says that I can only follow through on public property or public expenditure. My act prohibits me from going beyond that.

Ms HUPPERT — Which brings me to another issue that was raised by our Auditor-General, which is that he is quite happy to consult with us on annual plans but we also have a role in reviewing our audit; the subcommittee has a role in reviewing the specifications for particular audits. It seems to me based on what you

have said there is a good argument for continuing that role if the power of the Auditor-General is expanded because it does actually bring in some checks and balances on that power to follow or to delve into the operations of private entities. But one of the things that the Auditor-Generals has asked for is that that power be removed as it is more operational in nature and that our role be limited to annual plans rather than consulting on specific audits specifications. I wonder whether you could comment on that.

Mr BLAKE — Yes, and in the submission that ACAG put together we supported the view of the Auditor-General. We used the words in the submission, that it appeared to me more like an audit committee, an internal auditor relationship, and maybe I was a bit harsh there, I do not know. That is the way I read your protocol and the current arrangements. The annual plans that the Auditor-General put together and I have read are pretty detailed. They go into a fair amount of detail on some of the scoping of the projects that he is planning to do. I would have thought that is all it needs to be.

If the scope says we are going to look at an outsourced contract of some sort and limit our boundaries to the services provided under the contract, that should be enough, I would have thought. I use as an example, perhaps, what is happening in the commonwealth where the commonwealth Auditor-General in recent days has been asked to look at things like the insulation program, the broadband rollout and so on. They are major public sector initiatives.

I think it is a bit tough to ask the Auditor-General to suddenly respond to those and go asking his or her public accounts committee to respond in detail to the criteria or the planned approach and so on. It just seems to me that it was perhaps going too far and it was getting involved in operational matters.

The CHAIR — I might add that it actually works very successfully here.

Ms GRALEY — I have asked this question to a number of people who have been here today, including our own A-G. It is about his suggestion in his submission that his office be constituted as a statutory authority. I just wondered whether in your role as convener of ACAG if you have got examples elsewhere you could draw on that may illuminate us about whether we should go down that track or you have got any other suggestions as to how the office may be better constituted?

Mr BLAKE — Thanks for that question also. I have a couple of responses. Firstly, if you look at the INTOSAI principles, I think one of them says the auditor and his office should be independent. If you look at that model — the New South Wales Auditor-General was established some years ago as a statutory authority, which gives him the power to employ staff under conditions that he sets rather than conditions set by a state services commissioner.

I have just returned from a meeting in Canada with auditors-general in that country. I was talking to their provincial auditors-general. From what I can recall, many of them are in a similar position. They are not civil servants, as they call them there; we call them public servants. An example of what they have had to face with there, which I find very interesting, is that they have had their budgets cut because of the global financial crisis.

One step that they took as a result of that was to decrease or freeze salaries for their senior staff. I cannot do that here. When my act was being rewritten I sought to have statutory authority status and got knocked back. But if my staff were not public servants and not subject to negotiated wage outcomes, other than perhaps negotiated internally, I could take that sort of action. I think that flexibility is important.

Equally, if I wanted to employ staff at a higher salary because I needed them for some reason, I could not do that either. I think it puts auditors-general in a bit of bind in having all of their staff employed under public service arrangements. I think there are some examples if you look at Canada, and the New South Wales Auditor-General would be two.

Ms GRALEY — Thank you.

The CHAIR — Mike, if we go back to 5.2.2, which is the extent of legislative authority to investigate and audit matters pertaining to public money and property, I note that ACAG supports investigative powers. In fact you support the provisions enabling the Auditor to conduct audit work in relation to transactions which fall outside the traditional financial audit and outside the performance audit. Now the current act in Victoria

specifies financial audits and performance audits. Do you see sort of a third window or third arm being developed here and what does ACAG mean by that?

Mr BLAKE — Yes I do. When my own legislation was being — and I am not holding my own legislation as being the best thing since sliced bread, but it did a couple of things — when my Audit Act was being rewritten I asked for clarity around the difference between what I call a performance audit and a compliance audit. A performance audit looks at efficiency and effectiveness. A compliance audit looks at whether there has been compliance by an entity with rules and regulations, their own legislation, their own internal policies and so on. The two audits are not the same.

It was for that reason that the Auditing and Assurance Standards Board, when it was developing a standard for these two areas, developed separate standards — one for compliance engagements and one for performance engagements. I think there is an example.

I think auditors-general have a role to look at simple things like compliance — compliance with internal policies around the use of credit cards for example. I have done a few of those sorts of projects and found some real weaknesses in credit card management. You can say that that is a financial audit risk, and I would say yes, but I want to look at it in a bit more detail.

You could say it is a performance audit matter. I do not think it is a performance audit because it is not about efficiency and effectiveness. I think compliance audits are a separate type of animal if you like.

My audit act also allows me to do investigations. If there has been a misuse, in my view, of public property or public money, I can go and investigate that. That is not a performance audit or a compliance audit. It is what we call an investigation. I generally scope them out as being one of the two. These are two examples where I think my powers are slightly broader, and I can go and do an investigation rather than an audit. But when I do those sorts of projects, I still comply with auditing standards.

The CHAIR — I think it may well be what is in the definition of ‘performance audit’.

Mr BLAKE — Yes, I will check that, or how you describe a performance audit.

The CHAIR — Certainly here in Victoria, the current Auditor-General is now producing a range of reports.

Ms GRALEY — Mr Blake cannot see them.

The CHAIR — He cannot see them, I know. But I will just reach for them. It is when he does the financial audits. There is water entity results, this year’s audits; local government results, portfolio departments and public hospitals et cetera. But it is not just saying, ‘Okay, they have spent their money and it all adds up’. It also talks about financial sustainability; it talks about the effectiveness of internal control, for example, and there are a range of other things that come through.

I guess you can look at credit cards and these organisations too if you like. But in some ways the current Auditor-General is arguing that these powers already exist within the act, even though it specifies financial audits which are interpreted by the current Auditor-General as including compliance audits in terms of processes as well as performance audits.

Mr BLAKE — Yes, it helps. If you think those things are valuable from your point of view as readers of those reports, then perhaps you make it more explicit. I do the same. My act requires me to prepare one report a year. I have actually prepared two. But someone asked me for the results of my financial audits. If someone asks for the results of my financial audits, I also look at the sustainability of councils, government business enterprises and so on and provide members of Parliament with what I think. Those things go beyond that.

I suppose they do not back the financial work. They take the financial information and summarise them in terms of a range of, I suppose, well-known benchmarks such as the depreciation to assets. Some of the sustainability measures that the Auditor-General uses and that I use also, I think, add value to simply talking about whether an entity managed its assets or did not.

The CHAIR — Yes, fair enough.

Mr BLAKE — I also mention that the WA Auditor-General is unique in that in that state the Auditor-General has to form an opinion or conclusion about legislative and other controls. The internal control aspect of his mandate is broader than the rest of us. It is not a bad idea.

Ms PENNICUIK — I was interested in the issue of the performance audits of the other officers of Parliament by the Auditor-General. There is some discussion. I think you say there should be periodic performance audits by the Auditor-General of the other officers of Parliament. Then somewhere, and I cannot remember the exact page, I read there was on some page a word of caution from the Auditor-General that if he has a relationship, as in a joint investigatory relationship, that might be affected by his audit relationship with those officers. Do you have any comments on that particular issue?

Mr BLAKE — Firstly, I think those other independent officers should not be taken out of the mandate. In other words, in terms of the Auditor-General who, in my case, if I want to go and do a performance audit or compliance audit of the Ombudsman's office or activities, I can do that. Nothing precludes me from doing so, nor do I think it should. I am not sure about your point about if there is a relationship between the two. I make sure there is not a relationship between me and the Ombudsman or me and the state services commissioner or whomever to make it difficult for me to go and do an audit if I felt one was necessary. I am not sure that I said that in the submission.

Ms PENNICUIK — No, I do not think you did. I think there was just some general discussion about whether there was an issue raised when independent officers may have in the future — they do not actually have it now — this sort of thing.

Mr BLAKE — Yes, whilst I did not say anything, I think that is a very valid point though. There are two things: firstly, as I think I should be able to, or your Auditor-General should be able to, do a performance and compliance audit of the other statutory officers, so they should be able to do the same of him. So if the Ombudsman in this state, in my state, decided to come and do a review of the administrative arrangement of my office, because that is his authority to do, then I think he should be able to do so, and I should not be able to prevent that. I probably would welcome it.

But I have got a particular problem in Tasmania, because we have now established an integrity commission. The integrity commission will comprise seven people — the commissioner, three independent board members, myself, the Ombudsman and the state services commissioner. When the bill was going through its process through the Parliament, I just cautioned that that could create some conflict between the integrity commission and my office.

For example, if I am on the integrity commission, how can I then go and do a performance audit of the integrity commission or a compliance audit of the integrity commission? There is an example of where those sorts of relationships can become blurred and put us all in a difficult position. Unfortunately the act passed through Parliament in that manner, and I am stuck with it. In my case what I am going to have to do is to make sure I do not do the audit of the integrity commission. I will get my deputy to audit the integrity commission, because I cannot audit it myself. There is an example of perhaps what you are getting at.

Ms PENNICUIK — Yes, I was just raising that as an issue in terms of the joint investigations.

Mr NOONAN — I was keen to explore the issue of auditing the courts' administrative functions. I gather you have the capacity to do that in Tasmania?

Mr BLAKE — A couple of things — the courts are run through the Department of Justice from a financial work point of view. I do not form a separate opinion on the financial activities of the courts, because they do not separately report in their own right. That is the financial audit part of what I do.

A couple of years ago I said I wanted to do a compliance or performance audit of the effectiveness of the waiting times management by the courts. I chose the Magistrates Court to do that audit. I sat down and had a lengthy discussion with the Chief Magistrate at the time of doing so. The Chief Magistrate said to me, 'I am very happy for you to come and do that sort of audit as long as you do not question judicial decisions'. I was really keen that I did not want to do that. I did however want to see how effective they were, or are, in managing court waiting times.

We did the project. We agreed on the terms of reference with the Chief Magistrate. We reported publicly. The Chief Magistrate has said in a public forum how well the project was run and how useful the outcomes were to the management of his office. I think there was a win-win for us there. I believe that auditors-general should not be precluded from doing those sorts of audits, because I would expect the courts, like any other public sector entity, to be efficient and effective in the use of their funds. However, we would make sure that we do not question their judicial decisions.

Mr NOONAN — What would have happened if you were denied — or perhaps ‘denied’ is the wrong word — but what would you have done if there was a problem or some impediments to your capacity to go forward? In other words, if you were challenged?

Mr BLAKE — If I audit a project and somewhere along the way I had a finding that perhaps the courts did not like and therefore then for some reason they stopped providing the information, the only course of action I could take would be to issue a report and make it clear that the scope of my work was qualified — was compromised in some way. That is not dissimilar to a financial audit.

If I am doing a financial audit, say, if the courts were separately reporting annually in some sort of financial statements and I was denied access, that affects my independence, that affects my ability to form an opinion, and I would have to qualify my audit opinion. I would do the same if I was doing a compliance or a performance audit.

Ultimately though I cannot force the information to be provided. I suppose I could — I have not thought this through — the powers say I should have accessed the information; if the information is denied, all I can do is report. It is then up to the people, like yourselves, and the Parliament to say that the courts should have provided the information. That is a public debate we have not had to have, in this state anyway, but my view is that the Auditor-General should be able to audit those sorts of activities.

Mr NOONAN — Similarly, can you show your experiences in terms of auditing the administrative functions of the Parliament?

Mr BLAKE — Yes. It seems different here, we have four parliamentary agencies and I do an audit of them every year. They produce a financial report. Those financial reports are prepared in accordance with the Australian accounting standards. I do an audit in accordance with the standards and that gets added to the annual report that goes to the Parliament.

My own experience has been one where they treat it like any other agency. I have not chosen to do a performance audit of any of those parliamentary agencies, and I probably would not but if I am doing a cross entity compliance audit which I mentioned once before — compliance with internal policies, compliance with internal authorisation limits and those sorts of things, I have done in the past, but not treated them separately. I have just treated them as an across-agency type project so they were part of a number of agencies that were looked at.

Mr NOONAN — Did you say you would be reluctant to do a performance audit on the administrative functions of the Parliament?

Mr BLAKE — I could not think of what sort of criteria I would use — I am speaking off the top of my head — because they do not have outcomes and outputs that the others do, to the same extent, so I probably would limit my work to compliance-type activity rather than trying to assess whether or not the house of assembly or the legislative council, which are two of the agencies that I audit here, are effective or efficient. I probably would limit myself to compliance.

Ms HUPPERT — A final question. Back on the joint audit activities, but this time I am considering the different cross-state audit agencies and possibly commonwealth, and it seems to me that we have got a growing amount of conforming legislation going through our states across various jurisdictions. It may mean that there are agencies or government departments that are managing very similar legislation. I am just wondering what sort of scope you think there might be for joint audit work between the different jurisdictions if they are dealing with very similar roles in the governing agencies and departments?

Mr BLAKE — My own view is that we should be encouraged to do these sorts of projects. There are so many areas, legislation is one we have already mentioned, but there are a number of service delivery areas where we are all providing services, for example, to disadvantaged people, to Aboriginal communities. We have got the stimulus package being rolled out and we are all looking at those things as they affect our particular jurisdiction, without considering what the implications are where those services are provided across boundaries.

What tends to happen is that auditors-general look at these things and say, 'We would love to do some sort of joint project' because of the reasons you have just outlined, 'but our secrecy provisions in our legislation prevents us from doing that, so they prevent us from sharing information about our jurisdiction with the commonwealth Auditor-General, for example, and his legislation prevents him from sharing information with us'.

I think that is an easy way out. I call it horizontal government or joined-up government. I do not know what the right words are, but more and more, as you say, there are services being delivered across jurisdictions, across boundaries and I think auditors-general should find a way to do these projects in a joint way.

An example of that again, which we found in Canada recently, was when six jurisdictions all looked at management by the jurisdictions of the private health information, the health card, and how well that was being managed. In that case they could not compare and contrast, but they decided to do the one project using the same criteria, using the same objectives then separately completed audits in each jurisdiction and then the commonwealth Auditor-General was to bring together the findings in one report. Those sort of things, I would have thought, you, as parliamentarians, would be interested in and should be encouraging, and we should have the ability in our legislation to do them.

The CHAIR — In terms of general principles and the Auditor-General here in Victoria, in his presentation today he talked about balance in terms of operating independently, but there are a range of requests for more 'independence'.

Mr BLAKE — Yes.

The CHAIR — Some of the other people we have talked to today see the current system here in Victoria as pretty good. I was wondering whether some of the requests almost set auditors-general up as a fourth arm of government, almost separate from Parliament and above Parliament?

Mr BLAKE — Yes.

The CHAIR — Rather than being, for example, the Auditor-General here in Victoria rejected pretty strongly a view that he might be the agent of Parliament, when in fact he is a parliamentary officer. Is he an officer of Parliament, above Parliament? Is this where the auditors-general are heading or what?

Mr BLAKE — I certainly do not think I am, I cannot talk for my colleagues, but I do not think an Auditor-General is an agent. An agency relationship is not the same as an independent relationship. I do not know what was said to you, but my view is that if the Parliament appoints the Public Accounts and Estimates Committee, in your case, to be the arm that is going to monitor the performance of the Auditor-General, then so be it, I would live with that and behave accordingly. But my own view is that I am independently getting on with my job to provide the Parliament with the independent assurance of the activities of the government and of the executive of today. Does that mean I cannot be an agent? I suppose I would have to look at it. I do not think the two things are the same.

I do not think auditors-general are moving that way. We are simply saying that there is an element of trust here, you have appointed us to do a job, let us go away and do it. If we are not doing it well, then by all means take steps to get rid of us or to replace us. I think I need to be left alone to get on with my job.

I have a protocol here with my PAC. My protocol is far shorter than yours, it is only a page and a bit and it is just at the high level, saying, 'Yes, we will work together when we think it is a good idea but we won't always'. So it is a very short document. At that high level it says that we think there is an interest to consult and talk, and we do. That does not mean to say what you have got this right or wrong.

I do not think auditors-general are trying to be above the Parliament, by any means. We are simply, in my case, trying to make sure we can provide that level of assurance in the best way we can.

The CHAIR — I was just trying to see whether there was some sort of trend.

Mr BLAKE — No.

The CHAIR — We have had other reviews that we have done on accountability, and the suggestion is that there should be parliamentary commissioners — almost a body sitting above the Parliament, in order that the Parliament behaves itself or whatever. We have a long tradition in the Westminster system of the three arms: the legislative, the judicial and the executive.

The issue then is are some of these — that is, the Auditor-General — seeking to be almost completely independent from the Parliament? You are describing it as, ‘Just get on with the job that we are meant to do’ although, as we have had evidence here from our own Auditor-General, he is seeking to push back the involvement of the Public Accounts and Estimates Committee here in quite a significant way, including on things which we would regard as working rather well. For example, the audit subcommittee is quite vigorous and constructive. It is a meeting of a whole range of minds, and we think we end up with a better product.

Mr BLAKE — Yes, I am sorry to interrupt you, but that is clearly your view and I am not going to challenge that, but my own perception, as I was reading your protocol and web site, and I also said in my submission, is it gives me the perception that maybe that is what it is: that there is a level of interference and that is obviously not the right word.

But outsiders could say, ‘The auditor is not as independent as he or she could be because the Public Accounts and Estimates Committee can influence, whether it means to “influence”, or not the scope of a particular project’ and I do not think that should be allowed to happen. But if you think it improves the product, well then, why should I challenge it? But I suppose I am.

Ms PENNICUIK — Following on from that, the Chair is saying the audit subcommittee works well. I am not on the audit subcommittee, so I would not want to say whether it does or does not. My view would be that perhaps it improves the product, but at the end of the day there should be scope for the Auditor-General to say, ‘Thank you for your opinions on improving the product, but I still reserve my right to conduct my audit the way I wish, in the priorities with which I wish to conduct it, notwithstanding that I have consulted with the committee on that’. Would that be right?

Mr BLAKE — I hear what you say, and as I said earlier, why should I challenge it, but it is a perception issue. Because you have 10 people around the table who are apparently willing and keen to do all the right things, that is great. That could be different if you had 10 different members on your PAEC, but it is not right for me to speculate.

At the end of the day, the Auditor-General should be allowed to hear what you say and then go off and do what he or she thinks is the right thing to do. But it would be a brave Auditor-General to keep ignoring the suggestions of that subcommittee, I think.

The CHAIR — I think it is a question of trust and mutual respect.

Mr BLAKE — Correct.

The CHAIR — Indeed, under the act the Auditor-General can do precisely as you have just described, and as Sue has just described. Clearly the current act is premised on trust and mutual respect and a mutual interest in improving the efficiencies and effectiveness of the Victorian public sector.

Mr BLAKE — I think that is in all of our interests. Yes, I agree.

The CHAIR — We might leave it there. We have had lots of questions and I appreciate that you made yourself available, also the group putting together a submission for us.

That concludes the consideration of the evidence provided by the Australasian Council of Auditors-General. I thank Mr Blake for his participation today, it was a very useful session. I do not think we had any questions on

notice for you, but I am sure if we do have any further questions, you would be able to take correspondence from us.

Mr BLAKE — Yes, I would, and thank you for the opportunity.

Committee adjourned.