

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Victoria's Audit Act 1994

Melbourne — 7 April 2010

Members

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Witnesses

Mr G. Hehir, Secretary,

Mr S. Mitsas, Director, Budget and Financial Management, Department of Treasury and Finance; and

Mr P. Reed, Deputy Secretary, Government and Corporate, Department of Premier and Cabinet.

The CHAIR — I declare open this Public Accounts and Estimates Committee hearing on the inquiry into the Audit Act. On behalf of the committee I welcome the Department of Treasury and Finance and the Department of Premier and Cabinet, in particular Mr Grant Hehir, the Secretary of the Department of Treasury and Finance; Mr Steve Mitsas, director, budget and financial management; and from the Department of Premier and Cabinet, Philip Reed, deputy secretary, government and corporate. 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 PAEC secretariat are to approach PAEC members. Departmental officers, as requested by the Secretary of the Department of Treasury and Finance or the deputy secretary of the Department of Premier and Cabinet, 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 of hearings by Hansard, witnesses will be provided with proof versions of the transcript by the end of April, which should be verified and returned within three working days of receipt. Hansard is obviously working overtime; there are lots of inquiries going on. In accordance with past practice, the transcripts and any presentations may then be placed on the committee's website.

I will now hand over to the Secretary of the Department of Treasury and Finance for any opening comments or to Philip, if you wish to make some. Committee members will ask questions relating to the comments you have provided us with to help form our discussion paper. No doubt you have also read some of the submissions, and questions may proceed from them as well. I also ask that all mobile telephones be turned off.

Mr HEHIR — I do not think I will make a lot of opening comments. I just thank you for the invitation to appear before the committee. We think this is an important review. Obviously the role of the Auditor-General is quite central to the whole process of government and in assuring the accountability of executive government to Parliament; it is a critical cog in that wheel.

I think the discussion paper that has been circulated raises some really important issues around the role, scope, accountability and operations of the Auditor-General and his office. I think that those issues go to some fundamental principles of how the system of government works in Victoria, so they certainly cannot be treated lightly from that perspective.

Issues around the role and the extent to which it goes from assurance and compliance into improvement and risk management are some of the things that we have raised in some of the questions that we have put to the committee, such as the scope of the Auditor-General's mandate and whether it has moved away from its traditional role in respect to coverage of the executive arm of government into its relationship with the judiciary and Parliament. I think these are pretty fundamental issues which obviously need to be considered very carefully before making any legislative changes.

I think there are also a number of issues around accountability and how the audit office itself is accountable, which are raised by questions that are being asked, and I am happy to talk a little bit about them if people are interested. Other than that, I would not make any other comments but rather just deal with any issues that members of the committee may raise.

The CHAIR — As they come up, yes. Do you want to comment on the last things you mentioned, the issues in terms of accountability?

Mr HEHIR — I think some of the questions that have been raised in the discussion paper around the relationship of the Auditor-General and his office to Parliament are quite fundamental. My understanding of the sort of structure of how things have worked is that Parliament effectively established the position of the Auditor-General through the constitution to provide assurance to it from an independent source of the effective operation of executive government.

When you have a body which Parliament has established in order to provide some assurance over operations, I think the accountability back into Parliament — and that is traditionally through the PAEC — is a pretty fundamental issue. There is a balance there that always has to be played out between the concept of independence and concepts of accountability, and some of the questions and issues that have been raised through this inquiry actually come to those fundamental issues.

Very clearly the Auditor-General needs to be independent of executive government. You cannot have government deciding what is being reviewed or the terms of what has to be reviewed. Its independence of Parliament is a different matter, and how Parliament holds the Auditor-General to account is also fundamental to the effectiveness of the function.

The CHAIR — So what is the balance? The Auditor-General in his submission made it very clear that he disagreed with the committee, and said that he is not an agent of Parliament, he is an officer of Parliament. This is possibly an indication that this third wave of auditing reform is almost putting the Auditor-General in a fourth estate — which would push the press into the fifth, of course. What is the balance there? Other submissions we received, particularly from the Australasian Council of Auditors-General, are almost contortionist in the way they keep coming back to the notion of independence.

Mr HEHIR — I find it difficult from my position to talk about what is right and what is wrong in these contexts. I think the important issue here is that whether it is an officer or an agent or whatever of Parliament, the Auditor-General is a being of Parliament for the purposes the Parliament set out. It needs to be able to operate in a way which allows it to carry out the mandate the Parliament sets it.

That is very circular, but if you want to get the best out of an Auditor-General and its independence, I do not think a model where Parliament, through the PAEC or some other mechanism, actually prescribed exactly what reviews the Auditor-General should do and where they should do things would meet what have traditionally been the desires of Parliament in setting up an audit office.

Having a free rein for largely determining what business they operate under I think is quite important, but they need to be accountable for that back to Parliament to ensure that you are getting the job done that you want and that there is not something occurring which diverts their attention away from what Parliament thinks is important. There is a balance that has to be played out there. That balance at the moment operates through the consultative process as much as anything else between the Auditor-General and the PAEC. It does not look broken to me.

The CHAIR — It is unique.

Mr HEHIR — Yes.

The CHAIR — From our research no other jurisdiction has such a comprehensive relationship.

Mr HEHIR — On the face of it, it does not look broken; that is what I would say. But Parliament needs to decide what it wants out of this being and set the rules around it at the end of the day. Obviously in that process the Auditor-General needs to put its views on the table.

The CHAIR — That is fair enough.

Ms PENNICUIK — Thank you, Mr Hehir. I raised with the Auditor-General an issue which is raised in our discussion paper regarding the auditing of ministers and ministers' offices. Part of the discussion around the table was that that is partially covered by the audit of the departments: the minister's office is somehow covered by the department. I wonder if you could comment whether you feel that is fully covered, partially covered or what you would suggest?

Mr HEHIR — My understanding from a financial audit point of view is that it is covered — I think it is through the Department of Prime Minister and Cabinet.

Mr REED — The Department of Premier and Cabinet.

Mr HEHIR — Sorry. Too many COAG meetings!

The CHAIR — From my previous experience as parliamentary secretary I think the secretary of the department was responsible for organising the funds et cetera and the departmental appropriation.

Mr HEHIR — It is a bit of both. There have been some changes recently which puts a lot of into the Department of Premier and Cabinet; that is my understanding. I think the funding component of the audit of that is covered, but I think there are questions. I am not aware that there is a barrier to performance auditing of ministers' office expenses.

I think that is actually an issue that Parliament needs to consider because ministers are, at the end of the day, members of Parliament and certainly part of the resources that go to ministers comes from the executive arm, but part of it comes from the parliamentary process. Again there is this question of the scope of the audit office and the extent to which they are about the auditing of the executive, or whether they are about the auditing of the Parliament. That is a question that comes up.

The CHAIR — Why don't we deal with the financial audit side first off?

Ms PENNICUIK — And then we will go back to the others.

Mr REED — At the moment the financial transactions associated with salaries and allowances that are provided to offices are captured within DPC's financial statements and therefore audited by the Auditor-General.

The CHAIR — So the auditing then of the financial audit of DPC?

Mr REED — Yes.

Ms PENNICUIK — So it is not individual departments, it is DPC?

The CHAIR — So it is DPC now, is it?

Mr HEHIR — It was about five years ago or something like that, that it changed.

Ms PENNICUIK — So in terms of the performance audit?

The CHAIR — Is that a constitutional question?

Ms PENNICUIK — Yes, but also in terms of the significant amount. You are saying that a minister is an MP, but a minister is an MP who is more equal than other MPs, particularly in the amount of resources that go to a ministerial office and how they are acquitted, I suppose.

Mr HEHIR — I do not feel in a position to answer it one way or the other, because I really do think it is a matter — when you get into that sort of blurred line between what is Parliament and what is the executive, it is a very difficult question. To have the Auditor-General have a specific role in undertaking performance audits of Parliament or arms of it is a big question that goes to some of the fundamental structures of how our government's framework operates, and I am not certain how much you can cut off a minister's ministerial staff and say that you are going to treat that differently from the rest, given that the expectation would be that the staff of the minister operate completely under the direction of the minister, and the minister is a member of Parliament.

If you put all that together, it seems to me it is a big step to say that you can break off ministerial offices from the question about the role of the Auditor-General in undertaking performance audits of Parliament. That is a big step to move into that space. There are a whole range of issues around accountability, conflicts et cetera that open it up and it comes back to the other question about what is the role of the Auditor-General as an arm of the Parliament, or as some fourth estate — which I think you described it as.

Ms GRALEY — That is the media, though.

Mr HEHIR — Or fifth estate, if the Auditor-General is operating in that sort of field, which is independent of Parliament, where does that accountability lie? Before you can jump to the answer to that you have got to work through those sort of fundamental questions about how you make accountability and governance work

and then come to a decision about whether that is a desirable thing to occur. And that is a prior question about whether undertaking a performance review of a minister's office or ministerial offices is a good thing or not.

Ms PENNICUIK — Well, it is.

Mr HEHIR — Because I think it is wound up into this concept of the relationship between the Auditor-General and Parliament.

The CHAIR — Of course you have also got the role of the executive, rather than the legislature.

Mr NOONAN — I want to ask a question about the operational powers and responsibilities of the Auditor-General from your point of view. We have had the Auditor-General for a couple of hours this morning and one of the issues that we spent a bit of time on was talking about access to third party premises.

This was obviously raised in the context that government is increasingly delivering services and projects through partnerships, alliances and differing service delivery models than perhaps they were 20 years ago. We have had a couple of submissions from departments which raise issues about whether or not amending the act to provide this to the Auditor-General will indeed impact or affect Victoria's capacity to conduct business with the private sector on a competitive level.

We have also had a submission from a department that perhaps there need to be some limitations around this issue being established along the lines of a reasonable-belief requirement that might normally be satisfied through a relevant court before this can actually happen.

I wonder whether you can begin our discussion, because I am sure there will be a few questions on this in terms of the competitive issue, in terms of whether there should be limits, and any other factors which you believe plug into extending the Auditor-General's capacity?

Mr HEHIR — I think undoubtedly if you impose an additional cost on a private sector provider, then they will pass the cost on to the government. That is just what will happen and it does not matter whether it is putting an additional audit burden, or any other policy proposal you put on them, people do that. Does that have an impact on competition? Yes, but the question you need to ask is a cost benefit question rather than that one, I would have thought. Does the benefit of doing it outweigh the cost of doing it?

It probably would be going too far to say that if you did this, the world would come to an end and we could not do it any more, it would just increase the cost of doing it. In relation to the significance of the increase, I do not know.

Would it create an increased bias towards in-house delivery versus external? Yes it would because you are adding cost to the private sector; another regulatory burden over the private sector. That is undoubtedly true.

The CHAIR — Or it might equalise it, actually.

Mr HEHIR — There is a whole pile of regulatory burdens that the private sector has already got which public sector providers do not have to do as well. There is a whole pile of stuff from the commonwealth business regulator's side of things and that type of factor.

The CHAIR — Corporations Act.

Mr HEHIR — And certainly far more competitive pressures than what the public sector provider would have to do so it is a bit of a balance on those things. Yes, it would impose an impediment from that point of view.

I do not know whether the assertion that the use of private sector provision has increased dramatically, is correct. I think it fluctuates through time and the mechanisms for using it fluctuate through time. We have been utilising private contractors to deliver roads for decades, and we have used private contractors to maintain roads for decades. We now package it up into one contract and roll it out as a PPP.

Has the world changed a great deal from that perspective? Not in terms of how the service is delivered. Whether we do things in-house or externally has varied through time as well. In the 1990s, 2000s we probably

outsourced a bit more than what we did in the past, but we probably outsource less IT services today than we did 15 years ago, would be my guess. That is based on people making cost-benefit assessments on what is the right delivery mechanism. I am not certain the world has changed dramatically, although there are some big projects now that delivery is by the private sector.

Mr NOONAN — The evidence we received this morning went to Western Australia and Tasmania, and I suppose the view of the Auditor-General was that has not changed the competitive nature of the tendering over there. It is still, seemingly, all comers for contracts.

The view was also expressed that VECCI and Infrastructure Australia are not overly concerned about this potential development. I am just trying to weigh up the pros and cons. You have probably put more cons on the table for us, or more question marks for us as a committee. I am just trying to get something more definitive, because this is a pretty substantial issue.

Mr HEHIR — When I think about this I come back to principles, to tell you the truth, and not necessarily about whether a particular project is more competitive or not. I think the fundamental principle comes back to what is the role of the Auditor-General. The methodology that we have operated under has been that the role of the Auditor-General is to undertake an audit function on executive government, and that the structure under which the legislation works is about that.

If executive government or a department outsources the delivery of something, then the role of the Auditor-General is to oversee that, look at the documentation and provide assurance to the Parliament whether the delivery of that service, product or whatever is value for money, good practice — whatever. It seems to me that the question that the Auditor-General is asking is exactly the same one that the contract manager should be asking as part of their management contract.

I do not quite understand what the circumstances are where the auditor does not get access to the information they need to provide the assurances to Parliament, except if the contract is not written in an appropriate way. If that is the case, the role of the Auditor-General under the current framework is to say, ‘The contract does not provide the necessary information to give me assurance on this, and you need to improve the provisions of contract management processes around this’. I think through time you would find that our contracting performance has improved.

The CHAIR — To be fair, that is exactly what he is saying. He is saying that Partnerships Victoria guidelines are not working.

Mr HEHIR — I am not aware of an example of that, of their not working.

Mr NOONAN — I think he said ‘unreliable’.

Ms HUPPERT — Yes, and ‘inconsistent’.

The CHAIR — Inconsistent.

Ms HUPPERT — The contracts that have been entered into as part of the negotiation — full contracts for alliances and PPPs and provision of service generally as part of the contract negotiation standard provisions regarding to access documents are watered down, and that there is no consistency — most contracts that they have looked at in terms of the ability to access information, which is what they are seeking, and not the right to audit the contractor, but the right to follow through and get documentation to back up some of the information — that has been provided by the government entity that is managing that contract.

The CHAIR — He goes on to say:

Failure to make the amendments will result in further loss of transparency and assurance as the mandate of the Auditor-General is eroded by new service delivery models.

Mr HEHIR — I do not think the mandate is changing. I think the question that is asked is whether the nature of the contracts and the information required under the contracts actually allows the assurance that the Auditor-General would like to make, which in my mind I cannot differentiate from the assurance that a contract manager would want to undertake.

If the problem is poor contract specification, then I think that is the one that needs to be delved into so that the information is available, because you have to go back to first principles on all of this. If you expand the role of an Auditor-General beyond that of undertaking audits of executive government, where does that leave you? For example, if the commonwealth audit office had a mandate to undertake any assurance into any entity that it provided funds to, would that mean that it could undertake an audit of our Department of Treasury and Finance or demand information from that?

Could it go into our transport contracts and say, 'We gave you some money for a railway line, therefore we want to get assurance that that money is being operated efficiently'? Would that be a role for the commonwealth Auditor-General?

The CHAIR — Okay, but the Auditor-General, to be fair, is saying that some contracts do not have explicit access clauses and there have been some deficiencies, but he is also making a further point — that is, that there is a legal deficiency in terms of the access ability of the Auditor-General. It is insufficient because it is not a party to the contract, it cannot enforce the clause, and there is no incentive for either party, or either department or the private provider, to enforce such a clause in the Auditor-General's favour, and they can possibly claim exclusion because of legal professional privilege.

Ms HUPPERT — No, the issue is that we might have a provision in a contract that says that the private contractor is to provide certain information to the department, but there will be a confidentiality clause that says that any information provided under this contract is confidential, except to the extent required by law, and if there is no legal provision to provide it to the Auditor-General. There is an argument. I have not seen it tested in court, and until it is tested — —

I have negotiated those contracts myself, so that is the issue. The issue is: how does the Auditor-General get access to the documents it wants to see without prohibitive contract or without letters or requirement? I am not saying that that is necessary, but I am asking for your views, because that is the view that has been put by the Auditor-General.

Mr HEHIR — I would say that if situations existed where departments were doing that — I am not saying there are not any cases, I am just not personally aware of any — then it would be reasonable to undertake some action to make sure that those specific circumstances do not arise. Whether that is in a legislative mechanism or some other way, I would have thought it was an issue the Committee could consider.

The way we operate generally is that the Auditor-General has access to all documents of departments, and if a department is utilising some legal nicety to get around that, then Parliament, I would have thought, should do something to get its will to be observed.

Ms HUPPERT — That is part of the issue. One is the department may not have the document, because the contract may not provide it, which is a deficiency in the contract. The other is if they do have the contract, they could say, 'But we cannot give it to you because — '.

Mr HEHIR — That should not be available, I would not have thought, but that is not the intent of the current legislation I would not have thought, but if that is what is happening, then the Auditor-General could utilise the relevant access provisions of the Audit Act.

Ms HUPPERT — It seems to me what the Auditor-General is asking for is something that is similar to the provisions in the current Audit Act relating to provision of services in the not-for-profit sector. In other words, they do not want the ability to audit a commercial entity. What they want the ability to do is to obtain documents to give them the assurance that that contract is being managed in an appropriate, not to go into a wholesale audit. They are talking about being able to put a ring around what it is they are getting from the commercial entity. You seem to have some concerns that that would be possible.

The CHAIR — I think it works now.

Mr HEHIR — I have concerns about whether any ring fencing is possible, and I think that Parliament needs to assure itself that the mandate it wants to give to the entities that it sets up is appropriate.

The question that I ask is: does Parliament want to establish a role for the Auditor-General which is auditing executive government, or does it wish to extend that role into being able to access information and documentation and whatever mandatorily from all of the elements of the community with which government touches financially, which is almost all of it?

The CHAIR — So it should be doing a performance audit of the Salvation Army and Spotless or whatever it funds?

Mr HEHIR — Or people who get a school start bonus or something and how they spend that. Where does it start then?

Ms GRALEY — Please!

The CHAIR — That is the red coat complex, is it not?

Mr HEHIR — You can come up with lots of examples which would never occur in practice. To me, the principle that I would have thought the committee needs to bear in mind is: what does it think the role of the Auditor-General should be, and how far should that spread? If it is uncomfortable about it spreading beyond a certain field, then make sure that the line where it is comfortable at going to is a very clear one.

At the moment I think it is clear because it is about undertaking operations with respect to government. I accept that if you get poor contracts, then getting information can be difficult and that needs to be improved, but how do you actually expand that and constrain it? I am not clear about that.

The CHAIR — The Auditor-General has provided in chapter 5 of his submission comments on 5.2.1 and 5.2.2 — in the one we have here. Can you have a look at this and provide us with some comments in response to the issues he has raised, particularly regarding contracts not containing specific access clauses, the Partnerships Victoria requirements under PPPs, the wording used, standard access clauses?

Rather than trying to give an answer now, can you have a look at the issues he has raised — from page 14 through to 17 in his submission? There may be some things there on which you can provide some clarification to us about some of the issues he has raised. You may have some suggestions on changing the wording in the Partnerships Victoria requirement, for example, in the future in responding to what he suggests; things like that. Is that fair enough?

Mr HEHIR — We can get back to you on that.

The CHAIR — Certainly.

Mr HEHIR — Was it 5.1 and 5.2?

The CHAIR — Yes. That is what the questions have been about.

Mr DALLA-RIVA — In relation to the budget, the parliamentary involvement in the determination of the Auditor-General's annual budget, I just wanted to get some clarity. The Auditor-General this morning mentioned that he would like to have the budget determined by — —

The CHAIR — The Speaker.

Mr DALLA-RIVA — By the Speaker. I guess it would come through us. I am concerned about the involvement of the DTF in that process. I am trying to find out where you think it should be allocated and processes, perhaps, that are engaged with the Auditor-General. You mentioned earlier the performance audits and all of that but I am just trying to get a bit more of a feel from the department's perspective on how that is all sorted out, given that the Auditor-General has raised it.

Mr HEHIR — The current mechanism from the end point is that Parliament determines the budget of the auditor because it is a line item in the appropriation bill for Parliament and it goes through. Like most money bills, that is put forward by the executive, by the Treasurer, by the government of the day. The process by which it is dealt with is the same as how every other line item in an appropriation bill is dealt with in respect to Parliament's budget and the lines that are in that appropriation bill. Parliament puts a submission to government,

the government considers the submission, makes a decision on what legislation it wishes to implement into Parliament and then Parliament discusses it. That is the mechanism.

The only other mechanism that exists is the one that operates for the Auditor-General's salary and for judges' salaries, which is a standing appropriation which is sort of unlimited, in effect. It is limited by the cost of the salary but there is no specific annual parliamentary item.

The CHAIR — The Governor's salary, too?

Mr HEHIR — And the Governor's salary. We do not use that line type of appropriation a great deal in Victoria. We have only used it for those sorts of salary components of things. The only way you could carry out a mechanism, as described, would be if there was legislation passed which said that the amount of money that went to the Auditor-General was as determined by the Speaker or something like that. I think that would be a novel approach to allocating resources. At the moment there is a consultation process between the Auditor-General and the PAEC which feeds into that budgetary process which is, I think, set out in the legislation at the moment.

The CHAIR — Is that clear? The process is that the Auditor-General discusses it with you?

Mr HEHIR — The Auditor-General discusses his budget with the PAEC.

The CHAIR — Yes, he does.

Mr HEHIR — That gets fed into a submission or a proposition that is part of the parliamentary department — the proposition as a whole is my recollection. It goes in. If there is anything significant in it, there would be a discussion between my people and the audit office people about why they are saying they need X amount of money and whether that is appropriate or not, like happens with everything else.

The CHAIR — Like happens this year.

Mr HEHIR — Then an outcome is produced. There are technical ways of implementing alternative scenarios. The way we do it at the moment seems to be reasonable, I would have thought. If Parliament was concerned that that process was underresourcing the Auditor-General, I would have thought it would have been raised, particularly that this committee would have raised it in some of the budget hearings.

The CHAIR — I know this committee has written to the Treasurer and the Premier in the past and made pretty clear its views. This process is interesting because what the Auditor-General is proposing is quite a unique process which Parliament does not have either.

Mr HEHIR — No — the process for Parliament. What occurs for the Auditor-General is the process that happens at Parliament.

The CHAIR — Same as the process for Parliament?

Mr HEHIR — And for that matter for the judiciary as well.

The CHAIR — So the Department of Justice puts up on behalf of the courts?

Mr REED — The Ombudsman as well through the DPC.

The CHAIR — We think the Ombudsman's funding should come through Parliament, but that is just the view of this committee.

Mr HEHIR — There is not a process of the like that is proposed. I do not know whether that answers your question specifically or not.

Mr DALLA-RIVA — What did I ask again — sorry?

Ms GRALEY — I would like to ask a question. I asked it of the Auditor-General when he was here because it had to do with his comments in reference to your comments about chapter 6 and the matters raised by your department in regard to the Auditor-General. He makes a stirring comment at the end of this, that the

Auditor-General believes that any of the amendments suggested by DTF in this section would pose a serious threat to independence; in effect, represent transferring executive power and an inappropriate outcome. I would like your comments about that.

Mr HEHIR — We have not made any suggestions for any amendments to the act. Quite explicitly we have not made any suggestions for amendments because basically the process that goes on here is that the PAEC is undertaking a review which will go to government and we will advise government. I think the role we can play best is to say, ‘These are the sort of issues that you should consider’ and then provide the background from our experience. With respect to the issues that we raised, one is around the concept of continuous improvement. and this is largely in the area of performance reporting, although it does flow into financial reporting.

The CHAIR — It does, in terms of these sorts of reports he is now producing — water entities, hospital entities et cetera?

Mr HEHIR — Yes.

The CHAIR — He is looking to put them in his annual plan as being significant reports and sector reports.

Mr HEHIR — The concept we are talking about is that the evolution of performance reporting has been one which started because the nature of where the organisation started from was very much in the compliance framework — that is, is there a set of processes to undertake an activity? Have the processes been carried out and if they have not, why have they not, and they should be fixed?

Going forward, you would expect to see in the evolution of performance audits that we will move more and more in the direction of not just looking at, ‘Have you complied with certain frameworks?’ but more commentary around, ‘If you have not, what would it look like if you were compliant?’, that type of thing, which is what I mean by continuous improvement.

It is not just, ‘You did the wrong thing but you did the wrong thing and the right thing looks like this’. There is a significant grey area in all of this because we are certainly not saying — and these are why we are raising questions rather than putting forward answers — that the role of the Auditor-General is to establish policy or establish compliance frameworks.

The role of the Auditor-General is to comment on whether people are adhering to policy and frameworks and to some extent the validity of those frameworks. That is an area that you have to be careful about as well because it is not the role of the Auditor-General to say whether a particular policy is right or wrong.

There is a significant grey area between looking at a predominantly compliance-focused performance audit regime to one which is about compliance plus added value and how organisations can continue to improve through time. The question that we are asking, I suppose, is: are there issues within the Audit Act or should there be issues within the Audit Act which mean that performance auditing continues in the direction I think it has been going which look at not just compliance with current practice but what is best practice?

How could you move towards best practice, those types of things but not getting into the space of setting policy or setting frameworks. I do not think there is anything we are talking about which would undermine the independence of the Auditor-General

The CHAIR — Where does that go? We have, as we said, coming out of the financial ones, these sector reports which talk about common internal control weaknesses, for example, and suggestions. He also, for example, produces these records management checklists and other reports. There is quite a good one on IT and another one on procurement principles, which seem to me to be not just going around shooting the wounded but helping continuous improvement. We call them now ‘reported cultural strong performance in outcomes achievement’.

Where does that sit in terms of the Auditor-General; the role, for example, of the Department of Treasury and Finance, the Department of Premier and Cabinet, the SSA and even the Ombudsman who also takes some systemic views of things in some of his reports? What is the particular role of the Auditor-General in that total context of continuous improvement and arrangements? What should we be looking at in reviewing the act, to say, ‘This is the particular role for you. There is little overlap but this is the main role for you’?

Mr HEHIR — I suppose if I was suggesting an area in the legislation where the committee could give consideration to the nature of this role, it would be in the principles-type concept of the act, looking at the objectives and those types of things and whether within that framework it would be worthwhile considering concepts around best practice or continuous improvement as being part of the objectives of the auditor. We put it a little bit tentatively, because it is a significant question, but if you are having a review of the Audit Act, it is worthwhile thinking about whether the focus is solely on assurance or whether it needs to move in that direction.

We have worked with the Auditor-General on a couple of the things you have talked about and they have been good exercises which have produced good guidance in what best practice looks like. It would seem to me that when the audit office undertakes a performance audit of an activity, and in that context identifies not just bad practice but its research leads it to good practice, then there is probably value in that being more broadly spread out around the place. How that happens is an issue. In many cases it may be through doing things like that IT report, which was a joint one with us.

The CHAIR — Yes, this one here.

Mr HEHIR — That type of concept.

The CHAIR — What are you suggesting — that there be a preamble in the Audit Act in terms of principles and objectives?

Mr HEHIR — There is an objectives section at the moment. There might be value in looking at that and whether there is something that can be included

The CHAIR — Because we have used it in other areas, have we not?

Mr HEHIR — Sorry?

The CHAIR — We have used it in the financial management area.

Mr HEHIR — Yes. But bearing in mind you do not want to make the Auditor-General responsible for policies and framework. That is not his job.

The CHAIR — No, that is right.

Mr HEHIR — If they are responsible for it, then you have a conflict of interest there, because the next time they come to audit they might feel some ownership of it, and you do not want them to feel ownership of what the good practice is. Their job is to review things. I think you have to be careful about all of that.

There has been some good work done in best practice and continuous improvement; the question we are asking is whether that can be built into the framework a bit more. I do not think we have a solid, formed view that there is an easy answer to it.

The CHAIR — No, but I think we are of the view that the worst type of auditor is the one that just goes around and criticises people without necessarily trying to improve performance. It is easy to criticise; the hard thing is to come up with something which is constructive.

Mr HEHIR — That is one of the reasons why we have raised the other issue, which is around risk and risk management.

The CHAIR — Risk management, yes.

Mr HEHIR — I think, as I have mentioned before, there are significant concerns if the accountability framework in operation in the public sector forces people into risk aversion or more risk-averse behaviours than is desirable for effective outcomes. I think that is an important question, and that is the point that you make. If you have an approach to auditing which is just about a gotcha, caught you out-type of thing rather than effectively managing risk, that is quite damaging to innovation and driving change.

On the other hand, at the end of the Auditor-General's comments I heard him talk about the desirability of departments having good frameworks in place. I think good risk management also means that departments and organisations should be clearly specifying the level of risk they are willing to tolerate and then the review of the operation should be whether, when departments or entities set their risk appetite, that is a reasonable assessment of a risk appetite and then whether they have acted in compliance with that risk appetite setting.

They should be the questions rather than, 'You made a mistake'. If you make a mistake and it is within the risk appetite that you have set yourself, it should be treated as reasonable that those sorts of things occur. You cannot live in a risk-free world.

I think we still have a way to go in building comprehensive descriptions of risk appetite across government, and that is a responsibility of Treasury that we are working on continually — how you define these things better. But that only works if you have an accountability framework which accepts that as the base, that is, that risk management is what you want, not risk aversion. The questions we are asking there around those issues are whether the current act could be enhanced in any way, again probably through the objectives type of thing around making clear that we are not just about risk aversion, we are about effective risk management practices.

The CHAIR — Sue, did you want to follow up that?

Ms PENNICUIK — Not so much that. I wanted to go back to the previous discussion about the access of the auditor to public money or public property in the hands of private sector contractors. If I could take just a minute to go back to some of the things you said, one of which was, 'There does not seem to be much of a rise in contracting out or using PPPs', although you said that in the past things were contracted out but now they are packaged up into PPPs, which is part of the issue I think for the public. They feel that they are inaccessible and there is a rising use of alliances. Anyway the auditor points to the exponential rise over the last 10 years, up to \$1.46 billion.

With that background and the things you said, too, about going back to principles and it being the job of the auditor to audit executive government, I would have thought it was the job of the auditor to make sure all public funds are spent effectively and efficiently and provide value for money et cetera. If public funds and public property are held by private sector entities — and sometimes for a long time — why, from the principle of the public's point of view to want to know where its money is going, should those private contractors not have that audited?

You also said that that would be a cost on competitiveness. How is that a cost on competitiveness when it would apply to any contractor? No-one is disadvantaged here; everyone would be subject to that. Why would private sector entities that are engaged in large contracts involving a lot of public sector money object to having that audited? Why would they object on principle, when they have their own operations audited anyway in a private audit setting?

I am sensing a resistance to that. When I am trying to put in the public's point of view, which is that it wants to know what is going on with its assets, with the increasing amount of public money that is being tied up in this. I am just following up on some of the comments you made as to why. I really cannot understand why that is being objected to on a point of principle.

Mr HEHIR — I do not believe that in any of my comments I have stated anything as a matter of principle or said one way or the other in any of those areas. What I have been trying to say is that I think there are some significant issues that the committee needs to consider in this area, rather than saying yes or no. I do not see it as my role to propose a set view on anything, because that is not what I am here to do, in my view, as a public servant. It is to provide background information. If you have taken what I have said to say something should not happen, what I have tried to say is that I think that there are issues of concern around the role and scope of the Auditor-General which this committee and Parliament should consider very carefully, because you have to come back to a principle level, not just an individual case.

With respect to competitiveness, I think I actually said the same thing you said — that is, there will be a cost and the cost will be borne by the public sector, because if you impose the additional regulatory burden on private companies they will all build it in when they tender. Some of them might build it in at different levels, but that will be met by the public sector. To the extent that there is a reduction in competition, it is actually a competition between the public and private sectors — it is the relative pricing between those two things that

changes, not between private sector companies. SO it is not going to advantage or disadvantage one private sector company over another in that. It is whether the decision to outsource or not, or to run a PV or whatever, would occur. I do not think I have actually said anything different from what you have said.

Ms PENNICUIK — But is that not a good thing, because it is then a level playing field? Everyone gets audited.

Mr HEHIR — The Chair raised that with me before and my comment was that that was difficult to determine, because there is a whole pile of regulatory processes in place in the private sector which differ from those in the public sector. To get a level playing field, it is not clear to me that adding an additional burden to the private sector makes it a level playing field at the moment. I would not have thought so; it is not clear-cut to me one way or the other.

Ms PENNICUIK — You are putting it in terms of an additional burden; I am putting it in terms of the public wanting to know where its funds are going.

Mr HEHIR — The proposition that I have made is that expanding the ambit to allow access to auditing of — or whatever term you want to use to describe it — of private entities and individuals that the public sector operates with by the Auditor-General rather than just the public sector as a whole is a very broad expansion of powers and one that should not be taken lightly. I have also said that if the concerns are largely about access to information then it could be seen to be a contract management issue. If contracts are written which do not provide managers with enough information to effectively manage their operation, then that is something the Auditor-General should be raising concerns about with Parliament. Whether you need to follow every dollar in order to do that I think is questionable, because what you are trying to get at is whether you have got value for money. For example, it does not matter whether a private sector company makes a profit out of it doing business with government — in fact it is desirable. If one company wins a bid and makes a good living for its business out of doing that, that is not a problem, is it? I would not have thought so.

Ms PENNICUIK — I do not think I raised that issue. I just raised the issue about the investment of public funds. I was also interested particularly in public property that is held — for up to 30 years in the case of a road or something — in the hands of the private sector and that will then be handed back to the government. What state is that asset in? It is a public asset at the end of the day.

Mr HEHIR — Again, I would argue contract transcends, because most of the contracts specify the condition in which an asset is to be returned to government.

Ms PENNICUIK — I wanted to take up the idea of contracts, because my concern with that — and you might have a comment on this — is that at the moment the Auditor-General relies on the contract manager in the department saying the contract is working well and everything is going fine. Is that good enough, because there are already problems in departments with the way they run their own programs, let alone them having to rely on just the assertion of a department that the contract is being managed well without the auditor being able to check for himself that that is the case?

Mr HEHIR — I would be very surprised if there was any circumstance where our contracts were so poor that you would have to rely on only assertions. Almost all our contracts, to my knowledge — and I do not read them all, by the way — have significant requirements on performance reporting by the provider of the service providing data et cetera. So it is not an assertion, because effective contract management means that the contract manager needs to have access to the information to ascertain whether the service is being delivered.

Ms PENNICUIK — This is true, but only the contract manager is having the access to that data.

Mr HEHIR — The Auditor-General has access to all that data.

Ms PENNICUIK — Perhaps, or perhaps not all.

Mr HEHIR — No, the Auditor-General should have access to all that data that the contract manager has — section 11 of the Audit Act, I think.

Mr MITSAS — That is right. Sections 11 and 12 of the Audit Act provide for full and unrestricted access to any information that public sector bodies have.

Ms PENNICUIK — Yes, but in terms of corroborating what has been put forward by the contract manager, how does the Auditor-General do that? By corroborating assertion or — —

Mr HEHIR — I am not certain where that ends. There is either enough evidence provided to the contract manager by the provider to give assurance that the contract has been adhered to or there is not. If the contract does not provide enough information to give assurance to the contract manager and to any external body, whether it be the Auditor-General or a parliamentary inquiry or whoever else gets access to it, for them to ascertain that the contract is being delivered effectively, then the issue is poor contract management and poor contract description. That is the thing that needs to be fixed up. If the contract manager cannot be assured that the contract has been delivered effectively, then the contract is not written in a way which allows that to happen and it needs to be fixed.

Ms PENNICUIK — Yes, but — —

Mr HEHIR — This comes down to: what were you trying to ascertain here? You are trying to ascertain whether public moneys are delivering the services and goods and services and outcomes that the government wishes to provide. That is all.

Ms PENNICUIK — But the contract manager in the department has a conflict, in a way, to protect — and hear me out — their own conduct in managing the contract, so at the moment under the act there is no ability to check. If the Auditor-General wanted to check that in terms of public moneys or public property held by private companies, he cannot do it.

The CHAIR — I think there are standards of public performance. People from the Department of Premier and Cabinet are not here, but they are meant to maintain the standards of public performance. Sorry, Philip.

Ms GRALEY — They are professional people.

The CHAIR — Do you not think?

Ms PENNICUIK — No-one is saying they are not, but at the moment even departments can trip up in running their own affairs, and the Auditor-General will make a finding about that. Just relying on their word that something is being done in accordance with a contract does not necessarily mean that that is the case.

Mr REED — I think the point that Grant is trying to make is there is documentary evidence that you expect to be provided under the contract. Then the Auditor-General should have access to that information, not just the word of the contract manager.

Ms PENNICUIK — In some ways you are suggesting that there should not be a problem with access to those documents or information held by private companies?

Mr HEHIR — No, I am saying that a problem potentially could exist if the contract does not provide for access to all the information necessary to manage the contract. I accept that. If a contract does not do that, then the role of the review processes we have in place, including the Auditor-General, is to say, 'That is not how you should write a contract; it should be like this so that you have access to all the information'.

Ms PENNICUIK — But then there are all these commercial-in-confidence provisions in contracts as well.

Mr HEHIR — As we talked about before, if information is provided by the contractor to a public sector entity, then the Auditor-General should have access to it. I do not think you have any fuss about that. That is just straight up and down, I would have thought.

The CHAIR — Wade, do you want to follow this up?

Mr NOONAN — No. I want to move on, too. I had a go at this before, but perhaps not at the level of detail that Sue has. I want to switch paths in terms of the issues associated with the auditors of administrative functions of Victorian courts. I think this goes to the issue of the principle of judicial independence and the legal convention of separation of powers. This morning there was a discussion with the Auditor-General's office about separating the administrative functions, whether these could be properly defined and whether Victoria was perhaps out of step with other jurisdictions across Australia in this regard. It does appear that we are on our

own in this area. I wonder whether you can provide a viewpoint, because certainly the Auditor-General has put in his submission that his view is that DTF is blurring the lines between the judicial functions and the administrative functions in terms of this issue.

Mr HEHIR — I think it is blurred, and it is an issue that we confront all the time in our job because, as we talked about before, the way that the judiciary is funded is no different from the way the Parliament is funded, and we step along the same line from a budget/resourcing viewpoint as the auditor does from an audit point of view.

My understanding of the way it works at the moment is that the auditor undertakes financial audits of the judiciary on the basis of agreement rather than mandate, and that has been going on reasonably successfully for a while. Once you get beyond that into performance auditing, I think that is where the blur makes it very difficult, because if you go beyond the operating efficiency of the back office functions of courts, there is not much that is not getting into basically what are the governing functions or policy of the court — the stuff which clearly is separate.

We have discussions with the courts on a regular basis — regular, as in every two or three years — about whether they are utilising good practice and efficiency in operating their back office functions and even their court functions, whether they can utilise courtrooms more efficiently and that type of stuff. I think you have to be very careful about where the lines are on these things, because it is a fundamental principle of our structure of government that the judiciary is separate from Parliament. We have an in through the financial side of things. However, it has to be treated carefully; it is not our job to tell Parliament how to operate, because that could impact on the quality of its decision-making processes.

The resources you give them actually has an impact on that as well, so that is a difficult line. We are treading that line all the time. I have sympathy for what the Auditor-General says. From a financial audit point of view, though, again it seems to be working. You would raise concerns if the courts were saying, ‘No, we are not going to let you audit our finances’. That would be a significant concern, but there does not seem to be any indication of that. If you are going to get into the performance audit side of things, you have to be pretty careful, I would have thought.

Mr NOONAN — But if you have a discussion every two or three years about what you term ‘back office functions’, is the counter position that that should then be open to some perhaps more independent scrutiny, to see whether there are greater efficiencies that could be built into the functions of our courts?

Mr HEHIR — I think it is just the really fundamental and difficult question. I do not feel that I am an expert in the area of separation of powers in order to jump in. I do not know whether Phil feels that way. It just seems to me that you open a door and it is big door.

Mr NOONAN — It is a door that we have to grapple with.

Mr HEHIR — It is one we have to grapple with, so the first question that comes to my mind is: where is the broken bit that you are concerned about? If there is not something broken, then I would have thought it was pretty fundamental for Parliament to be asserting some authority over the judiciary.

The CHAIR — Where can we? This committee has expressed some concern about the time it has taken clear case backlogs. Of course the ABS provides figures on those for a comparison between courts. We have commented on this in our financial and performance reports and suggested the Auditor-General look at it, but because there are judges involved, any judicial involvement in executive management of the courts is seen as something affecting the judicial independence of the court. From their point of view it is very, very clear; it is not blurry at all. I guess from the Auditor-General’s point of view and to some extent our concern is in terms of effective management in a general sense rather than a particular judicial action, which is something this Parliament would have nothing to do with. Where do you lie on this?

Mr REED — I think it is an area that is going to be a difficult one to define. I think you have to seek advice, not from these departments but constitutional advice in terms of the impact of this and where a boundary might sit that is different from the one that exists today under the agreement that was the protocol that was put in place in 2006. We obviously caution against that.

The CHAIR — I suppose you would.

Mr NOONAN — Just before we move on, what have those periodical discussions led to, if anything, given the points that Bob has just raised? Is there an openness, a willingness to make improvements?

Mr HEHIR — Yes. If you look at both the County Court and the Supreme Court, there has been significant practice reform in the last four or five years and almost all that has been driven internally. We have encouraged it, but it has been the courts actually looking at themselves and saying, ‘How can we get better outcomes?’. They have commissioned work, done reviews, looked at their practices and instituted new methodologies for dealing with stuff which have increased their ability to do business significantly, in my understanding. I am pretty confident that both the Supreme and County courts have done quite a lot of work in that area.

The CHAIR — They are even working in January now. They made those changes a couple of years ago.

Mr HEHIR — They have done a lot of stuff in work practices, which has just been quite radical from the judiciary’s point of view, I think — and positive.

The CHAIR — I just want to ask a couple of questions which the Auditor-General has raised, and you may like to take these away as well. On page 25 of his submission, the Auditor-General says that he should not be subject to special reviews by the SSA under section 52(1)(c) of the PAA. You might like to look at that. The other one is about the Public Health and Wellbeing Act, which is something that has come up just recently.

Mr REED — This is the first time I have seen these.

The CHAIR — The other day was the first time we saw it, too. It probably does come up to the issue that we were discussing earlier, about what are the respective roles of the SSA, the Auditor-General and your two departments, let alone the Ombudsman.

Mr REED — Clearly you have the public sector standards commissioner review of the integrity and anticorruption system, which is looking at that interrelationship.

The CHAIR — Sure, but we are not interested in that per se; we are interested in the findings of it. We are interested in the Auditor-General, but we are trying to define where the Auditor-General sits.

Mr HEHIR — I think the SSA is largely a vehicle by which government undertakes work whereas the Auditor-General is independent of government.

The CHAIR — The Parliament undertakes the work there.

Mr HEHIR — Yes. I think what we try to do across all the independent and less independent bodies is get some sense, in that the work is not too duplicative. Most of the time people try to coordinate so that everyone is not reviewing the same thing at the same time. I would say that works reasonably well. I think the relationship between the audit office and the internal audit functions of departments is really quite good at the moment. They take account of each other’s work program to make sure there is no duplication going on, so you can get back some coverage. All of that is really positive. They fit different bits of the jigsaw.

The CHAIR — I guess the role of departmental heads in their committee is to try to coordinate that sort of stuff, too.

Mr HEHIR — Yes.

The CHAIR — Is there a mechanism by which departmental heads meet with the Auditor-General?

Mr HEHIR — Yes, a couple of times a year — two or three times a year he comes to our monthly meetings. We have meetings about 10 or 11 times a year, and he usually comes along once or twice, I think. We have a conversation, which is usually a pretty robust discussion.

The CHAIR — Friendly.

Mr HEHIR — It is important that everyone has a good conversation about how things are going. The Auditor-General is always very clear about his perspective on issues and my colleagues and I are clear about our perspectives. That is good; it helps things get better.

The CHAIR — In his report the Auditor-General is asking for legislation to ensure cooperation from departments in audits. Do the central departments think this is appropriate?

Mr HEHIR — The current legislation requires cooperation.

Mr REED — It makes it fairly clear.

The CHAIR — It is a further — —

Mr HEHIR — As you know, whenever people are reviewed there are always sensitivities around things. I am not certain you can legislate for behaviour, but at the moment the law is quite clear about the requirement for departments to provide the Auditor-General with all information necessary at any occasion.

Mr REED — There is a power there.

The CHAIR — So he cannot actually add ‘with a joyful heart’ or something or other.

Mr REED — There is a power there to actually formally call people in with their information.

The CHAIR — I think he has used that power in the last couple of years.

Mr HEHIR — Once, I think.

The CHAIR — Once, yes.

Mr HEHIR — You would not expect it to be used very often.

The CHAIR — At all.

Mr HEHIR — Or at all. I do not know whether the issues of cooperation or not with the audit office are worse than they have ever been or anything like that. It is always going to be a difficult environment. Most of the people who run programs in government are very passionate, committed and supportive of those programs, as we all want them to be. Then someone comes along to review them. Whether it is internal audit, external audit or the SSA, you get a little bit of sensitivity from program managers about that. That is human nature, I would have thought. The job of leaders — the Auditor-General, myself and my colleagues — is about making sure people understand the importance of cooperation.

The CHAIR — The total perspective.

Mr HEHIR — The broader perspective.

The CHAIR — What is your view on the ability under the act as it is at the moment for agency heads to provide a comment which must be included in the audit report? The Auditor-General is suggesting this can be done by press release.

Mr HEHIR — I am not aware of any circumstance where a department head has put out a press release.

The CHAIR — No. He is suggesting it should not be included in the audit report.

Mr HEHIR — I am not aware of any circumstance where a department head has put out a press release.

The CHAIR — Okay.

Mr HEHIR — I cannot imagine a circumstance where it would occur. I am not certain that is the vehicle for anything.

The CHAIR — Okay. He is suggesting there are other vehicles rather than having it in the report because the agency heads are not governed by principles of evidence in making their comments, whereas he, the Auditor-General, is.

Mr HEHIR — Big call.

The CHAIR — Okay. These are issues which have been raised, and it is incumbent on us to look at them.

Mr HEHIR — It is not clear to me why reducing the information coming to Parliament would be a good thing.

The CHAIR — Okay.

Mr HEHIR — I think when a report comes to Parliament it is quite capable of forming a view based upon all the information, whether it is from the Auditor-General or commentary from departmental heads. It is not clear to me why it is in the public interest to reduce that.

Mr REED — It is certainly a traditional approach. It happens in the internal audit area as well. It is the equivalent of management — —

The CHAIR — Right. They are comments from the line area of department. They are included in the internal audit, which then goes to the executive.

Mr REED — And here obviously there is the opportunity for the Auditor-General to comment on those comments.

The CHAIR — So you would say from a central point of view that it remains good practice?

Mr HEHIR — I am not certain of the harm that it provides.

The CHAIR — We would find it interesting reading, I am sure. We discussed before the right of access to records by private sector contractors but we did not discuss the right of access to premises. Would you have an even stronger view in regard to access to premises than you would in terms of access to records of private sector contractors?

Mr HEHIR — I think the issues are the same. I reiterate that it comes down to the role that Parliament wishes to give the Auditor-General on these things.

The CHAIR — It is just that powers of entry have traditionally been regarded as higher order investigatory powers, I suppose.

Mr HEHIR — Yes. It is significant, I would have thought.

The CHAIR — You mentioned before that most of your role is to provide questions rather than necessarily provide the answers. Are you looking to provide a formal submission in terms of response to the questions?

Mr REED — No. The Premier is writing to you as we speak, to indicate that the government will not put a formal submission in on the inquiry.

Mr DALLA-RIVA — Which is exactly what the Auditor-General was saying, that he had tried to get information from you guys and you will not do it. Thanks very much; you have just confirmed what the Auditor-General is saying.

Mr NOONAN — They have been here for an hour and a half.

Mr DALLA-RIVA — Yes, I know; it is just interesting.

The CHAIR — And on a number of specific issues they have agreed to provide us with further information.

Mr DALLA-RIVA — It is lunchtime.

The CHAIR — Thank you very much for appearing today. I welcome the fact that you have. This concludes consideration of the evidence provided by the Department of Premier and Cabinet and the Department of Treasury and Finance. I thank the three of you for that. Where questions have been taken on notice, the committee will follow up with you in writing at a later date. We request that written responses to those matters be provided within 45 days, because the manager of Hansard has said that it is unlikely that the transcript will be available earlier than in the next couple of weeks.

Witnesses withdrew.