



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into Annual and Financial Reports 2022 - 2023](#))

Members:

MRS E KIKKERT (Chair)
MR M PETTERSSON (Deputy Chair)
MR A BRADDOCK

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 20 NOVEMBER 2023

This is a **PROOF TRANSCRIPT** that is subject to suggested corrections by members and witnesses. The **FINAL TRANSCRIPT** will replace this transcript within 20 working days from the hearing date, subject to the receipt of corrections from members and witnesses.

Secretary to the committee:
Ms S Milne (Ph: 620 50435)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

APPEARANCES

ACT Audit Office.....	<u>10</u>
-----------------------	-----------

Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the Committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 9.00 am.

Appearances:

ACT Audit Office

Harris, Mr Michael, ACT Auditor-General

Smith, Ms Caroline, Chief Operating Officer

THE CHAIR: Good morning and welcome to the public hearings of the public accounts committee for its inquiry into annual and financial reports 2022-23. The committee will today hear from the Auditor-General.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal People. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander People who may be attending today's event.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome the Auditor-General and officials from the ACT Audit Office. I remind the witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered a serious contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Mr Harris: I have read the privilege statement and I understand it.

Ms Smith: I also have read the privilege statement and I understand it.

THE CHAIR: As we are not inviting opening statements, we will now proceed to questions. The Government Procurement Amendment Bill 2023 was recently tabled in the Assembly, bringing reform of the Government Procurement Act 2001 and the Government Procurement Regulation 2007. Are you familiar with this proposed legislation?

Mr Harris: I have some familiarity with it, Chair.

THE CHAIR: The substance of the bill is informed by your report tabled in July this year, report No 5, that looked into activities of the Government Procurement Board. I know you will provide a more fulsome response down the track; however, are you content that the bill addresses the issues identified in your report?

Mr Harris: Yes, I think it goes a substantial way to dealing with the issues. I am not

sure it does completely cover every aspect, but it is an evolving process, and I think the outcome of that process will be better procurement outcomes.

THE CHAIR: The board has been restructured as a major function of the bill, clarifying its role, composition and purpose. Are you satisfied with each of the changes? Are there any areas you feel have been missed?

Mr Harris: I would need to take some time to make direct comparisons between the eventual outcomes in the legislation and the report that we tabled, but it substantially addresses a lot of the major concerns, particularly in defining the purpose and the objectives of the board. I think as the audit report said, they lacked clarity prior to the amendments, and that was a significant deficiency in the way in which procurement was carried out within the territory.

THE CHAIR: Your interest in procurement is well known, and perhaps there are a few in the territory who are as familiar with ACT procurement governance than yourself. Could you speak more generally on procurement and perhaps share insight into ongoing performance audits such as the HRIMS project?

Mr Harris: We have done, as it turns out, a substantial number of audits in the procurement area in the time that I have been Auditor-General. I think we are up to about six now. I suppose, in many respects, where we have got to with the last audit is a demonstration of the evolution of our thoughts in relation to procurement.

When we first started on this journey, I said on the public record a number of times that I did not think the issue was necessarily with the board but with a lack of expertise and skill sets within the public sector itself, and a lack of understanding of the processes and procedures that the board had in place. As we have gone down the track and done more work in this area, it has become clear that it was not only a lack of skill, proficiency and knowledge within the public sector but also deficiencies within the board structure itself.

One of the observations I would make is that that deficiency was not a design feature of the board or the formal procurement process; it, I think, reflected the evolution over time and the length of time since the board was put in place, which was back in the early 2000s, and that the legislation had not evolved with best practice over the years. I think what has happened now is a significant catch-up in terms of refreshing the legislation and making it more contemporary.

MR CAIN: I have a supplementary question. Mr Harris, you mentioned that the bill that Mrs Kikkert touched on earlier did not implement every aspect of your recommendations. Could you expand on that a bit?

Mr Harris: I think what I said was that I had not done a complete check of what was in our report compared to what was in the bill and that I would need to do that before I can definitively answer the question. I think I also said it does go a substantial way towards addressing most of the most serious issues that we discovered along the way.

I should say I have only just returned to the country, so I have not had time to read the bill in detail.

MR CAIN: The status of the investigation into the HRIMS project—could you tell us where that is up to and a likely timetable for production?

Mr Harris: The best knowledge I have at the present time is that it will be tabled before Christmas—in fact, imminently. We were close to tabling before I went away. We are in the final stages of consultation with the relevant people mentioned in the report, which is one of the requirements in my act—to consult with them and provide a copy of the draft report. We are in the final stages off that consultation process.

MR CAIN: It is your practice to provide a draft report to the relevant directorate?

Mr Harris: It is a requirement in the legislation that I provide it, effectively, to parties named in the report, and that includes parties external to the public sector.

MR CAIN: And how long do you give them to respond before you issue your final report?

Mr Harris: A standard time frame, I think, is two weeks, but there is discretion; it might be three weeks. There is discretion within the act—depending upon the complexity of the material and the number of people that might necessarily need to have access to the report—for extensions to that time frame, and extensions are common. The intention of the act is that a natural justice process applies, and we err on the side of providing more time rather than less time so that natural justice can be seen to be applied.

MR CAIN: And how much time is left?

Mr Harris: There is actually no limitation to the amount of time I can provide. There is a minimum amount of time I have to provide, but there is no definitive rule that says it can be no longer than X number of weeks.

THE CHAIR: Thank you Mr Cain. Mr Pettersson?

MR PETTERSSON: As Auditor-General you have the power to obtain information under oath or affirmation. What happens if someone does not tell the truth?

Mr Harris: If they do not tell the truth, there is, under the legislation, the option for me to classify that as an offence and refer them to the police. It is, effectively, the same as lying under oath in court.

MR PETTERSSON: How do you determine if someone is telling the truth? Is there a time line for the determination of that?

Mr Harris: That is an interesting question, and I have had cause to give this question some thought in recent times. The questioning process under oath normally happens in a court environment and in a cross-examination exercise. I do not profess to be skilled at cross-examination because I am not a trained lawyer. In answer to your question of how I know if somebody is telling the truth—essentially, I do not unless what they tell me is not in accord with the facts that I have in front of me, which are

the basis of my questioning.

It is true to say that sometimes, after the event, other questioning processes and other facts come to light that may lead to the view that the person who was giving evidence under oath was not telling the truth. If that is the case, then a decision has to be made by me as to whether or not I use the powers under my act.

THE CHAIR: Thank you Mr Pettersson. Mr Braddock?

MR BRADDOCK: Have you ever utilised those powers?

Mr Harris: I have not. Sorry, which ones? The compulsory questioning powers?

MR BRADDOCK: In terms of someone who has not told you the truth whilst under oath.

Mr Harris: No. I have used the compulsory questioning power, so I have had people give evidence under oath, but to date I have not used the other power.

MR BRADDOCK: With the performance audit about financial management services for protected persons, I am interested as to why there were a number of issues discovered in the course of that audit, whereas financial audits of the Public Trustee and Guardian over recent years did not seem to indicate any issues. Could you please respond to that?

Mr Harris: There are two key aspects to that. There are issues with the Public Trustee, and we have a second audit that is probably 70 per cent complete at this time, which we are doing in close consultation with the newly appointed Public Trustee, I should say, and receiving a great deal of cooperation from him.

There are a number of issues that we are discovering, and one of them relates to the use of trust accounts and the basis upon which the former Public Trustee believed that there were reasonable grounds to use those trust accounts. The financial audits contain a process that requires those in charge—those responsible for governance—to make declarations about the legality of what they have done, and those declarations, through the financial audit process, have been provided, and were provided, by the right people. So, in that sense, we had no reason to be concerned about the truthfulness and the fairness of the presentation of the financial information. Whether or not—

MR BRADDOCK: So the processes for a financial audit do not involve checking those declarations are, in fact, based on—

Mr Harris: They do. We would ask a question as to the background to those affirmations. Where there are questions—for example, “Has legal advice has been sought?”—and we are given the appropriate affirmations by the appropriate people, the responsibility is on those people to tell the truth. If they do not tell the truth, then other processes come into play.

MR BRADDOCK: So that is why no issues were found during the course of the financial audits of the Public Trustee and Guardian.

Mr Harris: That is right. The performance audit process is a different examination process and is more likely to uncover those particular matters, and in this case the performance audit has raised a serious question about the legal basis for some of the expenditures that were incurred over time.

MR BRADDOCK: Thank you.

THE CHAIR: Mr Cain?

MR CAIN: There was an interesting article published in the *Canberra Times* addressing the Land Development Agency and its land purchases, a legacy matter of some deep interest. From 2014 to 2017 the now defunct LDA bought nine leases west of Canberra at a cost of \$43 million to taxpayers. Have you got a perspective on that and on how you saw the sale of this land?

Mr Harris: That question was the subject of a performance audit conducted by my predecessor and has been the subject of other examinations. I have not done any work myself since I have been Auditor-General in relation to those matters, but having said that, I have no reason to have any different view to that of my predecessor and the responses or the views that she expressed in the report that she provided.

MR CAIN: One plot of land sold for \$7 million despite it being valued at \$3 million. Does that give you cause to be further interested? Was this a procurement that went wrong?

Mr Harris: I have had cause to re-examine a number of issues in relation to the legacy issues in relation to the LDA as a consequence of the work that the Integrity Commission has been doing, and in responding to the commissioner in relation to some of those, I have expressed views. The view that I would express is that, given the amount of attention and activity the Integrity Commission is, and has been, undertaking in relation to legacy LDA issues, I am not sure it is the best use of the Audit Office's resources to do further work in that area.

MR CAIN: We have seen that the Integrity Commissioner and your own office came up with slightly different findings. Is that how you would characterise that?

Mr Harris: The Integrity Commissioner and I have had many conversations about matters of interpretation, and, at the end of the day, the commissioner is examining these things through the focus of black-letter law. I am examining, and my predecessor was examining, these things through a process which examines and tests efficiency and effectiveness and competency of implementation against the set of criteria. As the commissioner himself would tell you, it is entirely possible for us to come up with different perspectives when we look at precisely the same transaction, and that is certainly the case with some of the valuation areas.

I think what is fair to say, and he does agree with me on this, is we will express a view that says that this behaviour is not what the public would expect a public sector entity to undertake in relation to the way they manage the public resource, and that is, in essence, what my predecessor expressed on many occasions in relation to legacy LDA

issues; whereas, the commissioner would look at it and say, “If I test that transaction against black-letter law, there is nothing wrong with the transaction.” What we say, however, is that there are sets of standards and methods of behaviour that the public expects from its public servants, and in many respects, frequently, my predecessor’s reports have pointed out that what was going on in the LDA did not meet those standards, even if it did technically meet the black-letter law test.

MR CAIN: Thank you.

THE CHAIR: Ms Castley?

MS CASTLEY: The ACT Audit Office has issued qualified conclusions for the ACT Health Directorate and Canberra Health Services annual reports, and a “disclaimer of conclusion” for the ACT Local Hospital Network Directorate due to the large number of accountability indicators not measured and reported, as required by the Financial Management Act.

How usual and serious is this? In layman’s terms, what does the Audit Office’s qualifications of these annual reports mean?

Mr Harris: If I answer the last part of the question first, then I will work my way back, if I may. Essentially, what happened was that the transition to the Digital Health Record meant that the relevant agencies were not able to collect the data to be able to tell us whether or not they had met their targets. So that is, essentially, what the qualification means. They were not able to collect the data, so they could not specifically say “Yes, we have,” or “No, we have not,” and, as a consequence, we qualified it.

MS CASTLEY: Is this usual and serious?

Mr Harris: It is not usual. Well—it is not uncommon for us to qualify performance statements. It is a limited assurance that we give. It is not a full assurance like a set of financial statements, so we do not do all the testing that we would do with financial statements, so it is not a full assurance in that sense. Essentially, if an agency cannot demonstrate that they have collected data, and therefore they are unable to provide information in relation to the targets that they are required to report on, we will say so, and that is precisely what we are saying here.

MS CASTLEY: The Director-General of ACT Health and the CEO of CHS have also both had to sign those statements of responsibility because the accountability indicators were not measured. What purpose or function do they perform? Can you talk a bit more about that?

Mr Harris: Yes, they did. Perhaps Caroline is better placed to answer that question, because she has to provide that assurance to me in precisely the same way. I might pass that question to her, if I can.

Ms Smith: We will just use my example. I am giving the Auditor-General assurance that I have reviewed everything that is in there and that there is appropriate evidence to document that the targets have been met. So it is them taking the responsibility to

provide that to their Director-General that they have completed that process.

Mr Harris: I might add to that. There is an iterative process between our office and the auditee in relation to this. They will frequently come to us with a position that says, “These are the performance statements,” and where they have not been able to collect the data they may want to say “not applicable”, for example. Our view is that you cannot say “not applicable” because you have not collected the data; therefore, you cannot say anything; therefore, you have not met your responsibility under the Financial Management Act.

At that point in time, there will be a discussion between my staff and the auditee staff, and we will say, “We will qualify if you write that,” and they have a choice: they can either continue with that position or they can change their position. In this case there was a discussion, and their position was changed, but it still leads to a qualification because they have not met their requirements under the Financial Management Act, because they were required to report on those numbers, and they are not able to do so.

MS CASTLEY: I am wondering: have you decided whether or not the Audit Office will conduct a performance audit on the roll out of the Digital Health Record?

Mr Harris: Yes, and we will.

MS CASTLEY: You will. And do you know how long that will take?

Mr Harris: We have not started. We have done preliminary work, but we have not started the detailed work on that, so it is a little way away.

MS CASTLEY: On Thursday at the annual report hearings for Health there were some questions about why the board managing the rollout of the Digital Health Record did not agree to a request to extend the work of the business intelligence and data project; the workstream was focused on the data reporting. Is this the sort of question that a performance audit would examine?

Mr Harris: Yes, potentially, but my staff have not yet developed the test criteria or the scope for that audit. That is part of the research work that is going on at the present time to be able to target the areas that we are going to focus on. We need to set scope and criteria in order to define the boundaries of the performance audit, and in order to collect evidence to find conclusions, and have the evidence related to those conclusions and relevant to the criteria and the scope. Otherwise, it just becomes far too big an exercise, which is uncontained.

Having said that, as with procurement, and as with the Public Trustee, we may well start a performance audit in one area and discover other material as we go along and either change the scope and criteria of the current performance audit or, indeed, start others.

MS CASTLEY: On Thursday we also heard that in March the health minister did visit the digital health solutions division to hear for herself just what the issues were. Do you have the power to look at the degree to which the minister might bear responsibility for a program not performing, or is that outside your purview?

Mr Harris: Interesting question. I have the power to examine any documentation that is available, including cabinet material, and we gather a lot of documentation as we go through a process. Ministers' interactions with their agencies are a matter for ministers and their agencies; that is not a matter that I would go into. We deal with evidence and with documents and with as much as we are able to discover from facts, and we try and relate our conclusions in terms of efficiency and effectiveness and implementation. We try to make sure that we never publish something that is not supported by facts and by evidence.

MS CASTLEY: You will be aware that I did forward the workplace culture survey of the digital solutions division to the Audit Office. The survey detailed horrendous workplace issues, which obviously have had an impact during the rollout of the Digital Health Record. Will the Audit Office take account of workplace culture issues when it undertakes performance audits, or does it look at the effectiveness of decisions and the metrics?

Mr Harris: We are primarily looking at efficiency and effectiveness, and we put a lot of work into ensuring that the criteria and the scope that we have are such that we have a topic that is auditable. I think it is the question about being auditable which is the key question here. If you cannot determine specific criteria against which you are collecting evidence, you cannot have a subject matter against which you can conduct an effective audit.

MS CASTLEY: So where a minister was warned but did not act—that might be something you would consider?

Mr Harris: Until we develop scope and criteria, I cannot—what I can say, though, is that every piece of material that is forwarded to our office is included in the research work that is done when we set up scope and criteria. So, the material that you have sent will be taken into account. And sometimes, as the public accounts committee is aware, we will take account of material not in a current audit we are doing but build it into a future audit that we are doing.

MS CASTLEY: Wonderful, thank you.

THE CHAIR: On behalf of the committee, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as practical and no later than five business days after the hearing. This meeting is now adjourned.

The committee adjourned at 9.29 am.