



**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**SELECT COMMITTEE ON FINANCIAL MANAGEMENT  
AND GOVERNMENT PROCUREMENT  
LEGISLATIVE COMPLIANCE**

(Reference: [Inquiry into Financial Management and Government Procurement  
Legislative Compliance](#))

**Members:**

**MS F CARRICK (Chair)  
MR A BRADDOCK (Deputy Chair)  
MS D MORRIS  
MR T WERNER-GIBBINGS**

**PROOF TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 22 APRIL 2026**

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**Secretary to the committee:  
Ms K Langham (Ph: 620 75498)**

**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.

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*Amended 20 May 2013*

## **The committee met at 9.31 am**

**COCKS, MR ED**, Member of the Legislative Assembly

**THE CHAIR:** Good morning and welcome to the public hearings of the Select Committee on Financial Management and Government Procurement Legislative Compliance for its Inquiry into Financial Management and Government Procurement Legislative Compliance.

The committee wishes to acknowledge the traditional custodians of the lands we are meeting on, the Ngunnawal people. We wish 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.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly. The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web streamed live.

We welcome Mr Ed Cocks MLA. Please note that as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

As we are not inviting opening statements, we will now proceed with questions. Mr Cocks, It would be handy if you just gave an outline of your concerns with the Financial Management Act with respect to financial management. I think it is primarily around appropriations?

**Mr Cocks:** Thank you. Yes, and I think the introductory section of my submission goes to this fairly solidly. The idea behind the Financial Management Act is embedded across just about every jurisdiction in the country and pretty much every Western democracy in the world—that is, the government cannot spend money without the parliament's authority to do so. That is enshrined in section 6 of the Financial Management Act, and the act sets out a whole range of the procedures and the rules for how the executive actually goes about doing so.

We have started to look through some of the management of money because last financial year the government delivered an astounding increase in the deficit of far more than the over \$300 million they came back to the Assembly to seek approval for. Their deficit blew out by far more than that so we started going through and having a look at exactly how they have done that. What we found was a very large number of appropriation adjustment instruments. The Treasurer has authority to do this, but there are a whole lot of rules around what needs to happen if he signs off on an adjustment.

When these provisions were introduced, the strong sense was that this was a by-exception measure, that this should not be the normal process and that there were a

whole lot of other ways to deal with changes to appropriation by bringing things back to the parliament to consider.

So we have seen a whole series of issues. I think they are fairly well outlined in the submission, but there are probably three key things that I think the committee needs to look at, and they are did the Treasurer meet the legal requirements to attach instruments to the next financial statement tabled in the Assembly? If not, it looks like he has broken the law. Second, the purpose of some of the rollovers were specified within the instruments, which was to enable payments that had already been made when those instruments were signed off. Noting the Bruce Stadium parallels that I mentioned, has the government fully complied with the legal requirement for appropriations under section 6 of the FMA? If not, have they broken the law? Third, given a number of instruments indicate that payments—sometimes very large payments—were actually made in the year before the appropriation was available for that specific purpose, there is a real question around what legal authority the government was relying on to make those payments.

**THE CHAIR:** I would like to ask about the impact of the rollovers. You claim that there are over \$100 million. So what is your view about them being so late in the year and not being included in at least the budget review?

**Mr Cocks:** This is one of the really big concerns, because what we are talking about with \$100 million is just the amounts that were signed off on 10 April by the Treasurer. So this is only one set of instruments signed off on one day where the government has essentially given itself \$100 million of extra appropriation by reaching back into the previous financial year, which finished three-quarters of the year previously.

Now, between those times, the government could have amended the original budget appropriation for the year. They could have actually brought it forward in the budget review process and the second appropriation, or they could have brought another supplementary appropriation bill. They had a lot of opportunities. The government submissions suggests that the Treasurer was advised of this in December of the relevant year and that there was a whole lot of work that went on between times. But it is even is pretty concerning to not know until December that payments had been made that would require additional appropriation. But to essentially not find out as an Assembly until the June quarter financial statements were tabled in September of that year is just astounding.

**THE CHAIR:** Have you had a look at Mr Bradbury's submission?

**Mr Cocks:** I did. I don't have that one in front of me.

**THE CHAIR:** He says that the quarterly report for June 2025 talks about the establishment of a central reserve in appropriation bill 2024-25. Do you know what the authority is for that central reserve?

**Mr Cocks:** That central reserve was an additional amount—from my recollection; you might want to ask the government about this—that was established through that additional appropriations mechanism. The express purpose of that reserve that the government put forward at that time was so that they did not have to come back to the

Assembly with another appropriation bill. That is if I recall correctly the actual reserve that is being pointed to.

The other piece of important context here is that this is at the same time as the Legislative Assembly amended the Financial Management Act to require the Treasurer to actually table information about use of the Treasurer's reserve within three days. That was because there was a concern that the Treasurer would be topping these up and we would not find out about them for a very long time. So clearly while the Assembly was having conversations about transparency and getting the information out about the Treasurer's use of money and this sort of instrument, the Treasurer has gone and signed off on a large amount of these instruments that then were not tabled within the statutory timeframe.

**THE CHAIR:** Do you know what the underspend is in any given year—that is, what is available for a rollover and how they assess whether an amount should be rolled over? Do we have a consolidated list of what the underspend is, what is rolled over and what is not, and whether any lapses?

**Mr Cocks:** What you need to look at is the consolidated financial statements for the year. That will provide you with what the original appropriation was and what the final appropriation was after all of those adjustments through both this sort of instrument and the additional amounts that the Assembly approved through additional appropriation bills.

**THE CHAIR:** I have had a look at the statement of appropriation table, which is reasonable. If you have a look at appropriation No 2, if you take that off the additional approved appropriations in the last two financial years, there has been around \$150 million of additional funds, if not more, when you look at the use of the Treasurer's advance. For example in 2024 the total appropriated with the rollovers and Appropriation Bill No 2 was \$8.5 billion, but only \$7.5 billion was drawn down, so there is a difference of a billion dollars difference. How do we end up with Appropriation Bill No 2, \$452 million, having around \$150 million of rollovers so an additional \$601 million is appropriated but we are a billion dollars short in the drawdown?

**Mr Cocks:** It is a pretty deep concern. Under the provisions of the 16B rollover framework, that means that extra billion dollars is essentially available for them to draw down in the following year if the Treasurer signs off on it. Now there is a difference between appropriation and expenditure, and this is what we were starting to try and get to the heart of: how was it that the government could blow out the budget and the expenditure line by so much and yet finish a year with being a billion dollars under what it said it had appropriated? The two numbers just do not add up.

**THE CHAIR:** While the high-level numbers are given here, it is not clear what the controls are on a process that just allows you to dip back through the previous year and pull forward a billion dollars. Do you think there should be tighter controls on their rollovers?

**Mr Cocks:** Absolutely. The current provisions essentially enable the Treasurer to sign off on these rollovers right up until the end of June in a financial year. So that means

that the Treasurer could go back a full 12 months to actually sign off on those rollovers and the Assembly would have no oversight of the additional spending that that would entail.

**THE CHAIR:** Do you think there is enough assessment given to the Assembly to understand why the money has been rolled over?

**Mr Cocks:** I have pretty big concerns about what the Assembly is provided with and when. I have big concerns about whether the rationale in a lot of those rollovers actually stacks up. You have got rollovers in there that say that appropriation rollover is required to make payments for a contract, but when you look into the details of that contract—and you have to go through multiple databases to find it—you find the payments had all been made six months before the Treasurer actually signed off on that appropriation.

**MR BRADDOCK:** I just want to test some of the arguments in the government submission with you, Mr Cocks, about financial instruments whether they state that the instruments signed off on 10 April were not included in the March quarter consolidated financial report, which was presented after that date because it was not going to impact the results of that March quarter. Is that an argument you have some sympathy for or do you have a view that the Assembly should be provided with this information as soon as possible?

**Mr Cocks:** I think the Assembly ought to be provided with it as soon as possible and the government is legally required to provide that information as soon as possible. I thought it was very interesting that the government's submission makes the assertion—I am just trying to find the actual quote within their submission—that when the legislation was introduced that amended the reporting requirements in 2015 the explanatory statement said these should be reported with the financial statement to which they apply. Essentially that is the line the government is using to justify that they have done the right thing.

But if you have a look at that explanatory statement you see that the part of the explanatory statement they are referencing is not actually related to any of these instruments directly. When you look at the appropriation adjustment provisions and those actual changes within both the text of the legislation and the explanatory statement, the text of the legislation uses the words I have pointed to and the explanatory statement says the next financial statement tabling date, or words to that effect. So it is pretty concerning that they have not quoted the actual legislation itself and they are relying on arguments that are not directly related to that provision that they have breached.

**MR BRADDOCK:** So you are saying that clause 68 of the explanatory statement, which the government refers to in their submission, does not actually apply to section 16B rollovers, which is the question we have got in front of us?

**Mr Cocks:** Yes, correct. What that actually applies to is the rules around the financial statements themselves.

**MRS MORRIS:** Are you aware of any provisions within the FMA that would give the Treasurer authorisation to present it not at the next financial statement in the Assembly

but at a later opportunity, as he did?

**Mr Cocks:** Very simply, no. The legislation is extremely clear. The explanatory statement that went along with it was extremely clear. It must be tabled with the next set of financial statements presented to the Assembly. So it must be attached to that next set presented. It is not the period to which it applies; it must be presented with the next statements presented to the Assembly.

When you go back and look at the debate around the extended timeframe, the idea here was that the bureaucracy would have some additional leeway to not have to report things within I think it was previously three days or a week. So instead of constantly having these appropriation rollovers shared with members once every quarter you would get the information required. But that did not provide for such a long lag time. The view certainly seemed to be that you would have it within that quarter period, and the only way that happens is by attaching it to the next set presented, and that is very clearly the intent.

**MRS MORRIS:** The government also said in their submission that the rollover funding was simply a rephrasing of already appropriated funds rather than it being an overall increase in appropriation. Do you accept that evidence?

**Mr Cocks:** I do not, and it is actually clear in the act itself. The government has argued that it is not an increase to the appropriation, but section 16B(5)(b) states:

If the Treasurer authorises an amount to be disbursed under this section—

(b) the amount is in addition to the appropriation to the territory entity for that financial year.

It is an increase in the appropriation. Now, the government's argument is that it was appropriated in a previous year. That is not the way the FMA works. Appropriation bills appropriate money for a single year. These are special conditions that allow for adjustments where necessary and the Treasurer has to be very specific about how those appropriations are to be used. But it is very clear that it is an increase to the amount.

**MRS MORRIS:** You have raised in your submission some concerns about the timing of the rollovers, being nine and a half months in from a financial year. Section 16B(3) of the Financial Management Act says:

The Treasurer may give authorisation in the financial year in which the appropriation is made, or in the following financial year ...

It looks like that is what the Treasurer has done and then attached the instruments in the June quarter. Can you point out where the breach is?

**Mr Cocks:** Yes, sure. It is not a breach of 16B(3). The Treasurer can under the current legislation—I think this is problematic—sign off on these appropriation rollovers any time right up until 30 June in the following financial year. But the breach comes under 16B(6), which says that:

If the Treasurer authorises an amount to be disbursed under this section, the Treasurer must attach a copy of the authorisation to the next financial statement presented to the Legislative Assembly.

That is the first breach. That is the one I was referring to before. But there are other issues that my submission also points to surrounding the timing of that, in particular in relation to where payments have already been made. The example that I point to that we dived into in a bit of depth was the Fitzroy Pavilion, and I think I have provided the timeline of when payments were made versus when appropriations were changed. It still looks like the appropriation overall is breached; there are more payments than the appropriation allowed for anyway.

In that case, this is where you need to look at what happened under the Bruce Stadium affair where the very clear legal advice and the advice and position of the Assembly is that you cannot retrospectively change an appropriation. You cannot go back in time. If you do not have an appropriation in place when a payment is made, you cannot in two weeks or two months go back and change what that appropriation had been.

This is one of the challenges I think is probably faced by the Auditor-General when he goes back and looks at this because the Auditor-General does not have the scope when they look at these financial statements to consider whether every payment made after an appropriation adjustment was signed. Essentially what the Auditor-General can do, as far as I can see, is go back and determine overall what were the payments made under this appropriation, what was the end-of-year position in terms of the appropriation and were the payments more than the appropriation outline at that very high level? That is one of the challenges faced—that there has not been that reconciliation as far as I can see between when payments were made and when the appropriation was there.

**MRS MORRIS:** In light of the information that you provided to the Assembly, do you draw any confidence from the submission the government has made?

**Mr Cocks:** I am afraid I don't. I had really hoped that the government submission would at least point to the actual text of the act. What it reads like now is excuses and an attempt to retrospectively change what the approach was. But the government's submission does not align with what the legislation actually says is required.

**MR WERNER-GIBBINGS:** Thank you very much, Mr Cocks, for your submission. I would be lying, however, if I said I appreciated all the appendices.

**Mr Cocks:** I did apologise before I started for the length of the submission.

**MR WERNER-GIBBINGS:** That is okay. What are your thoughts on the distinction between a decision under consideration or a decision taken. My reading of your submission, particularly with regard to rollover requests including FMA instruments is, that the government should be reporting on decisions that are under consideration but where no decision has yet been taken with regard to rollover requests.

**Mr Cocks:** No, that is not what I have said. What I have said is that the government has legislative requirements to report on their decisions once they are signed off within a specific timeframe, and they have not met that requirement.

**MR WERNER-GIBBINGS:** Even with requests? You do not accept the distinction between a decision not yet taken and a decision taken in terms of whether or not they should be reported and how.

**Mr Cocks:** No, I am saying that everything is based on the date that the decision is taken. So the date that the Treasurer has signed off the instruments, that is the date under the legislation that matters and that is the comparison point for when those decisions must be tabled. So the Treasurer signed off on instruments on 10 April. The next tabling date for financial statements, if I recall correctly, was around 18 May and they were not attached to that statement. It is a very straightforward. It is very technical. It is very specific—there is no wriggle room. I have looked at things completely in terms of the legislation.

Now, I also have concerns that the government would surely have known about the need for most of these rollovers by the end of the previous financial year. It is astounding to me that the government somehow was not asking the Treasurer for permission to roll over money until December, so six months after the end of the financial year. I understand the government is saying that it is complicated and they need to do a lot of due diligence, but, at the same time, administrative inefficiency is no excuse for failure to meet the requirements of the law.

**MR WERNER-GIBBINGS:** So where you see that the problem lies—and we will test it with the government after this—is that it is a very technical issue and the mischief is a technicality.

**Mr Cocks:** I did not say it is a technicality; I said it is technical, it is specific and it is very clear. The government has obligations to report and it has not complied with those. There are additional concerns with whether the government has spent money before the relevant appropriation was in place. Those are not technicalities. They are not trivial. They go to the heart of whether the government is handling the financial resources entrusted to them responsibly and whether they are complying with the law.

**MR WERNER-GIBBINGS:** My read of the government's submission is that when they are managing requests for instruments under the FMA, they are looking for a sufficient level of engagement between the agents in question—the Treasury and the minister or ministers. Do you agree that the role of Treasury in scrutinising these sorts of requests for rollovers is important? I am not entirely persuaded by your first answer, but reporting on rollover requests before they are finalised would be reporting on a decision not yet taken.

**Mr Cocks:** I have never made that argument. I have never suggested that the government should be reporting on rollover requests before they are finalised. I am saying the government actually has to meet the requirements specified in the law, that when the Treasurer signs off on an instrument it must be tabled with the next set of financial statements. The question around the efficiency or otherwise of the government's process around those instruments is another area that I think merits this committee's consideration.

When we are talking about rollovers from one financial year to the next—which other

jurisdictions do either before the end of the financial year or within a couple of weeks after the end of the financial year—it is entirely unclear how it is that the Treasurer supposedly was not informed until December of that year. That is one concern. Then the Treasurer took months more before it was actually signed, so from December to April of the following year.

Now, between December and April of the following year there was all the work going on around the additional appropriation and the budget review. That was the right place to deal with these additional amounts that needed to be spent. It could have been done by bringing it forward in front of the parliament, and the Legislative Assembly could then have appropriately considered whether those additional amounts were justified.

**THE CHAIR:** On behalf of the committee I thank you for your attendance today. I do not think you have taken any questions or notice.

**Mr Cocks:** I am happy to take any questions on notice too.

**THE CHAIR:** We will put any questions through the portal. Thank you, Mr Cocks.

**STEPHEN-SMITH, MS RACHEL**, Minister for Health, Minister for Mental Health,  
Minister for Finance and Minister for the Public Service

**CAMPBELL, MR RUSS**, Under Treasurer, Chief Minister, Treasury and Economic  
Development Directorate

**DOWDELL, MS MICHELLE**, Deputy Under Treasurer, Chief Minister, Treasury  
and Economic Development Directorate

**POTTER, MS CHANTEL**, Acting Executive Group Manager, Procurement ACT,  
Chief Minister, Treasury and Economic Development Directorate

**THE CHAIR:** We welcome Ms Rachel Stephen-Smith MLA, Minister for Finance, and Treasury officials. Please note that as witnesses you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As we are not inviting opening statements we will proceed to questions.

Minister, part of the procurement process is to get value for money. When we have exemptions, how do we ensure that we have a competitive field and get value for money?

**Ms Stephen-Smith:** Can I clarify what kind of exemptions you are talking about?

**THE CHAIR:** Exemptions from an open tender process.

**Ms Stephen-Smith:** I will hand it to Chantel in a minute, but there is still an overarching requirement to be satisfied that the procurement meets value for money. So there are a range of reasons why you might have an exemption from a full open tender process.

**Ms Potter:** Thank you for the question. I have read and understood the privilege statement. In 2024 we had a range of legislative reforms but also practical reforms within government, led by Procurement ACT. And value for money, documenting explicitly in terms of the procurement framework what needs to go into planning to assess value for money and also the assessment of that through evaluation, whether that is through an open tender or a direct approach, was a big focus for that reform program.

Part of the framework now includes the procurement rules which are a disallowable instrument that sit under the framework. They were issued by the Special Minister of State in the same year as the legislation was passed. The legislation provides the high-level definition of what value for money is, but if you go to the rules, it actually steps through what business requirements should be considered in designing the process, so factors that should go to that, things like—I am reading directly from the rules—stakeholder input, the scale and scope of the business requirement, the territory entity's resourcing and budget that is available, obligations and opportunities under other existing arrangements, relevant laws and policy, and the market's capacity to competitively respond to a procurement.

The rules then step through what must be considered in relation to assessing value for money, not just in terms of price but also in terms of the quality of goods and services,

fitness for purpose in terms of the proposal that is advanced, the potential supplier's relevant experience and performance history . There is quite an extensive list in paragraph 4.4 of the procurement rules.

In a number of the Auditor-General reports that were cited in the submission by the current Auditor-General, value for money assessments in direct approach or exemption processes was a focus, particularly in the Acton Waterfront report which looked into that and made some recommendations. So the reforms we did were in direct response to creating a framework to adequately and explicitly detail the requirements. And then I spoke about with that reform practical elements in terms of capability building. So we have a hub internal to our SharePoint now where a range of resources exist.

A lot of the Auditor-General reports were published in 2021 and 2022, but they actually examined factual scenarios that dated back to 2016 and 2017, and a lot of the documents that went in support of those direct approach or single select were just internal executive minutes or other documentation as opposed to templates in a procurement format where there is actually guidance for a delegate to step through and discharge those obligations.

**THE CHAIR:** Do you report the number of procurements in a given year and how many are exempt, how many are direct source and how many are open tender?

**Ms Potter:** I am not aware of that.

**Ms Stephen-Smith:** There is now a requirement in agency annual reports to report on any procurements outside—I cannot remember the exact wording but every agency is required to report in their annual reports in relation to procurements where a decision has been taken outside of the standard procurement process. As I said, I can't remember the exact words.

**Ms Potter:** I will ask and come back with the wording within the session.

**MR BRADDOCK:** I have questions about the compliance with the Government Procurement Act, in terms of instances of noncompliance, which you say are listed in all the agency annual reports, Firstly, is there any sort of centralised tracking across the entirety of the ACT government of those instances of noncompliance?

**Ms Stephen-Smith:** No, there is no central register of that.

**MR BRADDOCK:** Coming to where we have instances, for example, where the contract is not loaded up on the website within the timeframes and so forth, what steps have been taken not just to identify the instances of noncompliance where it may be drawn to your attention but to proactively ensure there is compliance? And what steps are taken where instances of noncompliance are actually taken? Is there any penalty applied or action taken to make sure that the ACT government does ensure its compliance?

**Ms Stephen-Smith:** I do not think there is any penalty. Ms Potter may want to talk to this more, but certainly I am aware that when things have been drawn to attention in terms of contracts not uploaded in a timely or accurate way that does trigger within that directorate a review of their processes. It is the same within Procurement ACT—

historically sometimes it has been an issue at the directorate end and sometimes it has been an issue where information has been provided but for whatever reason, maybe even for a technical IT glitch, it has not been uploaded in a timely way.

**Ms Potter:** That is right. There are penalties for agencies or line areas that have not uploaded their contracts. The timeframe is 21 days. You can imagine the volume of contracts that are entered into because the threshold is \$25,000. There are lots of business units across the service who are entering into contracts for purchase of goods and services.

Items of how we advise people of those compliance obligations, there are a range of e-learning modules that came out of the reform program that are now required learning across directorates across the service in terms of awareness of delegates and line areas in relation to their publishing obligations. There are also newsletters and bulletins and other outreach activities that Procurement ACT does.

Fundamentally, the cohort of people we need to reach with that information are delegates in the service because it is the point in time at which that is then being signed and executed that there should be a follow-up to make sure that it is notified and notified within that 21 days. Where we do see breaches of the timeframe, often it is notified but just not within the business days provided.

**MR BRADDOCK:** Is there any audit or performance measuring to determine whether we are meeting the timeframes required for loading those contracts?

**Ms Potter:** In terms of the compliance question, agencies do have a reporting obligation in relation to their compliance with the framework generally. In terms of our undertaking an audit, I think it is hard because we do not know the contracts that are not registered hypothetically. So if they come to us and they come to us late, we would be aware of them in terms of notifying them. But I think it is certainly possible that there are contracts that are not on the register across the books of the territory. I think the prospect of an audit that would seek to find those would be quite—

**MR BRADDOCK:** Or even a randomised subsection just to see what the rate would be. Feedback I have received from members of the community is those contracts are not always there to the extent where they are in full compliance with the legislation. So I am trying to understand are you just reliant on people coming forward when they notice it or are you proactive in some way to make sure that compliance is achieved against that timeframe?

**Ms Potter:** In answering that question it turns on what you mean by “active”. We are active in ensuring that delegates know their reporting obligations and responsibilities. If there are contracts brought to our attention where people are searching the register expecting to find them and they do not find them, we would certainly follow that up with a line area.

Within any technical database—and the system is largely a database—there are sometimes quirks in terms of how businesses have been registered that mean that when a search is run—and it has happened to me—you go looking for a contract and you know the contract is there but it will not return until you find out how it has been entered

into the system. It is not as intuitive in terms of natural language use search terms as we would hope it to be. So I think more often than not if there is a question posed to me that there could be a missing contract, we locate it within the register as opposed to find out that it has not been notified at all, if that makes sense.

**Ms Stephen-Smith:** Certainly I have had the same experience of not being able to find something that I know is there. Sometimes it is because it is under a panel arrangement that might be managed by one directorate and you are expecting to find it under the list for another directorate. Particularly when CMTEDD manages a panel the contract might be under CMTEDD even though you would expect to find it under Health, for example.

The other thing I would emphasise is under the procurement reforms with the uplifting capability for each of the directorates, a number of directorates are now proactively establishing a specific procurement capability that will then within each directorate have more of a proactive role in assessing whether or not they are complying with their obligations and providing support to those individual areas that are undertaking procurement. I think that is another step in being able to be assured that there are multiple areas of checks in place.

**MRS MORRIS:** Section 8 of the Government Procurement Act goes to value for money. Master Builders ACT in its submission to the inquiry raised some concerns around the Secure Local Jobs Code and the current procurement settings. They are suggesting that the code is shutting out local small businesses and medium enterprises from bidding on government projects and that it potentially favours the larger interstate firms instead of smaller local businesses. Do you have any evidence that the code is improving value for money rather than reducing competition?

**Ms Stephen-Smith:** The code is a fundamental requirement that is intended to ensure there is a level playing field among the businesses that are seeking to tender for ACT government work. What we have heard anecdotally from the original introduction of the code is that a number of businesses that thought it was going to be an onerous thing actually appreciated the work that was done with them to support their compliance with the code but also recognised that having this baseline requirement around fair work ensures there are not businesses tendering that are undercutting the legitimate businesses that do everything right by their workers by under tendering effectively. As well as protecting the rights of workers the intention is to create a level playing field, so to that extent it is hard to see why that would disadvantage local businesses.

The other point I would make is that sitting alongside the Secure Local Jobs Code—which is a fundamental requirement above a threshold—is the local industry participation policy, which Ms Potter might want to talk a little bit about. That actually encourages and supports the participation of local businesses. Infrastructure Canberra would be able to talk a bit more about the implementation of that in the context of infrastructure procurement.

Certainly when we look at value for money for infrastructure procurement, there are a range of things that are taken into account. Having secure local job certification is one thing but there is also local industry participation and the employment of apprentices and trainees. As part of the secure local jobs broader policy—not the certification

process—there is also a requirement to have a labour relations workplace equity and training element plan. That sets out how the tenderer is ensuring they are meeting their ethical obligations for labour relations, for training and workplace equity. There may be then within individual tender processes a particular focus on, for example, Aboriginal and Torres Strait Islander employment and the engagement of local Aboriginal and Torres Strait Islander subcontractors. There might be a particular focus on women in procurement. There might be a particular focus on apprentices and trainees.

So the Secure Local Jobs Code and certification process is one element of a broader suite of things that really are about saying, as I think Ms Potter said earlier, value for money is not just about lowest cost; it is about, what is the contribution to our community and how do we ensure that we are getting value for the community.

**MRS MORRIS:** Yes, I understand the intent behind the Secure Local Jobs Code. My understanding of the submission of the Master Builders is they agree with that intent. However, their evidence was that the code was not achieving its original intent and it was actually having the reverse effect because it was reducing competition, making it difficult for small businesses and favouring larger interstate firms. Are those concerns and evidence they have provided to the committee legitimate?

**Ms Potter:** The submission makes the point about small and medium enterprises, particularly smaller organisations, not having the administrative capacity in terms of documentation and meeting the requirements that are set in terms of that regulatory scheme. The context in which I have encountered this is where a panel might be set up and the dollar value of that panel engages secure local jobs requirements where otherwise you might have people in a very small operation. It might be a handful of staff doing practical things in the community that are being sought through that panel process.

In that context we had an engagement with the registrar and discussions about whether exemptions to secure local jobs could be granted in relation to those panels relating to the work order value associated with them. So the total value of the panel might be \$500,000 possible in works over several years, but any particular engagement for a work order might only be \$70,000 or \$80,000. But by the setting of the panel there was a requirement for local business to engage through that whole regulatory scheme in terms of getting the secure local jobs compliance.

It is certainly something that has arisen. I think there is an inherent tension where we have these policy settings that, as the minister has said, go to community outcomes, whether that is local industry participation or Aboriginal and Torres Strait Islander businesses or the secure local jobs framework in terms of workers where the workers are treated in the context of their employment. Those settings are required to be considered as part of the value for money assessment I spoke about earlier under the rules. The relevant laws and policies need to be applied.

Our fifth procurement value speaks about ethical engagement in particular in terms of suppliers adhering to the standards that relate to the labour obligations contained within the secure local jobs framework. But it is an inherent tension where we have policy settings that then require suppliers to evidence that in terms of their organisation. As

the minister said, it is a particular focus of stakeholders in our infrastructure space because there are more requirements in bidding for those larger infrastructure projects than there are in the goods and services supply, which is more the focus of Procurement ACT notwithstanding we own policy framework for the infrastructure procurements as well.

**MRS MORRIS:** So can I take it from that that you agree the concerns of the Master Builders are legitimate?

**Ms Stephen-Smith:** There are probably some examples. That example about a panel arrangement is probably not related to construction, so it is probably not related to the Master Builders.

**MRS MORRIS:** It was not in the construction context; it was in the context of supply of trails in our national parks. So still building things, but not on the scale of Infrastructure Canberra. But it is an example that captures the concerns contained in the submission about smaller players and the obligations we set.

**Ms Stephen-Smith:** I think the other thing in looking at the Master Builders submission is some of it really goes to contract management. Part of what they are saying is that where there are large interstate head contractors or project managers—which we would expect for our larger projects as probably none of our local providers could undertake some of our tier one projects—it is really around subcontracting, which is also a contract management thing. If a tier one contractor comes in and says, “We’re going to subcontract to local suppliers this amount of business,” then it is a contract management and a tender negotiation piece to ask, “How is that going to work? How are you going to break up the work into smaller, discrete programs to reflect the capability of local contractors?”

So it is actually not about the Secure Local Jobs Code or the procurement process; it is partly around being clear through the procurement process how that is going to happen, but it is also contract management and engagement in the management of the project as it goes forward. A lot of those subcontracting arrangements will not be finalised until after the tender is actually let to the tier one.

**THE CHAIR:** We have heard in other committee hearings about the impact of the Secure Local Jobs Code on small groups like Landcare groups, who primarily are local volunteers who have stewardship of their local environment. Is there any consideration of exemptions for those sort of groups who are just local volunteers really?

**Ms Potter:** The registrar does have capacity depending on the activity to grant exemptions related to the procurement. But I think they are weighed up quite carefully because a lot of the requirements under the secure local jobs framework mirror industrial relations and work health safety obligations at law from a commonwealth perspective or other pieces of legislation.

The purpose of having the policy lever is to help organisations ensure compliance with relevant pieces of legislation through the certification process. So I think it would depend on the context in terms of whether the registrar would consider an exemption in terms of what activities are being proposed. But there is the possibility of having

exemptions granted.

**THE CHAIR:** Has the registrar granted exemptions to date?

**Ms Stephen-Smith:** We do not have responsibility for the Secure Local Jobs Code and Policy; that responsibility sits with Minister Pettersson. That is probably going into a level of detail around the decisions that the Secure Local Jobs Commission makes.

I would say in relation to Landcare, I would be reasonably surprised if they were undertaking packages of work that would require them to get secure local jobs certification. But it may come to the point that Ms Potter was making earlier that maybe they are applying for some kind of a panel arrangement. That is potentially exactly that issue. I cannot say for sure because I haven't had any representations.

**THE CHAIR:** How do you measure whether the procurement outcomes are strengthening or weakening local capability over time?

**Ms Stephen-Smith:** It is an interesting question, isn't it? We have measures in relation to our broader procurement framework and looking at spend on Aboriginal and Torres Strait Islander organisations, for example. There are particular metrics around that and particular work that Infrastructure Canberra is doing around women in construction and the culture piece that the Chief Minister is leading with Infrastructure Canberra.

But more broadly we would probably use the indicators of the health of our local economy and subsectors of the economy around are we seeing continued local investment in construction sector, what are we hearing from the sector. So it is probably a mix of data around the diversity of our economy and growth in particular sectors and how well they are doing from a data perspective.

But also we do get anecdotal feedback around what people are struggling with, and for quite a few years it was skills availability. There were more job vacancies in the ACT than there were people looking for work. There were some significant skills challenges that the sector was facing and that resulted in constraints on and capacity to deliver versus at other points it is things like supply chain.

There are so many factors that would influence the health of the industry that I am not sure. Mostly our assessment would be that ongoing engagement with the sector about what is working and what is not working. And there are processes where Infrastructure Canberra engages very closely with the sector.

**THE CHAIR:** Could an accountability indicator be of value?

**Mr Campbell:** There are two elements into it. There is the general aggregate—how the various sectors are performing—but for the delegates in the relevant directorates part of their due diligence is looking at the market and analysing the capabilities. Over a stretch of time they are getting to see changes in particular firms and their likelihood of supplying or offering to provide services for a particular activity. You can observe that through a review of how a particular contract went and how the services were provided so then when you go into the planning phase for the next one you can start to see over time particular suppliers and whether it is a healthy, vibrant market, But I think it would

be very hard to design an accountability measure for that.

The delegates are encouraged to look at those factors when they are undertaking the original procurement and then in the review at the end of if there are any issues that they want to address. It is something the procurement community have practised too. You get together with your colleagues on a number of occasions just to talk about the vibrancy of particular markets in the ACT because it is relevant to how those exemptions are clearer around local providers.

**MRS MORRIS:** Do you have any idea how many ACT construction firms have been unable to tender for government work because they do not have a secure local jobs certificate? Do you have any oversight of that?

**Ms Stephen-Smith:** We could probably pull out of the data how many registered ACT construction companies there are and how many have secure local jobs certificates, but many of those would not be tendering for ACT government work anyway because their work pipeline is full in the private sector. I think it would be hard for us to pin a number on how many are specifically not applying for ACT government work because they do not want to go through the secure local jobs certification process or they find that too much of a burden.

**MRS MORRIS:** Would you accept that it would be a perverse outcome of the code if it was in fact reducing local competition to the benefit of larger interstate firms?

**Ms Stephen-Smith:** I do not think there is any evidence that that is the case.

**MRS MORRIS:** Is that something that you assess though?

**Ms Stephen-Smith:** I have not looked at the list for a long time, but certainly that was a risk that was identified when we were debating the introduction of the Secure Local Jobs Code. What we found on its implementation was that a lot of companies very quickly applied for certification. I have not got the list in front of me, but there are a lot of relatively small to medium-size local companies that are certified. So if local companies are not willing or able to undertake certification, that may mean they do not believe that they would comply and would be able to achieve certification. So it is a bit hard for us to tell because if we are excluding companies that are not meeting the obligations that would enable them to be certified then that actually is in line with the objectives.

**MRS MORRIS:** But if the original intent of the code was to secure local jobs—which was the intent that you outlined moments ago—shouldn't you be assessing whether it is in fact securing local jobs?

**Ms Stephen-Smith:** The Secure Local Jobs Code is about ensuring that those organisations and businesses the ACT government engages to undertake particular types of work are treating their workers fairly and meeting their ethical obligations. Secure local jobs is about ensuring that people have good paying jobs and are treated fairly. It is about encouraging local businesses to meet their ethical obligations and their obligations to workers and then, as I said earlier, providing an opportunity to create that level playing field so that those companies that are doing the right thing by their workers

and therefore doing the right thing by the Canberra community are not being undercut by those who are not.

**MRS MORRIS:** In light of those concerns that have been put to the committee and section 8 of the Government Procurement Act, do you think there is any scope for the Secure Local Jobs Code to be reviewed and reassessed?

**Ms Stephen-Smith:** I do not know if there is a review built into the act.

**Mr Campbell:** We can take that on notice. The relevant policy will be able to give us advice on that. It goes to your point about how much feedback has been received directly in relation to this issue. As the minister said, it is hard to know when talking in the general where there is a noncompliance issue it is because there is an incapacity to comply—that would raise a different set of questions—or is it because there is burdensome nature to the application which could be streamlined. That is a different question. But we can take that one on notice to ask if there is anything specifically built in.

**MR WERNER-GIBBINGS:** My understanding of the concerns regarding procurement that have been raised with this inquiry is that they are more focused on historical rather than recent issues. Is that correct? I read a little bit about the procurement reform program that I understand began in 2024, which must have been set up to reform procurement in response to concerns and issues.

**Ms Stephen-Smith:** The Auditor-General has made a submission to the inquiry, and as Ms Potter said earlier, some of the issues that were identified by the Auditor-General did result in a significant program of work that Mr Campbell talked about.

**MR WERNER-GIBBINGS:** It was alluded to earlier. Can you expand on that?

**Mr Campbell:** That is right. I will hand to Ms Potter shortly, but there were certainly a number of particular circumstances which drew the attention of the community and ourselves to whether there were things we can do to improve the procurement framework and some of the practices and capabilities that sit behind it. The Auditor-General then undertook his own inquiry into the performance of the whole system and made a large number of recommendations which the government responded to through both legislative reform and also a general capability uplift and training package.

In terms of the substance of that, they were designed to address some cases that could clearly be enhanced, and strengthening the powers of the Government Procurement Board was probably a key element to ensure that there is an external lens and it is not just Procurement ACT and the relevant directorates doing their best. This is going through quite a rigorous process of if it is over a certain threshold or a particular risk profile, it needs to be considered quite carefully, which is probably the biggest change in terms of how it operates.

**MR WERNER-GIBBINGS:** When you say extended powers or broadened powers, what does that mean?

**Mr Campbell:** In terms of the types of procurements that they review, so the risk profile in particular was one of the big changes that was made.

**MR WERNER-GIBBINGS:** Why?

**Mr Campbell:** It is not just a numbers question here. If it is a lower value for instance but it has a higher risk profile because it is novel, it is a different type of procurement that we have not really done a lot in the past, we need to do more due diligence at the planning stage understanding what the outcomes and objectives are of government and ministers from this particular expenditure.

**MR WERNER-GIBBINGS:** So broadly you are strengthening their powers of review so there are more things that they can review and they can review harder, as it were?

**Mr Campbell:** I would say that, yes. I will hand over to Ms Potter who is closer to the detail.

**Ms Potter:** I think that is a good explanation. So the Auditor-General reviewed the Government Procurement Board had a range of findings. Largely there was a high volume of procurements going to the board quite late in the piece. I think they found one in 10 were going to the board after procurement activity and already commenced seeking retrospective sign-off to the approach. The focus of the reforms was about lifting the threshold. The current threshold is a \$7 million value for the total procurement value as an example. I think historically it was set at \$1 million to go to the board. So that meant that for board members there was a considerable volume coming to them in terms of their ability to influence the strategy or to sit with the risk and the risk plans in association with managing the procurement approach.

Some of the other changes are that we also have now an independent chair of the procurement board and the balance is five external members to four internal public sector members. That gives a level of scrutiny and industry experience to the board in terms of that supplier lens and purchasing happening in other NGO or public sector contexts to help public service officials who are bringing their procurement strategies and their other documentation, their risk framework, risk plan, evaluation plans, to have that pre-vetting both at the planning stage and then considering the source approach before the board.

Additionally, the Auditor-General found that there was not great clarity on the role of the board. So the legislation strengthened the framework that governs the board, so how the terms of reference are set in terms of ministerial directions being issued. There are now quite some documents supporting the objective of the board and reporting obligations in terms of what they consider and the volume of that.

More broadly, as I said at the start, there is the question of value for money, and the territory received quite some focus particularly in articulating in the rules how that is conceived of at the planning and evaluation stage. There was also provisions added around defining what probity in procurement means and expectations about how that is applied. That was in response to the Auditor-General report on Campbell primary as well.

In Procurement ACT we have a probity advisory service that is an in-house capacity for territory entities to engage where there are questions that come up or risks that they have identified that relate to probity that stem from those reforms. I think that has been a significant capability engagement piece. Things like where we have an incumbent supplier how we navigate that or if there is a scope of work where one supplier might be engaged to set the terms of or appraise the market and what the business need is but there is a possibility they might subsequently bid for that work, if work then eventuates from the initial piece. There are a range of contexts where probity advice is sought from that service. We also procure external probity audit or review internal supply complaint reviews that we undertake within Procurement ACT.

I also spoke about some of the practical measures that we have done. Now within the procurement landscape we have an accreditation system for territory entities. So the Government Procurement Board oversees that accreditation process and territory entities are issued an accreditation score linked to their maturity in terms of their ability to comply with the procurement framework. Then within Procurement ACT we have a support service which operates on a tiered support model. If you have a low level of maturity within the territory entity then we will be more involved in ensuring that the procurement happens and happens appropriately.

According to those four tiers we then have a dollar and risk rating matrix. Level 4 are considered advanced, best practice, equivalent to PACT officers in their expertise and have equivalent capacity in terms of procurement activity. Agencies who might be at levels 1 or 2 would have a managed service for all procurements over \$800,000 unless they are considered low risk. If it is a high risk it is \$500,000. So we have set those metrics to give capacity for Procurement ACT to assist directly with line areas to get their procurements done.

**MR WERNER-GIBBINGS:** We are give or take two years into a reform program. Is it paying off? How effective has it been? That is a raft of measures you have outlined, and some will presumably have quicker or slower impacts on improving the system than others. Where is it up to?

**Ms Potter:** We are scheduled to do a review of where the reforms are up to through July of this year. That will sit with that question and seek to understand how we can best measure some of the effectiveness of the reforms. From a Government Procurement Board perspective, we run the secretariat for the board out of PACT and there is a tangible difference that we can see in the quality of deliberations and engagement and also strategic opportunities for people who are appearing at the board quite early on in their planning process in order to get the insights from the board about some of the learnings they might have from their sectors in terms of applying those to the higher risk procurements.

As you say, it is two years. For a reform program of this size it does take some time to roll out that education, the learning modules, and garner the benefit of the shift in approach. For example, with the accreditation we have had an initial accreditation and one annual review. There is an annual review requirement in terms of assessing and reporting back to the board on accreditation because agencies are issued with recommendations from the board in terms of what they need to do to lift that accreditation rating. We have had one, so it is still quite early in terms of talking about

the scale and scope of reform of such a significant activity within government. That is why we have not yet commenced the review that will happen into how we assess the impact of that.

**THE CHAIR:** I would like to ask about reporting obligations. When there are multiple procurement packages, is there anywhere for larger infrastructure projects, for example, where the multiple packages are all reported so that the total cost can be seen?

**Ms Potter:** Are you are talking about large infrastructure projects?

**THE CHAIR:** Any project where there are multiple procurements, and, presumably it happens with large ones as an example. But does it get reported? There is planning money, a package for this, a package for that, a procurement for this, a procurement for that. Does that get reported anywhere so that you can see the project all in one spot?

**Ms Potter:** In the Tenders ACT system I do not think the searchability is done in terms of projects and subsets of projects in terms of approach to market in the way hat you are describing.

**THE CHAIR:** Not approach to market; I am talking reporting to the public, the reporting of the procurements for a project in an annual report or anywhere.

**Ms Potter:** Not in the way that you are describing

**THE CHAIR:** So how do you get the total cost of a project?

**Ms Dowdell:** It would depend on the type of project. Where they are capital projects, there is other capital reporting that would report at the project-as-a-whole level. But I do not think we have a system at the moment that aligns procurement processes with project value. It would be a combination of those types of reporting.

**THE CHAIR:** Where would you find that for capital projects?

**Ms Dowdell:** So we have a quarterly capital works program report.

**THE CHAIR:** Does that list all the procurements? As the quarters go by does that add the procurements so it builds—

**Ms Dowdell:** It includes the total project value. Our colleagues who will be here for the next sitting will have more detail. But there is a range of information in that quarterly report. As I said, it does not align then with what has been done in terms of the procurement, but it would provide the total project value and expenditure to date. I think it includes, but I will confirm that.

**THE CHAIR:** When contracts are varied for scope or time or budget, where is that recorded or reported?

**Ms Stephen-Smith:** The contracts will be uploaded on the contract register.

**THE CHAIR:** So it is a matter of filtering through the contract register to find them?

Is each contract identified to a particular project so that you can see that these contracts belong to that project and you can see where there have been changes in scope or time or budget?

**Mr Campbell:** Yes, there is a procurement identifying number that should be linking all of those together in the system. That would be the best way to identify variations on the original contract.

**MRS MORRIS:** I want to go to some concerns Mr Cocks raised in his submission in relation to the Fitzroy Pavilion. The original funding provision in the 2023-24 budget was withheld. The Chief Minister explained that it was withheld so that it would not predetermine the market price. But Mr Cocks has raised concerns over a work order that was issued which included the funding provision. Why was the Assembly and the public left in the dark over that funding provision that was withheld in the budget but was privately given to the contractor?

**Ms Potter:** The availability of the information about the dollar value of the proposed refurbishment contract was given to a supplier under a work order from the panel in order for them to be able to value and provide costings associated with whether they could take on that project. Because they were the project manager they would have been and then were engaged on being the refurbishment provider. So the dollar value attached to the project was relevant in them understanding whether they could deliver the project within the available budget.

The procurement process that was used to engage that potential supplier was the panel. So it was a panel process that they had access to. The work order being issued was then the mechanism by which they were engaged. For project managers it is relevant information for them to understand whether they can deliver a project and to understand what associated budget would be available to do that. So it was through the procurement process that that was done.

**MRS MORRIS:** Again to the point of that information being withheld from the Assembly and the public but given to the contractor, Mr Cocks in his submission has said that this does raise concerns around value for money and the integrity of the procurement process with that confidential information being given to one provider. Do you have a response to that?

**Ms Potter:** The procurement process that was undertaken was the use of the panel, and the documents that would support the procurement would be linked to that as the procurement process. The correlation between the dollar value being provided as evidence that there is not value for money is not a logic that I can follow. But I can just say that the usage of the panel by Infrastructure Canberra, there is nothing suggesting that there is an irregularity in them deciding to do that. It is a procurement that was done by Infrastructure Canberra; it is not a PACT procurement so in that sense I cannot speak with authority about the procurement activity in and of itself. But from seeking to understand from colleagues at Infrastructure Canberra what the context of the provision of that information was, it was used to engage the services of a project manager.

**Mr Campbell:** Given we are not the actual responsible agency I would like to take that on notice to see if there is any further that can be provided as a response to Mr Cocks's

submission.

**MRS MORRIS:** That would be good because he has raised concerns that it creates a perception that the panel might have put the contractor in a position to influence the terms on which the project would later be taken to market. If that were true it would certainly undermine the integrity of the procurement process.

**Ms Stephen-Smith:** Again to Mr Campbell's point, we are not the project owner, but I would suggest the committee might want to consider whether a project manager has the same role as a builder or a construction company that would then potentially be tendering for the next stage of the process. It might be helpful for the committee when you are talking to Infrastructure Canberra to draw out what the project manager's role is because that is the procurement that was done through the panel versus what the next stages of the project were once the project manager's advice was received.

I can understand the point that Mr Cocks is making, but in order for that to be a valid point there would have to be some relationship between the project manager and the tender process. That is not clear from anything that Mr Cocks has provided in his submission. That might be a line of questioning when you are talking to Infrastructure Canberra.

**THE CHAIR:** Our time is up.

**Ms Stephen-Smith:** Chair, before you close, just in relation to the question earlier about the reporting requirements under the Government Procurement Act, I referenced the annual report directions. Pages 33 and 34 of the annual report directions are publicly available as a notifiable instrument and they cover what territory entities need to report in relation to compliance with the Government Procurement Act. That includes if the territory entity has not complied with the Government Procurement Act during the reporting year details about how and why the entity has not complied with the Government Procurement Act. If that is the case, there is a table that is specified that entities need to use that has a description of the noncompliance, the sections that it relates to, the reason, and the steps taken to rectify noncompliance. So that would cover a range of areas of noncompliance.

**THE CHAIR:** On behalf of the committee I thank you for your attendance today. If you have taken any questions on notice—I think there were a couple—please provide your answers to the committee secretary within five business days of receiving the uncorrected proof Hansard. Thank you.

**STEEL, MR CHRIS**, Treasurer, Minister for Planning and Sustainable Development,  
Minister for Heritage and Minister for Transport

**AUSTIN, MR SCOTT**, Executive Group Manager, Finance and Budget, Treasury,  
Chief Minister, Treasury and Economic Development Directorate

**BOURKE, MS NATASHA**, Executive Branch Manager, Financial Reporting and  
Frameworks Branch, Finance and Budget, Treasury, Chief Minister, Treasury and  
Economic Development Directorate

**CAMPBELL, MR RUSS**, Under Treasurer, Treasury, Chief Minister, Treasury and  
Economic Development Directorate

**DOWDELL, MS MICHELLE**, Deputy Under Treasurer, Treasury, Chief Minister,  
Treasury and Economic Development Directorate

**THE CHAIR:** We welcome the Treasurer, Mr Chris Steel MLA, and officials. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

As we are not inviting opening statements, we will now proceed to questions. I will start off with the 16B rollover issue that Mr Cocks has identified. Section 16B creates rollovers, a new spending authority for the following year. The question is: why weren't the certificates attached to the next quarterly financial statement?

**Mr Austin:** The practice since the amendments were made in 2015 was that the financial instruments were provided to the MLAs with the financial statements associated with that quarter. Something signed in the June quarter would go with the June quarter financial statements, and that is consistent with the explanatory statement that went with the legislation at the time. If you look at the explanatory statement, clause 26 says that this—and I quote:

... replaces the existing presentation requirements from 'within 3 sitting days after the direction is given' to 'on the next financial statement presentation day'. This amendment is associated with streamlining and efficiency changes to section 26, discussed under clause 68.

If you go to clause 68, it explains the reason for the changes. This is a bit long, but it probably warrants being read out. Clause 68 of the explanatory statement says:

This clause inserts a new provision under submission section (2) to replace the existing presentation requirement (within 3 sitting days) for non-disallowable appropriation instruments. The amendment requires territory periodic financial statements—

the quarterly financial statements—

to include a summary of all the appropriation instruments authorised during the quarter—

referring to the quarter that these instruments apply to—

along with individual instruments.

The amendment replaces the existing presentation process that results in

disjointed, as required provision of individual instruments to the Assembly throughout the year, with a more integrated and coordinated process of scheduled quarterly reporting.

The idea is to make sure that the instruments are attached to the quarter that they refer to. The clause continues:

As well as being administratively more efficient, this amendment enhances transparency by providing the Assembly members a quarterly summary of appropriation instruments.

I think that is the context in which we do what we do.

**THE CHAIR:** But isn't it the case that they were not attached to a particular quarter?

**Mr Austin:** No, they were attached to the June quarter financial statements. The point has been made that the March quarter financial statements were released after the instruments were signed, and they should have been attached to the March quarter financial statements, but they did not apply to that quarter.

**THE CHAIR:** The question is: why does it take nine months? Why are rollovers being done so late in the year?

**Mr Austin:** It is part of our process that we probably do not learn about rollovers until halfway through the financial year from agencies. It takes a fair bit of work for them to put that together. For the first quarter of the financial year, we are working on end-of-financial-year issues, financial statements and that sort of thing. The practice has been that it takes at least six months for us to get the information. We get it at the end of December, basically, or mid-December. It takes us a while to work through those as well. I am currently completing a brief to deal with them. We are working through the budget process at the same time.

**THE CHAIR:** Do you have a list of the underspend for the previous year, and what potentially could come forward?

**Mr Austin:** We do not see that centrally. We rely on agencies to tell us that.

**THE CHAIR:** There is no central list of what the underspend from the previous year was and what potentially could be requested as a rollover?

**Mr Austin:** When we get the 16B request, that is the list, I guess.

**THE CHAIR:** Okay. Presumably, requests are not made for all of the unspent moneys of the previous year, so some would lapse?

**Mr Austin:** Some would lapse, and we have guidelines that we have put out on what we would consider to be an appropriate rollover to brief the Treasurer to accept. If you have an ongoing program—for example, you have set up an ongoing program with funding for staff, and you have not been able to manage to hire the staff in the first year—we would not say, “Roll that over,” because you have funding for the next year.

There are certain criteria that we apply. If the rollover is seeking to extend the program beyond what cabinet has agreed to, we probably would not agree to that for more than a year, or something like that. We would say, “Come back to cabinet,” in that instance. It is basically a cash management device. We talk to agencies about, “Have you got other ways of funding those projects or programs?” That is why it takes time to work through that.

We do not support all rollovers. We might say, “This is not appropriate.” One thing we do ask is why something has not been delivered. With something that has been rolled over in subsequent years, we would probably say, “Hang on; take that back to cabinet,” rather than us agreeing to a rollover. There are criteria that we apply, and agencies know about that before they put in their requests.

**THE CHAIR:** Have you looked at other processes in other jurisdictions and how they do it?

**Mr Austin:** At a very high level, yes. Many jurisdictions allow their appropriations to lapse in the financial year. We are most similar to the commonwealth, I would say.

**THE CHAIR:** Sorry, say that again?

**Mr Austin:** We are most similar to the commonwealth. They have a rollover process as well, where the finance minister approves rollovers.

**THE CHAIR:** That is true, but they do it in batches. They do it at budget and at midyear, so it goes through a budget process.

**Mr Austin:** Well, yes.

**THE CHAIR:** There will be sheets and sheets of the rollovers—they call it movement of funds—and that is done through a budget context and considered by budget group, and it is supported or not supported.

**Mr Austin:** It is a similar process here, because—

**THE CHAIR:** Yes, but this is all scattered across the year. They would have theirs in the midyear review.

**Mr Austin:** No. We get all the requests in December, and we do a centralised briefing to the Treasurer, so it is effectively in one batch.

**THE CHAIR:** Why isn’t it processed and included in the midyear review?

**Mr Austin:** Again, because we do not get that information until halfway through the year, in December, effectively, which is when we are finalising the budget review.

**THE CHAIR:** When you look at your processes, do you consider bringing that forward when you request the movement of funds? By December, surely, they know whether they need the money from the previous year or not. That could be brought forward. You could arrange your process so that it is all finished and included in the midyear review.

**Mr Austin:** They will know they have not spent it; they do not know whether they need it in that financial year. They might have other sources of funding that they could go to, which is what our process is about. We will go through and look at that and say, “You don’t need that rollover because you’ve got other program funding that you can use for that purpose.”

**THE CHAIR:** Basically, it is cash management; if you run out of money in your current year appropriation, you can go back to the previous year and dip into that one.

**Mr Austin:** It is a within-year cash management process. They might plan on having a section 16B approved, but they will factor that into their cash management processes. Moving it forward, we do run into constraints. Ms Bourke’s team does a lot of work on these instruments; it is a very small team. Our policy teams work with the agencies on that.

You do run into the problem that, for the first three months of the financial year, people are busy with consolidated financial statements and end of financial year things. They have to coordinate across the directorate, so it is not held centrally in the CFO areas, either. They have to work through the program areas to work out what has not been spent. As I said, there is a QA process whereby we have to go in and look, and assure ourselves that it is an appropriate thing to roll over. I would say that, if you brought it forward, there is the risk that you may not be able to do that due diligence that we do.

**THE CHAIR:** If they are providing the case to you, to assess the case, it should not take months. With respect to the CFO of a given directorate, are they not responsible for managing the rollovers for their directorate?

**Mr Austin:** Yes. We work with the CFO area. But when you say that it should not take months, we get it in December. By the time we start assessing, we are now going through the ERC process as well. Our teams are very busy drafting briefs for ERC, as well as doing this instrument process, as well as other instruments, not just 16Bs, and other requests that come up. We are a small team, basically—a lot smaller than what the commonwealth budget group has to work with.

**THE CHAIR:** These rollovers can be, I think, around \$150 million, when I look at the statement of appropriation. In the last couple of years, there have been large bill No 2s. In 2024 it was \$452 million. Last year it was \$387 million. In addition to that, there are the rollovers. They have been about \$150 million a year. We have a tight budget and we are trying to find savings.

In the 2024 year, there was \$601 million in additional appropriations through bill No 2 and the rollovers. The total appropriations came up to \$8½ billion, but only \$7½ billion was drawn, so we have a billion dollars that was not drawn. We gave additional appropriations of \$600 million; then a billion was not drawn down. Is there any way to tighten that up?

**Mr Austin:** Within our processes, we do look at whether an agency has received something through a supplementary appropriation or through a Treasurer’s advance. Obviously, in that case, if it is for that purpose, we would not support a rollover. We do

look at that. We look at all the appropriation sources, all the other sources that an agency has, before advising on whether section 16B should be supported or not.

**THE CHAIR:** At what level do they come through? We do not do program reporting, so how do you assess it? Against what?

**Mr Austin:** Ministers write to the Treasurer; then we get those letters and go back to the agencies, and we have a template that includes information on what is to be rolled over, current project funding or program funding, and the reasons for the delay. There is quite a competitive set of supporting documents, when we get that information.

**THE CHAIR:** It sits somehow under an output. Okay; thank you. Mr Braddock?

**MR BRADDOCK:** I have a question in terms of the timing of the instruments that are reported to the Assembly. According to your interpretation of the legislation, you will only report it when it applies to that quarter. Technically, if an instrument is signed on the first day of the quarter, under paragraph 26, at the end of the quarter, the Treasurer has 45 days to prepare the financial statements, and there is a further period of time before the first sitting, or the 45 days. Are we looking, potentially, at up to 180 days from the date of signature on the instrument to when it is reported to the Assembly?

**Mr Austin:** Potentially, that could be the case, under the current practice. Yes, that is right.

**MR BRADDOCK:** Do you feel that it is appropriate and timely for the Assembly to receive the information in that timeframe?

**Mr Austin:** I have been here for more than four years, and I have never been asked a question about a section 16B rollover. I am not sure whether that is a live issue—

**THE CHAIR:** It is now.

**Mr Austin:** but that is our interpretation of the legislation.

**Mr Steel:** I think this goes to the matters before the committee in relation to normative questions about what ought to be and what might be improved about the FMA, and what the actual FMA currently authorises. As we have heard, the FMA does authorise section 16B rollovers in the Financial Management Act. The reporting kicks in once section 16B is authorised; then it is reported in the next quarter's financial statements. That is what has been occurring.

There is no suggestion of a breach of the Financial Management Act. I heard some very confused legislative interpretation in the earlier part of the hearing. But it is now very clear, in relation to the explanatory statement, particularly clause 68 and the earlier clause that refers to it, that the practice that Treasury is diligently undertaking in reporting those section 16B rollovers is in accordance with the act.

It is also important to note that I am not aware of the other committee, public accounts, ever undertaking an inquiry, during my time as Treasurer, into those quarterly financial statements, or any of the consolidated financial statements. You may look at them; I am

not aware of what the committee's private proceedings are, but there may be a role for a committee, like there is in New South Wales or the commonwealth, in looking into those transparent reports of non-disallowable instruments and other instruments that are signed off under the act. But that has not happened yet. Those are there for scrutiny. They are available and transparent for scrutiny now, but I am not aware of that committee ever looking at them.

**MR BRADDOCK:** I cannot speak on behalf of another committee that I am not a member of. I was asking a question in terms of the timely provision of the information to the Assembly; that was the point.

**Mr Steel:** Yes.

**MR BRADDOCK:** And building on Ms Carrick's point, in terms of these instruments which appear to have been signed 10 months after the end of the financial year. I want to clarify something, Mr Austin. You referred to our practice seeming to follow the federal government's budget practice there. Do they take, on average, about 10 months for these rollovers to be approved?

**Mr Austin:** They might, as Ms Carrick said, do a batch at MYEFO; there is always a batch at budget. Potentially, they may do an earlier process as well. I have not worked in the commonwealth for a few years; they may have changed their process. Again, it comes down to the size of the teams we have working on this, the constraints on getting the information from agencies, and the fact that we are doing this as part of the hurly-burly of the budget process as well.

**THE CHAIR:** Mrs Morris?

**MRS MORRIS:** Looking at the Financial Management Act, section 16B(6) states:

If the Treasurer authorises an amount to be disbursed under this section, the Treasurer must attach a copy of the authorisation to the next financial statement presented to the Legislative Assembly.

Do you accept that that did not occur with the 10 April—

**Mr Steel:** No, it did occur. It was attached to the June quarter financial statement. If you go to the explanatory statement which we were just talking about and read clause 68, it says:

The amendment requires territory periodic financial statements to include a summary of all the appropriation instruments authorised during the quarter, along with individual instruments.

As Mr Austin mentioned, if you go to the earlier clause in the explanatory statement, in relation to section 16B, it refers to clause 68. It is clearly saying that the instruments that have been authorised within that quarter are attached to that quarter's financial statement.

**MRS MORRIS:** Which was not presented to the Assembly at the next available sitting.

**Mr Steel:** It was, for the June quarter. It was presented to the Assembly in the June quarter financial statements.

**MRS MORRIS:** There was an opportunity, I believe, in May, when it should have been presented to the Legislative Assembly. I think the date was 18 May; I cannot recall.

**THE CHAIR:** The 13th, I think.

**MRS MORRIS:** On 13 May. You did not present it to the Legislative Assembly then. According to section 16B(6) of the Financial Management Act, it says:

... the Treasurer must attach a copy of the authorisation to the next financial statement presented to the Legislative Assembly.

**Mr Steel:** Which was done in the June quarter financial statement.

**MRS MORRIS:** But it was not in the next financial statement presented to the Legislative Assembly.

**Mr Steel:** It was in the June quarter financial statement. Section 16B rollover instruments were part of the June quarter financial statement that was presented to the Legislative Assembly.

**MRS MORRIS:** But you did not present it in the May Legislative Assembly sitting.

**Mr Steel:** No, because it was part of the June quarter financial statement. The June quarter had not yet ended at that point.

**MRS MORRIS:** You have made an interpretation of that based on the explanatory statement, which I think could be contested. If we look at the actual legislation, can you point to anywhere in the legislation which would permit you to not present it in the next financial statement presented to the Legislative Assembly?

**Mr Steel:** We have just read out the specific parts of the explanatory statement that relate to the quarterly financial reports and the presentation of those to the Assembly.

**MRS MORRIS:** Did you present the statements in May?

**Mr Steel:** The June quarter statements?

**Ms Dowdell:** The March statements were provided in May.

**MRS MORRIS:** But did you present the—

**Mr Steel:** Yes. The June quarter ones, I think, were in August.

**MRS MORRIS:** Did you present the 10 April authorisations—the \$130 million rollover authorisations that we are discussing today—to the Legislative Assembly in May?

**Mr Steel:** The authorisations were not made in the March quarter; they were made in the June quarter.

**MRS MORRIS:** I did not ask about that; I just asked whether you presented them to the Legislative Assembly in May.

**Mr Steel:** They were presented as part of the June quarter financial statements, in accordance with the act.

**MRS MORRIS:** It is actually just a yes or no: did you present it to the—

**Mr Steel:** You cannot determine my answers to a question.

**MRS MORRIS:** Well, you are not—

**Mr Steel:** I am being really clear that they were presented as part of the June quarter financial statements, in accordance with the Financial Management Act.

**MRS MORRIS:** We can go back and look at the record for the May sitting, and it is clear that you did not present them to the Legislative Assembly in May. Looking at section 16B of the Financial Management Act, it says:

... the Treasurer must attach a copy of the authorisation to the next financial statement presented to the Legislative Assembly.

That would have been in May.

**Mr Steel:** We believe that we are consistent with the Financial Management Act and, using the clear explanatory statement as an interpretative guide, consistent with the Legislation Act. It is important to note as well, Mrs Morris, that we have an obligation to meet all requirements under the Financial Management Act—the entire act, including the section that relates to periodic quarterly financial statements, and that is what we have done.

**MRS MORRIS:** I am looking at the timeline; then I am looking at the actual legislation. When you put the two together, it certainly appears to me that you have not been compliant with section 16B(6) of the Financial Management Act.

**Mr Steel:** That may be your opinion, but the first—

**MRS MORRIS:** That is why I am asking you. It is not an opinion. I can read it again. Section 16B(6)—

**Mr Steel:** We disagree with that, and we presented a very clear rationale as to why.

**MRS MORRIS:** It says that the Treasurer must attach a copy to the next financial statement presented in the Assembly. That was in May. Did you present it in May?

**Mr Steel:** It is very clear in the explanatory statement that what that means, for the interpretation of the provisions under the Financial Management Act, is that it is

presented in the June quarter.

**MRS MORRIS:** What does section 16B in the explanatory statement from 2015 say?

**Mr Steel:** I will hand over to Mr Austin. He can repeat the clause of the explanatory statement.

**Mr Austin:** The explanatory statement from 2015 refers to the changes that relate to financial instruments. It refers to clause 68 of the explanatory statement, and clause 68 is the bit I read out before, which says that, instead of reporting within three sitting days—and I quote:

... for non-disclosable appropriation instruments. The amendment requires territory periodic financial statements to include a summary of all the appropriation instruments authorised during the quarter ...

In other words, our expectation is that, for the quarter that the financial statements apply to, that is when the instruments are reported.

**MRS MORRIS:** And clause 44?

**Mr Austin:** I do not have clause 44 in front of me; I am sorry.

**Ms Bourke:** Clause 44 says that “this amendment is associated with changes to section 26, discussed under clause 68”. Clause 44 relates to 16B—

**THE CHAIR:** Can you say that again?

**Ms Bourke:** It states:

This amendment is associated with changes to section 26, discussed under clause 68.

That is in relation to clause 44, which is for section 16B, in the—

**MRS MORRIS:** Can you confirm, for clause 44, that it states:

This clause replaces the existing presentation requirements in submission section 6 in relation to authorisation under section 16B from ‘within 3 sitting days after the day of the appropriation is authorised’ to ‘on the next financial statement presentation day’.

**Ms Bourke:** With reference to clause 44? I am pulling it up in front of me.

**MRS MORRIS:** Can you confirm that that is—

**Ms Bourke:** Yes, it does say that, but then—

**MRS MORRIS:** It does say that.

**Ms Bourke:** it follows on to say:

This amendment is associated with ... section 26, discussed under clause 68.

So it does reference you back to 68.

**MRS MORRIS:** Okay. You have said that you have not breached the FMA, based on interpretations in the explanatory statement, but the explanatory statement, in relation to 16B, clearly states that it needs to be presented on the next sitting day.

**Mr Campbell:** No, I do not think that is our interpretation.

**MRS MORRIS:** “On the next financial statement presentation day.”

**Mr Steel:** Because it refers back to—

**Ms Bourke:** It refers you to clause 68, which says during the quarter.

**Mr Steel:** Which is during the quarter, so—

**Ms Bourke:** That is right.

**Mr Steel:** The Legislation Act sets out the interpretation of acts in the territory. I would refer the committee to that as well, because it clearly references explanatory statements being an interpretation tool, and the explanatory statement is clearly saying that our practice is consistent with the Financial Management Act.

**MRS MORRIS:** Except the act clearly states when you should have done it, and you did not.

**Mr Steel:** It is interpreted with the explanatory statement under the Legislation Act, and it is saying that it is attached to the quarterly financial statements for the quarter that the decision is made.

**THE CHAIR:** Have you read Mr Bradbury’s submission? In that he talks about the December quarter 2024 consolidated financial reports. He says that there is some noncompliance with the reporting of two authorisations that were signed since the September report on dates that were before the production of the December report. It is the same for the March quarter 2025. He said:

This report as originally presented to MLAs in mid-May 2025 and on the ACT Government website listed 24 Treasurer’s Authorisations but contained no copies of the authorisations.

What is your view about Mr Bradbury’s claims of noncompliance in this respect?

**Mr Austin:** I think it goes to the same point we are talking about here—interpretation of “next financial quarter” and what that means. Our view is that, with the explanatory statement, it is meant to capture the idea that the financial statements are tabled for the quarter that the statements apply to. The other point that Mr Bradbury raised was that, on the website, the instruments were not attached for the March quarter. That was our fault. That was our mistake. I think Mr Bradbury wrote to us and we said, “Yes, sorry,

we will put them back up.” But it is not an FMA requirement that we publish them on the website. We do, as a matter of transparency, but that was administrative oversight in that case.

**THE CHAIR:** With the different notifications for different appropriation issues, do all of them go through the quarterly report or do some of them come directly to the Assembly?

**Mr Austin:** I think Treasurer’s advance would now. I think that would be the only one.

**Ms Bourke:** It is the variations under section 18 now—the Treasurer’s advance and the capital works reserve. The amendment was put through there in order to provide those—for the Speaker to circulate those within, I think, it is five days of that authorisation.

**Mr Austin:** Five days.

**Mr Steel:** In that case, created an inconsistency within the act in relation to reporting, which is going back to the original amendments that we have been talking about. The intent of those was to provide a consistency and streamlining efficiency of reporting, and transparency of the reporting, on that quarterly basis—the decisions made in the quarter. But that is now happening for different provisions in the FMA. That is happening in different timeframes. That creates a level of uncertainty and is not as efficient. But that may be something that the committee wishes to consider further.

**MRS MORRIS:** What takes precedence—legislation or explanatory statement?

**Mr Steel:** This is the explanatory statement for the legislation.

**MRS MORRIS:** I know that, but what takes—

**Mr Steel:** It is used an interpretive tool where something is not clear. I would refer you to the Legislation Act.

**MRS MORRIS:** The legislation is very clear on your requirements.

**Mr Steel:** Yes, absolutely.

**MRS MORRIS:** Whereas, the explanatory statement is obviously not. It is quite contested.

**Mr Steel:** No, it is very clear. It is very clear.

**MRS MORRIS:** Which takes precedence?

**Mr Steel:** It refers to the territory periodic financial statements to include a summary of all the appropriation instruments authorised during the quarter.

**MRS MORRIS:** So what you have just said there relates to what must be included in the statement, not when it must be presented to the Legislative Assembly. So I am sorry,

but I do not accept that interpretation.

**Mr Steel:** If you go to the Legislation Act, when you are working out the meaning of an act, the provisions of the act must be read in the context of the act as a whole.

**MRS MORRIS:** And what does the Legislation Act say about which takes precedence—the explanatory statement or the act?

**Mr Steel:** The context of the act is the most important thing.

**MRS MORRIS:** That is right.

**Mr Steel:** The entire act; not one specific provision.

**MRS MORRIS:** So if we look at the Financial Management Act—

**Mr Steel:** in interpreting the act, the Legislation Act says that the explanatory statement can be referred to for the purposes of interpretation.

**MRS MORRIS:** Yes, which is the point that you have made and which I am struggling to accept, given that explanatory statement relates to what must be included but not when it must be presented. Given that the Financial Management Act says the Treasurer “must”—not “may” but “must”—attach it in the next financial statement presented to the Assembly, and we have established that that did not happen in May, do you accept that you have breached the Financial Management Act section 16B(6)?

**Mr Steel:** We have attached the instruments to the quarterly financial statement for June, consistent with the Financial Management Act.

**MRS MORRIS:** Presented to the next Legislative Assembly in May, which did not happen.

**Mr Steel:** I accept that you have got a different interpretation, but the government—

**MRS MORRIS:** So you do not accept that you have breached—

**Mr Steel:** —believe that we are acting consistently and transparently in accordance with the FMA.

**MRS MORRIS:** I would just like to hear from every member of the panel whether they accept that the Treasurer has not breached the Financial Management Act section 16B(6). Could I hear from each panel member?

**Mr Steel:** I accept that the explanatory statement is very inconvenient for Mr Cocks, and it was read out at the time when this inquiry was—

**MRS MORRIS:** We are talking about matters of the law and public money and the administration.

**Mr Steel:** Yes, and the explanatory statement is absolutely relevant when considering

the interpretation of the Financial Management Act. I appreciate that he may not have been aware of it or he did not want to refer to it when he brought forward the accusations in the Legislative Assembly. But it is now abundantly clear that the reference in there is to quarterly financial statements and that we have acted in accordance with the Financial Management Act.

**MRS MORRIS:** Thank you for your opinion on that. Chair, I would really like to hear from each member of the panel.

**Mr Campbell:** Are you asking for a matter of legal compliance?

**MRS MORRIS:** The question is: has the Treasurer been compliant with section 16B(6) of the Financial Management Act?

**Mr Campbell:** I can speak on behalf of myself and the rest of my colleagues that, if you are asking for me to provide a legal opinion about interpreting whether there has been compliance or not, that is not something I would provide at the table. I would need to consult on that. But what I can say is that all the advice that is given to the Treasurer is consistent with reading the explanatory statement with the act. They need to be read together. In our view, that is why we think it is compliant.

**MRS MORRIS:** The explanatory statement goes to what must be included, not when it must be presented to the Assembly; whereas, the act says very clearly when it must be presented to the Assembly, which did not happen. So, again, all panel members, I would like you to answer that question, please. Thank you, Mr Campbell, for your response.

**Ms Dowdell:** I think, as Mr Campbell said, he has answered on behalf of all of us.

**THE CHAIR:** I think that they are allowed to refer to the minister a response, technically.

**MRS MORRIS:** Okay; thank you.

**MR WERNER-GIBBINGS:** Can you elaborate on the submission that was provided on behalf of the government on the evidence or the information on how and why we are, as officials, confident that the government is in compliance with the act?

**Mr Austin:** In relation to 16Bs? Is that what you are talking about?

**MR WERNER-GIBBINGS:** I am talking about the act in general, but 16B seems to be—

**Mr Austin:** All advice we provide to the Treasurer is compliant, in our view, with the FMA. As I said before, my reading—and certainly the practice since the amendment was made in 2015—was that the instruments go with the financial statements for the relevant quarter. Going back to clause 68 again, I will just read it out for the third time: “The amendment requires territory periodic financial statements to include the summary of all the appropriation instruments authorised during the quarter.” So our interpretation would be that, if it is signed in the June quarter, it goes with the June

quarter.

**MR WERNER-GIBBINGS:** Thanks very much. I am not as up to speed as other members on how the actual authorisation dates work and when the Treasurer is required to notify the Assembly. There have been various opinions. It might have to be a restatement—for which I apologise—but how do authorisations work? What are the timelines required and when is the Treasurer required to notify the Assembly?

**Mr Steel:** At the point of authorisation is when that reporting requirement then kicks in.

**MR WERNER-GIBBINGS:** Is that when you sign it off? Is that the point of authorisation?

**Mr Steel:** That is the point of authorisation, and we would then report for that financial quarter the instruments that have been authorised when that is tabled in the Assembly, which is what we did in the June quarter in relation to the section 16B rollovers that are being discussed. But there is a process which Mr Austin talked about earlier about due diligence, and an application is made or a request for a section 16B rollover by a minister. That due diligence is undertaken by Treasury to then provide advice to me ahead of me making the final decision. So it is not possible to really report on those requests before they have been authorised. There is no requirement in the FMA Act to report on those section 16B rollover requests before they are authorised. That really only kicks in when the authorisation is made. That authorisation was not made in March on the March quarter.

**MR WERNER-GIBBINGS:** A quarter has to finish before you can report on it, presumably.

**Mr Steel:** That is right. We have provided those section 16B rollovers and reported on those for the June quarter. Then it is, of course, transparent for the Assembly to then scrutinise legitimately the decisions that I have made as Treasurer to undertake those rollovers. But, as I mentioned earlier, I am not aware in recent times, only when I have been Treasurer, that the committee on public accounts has ever undertaken an inquiry into one of those quarterly financial statements. I understand that they do look at those very heavily in the New South Wales parliament and in the commonwealth parliament. So that might be something that this committee may wish to consider in terms of whether there should be additional scrutiny given to the statements that we are transparently publishing for the Assembly and the community to view, so that we can be held accountable for the decisions that have been made. But we have been transparently reporting on this stuff, and no-one is looking at it, it seems, in terms of the—

**THE CHAIR:** I am looking at it. I look at it.

**MRS MORRIS:** Well, we are here today, aren't we?

**MR WERNER-GIBBINGS:** Okay. Budgets are not my favourite thing. So this might be the last time you will have to say it, hopefully. So you make a bunch of authorisations between January and March and you report on those in the next quarter and then you

make a bunch of authorisations in—

**Mr Steel:** We report for the March quarter—

**MR WERNER-GIBBINGS:** In April, May or whenever.

**Mr Steel:** Yes; whenever—

**MR WERNER-GIBBINGS:** And then you do April to June in August and July to September—

**Mr Steel:** That is right. It is a consistent reporting schedule.

**MR WERNER-GIBBINGS:** It is a discrete—

**Mr Steel:** The practice has been very consistent by Treasury over a long period of time.

**MR WERNER-GIBBINGS:** And they are all bundled up in that timeframe?

**Mr Steel:** That is right.

**MR WERNER-GIBBINGS:** Quarterly, and then they are reported in the next quarter?

**Mr Steel:** Yes. We believe that that is consistent with the Financial Management Act requirements. If there is a different view, that the Financial Management Act should be changed and this explanatory statement thrown away, that is a different question. That is a question the committee may wish to consider around a change to the reporting requirements under the act.

**MRS MORRIS:** So that you can be compliant with it?

**Mr Steel:** But there is a difference between that and then what is actually required under the current act as explained in the explanatory statement.

**MRS MORRIS:** Are you suggesting that we change the act so that you can be compliant with it?

**Mr Steel:** No; I am suggesting that, if you are suggesting that there is an issue with the way that the current act is operating, it is open to the committee—and I am not going to tell you what to do—to consider whether there should be changes to reporting requirements. But the reporting requirements are very clear under the act. We are acting in compliance with them.

**THE CHAIR:** Given that you have committed to a review of the FMA this term, when will that begin?

**Mr Steel:** During the term. There are obviously other priorities that have been going on, and so that work will get underway. Any recommendations from the committee will of course be welcome in terms of us considering those as part of a review. We obviously have a range of other matters that the Treasury is considering at the moment that were

a greater priority than that piece of work. But, if there are matters that come through this committee, we will consider those in undertaking that work. But, yes, it will be occurring this term.

**THE CHAIR:** The quarterly report refers to the capital works reserve and the central reserve. Where is the authority for a central reserve?

**Mr Austin:** Is this referring to the budget review measure from 2024-25?

**THE CHAIR:** Yes.

**Mr Austin:** That was the government decision. It was a new initiative, and it was offset from underspends elsewhere. That was for a discrete initiative, effectively.

**THE CHAIR:** Is there authority in the act to do that? The appropriations are all so defined. How can we do this one without a definition of it in the act?

**Mr Austin:** It is an appropriation for a specific purpose. I think that was in the context of concerns about whether the Treasurer's advance would be adequate for that year because of the health cost pressures. I think at the time there was some discussion about if it was accessed that it would be reported on. It was not accessed in the end. I think it was reported on to that effect in the June quarter consolidated statements for 2024-25.

**Mr Steel:** But it was also appropriated in the second appropriation bill. So it was given authorisation by the Assembly.

**THE CHAIR:** Yes.

**Mr Austin:** So it is not an extension of the Treasurer's advance or some change to a provision in the FMA; it was a discrete government decision to put that funding aside—the same as any other decision to fund a program or an initiative.

**THE CHAIR:** In the statement of appropriations for June 2025 that is in the consolidated financial statements, where does the central reserve or the capital works reserve appear?

**Mr Austin:** The capital works reserve, I think, is a different concept, and that is provided for in the FMA. But the central reserve was appropriated through the supplementary approp for 2024-25, I think.

**THE CHAIR:** Yes, that is right.

**Mr Steel:** For CMTEDD.

**Mr Austin:** It would be in CMTEDD, yes; that is right.

**Ms Bourke:** In the additional appropriations column that relates to the second appropriation bill. It was not drawn down and expended in any way as part of the bill; it was undrawn and remained in the territory banking account.

**THE CHAIR:** Okay; thank you.

**MR BRADDOCK:** I want to test an assertion made by Mr Bradbury in his submission that, under section 8 of the FMA, the appropriation for the ACT executive was not legal. Please prove me wrong but reading through it, my interpretation of the FMA—which allows the appropriation of this type to directorates, which are defined under the FMA, towards the Legislation Act which then points to the Public Sector Management Act, section 13—is that the definition of the administrative units does not include the ACT executive. Under what legal basis is the ACT executive appropriation?

**Mr Austin:** There is a supplementary regulation, as I understand it, that makes the ACT executive a directorate. We can provide that information to the committee.

**Mr Steel:** Maybe we can take that one on notice.

**MR BRADDOCK:** Thank you.

**MRS MORRIS:** I have a couple of questions on the Fitzroy Pavilion. Mr Cocks, in his submission, has drawn the committee's attention to the fact that all payments were made before you signed off on the rollover. What authority enabled you to spend money that had not yet been authorised?

**Mr Austin:** Agencies can cash manage within the existing appropriations that they have. If there are underspends in existing projects, that could be applied to another project, and that is allowed under our capital works guidelines. With the scope, it goes back to the point that I was making at the start, in that section 16B is a within-year cash management device for agencies. If there is funding available elsewhere, they will pay that invoice or make that payment on the basis of an expectation that 16B would be approved later.

**MRS MORRIS:** Treasurer, were you aware that those payments had been made before you authorised them?

**Mr Steel:** I will take that on notice.

**MRS MORRIS:** Thank you. This question relates to the other one. Did you seek information on whether payments had been made? Could you take on notice whether you were aware and what information you sought about that?

**Mr Steel:** Yes.

**MRS MORRIS:** Thank you. Is it common practice? If I have misunderstood, please correct me: the authorisation that enabled you to do that was based on an understanding that section 16B was an option that was available to the Treasurer?

**Mr Austin:** CFOs manage their budgets on the basis of their expectations around cash flows from appropriations and other sources. You will often find—this goes back to Ms Carrick's point about why we do not do it earlier in the year—that CFOs will manage those cost pressures early on from existing funding and get reimbursed, effectively, through the section 16B.

I am not aware of the Fitzroy Pavilion example in great detail, but I presume that, if there were invoices to pay, they would have paid them from an underspend on an existing capital project, which is allowed for under our capital works program guidelines.

**MRS MORRIS:** Okay, so it is allowed for under the guidelines. Is it common practice for public money to be spent in this way when it has not actually been authorised?

**Mr Austin:** It has been authorised in the sense that it has been provided to, in this case, CMTEDD for capital works, so they are managing an overall program.

**Mr Steel:** It goes back to the principles around it being an appropriation to the directorate, not specifically to the projects.

**MRS MORRIS:** Yes, so it is authorised to the directorate?

**Mr Steel:** There is a level of flexibility built in there to be able to manage, particularly around contractual obligations for capital projects. But the rollover request has to be specific to a particular project. The appropriation is quite general to the directorate.

**MRS MORRIS:** Is it good practice for public money to be spent before it has been authorised by the minister?

**Mr Austin:** Under our capital works guide, it depends on what quantum we are talking about. There are thresholds that apply. If you are seeking to use an underspend from a capital project within a certain limit—and I cannot remember what it is now, but it is a small amount of the percentage value of the project—that is at the discretion of the directorate. Above that, the Treasurer would sign off on that. It gives the flexibility to directorates to manage a portfolio of projects if they have to make payments within the year.

**MRS MORRIS:** If it was above that threshold that you mentioned—

**Mr Austin:** I am not sure, because I do not know the details of this particular project. We can take that on notice.

**MRS MORRIS:** it would not be good practice to spend it without the Treasurer's authorisation?

**Mr Steel:** It goes back to the point of the section 16B rollovers. We are talking about projects and programs that have had an appropriation approved and authorised by the Legislative Assembly, where there might have been changes in delivery timelines for those projects and programs that mean there are undisbursed funds that need to be rolled over. That might be contractual; there might be some contractual requirements to make milestone payments for that project. These are already projects that are in flight, often, so to not have the flexibility of that rollover being provided would mean that effectively you would have to stop the project or not make a contractual milestone payment, and all those sorts of things. It exposes the territory to legal risks. There is a range of consequences that might come from that.

**MRS MORRIS:** I am not disputing that. The question is: if a need for spending arose, wouldn't best practice be to seek authorisation from the minister and then spend the money, rather than spend the money and then retrospectively seek authorisation?

**Mr Austin:** Mrs Morris, I have the guidelines in front of me now, so I can probably give a bit more detail. Under our capital works guidelines—we can provide them to the committee, if that would assist—if the cost increase is less than two per cent of the project's budget or \$100,000 in appropriation and it was required to complete the project and it was incurred in the financial year in which the project is financially acquitted, that can be decided at an agency level and agreed with Treasury. Above that threshold, it would have to be approved by the Treasurer. It is about trying to give that flexibility.

**MRS MORRIS:** What is the threshold?

**Mr Austin:** The threshold is where the cost increase is less than two per cent of the project's budget or \$100,000.

**MRS MORRIS:** \$100,000; okay. I am not sure about the cumulative figure. I am pretty sure it was more than that.

**Mr Austin:** Sorry, I do not have that sort of detail.

**MRS MORRIS:** In which case, wouldn't best practice be a need for a rollover arises and then authorisation is sought from the minister? What we have in this case is money being spent that has not been authorised and the Treasurer then providing an authorisation retrospectively to cover that spend. Is that good practice?

**Mr Austin:** In terms of this project, in our central system, we are actually reporting it as slightly underspending at the moment. I am not sure what numbers are being referred to, but we can take that on notice and have a look at that. It is about a \$4.5 million project and, according to what has been reported to us, it is underspending by about \$100,000 at the moment.

**MRS MORRIS:** Treasurer, would it be your expectation that, if money needs to be spent, if a rollover authorisation needs to be made, that would be brought to your attention before the money is actually spent? Would that be your expectation as Treasurer?

**Mr Steel:** The money is appropriated to the directorate for capital works.

**MRS MORRIS:** Why then do you need to authorise it?

**Mr Steel:** It is not specific to the project.

**MRS MORRIS:** Why do you need to authorise it?

**Mr Steel:** And the project has already been agreed to, or the program has already been agreed to, in the budget. These are projects that are already agreed to that are in flight,

and the directorates need to manage those. If they need a section 16B rollover, they need to make that request, and it will be considered in accordance with the act.

**MRS MORRIS:** Does that make the role of the Treasurer redundant, if you are effectively saying that it does not need your authorisation?

**Mr Steel:** No, the section 16B does require my authorisation under the act.

**MRS MORRIS:** The spending happened before you authorised it, so is that then in breach of that section 16B?

**Mr Steel:** Spending within the budgeted appropriation for the agency is up to the agency, but if they need a section 16B rollover, they would need to come to me.

**MRS MORRIS:** But they had a rollover before they came to you.

**Mr Steel:** No, because it was not authorised at that point.

**MRS MORRIS:** That was illegal spending then?

**Mr Steel:** No, they are making decisions within their appropriation.

**THE CHAIR:** If an underspend of the current year's appropriation was used, why was there a need for a rollover?

**Mr Austin:** Again, I am not sure of the details of this project, so we can take it on notice and have a look at that. It may be that they were cash managing at a point in time and then said, "By the time of the financial year, we'll need the rollover to make up the difference." That may have been what was happening.

**Mr Steel:** I think this relates to a change in contractor, if I recall, but we will provide the detail on notice. Actually, it was read out at the time, I think, in the debate in the Legislative Assembly in relation to the establishment of this committee. There is some background to the matter, but we will provide some further information on notice.

**MRS MORRIS:** With respect to the guidelines that you provided, thank you for that. What should take precedence: the Financial Management Act or the guidelines?

**Mr Austin:** The guidelines are about helping agencies to make decisions. The Financial Management Act is the overarching legislation, and all our guidelines would have to be consistent with that.

**MRS MORRIS:** For the guidelines to be consistent, the Financial Management Act clearly states that the Treasurer must authorise it, but the spending happened before the Treasurer authorised it.

**Mr Austin:** I guess this gets back to the point I made before about managing cost pressures within year versus across the year. It happens all the time that CFOs use existing funds to manage pressures, on the understanding that they may receive either a supplementary appropriation, a Treasurer's advance or a section 16B later in that

process. Hopefully, they will talk to us first, before they do that, but it is not always the case.

**THE CHAIR:** Could you provide on notice for us all the different reserves that there are?

**Mr Austin:** Yes, that is fine. I think the capital works reserve is the only one specified in there, and the Treasurer's advance in the FMA. We can definitely do that. The reserve that you referred to before was a specific time-limited reserve, so it does not exist anymore.

**THE CHAIR:** The central reserve?

**Mr Austin:** Yes.

**THE CHAIR:** What other reserves are there in the budget papers?

**Mr Austin:** The capital works reserve and the Treasurer's advance. They are the two that are appropriated.

**THE CHAIR:** Asset renewal reserve, and—

**Mr Austin:** That is a program. That is a specific program.

**THE CHAIR:** That is a program?

**Mr Austin:** The government decides how much money to put into that.

**THE CHAIR:** What reserves are there and what buckets of unallocated money are there in the budget to be allocated to projects?

**Mr Austin:** We can do that. The asset renewal program is an example of that. There is a certain amount of funding set aside and agencies determine what projects they want to take out of that. Yes, we can do that.

**THE CHAIR:** Thank you.

**MRS MORRIS:** Is there anything within the Financial Management Act that you can point to that permits retrospective authorisations of spending? You can take it on notice, if you like.

**Mr Austin:** The only point I would make is that section 55 talks about the responsibilities of CEOs to spend money in accordance with a purpose, effectively. As the Treasurer said, appropriations are fairly broad, for the purpose. CHS spends money for health purposes. It is pretty broad. With retrospective endorsement of spending, the FMA provides flexibility to CEOs or directors-general to do that.

**THE CHAIR:** On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

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, and the secretariat. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today. This meeting is now adjourned.

**The committee adjourned at 12.02 pm**