

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

**(Reference: review of Auditor-General's report No 7 of 2002—Financial audits with
years ending to 30 June 2002)**

Members:

**MR B SMYTH (The Chair)
MS K MacDONALD (The Deputy Chair)
MS K TUCKER**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 23 APRIL 2003

**Secretary to the committee:
Ms S Mikac (Ph: 6205 0136)**

By authority of the Legislative Assembly for the Australian Capital Territory)

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.37 pm.

TED QUINLAN,

MICHAEL HARRIS and

MEGAN SMITHIES

were called.

THE CHAIR: I call the meeting to order and welcome the Treasurer to the inquiry of the Public Accounts Committee into the Auditor-General's Report No 7, *Financial audits with years ending to 30 June 2002*.

Mr Quinlan: Thank you.

THE CHAIR: I'm told I'm to read this to all witnesses: you should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections, but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Treasurer, do you have an opening statement?

Mr Quinlan: No, it's your show.

THE CHAIR: Treasurer, in pages 73 to 81 of the report, the auditor raises some dissatisfaction with the territory's financial statements and has, in fact, given us a qualified statement, which I guess we all take very seriously. I know that this is an issue that you've had an interest in for some time. How will the government respond to what the Auditor-General has said?

Mr Quinlan: I could probably get Mr Harris to give some detail, but first I'll say that there is concern across governments as to some of these accounting treatments. The concerns have been discussed by the Heads of Treasury meeting, a group that does meet regularly. They have determined—I'll get Mr Harris to clarify it exactly—to refer a couple of matters to the Australian Accounting Standards Board, in order that we get some uniformity.

You'll be aware that this qualification arises from a treatment of adjustments by the actuary to the quantum of the unfunded liability of superannuation. Now, this has had quite a chequered history going back to 1995-96 when, I think, something like \$91 million or \$94 million was bought to account in one year, bringing the recorded deficit for that year up to \$344 million. That was a backcast year conducted before the actual introduction of accrual accounting in the following year. That was a treatment that was done on a one-off basis.

At a later stage there was a very considerable adjustment, in the order of \$280 million or \$300 million, in a given year. It was then decided by the government of the time that that ought to be amortised over a 12-year period, which was a change in the process. I rather thought at that point that it more than anything distorted the comparison between years, because we had a change in treatment.

I have discussed that. I've sat on the other side of the table in this particular forum and discussed it with the Auditor-General. Until last year, he was of the opinion that it was the appropriate treatment. There was no prevailing Australian standard, as I understand it, and this was the adoption of an American standard.

Since that time, the auditor himself, the same auditor, has changed his mind and thought that, no, these things ought to be brought to account immediately, in the year that they were recognised. That leaves the government with considerable difficulty, actually, that we would have distorted comparisons going between years.

We do know, unfortunately, from time to time how single numbers can get currency in political debate within the territory and the government has said, "I think what we really should do in the interests of comparability, in the interests of comparison of performance, is that we ought in fact to produce accounts that are produced on the same basis as the accounts for the previous year." Those are the accounts that we put forward.

We understood that it was highly likely that there would be a qualification of that. As you rightly point out, that's a serious matter. However, it, in fact, now has the issue as a profile issue. It was, you know, not the most exciting issue to come forward in the discussion of public accounts. It is now at least a recognised issue, I think.

You may be aware, as chairman of the PAC, that there is scheduled in the year 2007 harmonisation of international accounting standards. So what we want to do, first of all, is refer it to the Accounting Standards Board and get a short or medium-term answer, but in the long run make sure that we've got a process of reporting that is not only consistent across Australia but is also consistent internationally, which is the desire, I think, of all the treasurers and states in Australia. So, precisely what's being referred to the standards board, I can allow Mr Harris to fill in.

THE CHAIR: Mr Harris, for the purposes of Hansard, identify yourself so they can recognise your voice from the tape.

Mr Harris: Mike Harris, chief executive of the Department of Treasury. As the Treasurer mentioned, the current Australian accounting standards provide no written standard for this particular reporting treatment of superannuation. The Australian standards are being harmonised with international standards across the next four or five years and there is an international standard currently in place which does deal with this treatment of superannuation. That international standard, by and large, is consistent with the view that the Auditor-General now takes on the treatment of superannuation.

The Heads of Treasury have had a working group dealing with a number of accounting standards issues, particularly in the lead-up to harmonisation, and have referred a paper

to the Australian Accounting Standards Board which would have the board write a standard where one currently does not exist to give guidance for the treatment of superannuation in order to provide a framework within which auditors can audit.

The position that has been referred to the AASB would have valuation changes in liability and asset worth taken to the balance sheet as equity, rather than to the operating statement as expense. Should the board agree with that proposition, then the treatment we currently apply, which was the subject of qualification, would by and large be the position that would be adopted as a written standard. It would not have the amortisation process applied to it as we currently do, so the change in equity would be taken in total in the year in which it occurs, but would be taken to the balance sheet, not the operating statement.

THE CHAIR: At this stage, we have the qualified statement but the process that the government is following is to take it to the working group to see whether we can come to a consistent decision.

Mr Harris: To the Australian Accounting Standards Board and to have the board write a standard where one currently does not exist, and the standard that they would write would essentially validate the treatment which we apply as practice at the present time.

THE CHAIR: At this stage, the government's position would be that it wait and see what the standards board comes up with. If it doesn't validate your position, you would move back to the Auditor-General's position.

Mr Quinlan: The government collectively hasn't decided that, so I'd only have to give you a personal opinion, but I do believe that it is important that we don't change courses too often and get bottom lines on different bases. I mean, if you applied the auditor's standard that he now adheres to back a couple of years, the last couple of years' performances have been overstated by, collectively, \$50 something million.

THE CHAIR: Yes, he points that out on page 78. So what do we do? Do we sit and wait for the standards board to make a determination?

Mr Quinlan: Other than the presentation of the budget this time round, we've probably got until September to see what might or might not emerge from the Accounting Standards Board, because we have to have our accounts, effectively, audited now by 30 September, I think; is that right?

Ms Smithies: Mid-October.

Mr Quinlan: Mid-October. Okay, near enough.

THE CHAIR: What's the effect of the qualification? Is it an argument between accountants? Is there real importance to, say, our credit rating?

Mr Quinlan: It has two levels of importance. It's important in as much as we do actually need to have consistent bases for reporting and find either consistent bases or an ability

to explain results from year to year so that non-accountants that don't want to be bothered with the esoteric detail of the accounting process can still understand and get a perception as to what has occurred. I think that's very important.

This issue is probably important as well in the wider context of the appropriateness of the total application of accrual accounting in public accounting, because not all professionals in the industry agree that accrual accounting as applied to the letter in the private sector, particularly following some of the excesses of the 1980s, is necessarily appropriate to the public sector.

I happen to be one that has some reservations myself, reservations that I have voiced in public and professional forums. I mean, we do have a process that has got quite a number of arbitrary rules that need to be explained or negotiated so that we actually still know that the territory, in this particular case, is travelling okay, is meeting its commitments and is capable of meeting its true future commitments.

We certainly do need that, and accrual accounting goes a long way to addressing that particular problem, albeit the capacity to meet further obligations. If I might just refer to a topical issue: the territory at this point in time has cash holding, but at the same time this territory holds hundreds of millions of dollars of obligations, particularly to its own work force, and you can't really live off people's annual leave or long service leave. Nevertheless, there will be reserves and the reserve capacity in the balance sheet looks very inviting, but we actually need a system that reports and doesn't permit governments to dip into those sorts of funds because they're taking a temporal view rather than a longer-term view.

THE CHAIR: Any questions, members?

MS TUCKER: No. That was interesting, thanks.

THE CHAIR: The point is well made: if we don't get it right, there's no consistency, you are comparing apples with oranges or pears and nobody can understand what's going on. If we can get a standard across the board that the standards committee agrees to, then everybody's better served.

Mr Harris: It's probably also valid to make the comment that I think the Accounting Standards Board recognises the differences between public and private accounting requirements, because they are now specifically writing standards that give guidance for the application of a general standard within the public sector, whereas at the beginning of the process they didn't do that and we did get into some difficult areas where the differences between public and private were so pronounced that the standard just simply was unworkable. That's effectively the road that's being put in front of them at the present time with the variation.

THE CHAIR: All right. The next issue of importance that the auditor seems to have raised, and he raised in a letter with me, is the use of the Treasurer's Advance. Perhaps, Treasurer, we might explore why it was, as you told the Assembly, that the use of the Treasurer's Advance was taken to cabinet. Perhaps you could enlighten us as to how cabinet or you came to the conclusions that the \$10 million should be spent, firstly, on social housing and then transferred to fire safety.

Mr Quinlan: What I can advise the committee is that I gave some verbal instructions to the then head of Treasury to make sure, or maybe damn sure might have been the words, that when we completed the current financial year, which was the past financial year, we had no carries forward, we had expended all of the necessary expenditure in the year, that I didn't really want to be picking up the tab in the now current financial year for the immediate past financial year in any way.

I think that instruction went through the heads of departments. It wasn't a formal missive or anything like that. It was, "Beat the bushes and make sure you pay all your accounts. I want to make sure that we have, in fact, spent every cent in the year that it was appropriate to spend it." And then the issue of paying an amount—\$10 million, as it was—to Housing came to cabinet. It came, I think, verbally. I don't think there again was a long dissertation or written dissertation on it.

Effectively, the government was advised, "You have just inherited a liability to do this extraordinary maintenance." It was not just a case of bundling it up into the ordinary public housing maintenance, but that, "You, the government, have just inherited a \$10 million legacy in the unsafety or the unsafeness of public housing in relation to fire safety." The proposition was put forward that, in fact, we ought to pay for that out of the year.

If we can go back to the previous discussion about wanting to truly represent the affairs of the territory or the position of the territory at the time, then some measure needed to be taken to recognise the fact that here was \$10 million that we were committed to. We've got an identification. There was a process of review going on that was detailing, I think, complex by complex the costing of it, but here's a very large lump of money that a liability now exists for the territory.

There's probably a number of ways it could've been handled. It could've been handled by just putting it on the accounts as a liability, a provision for a backlog of maintenance or whatever. If you're looking for what is the true position of the territory at 30 June 2002, then really that \$10 million liability should've been recognised. Proposition: use the Treasurer's Advance, pay the cheque to Housing and that way it is recognised as expenditure because, like it or not, expenditure made by the territory to Housing is expenditure in the year, as the accounts were—in terms of expenditure certified by the Auditor-General, anyway.

We can assume, I think, by his certification that that was expenditure in the year. So that is a method of recognition that that expenditure or that liability was recognised at the time, 30 June 2002. So that seemed quite okay to me. There was nothing covert about that. This was in August notified to the Assembly by the tabling of the appropriate document in relation to the Treasurer's Advance and, as far as we were concerned a, quite simply method of recognising a genuine legacy that existed at 30 June 2002.

THE CHAIR: Do you recall who brought it to cabinet? Was it your decision to take it to cabinet, the housing minister?

Mr Quinlan: I think it actually came up in cabinet with the Under Treasurer of the time because, as you will be aware, quite an amount of time is spent by our poor benighted Treasury officials in the cabinet room around about that cycle of the year. So it was something that was put forward. I can't remember whether there were bits of paper, exactly, or the input of the appropriate minister, Bill Wood, or not. I don't actually recall the by-play because it was, "That's easy. Done. Move on."

THE CHAIR: The Auditor-General has, of course, come to a view that you shouldn't use the Treasurer's Advance in that way, and he has called it a misuse. The quote is, "The audit view is that this was a misuse of the Treasurer's Advance and its legality could also be questioned." The act says it's for unexpected activity—

Mr Quinlan: Does it.

THE CHAIR: That the need for the expenditure could not reasonably have been foreseen at the time of presentation, section 18 (1) (c), Treasurer's Advance, Financial Management Act. Indeed, the auditor goes on to say that the audit's understanding of the Treasurer's Advance is that—

Mr Quinlan: Of the first appropriation bill for the financial year, so it's the year before. I couldn't foresee it a year before, no.

THE CHAIR: Even though your government had been told that there was—

Mr Quinlan: "Could not reasonably have been foreseen at the time of presentation to the Legislative Assembly of the bill for the first Appropriation Act relating to the financial year in which the expenditure is to happen." That was in the year 2000.

THE CHAIR: 2001-02, yes.

Mr Quinlan: That was in May of 2000, the appropriation bill.

THE CHAIR: No, May 2001.

Mr Quinlan: It would be 2002, yes, sorry. So, May 2001, no, I don't think we could have reasonably—we. I think we could claim when we get into bandying words, and we may want to, but I don't think you could say that you would expect the incoming government to have reasonably foreseen this in May of the previous year, 12 months earlier.

THE CHAIR: The question time brief dated 18 February 2003 from the minister for housing actually says the issue of fire safety at the multiunit complex emerged last financial year, so that would be 2001-02, the year that you came into office, as a result of the work done on the previous government's multiunit property plan. So the advice to the minister for housing is that it did emerge.

Mr Quinlan: Is there a magnitude there?

THE CHAIR: It doesn't go on to suggest a magnitude, although it does say that the increase of \$16 million would help. But it's quite clear from this document, and I'll have to table the document, that the government was aware that the issue of fire safety had emerged because of the work done by the previous government.

Mr Quinlan: The government was aware at the time you brought down your first appropriation bill?

THE CHAIR: No, that you were aware when you were doing your budget last year that there were issues concerning fire safety at the multiunit complex.

Mr Quinlan: But this is expenditure in 2001-02.

THE CHAIR: Correct.

Mr Quinlan: And the first appropriation bill for 2001-02 was brought down in May 2001.

THE CHAIR: Correct.

Mr Quinlan: Without putting too fine a detail, I don't recall knowing that there was a fire safety problem in public housing in May of 2001 when Mr Humphries brought down his last appropriation bill, or his first appropriation bill for that year.

THE CHAIR: No, it says here that fire safety emerged during the last financial year. I'll get you a copy of the report. But the point is the auditor goes on to say on page 39:

The Audit's understanding of the Treasurer's Advance is that it exists to enable unappropriated, unforeseen, and unavoidable payments to be made if and when they need to be made.

And that those payments which urgently need to be made in a year are legally made in that year. Is it not true that the advice given to the government was that the payments wouldn't be made?

Mr Quinlan: Sorry?

THE CHAIR: Is it not true that the government was advised that no payments could be made in that year?

Mr Quinlan: I'm not sure what you're driving at.

THE CHAIR: Normally, the use of TA is for the payment of bills in the financial year, otherwise the TA rolls over.

Mr Quinlan: We did pay the bill in the financial year.

THE CHAIR: That's correct, and that's why the auditor is saying that it's a misuse of the TA.

Mr Quinlan: But only after he applies effectively his own additional rider within the terms of the act. He's now giving his opinion ex post. Maybe we should have asked him beforehand, but he's giving ex post an additional set of parameters that aren't literally contained in the act. Is that right?

THE CHAIR: I'm just reading his report. But if you go to the advice that, perhaps, Urban Services was giving to cabinet, they say, and I quote an email from an Urban Services officer, "We cannot spend the money until next year." I might read it. In fact, I've got a copy if you want to follow it through. Without naming public servants, basically it says:

We have been approached by Treasury to take up \$10m this year as service purchase payments, I presume following the outcome of Budget Cabinet III last week. I am happy to do this although, have indicated that as we can not spend this money until next year and 2003-04, I would prefer to record the money as income in advance.

I assume that also as the money has not been appropriated under Appropriation No 3 and is due to come to us this year, that the money will be forwarded from the Treasurer's Advance. My understanding is that we are ... are writing a Submission to Alan Thompson advising of the need for urgent expenditures to be undertaken for fire safety ... A copy of our Submission will be available ... tomorrow."

Is the Treasurer's Advance not for expenditure in the given year, unexpected payments that come due in that financial year for which the TA is appropriated?

Mr Quinlan: According to the act, according to the auditor's certification, this was expenditure in the year. There's a certificate on the accounts that record it as expenditure. The particular memo that you've given me is from Housing, which is a separate entity from the ACT general government sector. So, even if Housing can't expend it in the year, at least technically the government had expended it in the year. More importantly, as I pointed out earlier, what it did do is convey by that particular process—and there are probably other processes available, in my view—to the Assembly and the people of Canberra a truer reflection of the financial position, strength or otherwise, of the territory at 30 June 2002.

In hindsight it might have been better, because people wouldn't have been so hot and bothered about it, to have just written a journal entry that said, "Provision for improvement of fire safety in public housing" and then debited expenditure for the year, because there is no doubt, I don't think anybody is doubting, that the government had on its hands in May 2002 a very large slice of expenditure, that it had a legacy of work undone, work let slide or work unrecognised as necessary. But in any way you like to look at it, the result that you get from this treatment, or the journal treatment, which, as I said, might have caused less hearts to flutter, would have given a far truer picture of the financial position of the territory at 30 June 2002. I would have thought that a public accounts committee, more than any, would want that.

THE CHAIR: Except that it does get to the view of the auditor that it is a misuse and that its legality could be questioned. The auditor is saying that he doesn't believe you should be using TA in this way. Indeed, further advice from the public servants indicates that that's their view as well.

Mr Quinlan: I respect the auditor's opinion. We didn't name public servants. With the greatest respect to the public servants who were writing this, the particular memo that you've referred to is actually from Housing and it's not from within the general government sector. Therefore, the treatment for them and the process for them is, of course, different because they're the ones that got it, right?

THE CHAIR: But the email is actually between, in this case, Urban Services and Housing and certainly Urban Services is part of the general—

Mr Quinlan: It's got written across it "Housing to DUS Corporate".

THE CHAIR: Yes, that's right and they're replying back to previous inquiries. But if we move along—

Mr Quinlan: Well, that's what it says here.

THE CHAIR: Yes. That's to give you the reference point. But the thing is that on the same day as that email ACT Housing is there asked to develop a program to spend the money in 2003-04. If it's so urgent that you allocate \$10 million to the project and then they have to work out how to spend it, how can you then justify using the Treasurer's Advance, when clearly it's not as urgent as the government's attempted to portray it?

Mr Quinlan: What's important and what remains important is the fact that we have recognised this particular legacy and that any accounting 101 will talk about matching cost with revenue for a given period and reporting the financial welfare or strength—I can't even think of the word, but something of that ilk—of the enterprise at a given time; a true, fair view of the financial affairs of the territory at the time.

The territory at the time owned a legacy of undone maintenance at 30 June 2002. As I have conceded, and happily do so, it might not have raised eyebrows and not perturbed the auditor had we used the process of just setting up a provision and recognising it because—this is one of the responsibilities you have if you're putting the books together—if you know that the territory has a liability, effectively, then you're duty bound to recognise it. If you don't recognise that liability you are overstating the wealth and the strength of the territory at 30 June 2002; you would be doing that. As I said, there might have been different ways of doing it that mightn't have perturbed people. I didn't anticipate that this would, in fact, perturb people and happily did it, didn't hide it and put the report into the Assembly. As far as I thought, end of story.

If it might have been done differently, then I'm happy to be advised so and I'm very happy to pick up the auditor's comments, but you have to read all of the auditor's comments. The auditor said guidelines need to be changed; ergo, he wants different guidelines to make an act like this illegal; ergo, it is not yet illegal.

MS TUCKER: I guess the fundamental question is that technically it is not illegal because it's classified as expenditure at this point in time. The argument is that that's really not within the concept or the intent, as people understand it, of the Treasurer's Advance, so that's where the problem is.

Mr Quinlan: Yes.

MS TUCKER: As I understand it, you're saying that if people want to make that intent clearer, that can happen through amendments.

Mr Quinlan: Yes.

MS TUCKER: At this point you seem to be saying you've done nothing illegal, but you also seem to be conceding—I'm not sure that you're conceding this—that it may not be completely within the understood intent of the Treasurer's Advance, because it does appear to most people that the Treasurer's Advance is to be used only when there's nowhere else to go and, because this was so close to the next appropriation, you could have appropriated that money later. But you said at the beginning that you wanted to make sure you spent as much as you could before that appropriation, as I understood it.

Mr Quinlan: Yes.

MS TUCKER: You seem to be saying that you had these considerations. You wanted to spend as much money as you could before the next appropriation so that you didn't have more coming out of the next appropriation.

Mr Quinlan: Yes.

MS TUCKER: And you thought that this was a way to spend money that technically could be argued, you were advised by officials, to be within the law, basically. Is that correct? Have I summarised what you said?

Mr Quinlan: I think that's the case, anyway. I think that is the case. But, more than that, I do want to re-emphasise the fact that this action then gives the reader of our balance sheet a truer picture of the state of affairs of the territory than not taking this action. I think that it is very important that the committee recognise that.

MS TUCKER: I don't quite understand that. Would you mind explaining that again? We know if you've spent money in the Treasurer's Advance or you haven't. If you didn't spend the money in the Treasurer's Advance, we'd know you hadn't spent it. But you did spend it. We know you spent it because you didn't make a secret of it.

Mr Quinlan: But I'm saying when we produce the financial statements for 2001-02, we will produce a balance sheet to say that this is the strength, this is the assets and liabilities of the territory. The household analogy: if we were working out what our financial capacity was for the future and we knew we had so much—so many assets, so

much in the bank and so many other things—and we knew we owed so many bills, and we also knew that we had a hole in the roof that had to be fixed, no choice, we would probably take that hole in the roof and the potential cost of that hole in the roof into account before we went off spending our money.

That's the sense of trying to match, trying to give a true picture. That's why you have contingent liabilities in balance sheets. If you don't put that liability in the balance sheet or you don't have some method of ensuring you record the particular expense you face, if you don't put that in there then you would be believing that you had \$10 million more to spend than you've actually got, because it's already committed. It's effectively gone, just hasn't happened yet, but that's the same as your provision for annual leave or long service leave. It's effectively committed; you just haven't paid it yet. That's the process of putting the balance sheet together, so what you got was a truer and fairer picture of the affairs of the ACT as a result of this than you would have gotten if we had said that we would put it in next year.

THE CHAIR: But that's the actual criticism that the auditor makes. He says the intention is not to enable amounts to be put aside in one year to meet payments that do not need to be made until some time in the following year. There are other ways of doing that and doing it appropriately and possibly not breaching the FMA and possibly not getting the use of the word "misuse".

Mr Quinlan: I would agree with the auditor to the extent that those expenditures he's talking about relate to the subsequent period; the money is spent in the period and relates to that period. But one of the basic tenets of accountings is to try and get your expenditure into the period to which it relates. This is a problem that built up over a long time but actually pre-exists, and the ACT government had no choice, it had virtually \$10 million of its money—or more, actually, but the bulk of this took care of it—earmarked, not available for anything else, gone, gone because there has been maintenance undone and a maintenance legacy that needs to be addressed, money gone.

THE CHAIR: But initially the money was set aside for social housing. It was not until about 30 May that you actually changed that decision to make it for urgent fire safety.

Mr Quinlan: Mr Smyth, I have to say I have no knowledge of people talking about spending the money on social housing versus maintenance, because if the question of social housing came up, we'd have to say that that would be a positive policy issue and a decision taken, albeit it has to relate to the period to which the policy relates.

THE CHAIR: So you have no knowledge whatsoever of cabinet or yourself putting aside \$10 million of the Treasurer's Advance before 30 May for social housing.

Mr Quinlan: I've got no real recollection of that. It might have been discussed.

THE CHAIR: It was not a decision of budget cabinet III on or about 21 May?

Mr Quinlan: Not that I recall. It may have been.

THE CHAIR: Perhaps you need to check your records. One of the documents I wasn't allowed was budget cabinet III's decision 187, which pertains to the provision of \$10 million for social housing. I can only assume that it was a budget cabinet decision. No?

Mr Quinlan: I don't know, but I'm informed that it doesn't relate to that.

Ms Smithies: It relates to \$10 million for housing.

THE CHAIR: For what purpose?

Ms Smithies: It just said housing.

THE CHAIR: If I could read from a letter from the Under Treasurer. Actually, before we have the Under Treasurer's letter, you said earlier that the reason you did this was to have a true statement of the financial position of the ACT. That's different to what you told the Assembly when—

Mr Quinlan: The reason I did this was to make sure that we didn't inherit and have to factor into our budgets a legacy that's not of our making and which could quite legitimately be brought to account in some manner or form within the 2001-02 financial year, and I stand by that.

THE CHAIR: That's not what you said in December in the Assembly when you came into the house after the Speaker tabled this report. You said that this \$10 million had been put aside because of urgent advice received from the Government Solicitor that said you had to put some money into this problem or you were in trouble.

Mr Quinlan: That doesn't contradict what I've said; that actually dovetails with what I've said because when someone comes into cabinet—as I've said, I don't recall the conversations and I'm sorry I don't—and says, "We want to spend this money," then I as Treasurer would say, "Well, you had better make damn sure that that's a firm commitment." I mean, I would want to see some verification and some documentation associated. "We're now saying we've got this commitment." "I believe you, but we want a decent paper trail," and they've said, "We had better go and check to see what our legal position is." So they go and do that.

That then becomes the trigger; I think you used the word. At that point, you say, "Okay, we are now committed." It's at that point—at the point in time when the solicitor says, "You have a direct liability and exposure to liability"—I can claim, "Right, that is a legacy. That should be brought to account."

THE CHAIR: You've just said that you've sent the public servants away to come up with the paper trail that leads you to that conclusion.

Mr Quinlan: No, I didn't say to come up with a paper trail. I didn't say that.

THE CHAIR: All right, you've just said that you wanted people to go away and justify it so that there's a trail of documents.

Mr Quinlan: I wanted assurance.

THE CHAIR: You wanted assurances, yet no document was presented to cabinet for the \$10 million expenditure of the Treasurer's Advance. You've said you can't find one. The FOI says there isn't one.

Mr Quinlan: Well, is it essential that there is a cabinet document?

THE CHAIR: I'm just surprised you can spend \$10 million on a verbal. I mean, you said earlier—

Mr Quinlan: But if I sit in cabinet and say, "Does cabinet agree with this?" and they say yes. "Right, what's the process?" "Well, you're the Treasurer, you can sign that." Okay. What do I do, say, "No, write a letter?"

THE CHAIR: Except you said in the Assembly that advice was given to cabinet, and you said earlier today that your recollection was that it was given by the Under Treasurer at the time, that you needed to spend this \$10 million.

Mr Quinlan: Yes, I think. I don't know exactly what I'm answering because I think you're trying to be very selective in your questioning.

THE CHAIR: I'm just asking you on what you've told us.

MS MacDONALD: Are you asking if there was written advice or if it was verbal advice?

THE CHAIR: No, I'm asking if there was any advice, to which we're told that the Under Treasurer of the time took it to cabinet and clearly it was done as a verbal.

Mr Quinlan: Ms Smithies tells me there actually was a cabinet submission for fire safety in Housing.

THE CHAIR: There was a cabinet submission for fire safety. I'll have to check my FOI request, because I don't think it appears on my FOI request as a document denied. Let me check on that and I'll get back to you. But it does come to the point of what is the advice that was given to the cabinet and if it was given by the Under Treasurer of the time, Howard Ronaldson. I'd like to read to you a letter of 4 June.

My understanding is that Urban Services gets the urgent legal advice from the Government Solicitor about 28 May. It's done up as a document that goes to Mr Thompson. It then goes to cabinet, who apparently agreed. If I recall rightly from the Assembly, the majority of the cabinet sat on 30 May. But on 4 June the Under Treasurer, who supposedly gave you the advice, writes this letter, talking about the Building Code of Australia and meeting the need of urgent fire safety:

I note that the BCA does not put a positive obligation for compliance at all times. However, ACT Housing has a duty of care for such compliance particularly where it relates to fire safety. Addressing these issues should therefore be a matter of priority for the existing Housing budget.

I assume that in the first instance, an appropriate management plan is being developed, as advised by the Government Solicitor's Office, which balances the risks against the costs and difficulty in reducing those risks.

As you are aware, the Government has agreed to provide an additional \$10m to Housing in this financial year (2001-02). The funding for this purpose will be from the Treasurer's Advance, and the appropriation will be as a capital injection, with payment to be made to ACT Housing during the current financial year.

The additional funding is for social housing.

Treasurer, I ask you: was there a decision before the fire safety excuse appeared to send \$10 million of the Treasurer's Advance to social housing?

Mr Quinlan: Ms Smithies has a better memory of what was in the papers that came forward.

Ms Smithies: The housing department put forward a cabinet submission relating to the 2003-04 budget and other financial pressures on the Housing portfolio. There were a number of issues addressed in that particular submission, one of which was the need to spend a large amount of money on fire safety within—

THE CHAIR: What day would that submission have entered the rounds, approximately? I'm not asking for an exact date. Was it in budget cabinet I, budget cabinet II?

Ms Smithies: Probably around II. As with any budget process, these things come up two or three times. The submission canvassed a number of issues. Part of those issues was social housing, which is where I think we get the confusion between whether the funding was actually for social housing or for urgent fire safety.

THE CHAIR: Except you can see that this is now all contradictory. I mean, the initial excuse given to the Assembly back in December last year was that you got some urgent solicitor's advice that said you had to spend it on fire safety, but we know that even before that advice was given to cabinet the decision had already been made to give \$10 million of the Treasurer's Advance to social housing. Social housing didn't get the guernsey when—

Ms Smithies: No, that wasn't cabinet's decision.

THE CHAIR: Whose decision was it? Only the Treasurer can use TA, so it wasn't cabinet's decision.

Ms Smithies: There was a general agreement by cabinet that there needed to be funds set aside to actually address the issues in Housing and the issues were left to debate between the Department of Treasury and the Department of Urban Services how best that could actually be achieved. There was discussion between the two organisations as to what the relative priorities were. The legal advice came forward and obviously, based on that conclusion and what was present in the legal advice and subsequently and as reflected in the budget documentation after 4 June, the funding went to fire safety in the multiunit complexes.

THE CHAIR: If you accept the Under Treasurer of the time, the man who was supposed to have informed cabinet on 30 May, at 4 June he is of the opinion that there is no money going to fire safety, there is no need. He does say the government has agreed that the money is still to go to social housing. Indeed, as late as, I think, about 14 June, members of Treasury still believed that it was being spent on social housing, according to the emails that we have.

Ms Smithies: And yet the budget documents quite clearly say it's gone in the Treasurer's Advance when it was written up, so it went to multiunit complex fire safety. Yes, there was a bit of knocking of heads in terms of how best to ensure that the dual needs of the government were actually met, and indeed they were. The \$10 million went on fire safety and then Housing also put money into social housing, which was also seen in the budget.

THE CHAIR: But from what you have just said, Ms Smithies—you didn't identify yourself for Hansard, but I'm sure they know you well—the government was aware as early as budget cabinet through. Perhaps you could tell the committee when budget cabinet I, II, and III occurred. You might like to take that on notice, the dates. So before the decision of 30 May the government was aware, there was time to include it in the following year's process, and indeed what we've got is a Treasurer who simply spent money to run down the deficit or run down the surplus, take it into deficit, spend the money.

Mr Quinlan: Excuse me. You'd better withdraw that.

THE CHAIR: I'm not sure I have to, Mr Quinlan, but, to keep your sensibilities intact. I will.

Mr Quinlan: Okay.

THE CHAIR: I'm actually in charge here, Mr Quinlan, not yourself.

Mr Quinlan: So?

THE CHAIR: Do you want to go to your question, Ms Dundas?

MS DUNDAS: Ms Smithies might have already answered it. Are you saying that there was written advice provided to cabinet about the need for fire safety upgrades through a budget submission as opposed to a separate submission?

Ms Smithies: That's right. The submission contained a number of other issues as well.

MS DUNDAS: Across the whole portfolio of Housing.

Ms Smithies: From memory, yes.

MS DUNDAS: And you're checking on the date when that submission went through.

Ms Smithies: I can, yes.

MS DUNDAS: While that submission was being considered by cabinet, the legal advice came through after that submission was already on the table.

Ms Smithies: That's right.

MS DUNDAS: And the legal advice is what prompted you then to make—

Mr Quinlan: Again I come to absolutism. Certainly, I think the legal advice was sought because—

MS DUNDAS: By whom?

Ms Smithies: When Housing first put the submission on the table, I understand the chain of events was we actually asked them to seek legal advice and they did.

MS DUNDAS: I'm sorry, can you just repeat that?

Ms Smithies: When the issue first came up as part of the budget process—

MS TUCKER: For social housing.

Ms Smithies: From Housing.

MS TUCKER: Yes, for social housing.

Ms Smithies: It was for all sorts of issues in relation to housing. It covered a whole gamut of stuff. At that time when they raised that issue we actually asked them or suggested they seek legal advice on the issue.

MS DUNDAS: Ms Smithies, can you clarify a point? When you say we asked them to seek legal advice, did you mean cabinet or Treasury?

Ms Smithies: Treasury.

Mr Quinlan: Can I just return to the point about running down the deficit? I think I made it clear earlier that certainly I was not happy to be picking up expenditure that should have already been charged against a year—open about that; that's good management.

THE CHAIR: But there's a discussion about whether that's accurate or not.

Mr Quinlan: But what I have said to you is that, if that was the only objective, then I'm 99.9 per cent certain that it would only have taken a journal entry to create the liability and create the same bottom line. So this particular process, in itself, wasn't the only way that the legacy that existed, and I don't think that's been denied, was recognised. That's not the only way that needed to be employed to recognise that and therefore charge it against the bottom line for the 2001-02 year.

MS TUCKER: Sorry, I've just got a bit confused now. You said that Housing put in a general shopping list and then you got legal advice, but now I don't understand why a general shopping list and legal advice were necessary at all. I mean, if it was a general shopping list, you wouldn't be talking Treasurer's Advance.

Mr Quinlan: No, you're talking budget.

MS TUCKER: Just budget.

Mr Quinlan: Yes.

MS TUCKER: So why did you have to get legal advice?

Mr Quinlan: Part of the shopping list and the argument for it was that if we don't do this we are legally exposed.

MS TUCKER: I see.

Mr Quinlan: And we say, "Well, where's your legal advice?" "We'll go and get it."

MS TUCKER: And you're saying that from that legal advice you decided not to make it part of the general—

Mr Quinlan: That means you've got the force. In fact, to address a problem then, the actual government has started to address its responsibility from the moment it pays the money to Housing. We have an event that says, "If there is a fire that causes loss beyond that point, at least this government has taken some steps, whereas previously nothing was being done."

THE CHAIR: Except the Under Treasurer of the time writes to say that he doesn't believe that to be so and that you've got \$10 million for social housing. Any fire upgrades need to be done as part of your existing maintenance work.

Mr Quinlan: And there are two explanations for that that I can think of. One is the Under Treasurer, involved in Treasury, thinks social housing is broader than the definition that you're putting on it, thinks it's public housing, social housing. I don't know why he wrote that in a letter.

THE CHAIR: Actually, it goes on:

The additional funding is for social housing. An appropriate split of funds between public housing and community housing needs to be determined. It would be appreciated if this could be settled quickly. In relation to support for community housing, the mix between capital asset transfer and grant allocations to the community housing sector also need to be determined.

I think it's quite clear what it was intended for. Further to that, Treasurer, as to the question of whether or not it should be from the TA, there was a message from Treasury, document 5 there, that says:

Housing \$10 million to go to DUS as normal approp and to Housing as SPP.
Housing to accept as normal payment.

The message back from Housing was:

Thanks for the advice, but could you please let me know what part of the FMA will cover the increase in approp by the \$0.10m—

I assume that means \$10 million—

Is there to be a 4th approp? or is it still considered as TA with the associated audit problems as per last year? or is there something else?

For your urgent consideration please.

The response from Treasury to DUS was:

It will be a TA.

The directors will communicate on the defence that will be taken. Treasury adjudicate the situation to defensible and we expect questions from the auditor and are aware that the auditor will be interested in the situation.

Weren't you at least concerned that the use of TA would result in this?

Mr Quinlan: Yes. I didn't think it would go this far. I didn't think we'd be here today. But I did rather think that, in this particular treatment, we were probably at the edge of the envelope, that the auditor may not particularly like it. I think the auditor even says in his own report that he doesn't adjudicate on—I don't know where the words are. That was what I believe was a problem that we would have to address, that the auditor may not like it. This is, quite clearly, not conventional. But it certainly is, and I will restate it, and represents a method of ensuring that an existing liability to spend money was recognised on 30 June 2002—the lesser evil, let me say, than having the auditor discuss it in, I think he called it, a significant finding. The auditor has gone on and said that he would like to see the act changed so that this can't happen. Ergo, it can happen before it's changed.

THE CHAIR: That's not what he says, because he says that this is a misuse of the Treasurer's Advance and its legality could be questioned, and that's what we're doing now.

Mr Quinlan: Having already added his own interpretation of the Treasurer's Advance. He didn't stay literally on the Treasurer's Advance as described in the act.

THE CHAIR: The section that I am reading here is simply what he is referring to as breaches of the Treasurer's Advance.

Mr Quinlan: Mr Smyth, you can see by all the correspondence that was going on and what people were writing this was no covert operation. This was just doing something as instructed and as we were advised was within the framework of the act—not what everybody likes, but within the framework of the act.

THE CHAIR: You weren't advised by everybody that it was and there were already problems with it. In relation to social housing, why was the decision made to take the \$10 million away from social housing and transfer it to fire safety?

Ms Smithies: It was never given to social housing.

Mr Quinlan: Yes, social housing never, ever got approval for \$10 million.

THE CHAIR: What was the approval for? All I can do is quote the Under Treasurer back to you. He said the additional funding was for social housing. I would assume the Under Treasurer at the time knew what he was talking about. Perhaps you can clarify what it was for, then?

Mr Quinlan: I have in front of me the request for issue for the Treasurer's Advance, which I signed on 14 June. "The additional funding has been identified for the purposes of addressing costs associated with fire safety issues in ACT Housing's multiunit complexes and to meet the current standards under the Building Code of Australia. The split of funds between public housing and community housing and the mix between capital asset transfers and grant allocations is still being reviewed." How we do the job, how we address fire safety in community housing, which we don't manage, which is managed by different people, that's still to be reviewed. It's not the total amount, I don't think, but here is \$10 million that we are, yes, setting aside to recognise a pre-existing condition and a pre-existing call on the resources of the territory. We're saying here to do this because at the end of the day it belongs in the books before 30 June 2002, because that's where the legacy pre-existed.

MS DUNDAS: So the money that was then in the 2002-03 budget for fire safety—from memory, it was about \$6 million; I don't have the budget papers in front of me—what was that money for, considering it had the same heading of fire safety upgrades?

Mr Quinlan: Had all the audits been done and had we the capacity, we could well have made journal entries for up to \$16 million, but what we believed necessary was to be on record as having taken immediate action. As I've said in the house, I think, once we got to the point in this discussion where we had a legal opinion that said, "If you don't do this, you will be held liable"—

THE CHAIR: Except that's not what the legal opinion actually says and the summary. Again, I go back to what your own Under Treasurer said, "I note that the Building Code of Australia does not put a positive obligation for compliance at all times." He's responding to Alan Thompson's letter, the head of Urban Services, saying we need an extra \$10 million for urgent fire safety, and he's saying, "I don't believe it. I don't think that's what the legal advice says." The legal advice is one of those things that says, "Yes, there is a risk that may cause you liability, but to get out of the liability you actually need a plan." This is what your Under Treasurer of the time says:

I note that the BCA—

Building Code of Australia—

does not put a positive obligation for compliance at all times. However, ACT Housing has a duty of care for such compliance particularly where it relates to fire safety. Addressing these issues should therefore be a matter of priority for the existing Housing budget.

I assume that in the first instance, an appropriate management plan is being developed, as advised by the Government Solicitor's Office, which balances the risks against the cost and difficulty of reducing those risks.

Your own Under Treasurer at the time doesn't believe that excuse.

Mr Quinlan: I haven't got the legal advice in front of me, but I think the legal advice contained sufficient words for me to get the message that we would be legally liable if we didn't do anything about it. I think that would be a reasonable conclusion of the reasonable man here.

THE CHAIR: That is one conclusion, Treasurer.

MS MacDONALD: You've provided a number of papers to me today, but the legal advice is not included. Have you got a copy of the legal advice?

THE CHAIR: No, I don't have the legal advice with me, or do I? If it is, I can't see it here.

MS DUNDAS: While they're looking for the legal advice, can I just chase up some background information? The final amount set aside for fire safety over the two financial years was \$16 million?

Mr Quinlan: Yes.

MS DUNDAS: With \$10 million being through TA and \$6 million through the Housing budget 2002-03. Maybe it will be in the legal advice, but I assume that Housing said it needed \$16 million to fully fix the problem.

Ms Smithies: There was a figure of \$16 million put forward. I can't recall whether it was to fully and categorically fix the problem or not, but a figure of \$16 million was brought forward.

MS DUNDAS: And who made the decision to put in \$10 million, not \$5 million and put the other \$11 million in the budget? Who made that decision to make it the figure that came out of TA that won't be spent until the next financial year anyway, along with the other \$6 million? Who picked \$10 million?

Mr Quinlan: At the end of the day, that has got to be my decision but, having elected to use the TA, we virtually used whatever balance we had left in the TA to say that we'd actually taken some positive action and made a substantial—

MS DUNDAS: So you used up the rest of the TA that was available.

Mr Quinlan: At this point, yes.

MS DUNDAS: All of it.

Mr Quinlan: Not quite.

Ms Smithies: Probably not all of it, but most of it.

Mr Quinlan: Yes, a large lump of it.

THE CHAIR: There wasn't a whole lot to come back to the bottom line at the end of the process.

Mr Quinlan: Yes. At that point, as I best recall it, the audit process of housing units was still in process. Some had been done and some were still to be done, so you couldn't guarantee that \$16 million was the final number.

MS DUNDAS: But you could be certain that there was definitely \$10 million worth of work that needed to be done?

Mr Quinlan: I'd be very, very confident that there was going to be a minimum of \$10 million that we were up for just as an inherited, unaddressed problem.

MS DUNDAS: When were the audits complete to come up with the figure for the extra \$6 million in the budget? When were the housing audits complete to come up with the figure of \$6 million for the budget?

Mr Quinlan: That was probably taken around about the same time, but that's an estimate that you can put into the budget that's not as firm as putting aside the Treasurer's Advance in that capacity that we had.

THE CHAIR: Where did the \$16 million number come from, then? Was that Housing's number?

Ms Smithies: Yes.

THE CHAIR: That is interesting because, if you look at document 6 there in front of you and documents 22 and 18, Housing originally put up a bid for \$16 million that actually included Ainslie Village, with a cost against Ainslie village of \$150,000, but when this was put forward from Housing to DUS, it says to the officer:

Attached is a draft letter from Alan T to Howard R in relation to the \$10 million for fire safety.

Peter, I noticed that Ainslie Village is included in Attachment B, could you (1) please omit and make it add up to \$16 million; and (2) if possible add some words (any words) under the “Deficiencies” section for Kanangra, Jerilderie and Fraser Courts.

It seems like we’re fixated on a figure of \$16 million and everything is being manipulated to fit a bill, not a real and accurate picture of fire safety. In the cabinet submission early to budget cabinet I, II or III did Housing actually put forward a figure that covered the total cost of the fire safety upgrades?

Mr Quinlan: Do you remember that?

Ms Smithies: No, I can’t remember whether it was actually to the level of detail that made up that \$16 million.

THE CHAIR: Will you take that on notice?

Mr Quinlan: I can’t here answer for what the processes within Urban Services were.

THE CHAIR: Certainly not, but I’m actually asking whether you will take it on notice and inform the committee of what Housing actually asked for as the sum, because it seems to me that it’s not about fire safety, it’s about the bottom line and it’s about the question of spending the money, taking it out of one budget and putting it into another budget, when you knew you couldn’t spend it so.

MS MacDONALD: But isn’t this surely an issue that the minister for housing should be answering to, not the Treasurer?

THE CHAIR: Except the Treasurer gave him the money to spend. Surely the Treasurer gives money for spending wisely.

MS MacDONALD: Yes, but you’re asking a question about housing; you’re not asking a question about what Housing have done and you’re not asking a question about what Treasury have done.

THE CHAIR: I’ve asked him to take it on notice. He’s the officer representing the government.

MS TUCKER: Have they got a copy of what you’ve given us, attachment B?

THE CHAIR: I hope so.

MS TUCKER: There is a list there of what the money was supposed to be spent on.

THE CHAIR: It looks like the issue was made to fit \$16 million, not the money to fit the issue, and I would like to know what Housing put forward as a cabinet submission as the real need in terms of fire safety. Will you take that on notice?

Mr Quinlan: I don't know. How much cabinet information are we supposed to give the committee?

Ms Smithies: I don't know.

Mr Quinlan: I don't want to be getting to a point where every item that goes to cabinet, any discussion that goes to cabinet, every interim figure that goes to cabinet and cabinet either accepts or rejects can become public knowledge, otherwise the cabinet process doesn't work, as you would appreciate.

MS TUCKER: I don't remember the previous government liking that idea, either.

THE CHAIR: That's fine, except the question now is that there is a cabinet sub that has detail in it and I'm just curious as to how much regard you paid to the cabinet sub. We now know that earlier in the process you were made aware that there was an urgent fire—

Mr Quinlan: Mr Smyth, with the greatest respect, it is not a matter for this committee to determine how much notice the cabinet or I or any other member of cabinet takes of cabinet submissions.

THE CHAIR: Well, I suspect it is. I mean, your defence is you only knew about it on 30 May. If you were informed much earlier that there was an urgent fire safety need and you ignored it, you can't then use that as a justification to spend the Treasurer's Advance.

Mr Quinlan: I don't follow your question, if it's a question.

THE CHAIR: The question is: when did you first become aware of it? We're told there is now a fire safety cabinet submission. That was given in evidence earlier.

Ms Smithies: A budget submission.

Mr Quinlan: Let's work on two levels. As you well know, there are moments when data or information is put forward and there are other moments, sometimes, when realisation sets in. And quite often there's deliberation in between, with input and debate amongst the cabinet members and those advising us.

MS DUNDAS: What caused Treasury to request legal advice on that Housing budget submission?

Mr Quinlan: As I understand it, it goes like: here is an urgent need for a lot of money.

MS DUNDAS: Can you tell us how much money?

Mr Quinlan: Let's assume it's \$16 million, or \$10 million, whichever you like, or somewhere in between, but anyway a large amount of money for a particular problem, with the rider that if we don't do this—you know that the budget process has a lot of people coming forward with a lot of urgent needs, let's get it in perspective—so there's a whole raft and there's a claim made, as I understand it, that this implies a direct liability to the territory and a liability in negligence. Then Treasury says, "Housing, if you want that sort of money, you'd better back up that claim with a Government Solicitor opinion, not your own," I think. Is that about right?

Ms Smithies: Yes.

Mr Quinlan: Yes.

MS DUNDAS: Even though Housing had come and said that this was urgent in terms of a financial priority for the next budget, because of the amount of money that was being requested, a figure which we don't have, Treasury said, "Get legal advice to prove that us giving you that amount of money for the next financial year is warranted."

Mr Harris: Not for that reason. The legal advice was sought because the consequence attributed to not providing the money was a liability in law if an accident occurred. Treasury told Housing—

MS DUNDAS: But this submission was put forward as part of a budget submission, so they were looking for the money for 2002-03.

Mr Harris: It doesn't matter which period they were looking for, the consequence that was attributed to it was the issue.

Mr Quinlan: I see your point, Ms Dundas. I mean, Housing wants the money as soon as they can get it.

MS DUNDAS: They wanted it five years ago.

Mr Quinlan: Yes. If the Treasurer then realises, by Housing asking for this money to meet an unaddressed need, then the Treasurer says, "Hang on, that's a legacy. Why should future budgets carry the cost of, in effect, a dereliction of duty?" So you say, "Okay, how do we in fact ensure that that legacy inherited is reflected?" As I said earlier, for all concerned, it might've been a whole lot easier if I'd put through a journal entry for \$16 million. However, while doing a lot of other things in terms of the budget, this was recommended, with the legal opinion forthcoming, and it says, amongst other things:

In the event that a person is injured as a result of fire in a building at issue, the Territory is potentially liable in negligence. It has been noted, however, that the Territory's liability does not arise as a result of its failure to comply with the building codes, but as a result of failing to protect against risk of foreseeable injury

...

So then we say, “Well, how do we, in fact, bring some of this to account?” As I said, I happily concede that it would’ve been a whole lot better if I’d put forward a journal entry. It would have had the bonus effect, as Mr Smyth has pointed out, of coming off the bottom line of the 2001-02 year immediately and it would not, possibly, have perturbed the Auditor-General. And I think it would’ve been within the appropriations, wouldn’t it? It wouldn’t have mattered, wouldn’t have required appropriation. I wish I’d thought of it at the time.

MS DUNDAS: Maybe this is a question you will have to take on notice. I take Karin’s point; it does relate more to what Housing was doing than what Treasury was doing. But the MUPP report that first flagged fire safety as an issue, from my recollection, came down in about 1995 or 1998, some time ago. Can you find out whether Housing has been requesting money to implement the fire safety upgrades as recommended by the MUPP report in the financial years before 2001? Is that information available?

Mr Quinlan: I’m not sure that we should be divulging the business of the previous government to that extent.

THE CHAIR: I’m not sure you can.

MS DUNDAS: That’s why I’m asking whether that information is available.

Mr Quinlan: I’d love to.

THE CHAIR: You might have to ask me and I might have to ask Mr Tonkin to open the books so that I can have another look.

Mr Quinlan: I don’t think we can, Ms Dundas.

MS DUNDAS: So we don’t know whether Housing has been asking for this money for the last three years as opposed to just the last one?

Mr Quinlan: All you can do is rely on your sense of the law of probabilities.

THE CHAIR: My recollection is that once we got the MUPP we then did individual assessments and we started the audit process and that process culminated—

Mr Quinlan: I think that’s the case, but very, very slowly.

THE CHAIR: Well, a large number of buildings for it to be done. It culminated at the end of 2001, early 2002, and that advice was then given to Bill Wood as the minister.

MS MacDONALD: Ted, that was the same audit process you were speaking about earlier, that was finishing up as you were making the decision on whether the extra \$6 million would be in the budget. That’s the same audit process that Brendan was just talking about.

Mr Quinlan: I don't know where the number came from, but when you've got something like that you've got—there was a series of estimates, some of which were just off the top of the head, I think, and some of them had been verified as, “This is about the cost.”

MS MacDONALD: Through the audit process that was staged under the last government.

Mr Quinlan: Yes.

THE CHAIR: I guess in summary, and this is my opinion, it seems that money was set aside for social housing and not fire safety. That's how the Under Treasurer at the time refers to it and it's quite clear that it's to be split between public housing and community housing, according to his letter. If you want to somehow come back and give evidence that that's not the case and that the Under Treasurer got it wrong—

Mr Quinlan: I'll just say this much to you in response to that: if you follow the logic of what you see in front of you, you will see that there was a request. I didn't read all of the Under Treasurer's correspondence, but from my perspective the only issue was fire safety, because when you take a \$10 million decision you do actually say, “Now, you had better be able to back this up,” and there was a claim that this was urgent.

There had been, in relation to last year's budget, quite considerable discussion on housing, on comparisons between the ACT and other places, the level of public housing, a whole lot of issues associated with housing. Within that framework there are requests for all sorts of funds, as I'm sure you will recall, Mr Smyth, in your time in cabinet, that you do get pages and pages of single-line requests for funding.

Of course, we got a list of requirements from Housing. The issue that came to the fore, exactly our discussion, is fire safety—“What's that about?”—and a claim. That claim had the force of a statement that says, “And if you don't do it, you're legally liable for what could happen.” I think then the Treasury said to Urban Services or whoever was making the claim, “Well, you can make that claim, but you had better be able to back it up.” I think the legal opinion even says—if you have got the legal opinion, it repeats the request for advice. So you can read even in that request what they asked for. And then it says, “You're legally liable.” Now, I would say—

THE CHAIR: But it also says that you have to start with a management plan as outlined by the Under Treasurer.

Mr Quinlan: Yes, but I was actually the Treasurer at the time, and still am, and I would've thought, “Well, here we've got a problem. I've got a problem.” Somebody just walks into in the room—let's be frank about it—and says, “By the way, while you're doing your budget, here's another \$10 million to \$16 million hit.” “How did we get this?” “Because they didn't do anything about it.” Lovely.

THE CHAIR: One, we dispute that we didn't do anything about it. We actually set in train the process that delivered the audits to Bill Wood either late last year or early this year.

Mr Quinlan: Yes, thanks for that.

THE CHAIR: And your own Under Treasurer doesn't say that. Your own Under Treasurer refutes that. He says that you've got the money. The solicitor's advice says, "Balance the difficulty of reducing this risk against cost and come up with a management plan." There is no indication of urgency. I have to say that my reading of it is that the money was set aside for social housing and when a better excuse—i.e., fire safety—came along to, as you say, put the money in that year instead of in the current year, that option was taken because it seemed to be a better excuse. I think that's an attempt to deceive people on the payment of that money, and that's the same conclusion that the auditor comes to.

MS MacDONALD: Mr Smyth, in terms of that, I think your question should be directed to Housing. If you're suggesting—

THE CHAIR: No, he's the minister.

MS MacDONALD: No, if you're suggesting—

THE CHAIR: He's the minister that makes the payment. He signed the document.

MS MacDONALD: If you're suggesting that it's Housing who've done this, then you should be asking—

THE CHAIR: No, I'm not suggesting it's Housing at all.

MS MacDONALD: No, that's what you are suggesting. You're sitting there and saying—

THE CHAIR: No, I'm not.

MS MacDONALD: You are; you're sitting there and saying that Housing have gone fishing for this amount of money. They didn't get it one way—

THE CHAIR: No, Treasury offered them.

MS MacDONALD: They didn't get it one way, so they wanted it another way. But I would actually say that having—

THE CHAIR: Go back to the first document: "We have been approached by Treasury to take up \$10 million this year." Treasury offered them the money.

Mr Quinlan: Excuse me. I would prefer you guys to have your argument without me. Can I just make a statement? I'll just put this on record. Fact: there was a legacy that needed to be addressed. It was addressed in a manner that the Auditor-General does not approve of, but nevertheless has stopped well short of saying it was illegal. In fact, he

says that the act needs to be amended in order to make such an expenditure illegal in the future. Therefore, if not totally within the act, then certainly major doubt. Fact: the balance sheet at 30 June 2002 is a more accurate reflection of the position of the territory at the time as a result of this action. Fact: on 14 June, I signed \$10 million of Treasurer's Advance for the purposes of fire safety.

MS MacDONALD: Can I say, Mr Smyth, I have finally been given a copy of the legal advice which you were referring to continuously throughout this hearing, and on my quick reading through it I note that in the final clause of the advice from the Government Solicitor's Office it says:

While it is not practical for the Territory to cause buildings to comply with BCA fire standards immediately, the Territory should take interim steps to reduce the risks in the event of fire, for example, the installation of smoke detectors and fire extinguishers, and other reasonable measures that go some way to addressing the Territory's non-compliance with BCA fire standards.

THE CHAIR: You need to actually read all of the legal advice to know that at no time is there an obligation to remain compliant with the BCA simply because the BCA changes over time. So, selective quoting is good, but you need to read the whole advice.

Mr Quinlan: Yes, but at the same time not having to comply with the BCA does not free you from negligence or responsibility.

THE CHAIR: Correct.

MS TUCKER: That comes out in the legal advice, too.

THE CHAIR: That's true. That comes out in the legal advice, most certainly. The interesting thing, Treasurer, and to finish on this issue, is that there was another email from Treasury to Housing on 12 June which says:

I believe in Howard Ronaldson's letter, it was inferred that the amount that is to be forwarded to community housing would need to be negotiated with Treasury, and would be at least half of the initial \$10 million, but may take place over a period of years.

So, even as late as 12 June, your own officials believed—

Mr Quinlan: There is the issue of fire safety in community housing as well as public housing for which we're responsible.

THE CHAIR: Well, you might like to put that spin on it.

Mr Quinlan: You read whatever you want to read, but that's what it sounds like to me. One of the other letters you read said that at a later stage the issues of who gets what of the \$10 million in terms of the public housing sectors, plural, is still to be worked through.

THE CHAIR: Correct, and it's from your Under Treasurer again, Mr Ronaldson: "The additional funding is for social housing. An appropriate split of funds between public housing and community housing needs to be determined. It would be appreciated if this could be settled quickly." He was still spending it on housing. Four or five days after you made a decision, 15 days after a decision was made by Cabinet, Treasury officials still believed they were spending it on social housing, with community housing to receive at least half of it.

Mr Quinlan: You seem to be clinging to one word, Mr Smyth.

THE CHAIR: Sorry?

Mr Quinlan: You seem to be clinging to one word.

THE CHAIR: Well, it's the word of your Under Treasurer. What can I say? I can only believe what I read.

Mr Quinlan: I can only refer you to the stream of facts that I just enumerated before this committee, all of which are irrefutable.

THE CHAIR: If you want to start contesting facts, I can reject all of the facts that you assert in terms of legacy and other things. The payment of the \$10 million from the TA is not permitted under the TA guidelines. As the Auditor-General implies, although he doesn't say it, that is illegal. Technically or otherwise, it should not have been spent in that manner.

Mr Quinlan: He didn't.

MS MacDONALD: He doesn't say it's illegal.

Mr Quinlan: Did not say that.

MS MacDONALD: He didn't say that, Mr Smyth.

THE CHAIR: Perhaps we should move on to—

Mr Quinlan: As a chairman of a public accounts committee, Mr Smyth, I have to say I think you have a responsibility not to place such interpretations, which I think are convenient to your ends, on the writings of the Auditor-General. If he says the legality is open to question, you cannot conclude it's illegal. You cannot.

THE CHAIR: Well, I've just given you it as my opinion.

Mr Quinlan: From him.

THE CHAIR: I give it to you now as my opinion. I do not believe you can spend TA, but we can argue about this. Perhaps we should move on.

Mr Quinlan: I think it's an opinion born of desire, Mr Smyth, rather than facts.

THE CHAIR: Well, the point is now to move on to the review of the Financial Management Act.

Mr Quinlan: Sorry?

THE CHAIR: The point then would be to move on to the review of the Financial Management Act, which the Treasurer is also critical of.

Mr Quinlan: The auditor.

THE CHAIR: Sorry, the auditor's critical of.

Mr Quinlan: Well, I think it's been a progressive process anyway. In fact, if you refer to the legislative schedule that has gone through, there has been ongoing review of the Financial Management Act anyway and there have been amendments made.

THE CHAIR: Except the auditor says that the fundamental review as committed to by the Treasury has not been undertaken, unless you're saying the amendments that we've done recently cover that which the auditor was unhappy with.

Mr Quinlan: Well, we'll take the auditor's opinion and do what we can with it. There's a couple of issues where this government and, coincidentally, the previous government do not agree with the auditor in terms of presentation. But beyond that, I don't know that there's any major issue that he has with the Financial Management Act. I don't know that he's got a major issue with it.

Ms Smithies: There was a very detailed review of the Financial Management Act and that was done in consultation with the Auditor-General and he was given all the documents behind that. As far as I understand the situation, the Auditor-General would actually like to see the review go further to actually examining the financial framework of the territory, not just the Financial Management Act, and areas like our accrual budgeting and reporting and our lines of financial responsibility, the relationship between ministers and senior executives, our appropriation processes, the concept of an accrual appropriation, et cetera, and there were some things as part of that. They are actually issues of framework rather than issues of the Financial Management Act. I think that's probably why he says that there's been no fundamental review.

THE CHAIR: So, at this stage, the government's position is they've gone as far as they intend to go.

Mr Quinlan: No, I think we've still got people looking at it.

Ms Smithies: No, they're still looking at it.

Mr Quinlan: Still going through it. I mean, the auditor, as is his right, I think, does repeat some of the concerns that he has with the act and we've responded to those in various shades of agreement or not, as previous governments have.

THE CHAIR: Treasurer, thank you.

Mr Quinlan: Thank you.

THE CHAIR: Ms Smithies, Mr Harris, thanks a lot.

The committee adjourned at 4.14 pm.