

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Financial Management Amendment Bill 2003 (No 3))

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 17 MARCH 2004

**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 2.36 pm.

THE CHAIR (Mr Smyth): I thank the Treasurer and his staff for attending this hearing of the Public Accounts Committee. You should understand that these hearings, which are legal proceedings of the Legislative Assembly, are protected by parliamentary privilege. That gives you certain protections but it also places on you 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. The Assembly will treat as a serious matter the giving of false or misleading evidence. I note that you sent the committee a submission, which it received yesterday. Would you like to commence by making an opening statement?

TED QUINLAN was called

Mr Quinlan: I will say a couple of things at the outset. I refer, first, to perspective. In my time in the Assembly the Financial Management Act has been altered and tinkered with to a large extent. It is a soft target when a minority government is in office. There is an emphasis, or overemphasis, on accountability. We have a tendency to focus on process. Let me give this issue some perspective. Each year the budget is followed by an appropriation bill which contains one-line appropriations—for example, \$429 million for Health and Community Care, \$230 million for Urban Services and \$422 million for Education, Youth and Family Services.

The limitations on expenditure for those departments rest within the output classes, which comprise not much more than a page of this book. So we are talking about the capacity of administrations or governments to use discretion when expending considerable amounts of money. That is the only way that governments, executives or administrations can operate and get on with what they are charged with doing. I am sure that you will correct me if I am wrong, but I believe that the Financial Management Amendment Bill (No. 3) has two elements to it. One element relates to whether funds authorised under the Treasurer's advance must be spent in the financial year.

The second element relates to the degree of urgency. How do you measure urgency in relation to expenditure? The limitation on expenditure within the year should not be any tighter in this area than it is for other and much larger appropriations. It is just not possible to pull in all the bills at one minute to midnight on 30 June, pay them all and have them out of the road. The whole administrative process just would not permit that. We could try, one way or another, to dodge around that issue, but once the Assembly has made an appropriation for, say, health, education, or whatever, there is a requirement to carry it forward.

That would have to occur within reasonable bounds otherwise we would not be sitting here today discussing this matter. There must be a practical dimension to this bill. Someone with experience and knowledge of the administrative process has not thought this bill through. The concept of urgency, which is difficult, is an issue with which you will have to wrestle. However, it seems to me that an issue that might be urgent for one person might not be urgent for another. Let me give you an example of an issue with which we are now wrestling.

I sent a letter to the Commonwealth solicitor asking how I can free up money for child

protection in anticipation of the appropriation bill. That might take up time that none of us wants to be taken up, but we do want the appropriation bill to go through the estimates committee process. If it is legal to do so—I will check to make sure—I will establish whether funds are available in the Treasurer’s advance and I will take prompt action in relation to child safety. I compare that with, say, BusinessACT running out of money for a series of scheduled business development programs. Is that matter urgent if insufficient funds are available for those programs?

The first example has an emotional dimension to it. It could be argued that it is essential to get out that money. The administrative process covers a lot of functions. Included in those functions are child protection and spending money on business developments. All those issues fit into the emotional attachment spectrum and one would have to determine whether or not to attach a sense of urgency to them. In the middle of that spectrum is a whole raft of things. We would have to use our subjective judgment to determine whether it was necessary and urgent to spend money, for example, as previous governments have done, on the Canberra Cosmos.

I refer to page 10 of our submission and to a number of expenditures that have taken place. You might ask, “Were those expenditures really urgent?” They might have been. It is strictly in the eye of the beholder. I am only really asking the committee to consider that dimension. I am asking the committee, in turn, to ask the Assembly to get used to the idea of some degree of ex-post-accountability. Once you get inside the classifications or expenditure classes within the appropriations, discretion is applied to expenditures somewhere every working day. Accountability for much more money takes place through the estimates committee process at the end of the year.

We might then take a broader look at what is happening to waiting lists in the health area. We might also take a broader look at what is happening in education. During that process there might be some drilling down because of a given issue. To a large extent accountability will still be ex-post-accountability. There is a risk of an overemphasis on process and not necessarily an emphasis on genuine accountability of government to the Assembly and to the people of the ACT.

THE CHAIR: If we want to shift away from placing an emphasis on process to placing a genuine emphasis on accountability, how do we make that happen?

Mr Quinlan: To a large extent you have the processes available to you. It is a matter of using the estimates committee process well. From time to time some of us understandably have an abiding interest in a given issue, or whatever. It might be a politically salacious issue, or it might be seen as a flagship or as an indicator. Nevertheless, it is a case of whether we, or the people who assist us, have a trained eye to obtain a perspective and to make reasonable comparisons. Every year during the estimates committee process we deal with standard fare. No matter what happens you can guarantee that, in years to come, estimates committee reports will state, “We need better performance indicators. They must be more informative and we need a bit more information.”

Precise examples are very seldom given, because it is difficult to do so. At the end of the day you have to look broadly at those issues and then work your way down, using the facilities that are available—the estimates committee process or the judicious use, and I

emphasise the words “judicious use”, of questions on notice. We should ask for information rather than trawl for it. But we should have some idea of the accountability that we are looking for. I said earlier that we all need trained assistants. We need people who support us, whether they are departmental people or political staffers who can help.

I used to lecture a little in accounting. One of the things that I said to people early on was that they needed to develop a sense of smell. Some people can pick up statements and say, “That does not look right. That is not right.” Someone around you has to be able to do that. If you are examining accounting statements you have the auditor, but the auditor cannot perform a compliance audit on every transaction. The increasing focus that has been placed on performance audits, which is all very necessary, has taken away the focus on compliance. So responsibility for that is left to the estimates committee process—to Opposition members and to members on the crossbenches.

THE CHAIR: You state in paragraph 1.3 of your submission:

The Government does not believe there are fundamental problems...and does not believe that major amendments are required. The major issue to be addressed...may be addressed by minor amendments which clarify the definition of expenditure.

Do you want to elaborate on that?

Mr Quinlan: I have to establish exactly what is the definition of “expenditure”. I will refer to the experts about whom I spoke earlier. Paragraph 6.2.2 on page 19 of our submission defines the word “expenditure”. We are talking about genuine expenditures and not internal transfers.

THE CHAIR: I refer you to paragraphs 6.2.1 and 6.2.2 of your submission. In your opinion, would that have allowed the \$10 million payment to be made to housing, given that the majority of the money in that financial year was not spent?

Mr Quinlan: So far as I am concerned, the definition of “expenditure” and the structure of the Act made that transaction to housing totally legitimate.

THE CHAIR: If you changed it to include definitions under paragraph 6.2.2, would it still be allowed under those terms?

Mr Quinlan: No. We are saying that this is the transaction that the Assembly, perhaps with a little hysteria, chose. It then said, “We will make a whole lot of changes to ensure that that cannot happen again.” The answer to your question is that it has to be expenditure or a commitment, as opposed to the transfer of funds. As you would know, we transferred that money to housing to discharge a \$10 million or \$16 million liability that it was carrying.

THE CHAIR: If we accept the amendments that are proposed in paragraph 6.2.2, do you believe that that is a much better way of codifying or legislating for what Ms Dundas is trying to do in her bill?

Mr Quinlan: It depends on which side of the fence you are sitting. I would like the Treasurer’s advance to be available to the government as discretionary expenditure,

given how well things have gone this year. If things have gone well throughout the year and we are getting to the end of the year, there are things that the government can do generally for the benefit of the population. That freedom ought to be available. However, I do not think that would be accepted by the majority of members in the Assembly.

The Assembly might want to proscribe the use of the Treasurer's advance only to those things where a specific payment is made. This structure addresses the question of whether or not to carry forward an appropriation if money has been expended or a firm commitment has been made. I might have signed a contract for \$9 million over three years and that might still fall within this structure. You cannot build a system that removes all discretion from government and its administrators and still have a workable government.

MS TUCKER: Looking at your submission, it appears as though we have more accountability here than exists in most other places in Australia.

Mr Quinlan: We certainly have. I hope and trust that the committee takes note of the structures that exist in other jurisdictions. As I said at the outset, I think the Financial Management Act has become a soft target for those who want to appear to be pursuing accountability in the Assembly. They tweak it here and there as a way of getting some legislation in their name.

MS TUCKER: To be fair, referring to the money that was allocated to housing, we asked whether it was allocated in the spirit of, and in accordance with, the requirements for the use of the Treasurer's advance.

Mr Quinlan: No, it was not within the spirit of what is genuinely meant, but it was still legal.

MS TUCKER: I know that it was legal, but I am just responding to your comment. It is perfectly legitimate for people to establish whether or not they can prevent that from happening again.

Mr Quinlan: Do you want to do that? At the end of the day you might decide to do that.

MS TUCKER: I think you need clarity. Strictly speaking, something is legal but it might not come within the spirit of the requirements.

Mr Quinlan: You have clarity. Members of the Assembly were advised in black and white back in August—months before anybody made any fuss about it.

MS TUCKER: I am not suggesting that you were deceitful; I am saying that we like clarity and that we need to know how the law is written. The question that was asked was whether this legislation was unclear, which you have already acknowledged. In paragraph 4.2.8 of your submission you state:

It is also undesirable that agencies be compelled to remain silent about possible claims against Treasurer's Advance.

I am not quite sure what you mean by that statement. Are you responding to provisions

in the bill?

Mr Quinlan: Yes, I am responding to provisions in the bill that state that this was unknown to a whole layer of people.

MS TUCKER: Are you suggesting that that will stop chief executive officers from speaking to you?

Mr Quinlan: It will make it difficult for them. If someone missed something, effectively he or she would be held liable for not telling us.

MS TUCKER: I can understand how that might be of concern.

Mr Quinlan: We need a little wriggle room in this whole process of governing.

MS TUCKER: You are saying that if a chief executive officer or the minister were not aware that there was a need, you are concerned that they would be held liable? That is one of the points that you just made. You seem to be saying—although I am not too sure about it—that agencies would feel compelled to remain silent against possible claims. What is it that you are suggesting?

Mr Quinlan: I will ask Phil Hextell to explain this matter. Our people have established where everybody stands in the foreseeability, appropriation and accounting processes.

PHIL HEXTELL was called

Mr Hextell: This issue is to do with a proposal in the bill. If expenditure was foreseen prior to a supplementary appropriation bill, it should go into the supplementary appropriation bill. The first call for an agency to fund some unforeseen expenditure would be from savings within that agency. I think an example is given in the submission. If an agency foresaw a possible funding need early in the financial year, it might be required to fund that need from its own savings by the end of the financial year. However, you would not know what those savings were until about May or June.

If a supplementary appropriation bill were introduced, say, in February, the agency might be hesitant in bringing forward a claim early in the financial year, knowing that it could not use the Treasurer's advance if that claim was foreseen prior to the introduction of the supplementary appropriation bill. So it might delay chief executives warning about likely funding issues for the year, which would not be desirable.

Mr Quinlan: It would inhibit a chief executive or a minister from putting pressure on a department to find a way to fund those issues for most of the year before we finally acceded to the request to fund them.

THE CHAIR: Unless you adopted the Tasmanian model, which is not to spend the Treasurer's advance until the last two months of the year.

Mr Quinlan: Not to spend it at all?

THE CHAIR: We have a submission from the Tasmanian Treasury that states:

The Treasurer's Reserve is normally utilised in the last two months of the financial year when it is clear that there are net additional costs that have to be met and no other source of funds is available.

Mr Quinlan: I cannot be sure. I cannot be precise about how specific its budgetary process is along the way. It is likely that in every jurisdiction there would be more pressure on the Treasurer's advance towards the end of the year than there would be during the year. Quite frankly, we would like to keep it that way because it might well be that the need appears and disappears during the course of the year. We do not want to put pressure on people by saying, "Those costs have been foreseen. You have to muster it now or you will forfeit your right to get it. You will also forfeit your right to manage your way through it." We really do not want to be that proscriptive.

THE CHAIR: It then comes down to the definition—the point that you made on the first page of your submission—of what is unforeseen. The current Act states, "the need for the expenditure could not reasonably have been foreseen at a particular point".

Mr Quinlan: Yes, here comes the reasonable man.

THE CHAIR: The reasonable man says, "How could you have known?" We might then get into the political argy-bargy. Is it not better to do what Tasmania does—use all your reserves or the funds that are unexpended in your department before you resort to the Treasurer's advance?

Mr Quinlan: Unless it is a need that is outside the normal course of events, generally that is what is expected. People will manage the vicissitudes of life throughout the year. If they have additional pressure they might seek relief from that pressure somewhere else down the track. This bill is telling them that they really have to ask for it now, or they have to pretend that the paragraph to which you referred earlier applies. They have to pretend that they did not know about it. They have to pretend that the need is not there.

THE CHAIR: On page 6 of your submission you make the point that none of the other jurisdictions seems to have an urgency requirement, except perhaps the Commonwealth. It has an interesting interpretation of what is urgent. Is the current legislation too tough on the ACT Treasurer?

Mr Quinlan: Phil just pointed out that that does not include all jurisdictions. The Commonwealth, New South Wales and Victorian governments have similar requirements. New South Wales certainly has urgency requirements.

THE CHAIR: Victoria does not.

Mr Quinlan: Paragraph 2 of our submission under the heading "Legislative Provisions" states:

Additionally, 0.5% of total appropriations is available for temporary advances to meet urgent claims, in anticipation of Parliamentary sanction.

THE CHAIR: That is above the existing percentages that are given.

Mr Quinlan: Yes.

THE CHAIR: So is the current legislation too tough?

Mr Quinlan: It is obviously the toughest in the land. You asked whether it was too tough. I think it is unnecessarily tough and strict. We are talking about 1 per cent of the budget—a much lesser amount than is at the discretion of government and its administration throughout the year in a number of areas. We are heading towards an overemphasis on process as opposed to bottom-line delivery and accountability.

MS MacDONALD: How often has the Treasurer's advance been used in the past?

Mr Quinlan: Page 10 of our submission shows how the Treasurer's advance has been used as far back as about 1997 and 1998. In the first couple of years it was generally used as a top-up fund. There did not appear to be any urgency in relation to some of these things. It would vary. I do not think they were hot political topics at the time. The use of the Treasurer's advance is still reported to the Assembly.

MS TUCKER: I refer to that part of Ms Dundas' bill that states:

a need for expenditure is only a need for expenditure that *could not reasonably have been foreseen* if it could not reasonably have been foreseen by—

- (a) the Treasurer; or
- (b) for expenditure in relation to a department—the responsible Minister or the responsible chief executive

You said that this would be really unworkable because it would require you to ascertain the state of mind of another person at a particular point in time. If a chief executive officer determined that the budget was not going to be able to be met, would that be something that was noted and not something that remained in the mind of a person?

Mr Quinlan: It would depend on the degree. If someone who was running the urban services department said, "If it does not rain soon we will have to use more water", or, "If it does not stop raining we will have to put on more contractors to cut the lawns because we have not had a chance to mow them", we have what are likely to be foreseeable pressures. Ministers receive briefings from their chief executives, but we do not know everything that is going on in a department. Things that eventuate as being important might not have been foreseen as being important. We cannot always have perfect knowledge and there cannot always be a full transfer of responsibility.

MS TUCKER: That is not what I am suggesting. However, I would have thought that a good manager would note those things and that they would be included as part of your discussions.

Mr Quinlan: Yes. Let us use as an example a department in which the chief executive says one-third of the way into the year, "I have had a run on some of our expenditures." Some of our expenditures are not within our control. We budget for foster care, but we respond in every case. So it is really only an estimate; we cannot manage the expenditure. The chief executive might say, "I am over budget now." If he were asked

whether he would be able to manage for the rest of the year he might state, “In my experience, these things come in waves. I will probably be able to manage. I might be able to make savings in some of the other allied areas. I will see how it runs.”

He might or might not relay that information to the minister. At the end of the year he might say, “The allied areas are all expended up to the hilt. The demand has stayed high and we need additional money.” To some degree he could have foreseen that need six months earlier.

MS TUCKER: You are making the point that you could have foreseen the need for more money. I would have thought that a good manager would have noted those things as the year progressed.

Mr Quinlan: That is what a lot of managers would say. They would go from their departments to Treasury and say, “I foresee that I will need more money”, and Treasury might say, “Go back and see how you go. See whether you can manage.” Those sorts of tensions must necessarily exist. A chief executive officer of a department might have foreseen a need and Treasury might have said, “Not yet, mate. You have other areas that you can manage. That is your job.”

MS TUCKER: I do not have a problem with that. That is open and accountable government. The point I am making is why should you have to read someone’s mind? You are saying that communication occurs, which is good. You are saying that good managers keep track of what is happening. They talk about it and they even go to Treasury and say, “We are going to run out of funding.” Treasury might then say, “Go back and find savings.” So this is an open discussion.

Mr Quinlan: But you would not be aware of every darn thing.

MS TUCKER: Not every darn thing.

Mr Quinlan: You just cannot; it is not possible.

MS TUCKER: I do not quite understand your point.

Mr Quinlan: Maybe I do not understand the question.

MS TUCKER: You might not be aware of every darn thing, but we are talking about tracking money management, which is a fairly basic issue for any manager. Using your example, you have calls on your money when it is raining, when it is not raining, or for foster care placements. But you should be keeping track of what is happening to that money. So those conversations would be ongoing. That supports your earlier argument that it is healthy.

If I understand your point correctly, you are concerned when you are told that something will not happen because that means you will not be able to use the Treasurer’s advance. People have been honest and open in their conversations with you and they have let you know about the tracking. I understand why you do not like that part of the bill, but I do not understand your argument in relation to these other issues. You seemed to be saying earlier that you knew what people were saying.

THE CHAIR: What paragraph in the submission are you referring to?

MS TUCKER: I am referring to paragraph 5.2.23, which states in part, “the Treasurer to ascertain the state of mind of another person at a particular point in time”. That is just not feasible. I do not know what point you are trying to make there. You seem to be making a fairly clear point about having open conversations. However, that would be a disadvantage if this bill were passed. Is that what you are saying?

Mr Quinlan: Yes.

MS TUCKER: If you were having those conversations you would be able to argue that something was foreseen, it might have happened and, therefore, you would not be able to use the Treasurer’s advance. Is that what you are saying?

Mr Quinlan: I think we are on the same wavelength.

MS TUCKER: Was my question to you unclear? I wanted you to explain why you thought you would have to be able to read the mind of a chief executive officer.

Mr Quinlan: You set up a structure—whether or not it is written well—which states that, if you commit the act of foreseeing, you are required to take action immediately. Let us say you foresee that you might run out of money in one area in November or January. The government is putting together a second appropriation bill. In normal circumstances the government would have said, “You are not getting any money from that appropriation bill because we think you can manage your way out of this.”

Any chief executive with half a brain would say, “If I found myself in that situation, the smartest thing that I could do would be not to tell the minister about it. If I did, I would have foreseen something.” The Treasurer would not say, “You cannot have any money from the appropriation bill even though you might need it by the end of the year” because that would take flexibility out of the process.

MS TUCKER: I understand that.

THE CHAIR: It goes back to section 18 of the Act that states in part, “and could not reasonably have been foreseen”. You stated clearly that this legislation was just too tough or unworkable.

Mr Quinlan: You could live with it, but there will always be debate. Once you have a qualitative term like that there will always be debate. This is a place of political debate so it will be interpreted politically.

THE CHAIR: Is the size of the Treasurer’s advance adequate at this stage?

Mr Quinlan: So far I think it is. I do not think we have had a problem. We got the appropriation bills through this year but I do not think we have spent any of the allocations in those bills.

THE CHAIR: One of the jurisdictions has received 3 per cent.

Mr Quinlan: It really has not been cracked that much.

THE CHAIR: The other proposed amendments relate to reporting. In paragraph 6.2.4 of your submission you state:

The Government would suggest that any Treasurer's Advance authorisation should be tabled within 3 sitting days of being issued.

Is the Government intending to implement the amendments referred to in paragraph 6.2.4?

Mr Quinlan: Cabinet has already agreed to it. It is committed.

THE CHAIR: Will the proposed amendments to the Financial Management Act that are reflected in paragraph 6.2.2 of your submission also be implemented, courtesy of the government?

Mr Quinlan: Yes.

THE CHAIR: Will you give us some indication of when that legislation will be tabled?

Mr Quinlan: Soon. It is in the legislative queue. There are budgets and rates bills and things like that. We are already juggling the legislative program.

THE CHAIR: Ms Dundas's bill might be affected by any legislation that you introduce. If you introduce legislation soon it might negate the need for her bill. Is it possible to give us an indication of when that legislation might be tabled?

Mr Quinlan: I will get back to you on that. I will see where it is in the pipeline.

THE CHAIR: Some of the other jurisdictions seem to have a great deal more flexibility, which addresses the situation about which you are concerned. Should we agree to the recommendation that the Treasurer or anyone else could have foreseen this expenditure? Other jurisdictions simply acknowledge that when programs become bigger more expenditure is required. As you roll them out you might establish that your estimates were incorrect. Would you prefer to see a lessening of restrictions rather than the tightening that is proposed in this bill?

Mr Quinlan: From my experience there has been no need to do that. We do not have a governor, so I cannot go to him. We do not have a major problem at this stage, as long as the Treasurer's advance is used within reasonable guidelines. There is also a reporting process. The Assembly gets more information about what has been spent from the Treasurer's advance than it does on most of the budget lines. But I do not believe that there is a need to loosen up restrictions. I think we can work within the legislation.

MS TUCKER: I was interested in a comment that you made earlier. If I understood you correctly you said that an estimates committee had been established to examine your appropriation for family services. You also said that you were trying to establish whether or not you could legally use the Treasurer's advance for that. Is that correct?

Mr Quinlan: Yes. I will make doubly sure.

MS TUCKER: How could you do that? What is your view about the legality of such a proposition? Are you seeking advice?

Mr Quinlan: I think it is okay. Because of the way in which the bill is written I think I could write the approval tomorrow. That is my interpretation of the bill. I want to make doubly sure that it is right. I do not want to play games. I do not want people to say, “The Treasurer has broken the law again”, or something like that.

MS TUCKER: I imagine that you would want to be careful about that.

Mr Quinlan: Yes, I do. In the meantime I will obtain a legal opinion on that. If the Dundas legislation went through I could not do anything about it. I would just have to wait for the appropriation bill.

THE CHAIR: In paragraphs 2.1.4, 2.1.5 and 2.1.6 of your submission you outline the way in which funds can be found from other parts of your department or from other departments. Are those avenues being explored for child protection rather than the use of the Treasurer’s advance?

Mr Quinlan: I do not know. You would have to ask the minister about that. That comes within the minister’s portfolio.

THE CHAIR: Obviously the minister has asked you for the money.

Mr Quinlan: Yes, certainly. The Minister will not back off from that request, will she?

THE CHAIR: I suspect not. Have you asked the Minister about the issues that you have outlined on page 2 of your submission? Has she followed those other processes?

Mr Quinlan: Because the minister has had staff shortages she has been given some leeway to catch up to the current establishment before she gets any further expenditure. However, we have not had in-depth discussions about that issue.

THE CHAIR: Will you ask her about those issues before you approve of the use of the Treasurer’s advance?

Mr Quinlan: We always ask about those sorts of issues. Do you want to know the answer to that question?

THE CHAIR: I would be intrigued to know the answer to that question.

Mr Quinlan: Do you want to know what the bookmakers have on that?

THE CHAIR: Yes, but you are saying that you are considering using the Treasurer’s advance.

Mr Quinlan: She has already been through the discussion to which you are alluding—

how much we need to address this problem. That occurs before we introduce the third appropriation bill.

THE CHAIR: I am asking for confirmation of that. We have already been through that part of the process.

Mr Quinlan: We went through that part of the process when we were putting together the appropriation bill.

MS TUCKER: So are you saying that you will use the Treasurer's advance for a while and, when you get the appropriation bill through, you will put the money into the Treasurer's advance? Are you actually using the Treasurer's advance?

Mr Quinlan: If I write it off by using the Treasurer's advance I will move an amendment to the appropriation bill to delete that line, unless someone in the Assembly has conniptions about it.

MS TUCKER: You would do it just for that particular line?

Mr Quinlan: Yes.

MS TUCKER: The Assembly might want to scrutinise an appropriation such as that, but you can use the Treasurer's advance to get that money anyway. I understand that this is a matter of urgency, but we talking only about a period of four weeks. I think the estimates committee said that it would table its report early in April.

Mr Quinlan: It does not matter; it cannot be processed until the next sitting.

MS TUCKER: So that would be in May?

Mr Quinlan: Yes.

MS TUCKER: That is a period of five or six weeks?

Mr Quinlan: Yes.

MS TUCKER: It is the view of the minister that the allocation of this money is extremely important, so you will just get those funds from the Treasurer's advance.

Mr Quinlan: Yes, maybe.

MS TUCKER: That raises some questions, does it not?

Mr Quinlan: What questions does it raise?

MS TUCKER: The obvious question would be whether or not the Assembly wanted to scrutinise that expenditure. If you used the Treasurer's advance you could avoid that scrutiny. Is that good? Are you working with or against the will of the Assembly by doing that?

Mr Quinlan: No, we are not. Any expenditure from the Treasurer's advance would be accountable on an ex-post basis. That is why it is a small amount and that is why you have a budget. You have expenditure lines within a budget and the Assembly is able to approve levels of expenditure for health, education, youth services, et cetera. We have prospective approval by the Assembly to expend that money. Beyond that there is retrospective or ex-post-accountability through the estimates committee process. Estimates or other committees examine departmental annual reports.

The government makes a decision and it takes responsibility for using the Treasurer's advance. The government reports to the Assembly after the event. It is required to report—and it does report—on a regular basis on those lines of expenditure. I repeat what I said earlier: That is a much finer degree of accountability than the accountability that is applied to a great deal of expenditure within the original appropriations throughout the course of the year.

MS TUCKER: What I find interesting is the use of Treasurer's advance as a way of avoiding scrutiny by an estimates committee. That is slightly different.

Mr Quinlan: It is a matter of concern to me. I have written to the government solicitor in relation to that issue.

MS TUCKER: I look forward to seeing that advice. Will we get to see that advice?

Mr Quinlan: I hope so. I do not know.

MS TUCKER: Will the committee see that advice?

Mr Quinlan: It is really none of your business.

THE CHAIR: Can the committee see that advice when you receive it?

Mr Quinlan: I have just received advice that might add to my earlier bumbling explanation. We give certain funds to non-government agencies, particularly in the area of child protection. That is not a flexible fund that we can play with. You asked me earlier how we manage those funds. We try to manage those funds within that budget line. The funds are committed almost to the dollar because that funding goes to non-government agencies.

MS TUCKER: But that is not the issue at the moment.

Mr Quinlan: No.

THE CHAIR: I refer again to your proposed amendments. Ms Dundas's bill calls for the return of any money that has not been expended. I cannot find the reference to that matter in your submission, but you say that that is a movement back to cash management. In paragraph 6.2.3 of your submission you state:

This amendment will have the effect of only allowing a Treasurer's Advance to be authorised when an obligation to make a payment will be incurred in the financial year.

If that payment is not made in the financial year will the money be returned to Treasury?

Mr Quinlan: It depends on how the bill is followed and written. Phil tells me that because of the way in which the Dundas bill is written you lose the cash. The government's proposal states that, if an obligation is recorded, you can keep the cash into the next year.

THE CHAIR: Even if the payment is not made in the year?

Mr Quinlan: That is right. It is very seldom that payments are made instantaneously, or before the event.

MS TUCKER: I do not understand paragraph 5.3.3 of your submission, which refers to what is spent and what is expenditure. The housing money was legal because it was expended the minute it was moved.

Mr Quinlan: Yes.

MS TUCKER: I would like you to clarify what you are saying in paragraph 5.3.4.

Mr Quinlan: Phil will help you.

MS TUCKER: That might make the process easier. You state:

The proposed amendment would have the effect of, in regard to use of the Treasurer's Advance, returning the Territory to cash rather than accrual accounting management practices. To make the provision more consistent with accrual accounting principles, it would be necessary to limit the return of funding to the Territory Banking Account to apply to only uncommitted funds.

THE CHAIR: What is your question?

MS TUCKER: I do not understand that paragraph.

Mr Quinlan: Some of the debate about the \$10 million related to the return of expenditure. What is expenditure? Ms Dundas's bill seems to imply that expenditure is when you pay money. Expenditure is when you commit money. Unfortunately, we have rules. We have to have rules when we have a system.

MS TUCKER: I will have to read the submission later.

THE CHAIR: There is some substance to what Ms Tucker just said. This submission was prepared on 11 March but the committee received it only yesterday, which makes it difficult to prepare.

MS TUCKER: It was issued only today.

THE CHAIR: When documents such as this have been signed it would be helpful if they were sent to the committee.

Mr Quinlan: I signed the document on 11 March, but I took it to cabinet only yesterday.

THE CHAIR: I understand the cabinet process. It would have been much better if committee members had been given this information earlier. They would then have been able to digest the information. I thank the Treasurer and his staff for their attendance before this committee.

TU PHAM was called.

THE CHAIR: Good afternoon and welcome to the public accounts committee inquiry into the Financial Management Amendment Bill 2003 (No 3). I would welcome the new Auditor-General, congratulate her on her promotion, and say happy St Patrick's Day. I will get through the formal stuff, which goes like this: 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.

For the Hansard recorders, on the first occasion you speak you might give your full name and the capacity in which you appear. Tu Pham, congratulations on your promotion.

Mrs Pham: Thank you.

THE CHAIR: Do you have any comments you would like to make on the bill that has been presented for consideration?

Mrs Pham: Perhaps at the outset I think the issue to be identified here is what we understand as the purpose of this use for Treasurer's Advance. I think some different views have been expressed in the past about what the Treasurer's Advance is used for. I think we need to clarify that, and then support the amendment to the legislation in such a way that we deliver the purpose of the Treasurer's Advance.

I think that, as an Assembly member has already pointed out, the current provision for the Treasurer's Advance is not clear. It is open to different interpretation and that is why we had issue with the housing Treasurer's Advance.

So we need really to take one step back and say what we should achieve out of the Treasurer's Advance. In the Auditor-General's Office we feel that, first, we would like to

ensure that the Treasurer's Advance is provided in such a way that it has transparency, it provides a high degree of accountability to the Assembly, so the Assembly can question and can look at it and examine it, and also it should provide some form of fiscal flexibility for the government to respond to some urgent need.

I think it is important in terms of the Treasurer's Advance to give the government the opportunity to respond to meet what they did not expect to happen during the year and the delivery of the Treasurer's Advance should also achieve some sort of administrative efficiency. We believe that the bill, as proposed by Ms Dundas, tries to address some of these issues but at the same time creates some practical and operational issues.

Looking at the government's proposed amendment, I think some of the proposed amendment should be supported because it actually improves the accountability and it also gives some sort of better fiscal flexibility. But I think we would like to see an additional concept introduced in terms of urgency similar to the Dundas bill but it should be introduced in such a way that it would be manageable and it would be easier to be implemented without undermining the government's ability for fiscal responsibility or flexibility.

MS TUCKER: So how would you—

THE CHAIR: My question exactly.

MS TUCKER: How do you define urgency?

Mrs Pham: I think the bill introduced the concept of urgency in addition to the concept of the unforeseeable test. So actually we have two tests for the Treasurer's Advance. One test is whether or not it is unforeseen at a certain time by certain people, and also the second test is "is it urgent for the year?".

From my experience, I think the unforeseeable test is actually quite confusing because cost pressure and so on can be foreseen by most chief executives throughout the year. But, as the Treasurer advised, you may have foreseen cost pressure but at that time you don't know if you could use other mechanisms to take care of it, or you don't know the

certainty of when that will happen, or you don't even know the quantity of it to accurately advise the government.

Hence, in many cases, if you are really strict in the terms of the unforeseeable test, then most of it can be foreseen by the chief executive running the department. So that test is quite confusing in terms of foreseeable by whom, foreseeable at what time; is it before the appropriation bill No 1, that is, the first one, or the supplementary bill? So in my mind, if you would like to make sure that the Treasurer's Advance is limited to urgency only or the urgent need for expenditure, then that test, the unforeseeable test, may or may not be required. I do not think that is useful or helpful. As you discovered before, a chief executive may foresee some of these things already, but if they do that then they are in breach of the law by asking for Treasurer's Advance later. So it doesn't really work in practice.

So I hope the urgency test would be a better test to apply and remove the foreseeable test. Urgency, certainly, is a difficult concept but it's not unachievable. The Commonwealth legislation has an urgency test. New South Wales does; the same with Victoria. So I think if we can introduce the urgency test with some very clear guidelines from the Treasurer or the Treasury in terms of operational guidelines, so the agency understands what urgency is about. I think something along the lines of the Commonwealth definition of urgency is good. That test would make sure that the use of the Treasurer's Advance is only for the government to respond to urgent need for, say, child protection—the application of the urgent test.

THE CHAIR: So, for example, flu injections—the department says 10 per cent of Canberrans will need a flu injection this winter, but in reality 25 end up needing it. They have foreseen it. Therefore, under this test they couldn't come back for any more, even though there is a worsening situation they really couldn't have predicted. But if you apply the urgency test and, if you use the Commonwealth definition, the matter has gone from an ordinary need to a more urgent need, then you can come back and approach the TA for use.

Mrs Pham: That's right. Yes, because that would be above the appropriation allowed for that purpose. So the urgency test can be seen as a response to the situation where the

appropriation is not sufficient. For example, wage increases. The government may have an appropriation for a wage increase for EBA. However, during the year, due to negotiations or other developments, often in other jurisdictions, the wage line can be more than what is allowed under the appropriation bill. That could be considered as an urgent need, and that could be a reason for access to the Treasurer's Advance.

THE CHAIR: Are there any parts of the bill that we should salvage and keep? You are saying that the bill sets too high a bar?

Mrs Pham: Yes.

THE CHAIR: You said it was not operationally possible in some cases.

Mrs Pham: If I go to the government's proposed amendment in their submission then I could say that it addresses mainly the issues that arise out of the housing Treasurer's Advance. One is transparency, that the government now propose that they will report three days after the allocation of the TA to give the Assembly the opportunity to examine and question the government within a much better timeframe of three days instead of waiting until the end of the year—it could be months and months after the TA is allocated.

In terms of accountability, also I think the government proposed a definition of expenditure and that clarified what they mean by expenditure and, therefore, it will avoid the situation of just a mere transfer of money from one government account to another, such as the housing one. So it won't happen under the new definition of defined expenditure.

MS TUCKER: In the government's amendment?

Mrs Pham: The government's amendment—expenditure. So that is a good amendment to define expenditure.

MS TUCKER: Have you seen the government's submission?

Mrs Pham: We have a copy of the government's submission today, yes.

MS TUCKER: So do you agree with that analysis on 5.3.1 that I was just trying to understand—that I do understand now; I have had a bit more time to read it—which is that you agree that there is a concern if you are confusing expenditure and payment?

Mrs Pham: Exactly. I can give you an example. If, say, tomorrow someone reported to the government that there is some toxic material in school playgrounds and there is an urgent requirement for the government to remove that toxic material, the government then can use the Treasurer's Advance and go out to a contractor and ask them to remove that material from the playgrounds. So the whole contract for, say, removing the toxic material can be \$5 million for all school playgrounds in the ACT. So the government commits that \$5 million to the contractors and that could mean that there may be three payments—the first, \$2 million, then \$2 million and \$1 million, depending on the progress of the work. So at the end of the year in terms of cash payments you may pay only \$2 million out of a \$5 million commitment to remove the toxic material.

Under Ms Dundas's amendment, the government only pays \$2 million out of a \$5 million contract and \$3 million has to be returned to the government. And then they have to go through the process of the appropriation bill and everything again, which doesn't make sense because the government has already committed \$5 to remove the whole thing. So it may be \$3 million to be spent the next year but it's already committed. So instead of saying the unspent cash is to be returned, you would have to say uncommitted funds to be returned. There is a difference between cash and accrual accounting.

MS TUCKER: Sure.

THE CHAIR: Is there a difference between the terms obligation and commitment? I note the Treasurer says in 6.2.2 and 6.2.3 that it is about incurring an obligation. Now is an obligation that we have gone out to tender but we haven't signed contracts? Is an obligation that we have actually signed contracts and therefore we are committed to the payment?

Mrs Pham: I think that the term "obligation" in the government amendment is probably

tighter than commitment. I think obligation means a contract already signed. There is an obligation for payment. So commitment is looser.

THE CHAIR: Because of the trouble with the TA's use for the housing, the security upgrades, the \$10 million was transferred in June but by the following December they had still only expended \$70,000, and that was just on scoping work—no contracts had been let. So you are saying that if the contract is let, the money should stay and the contract is the test?

Mrs Pham: Yes, I would think so in general terms because if there is no commitment or obligation on the government to pay that money to anyone then they had time to go to the Appropriation Bill.

THE CHAIR: Okay. What if we come back a step and it is the tender process? The government won't let tenders unless it's got money to fulfil the tender, so it is called for the provision of a service. If the tender hasn't been finalised by 30 June, should the money be returned to the Treasury?

Mrs Pham: That's a tough question. I think depending on the issue at hand and depending on the urgency in terms of is it urgent for the government to agree to go ahead with the contract even though they are in the middle of the contract arrangement, I would say for admin efficiency I would think it reasonable for the government to continue with their contractual or tendering arrangement.

It is just a bit hard to be so clear on this point. But the government has to then explain to the Assembly whether they believe they have an obligation to go ahead with the tendering arrangement and whether or not they can satisfy that obligation—if it's urgent.

THE CHAIR: Well, that gets back to my original question: is the word obligation clear enough and is it strong enough? The government could say it has a moral obligation. In respect of the housing, the case of the government was that it was urgent, they had a moral obligation to undertake this work even though very little money was expended for a minimum of six months, and I suspect that most of the money still was not expended after 12 months.

Mrs Pham: No, I don't think we can rely on moral obligation, generally speaking, in terms of financial management.

THE CHAIR: Is obligation understood in financial terms as, for instance, a signed contract?

BERNIE SHEVILLE was called.

Mr Sheville: Bernie Sheville, Director, Financial Audits. Normally, in accounting terms, yes. Normally you would have to have something signed to create a liability. There are such things as constructive liabilities but normally you would need to have a contract at the point where it is signed before you would start booking the liability in the book. Before then there is no obligation. It's just a statement of purpose really that we are going to do something about this.

THE CHAIR: All right, and if you can't complete your tender process by 30 June and you have that obligation, then it should have been included in the following year's budget.

Mr Sheville: Well, hopefully it's planned in a way that it's clear one way or another.

THE CHAIR: Okay.

MS TUCKER: I am curious about the conversation I just had with the Treasurer about his use of Treasurer's Advance right now. He felt that there was too much delay as a result of an estimates committee being set up. If you are looking at developing criteria for the use of Treasurer's Advance—I am not sure if this is a political question rather than an auditor question, but I think it might be an auditor question—would that be an appropriate use of Treasurer's Advance in your view? If you've got the Assembly choosing to scrutinise expenditure of a certain amount of money, then the Treasurer can just go and use TA to get that money, thereby removing the requirement of the scrutiny which the Assembly has agreed to. Is that acceptable?

Mrs Pham: If there is an established urgent need for that money to be spent then that could fall within the allowable use of the Treasurer's Advance, regardless of other funding mechanisms.

MS TUCKER: So if the urgency applied then it would be fine?

Mrs Pham: That's right. So that's why I believe that the urgency test is the key test for Treasurer's Advance and that the urgency should be clearly defined in the financial instruction operational guidelines issued by the Treasurer. By using that test then, yes, if there is an urgent requirement, even if some other funding mechanisms exist, the Treasurer can use the Treasurer's Advance for that.

THE CHAIR: You mentioned having guidelines attached for the operational use. Are guidelines strong enough or should we have regulations governing that use that are therefore governed by the Assembly?

Mrs Pham: Often my approach to the legislation is you don't want the legislation to be too complicated. The more it is complicated, the harder it is to implement it because it's subject to different interpretation. So some of the detail, especially in terms of examples on a case-by-case basis, is better included in the financial guidelines. I think the guidelines and how they are implemented can be subject to Auditor-General compliance audit, and could be also subject to committee questioning Treasury in terms of implementing those operational guidelines. So once the guideline has been issued, there is a responsibility on Treasury to make sure that it is implemented properly.

THE CHAIR: The government has proposed two amendments—one is on the definition of expenditure and one is on reporting guidelines. Is there anything therefore that has been missed? How would you actually state the urgency test? The government has not commented particularly on what urgent is. You mentioned earlier you thought the definition in the Commonwealth legislation was appropriate.

Mrs Pham: Yes. I think the government at this stage is not keen to entertain the concept of urgency because it is a new concept compared to the existing concept of the unforeseeable test. So that is why the government has not, I understand, put it in their submission. But I think the Auditor-General's Office view is in line with the discussion

going on at Assembly level because of the housing issue.

In looking at Ms Dundas's bill, I think there may be merit in considering introducing the test, and to introduce the test we can copy the Commonwealth legislation. The Commonwealth legislation is along the lines that the use of the Treasurer's Advance can be made when the Treasurer is satisfied that there is an urgent need for that expenditure for that financial year. And then they define under their operational guideline what they mean by urgency. They mean urgency when an agency has exhausted or is close to exhausting all of their available funds under the relevant appropriation. That also took care of the issue that agencies may try to save money in their appropriation bill first. So we define urgency only when agencies have nearly exhausted their appropriation bill for that particular purpose. By looking quickly at the Commonwealth definition of urgency and urgency tests, I think it can be workable.

THE CHAIR: Are there any more questions? No? Okay. If you can't answer this, we might just go onto two other matters. We received a letter signed by Bernie on 8 March concerning the InTACT costs, which have gone from \$120,000 to \$240,000. Are you in a position to take a few questions on that? I know we didn't give you notice and if you can't then we won't proceed.

Mr Sheville: I will have to take that on notice on the details. I don't have much more information than what is actually in that letter.

THE CHAIR: All right. The letter actually talks about some discounts that were offered that have now disappeared—it makes three points—but it doesn't actually detail what the breakdown of the extra \$120,000 is between the three different parts of your answer. Could we get that breakdown?

Mrs Pham: Yes.

THE CHAIR: Okay. All right. We might leave that at that. That will save us writing a letter.

MS MacDONALD: Can I ask a question in relation to that? Did InTACT give a reason

why they are no longer offering discounts?

Mrs Pham: I understand that there was a trial arrangement to use a system to link our system to the whole-of-government system, which doesn't work, hence they have to go to a land-based cable arrangement, which costs much more than the trial base that they offered to us from the beginning. But, again, that is new to me, so we will come back and talk to InTACT and get the detailed explanation of that increase in cost.

MS MacDONALD: Yes. Reason 1 in the letter from Bernie states that InTACT have advised the office that discounts are no longer available to its customers. So I understand there is the issue of the link, which is more expensive, but it seems to me that they are saying the discount is no longer applied to anybody.

Ms Pham: No, it's only to us because our building is actually away from every other government building. So I think there is that additional cost to link the building of the Auditor-General's Office to the main system. But we certainly will take it on notice and ask InTACT to provide a very detailed breakdown of that \$120,000 increase.

Mr Sheville: I suspect they have actually got it off the file there, but it should not be a problem to get the details.

THE CHAIR: That's fine, because we cannot approve your budget until we know that. Are there any further questions, members? No. Auditor-General, thanks very much.

The committee adjourned at 3.56 pm.