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

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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 2.01 pm.

ROSLYN DUNDAS was called.

THE CHAIR (Mr Smyth): Thank you, Ms Dundas, for attending this meeting of the public accounts committee to discuss your Financial Management Amendment Bill 2003 (No 3). Before we begin, I have to say the following to you.

You should understand that these hearings are legal proceedings of the Legislative Assembly and 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 very serious matter.

If, on the first occasion you speak, you could, for the benefit of the Hansard recorders, give your name and the title under which you appear, we will begin. Would you like to make an opening statement to the committee?

Ms Dundas: Yes, I would. I am Roslyn Dundas, MLA. Thank you for inviting me along, and I'd also like to thank the committee for the speedy way in which they are considering the matters before them, as I think it's quite important that there are significant changes made to the Financial Management Act in relation to Treasurer's Advance, and that those amendments are made as soon as is practicable.

Looking through the submission that the Treasurer put to you and the evidence that he presented verbally, there are some points that I would like to respond to. There was some discussion about what the basic principles of Treasurer's Advance are and how they are currently missing from legislation. I think that's something that needs to be addressed. What we've seen over a number of years is a set of regulations, or a legislative set-up, that means that you could basically drive a truck through our Financial Management Act in relation to the Treasurer's Advance. Thankfully, we've had governments that have not necessarily been keen to do that but that doesn't mean we shouldn't fix it so that in the future no truck can drive through.

Yes, we are talking about one per cent of the total budget, but it is a high level of discretionary funds that the Treasurer has control over. Most of the budget is allocated through standard programs, such as wages and recurrent capital costs that are known about and are recurrent. This is a high level of funds that the Treasurer has total discretion over.

Significant concerns have been raised by auditors-general in the past and when this committee looked at Auditor-General's report No 7 of 2002, they came to the conclusion also that changes needed to be made to the Treasurer's Advance section of the FMA. The government supported those recommendations and said that they would be proceeding with amendments in the autumn sittings. We are yet to see those amendments from the government, which is why I put mine forward.

There are three main thrusts of my piece of legislation. They are responded to by the Treasurer in his written response, so I'll just go through them. Firstly, he talks about foreseeability and not wanting to completely confuse the legislation by having a discussion about who foresees what and when. In the current Financial Management Act it already talks about expenditure being unforeseen. What my legislation proposes to do is actually clarify what we mean by unforeseen and unforeseen by whom. So it actually makes the situation better.

There are also some complaints made by the Treasurer about the relationship between CEOs, their departments and ministers. I think they are broader questions about the public service and full and frank reporting by the public service; they are not problems with the Financial Management Act, or not problems with the legislation that I have proposed.

There are also concerns about the proposal to make sure that moneys not expended in that financial year are rolled back into the bottom line. One of the main arguments put forward by the Treasurer is that by way of what we're looking at in relation to the Treasurer's Advance, we are going against other parts of the Financial Management Act in terms of accrual accounting. It must be said that Treasurer's Advance in itself is a special part of the Appropriation Bill that doesn't have a lot of scrutiny or defined purpose, so a special provision for Treasurer's Advance is not out of the ordinary. The Assembly doesn't actually see where that money is targeted for, as we do for the rest of the Appropriation Bill. It is about scrutiny, and it is about making sure that what is identified as a need for the purposes of a Treasurer's Advance is unforeseen and is urgent. It takes five to six weeks, as the Treasurer himself said, from whoa to go on a supplementary appropriation bill.

We are really talking about urgent things that don't fit into a five to six-week time frame and that might happen outside the normal sitting patterns of the Assembly, so they must be truly urgent for use of the Treasurer's Advance. If not, then we can use a supplementary appropriation bill, and I was disappointed that the Treasurer didn't really discuss in more detail how supplementary appropriation bills are put forward. We've had three of them in this budget and three of them in the budget before. They are quite regular occurrences, and the Treasurer himself said they do happen at quite a rapid rate. So if the money cannot be used in the time that it is allocated to be used from Treasurer's Advance, then why can't it wait for an appropriation bill?

I think by putting that argument forward, I've also discussed the third point, which is about urgency. There is nothing wrong with developing a culture of supplementary appropriation bills. It provides scrutiny and accountability and allows the Assembly and the community more discussion about where taxpayers' money is going over the financial year. As with any appropriation, underspends do get rolled back into the bottom line for expenditure in the next financial year.

That is my opening statement, to put forward some response to what the Treasurer has said. I take it as read that you have a copy of my tabling speech. I know that you'll be doing this anyway, but I refer you back to this committee's own report, which first discussed in more detail the problems with Treasurer's Advance, and the Auditor-General's reports that also looked into this matter.

THE CHAIR: Thank you, Ms Dundas. Moving straight into it: you've raised three points. On foreseeability, the Auditor-General, when we spoke to her last week, saw some difficulties with your section 18(5), (6) and (7), in that it may actually stop expenditure of money that you may intend. The example I quoted was: what if we put some money into a budget for, say, immunisation for flu and say that we think 10 per cent of the population will need it, but a particularly virulent strain turns up and you actually need to have funding for 25 per cent?

How would you cope, under your amendments, on the language that's being used here, given that it's already been foreseen—therefore you can't expand a payment which everybody would think was entirely logical—and if it's at a time when there's not money available to a department and indeed you need the injection now, not in six weeks' time?

Ms Dundas: This is the point where I say that I don't agree with that statement made by the Auditor-General. I think I need to make it quite clear that these amendments weren't drafted in isolation, they were drafted in response to the previous Auditor-General's report and after great discussion with the Auditor-General's office. We discussed at great length what was meant by foreseen and who was doing the foreseeing. We have major problems with the Treasurer's Advance at the moment where it just says it is unforeseen. It doesn't discuss by whom or when.

The point that you make, I think, could still be covered by Treasurer's Advance, because it is an expense over and above what could have been foreseen at the time, in that sense. I can understand the idea that you're trying to put forward, but if in that financial year we allocate $10 million for something and, to the best of the budgetary knowledge at the time, that was all that was needed, and then if something goes wrong, if there is a disaster and things need to be fixed, more money is appropriated. And we saw that after the bushfires where there were line items being topped up out of Treasurer's Advance. I don't think that this would stop that.

THE CHAIR: The advice from the new Auditor-General—which may be different from the advice that the old Auditor-General's office gave you—was that this was too prescriptive and may have the unfortunate downside of making additional expenditure actually illegal in the case where everybody might reasonably agree that yes, we didn't think the flu epidemic would be as bad or the bushfire season would be as bad. In that case you have actually talked about a coming bushfire season or a coming flu epidemic or whatever it is and once it's mentioned, it's obviously been foreseen. If you get the quantum wrong, are you sure that your amendments won't stop an increase in a quantum that was unexpected or unforeseen?

Ms Dundas: That's definitely not the intention of these amendments at all. It is about providing some clarity as to who was doing the foreseeing or not foreseeing. I think the problems that the current Auditor-General raised are problems with the current act, if we're going to look at it that way, where it does just say unforeseen. You can say that that means unforeseen by anybody who has anything to do with the Financial Management Act, because it doesn't define whom it's unforeseen by. So if anybody in the department had any idea at any stage that there was a problem, does that mean we can never use Treasurer's Advance? This is about how the Treasurer, ministers and the Chief Executive need to take responsibility.

THE CHAIR: The Treasurer makes similar comments in his submission, which I assume you've now seen?

Ms Dundas: I have read it cover to cover.

THE CHAIR: So you would refute his arguments in the same way?

Ms Dundas: Yes; as I put forward in my opening statement, I think some of the arguments are a bit of a—

THE CHAIR: Go on; don't hold back.

Ms Dundas: I was just going to say a bit of a beat-up, which I know isn't necessarily a parliamentary phrase. But maybe the question for the Treasurer, or for the ministers, is: how much responsibility do they already believe they have if their department happens to stray outside their budget? The problems that have been raised are things that need to be addressed through discussions with public servants and with the ministers about levels of responsibility and levels of accounting, but that doesn't mean we should leave the legislation unclear. I think my amendments make it clearer, as opposed to less clear.

THE CHAIR: The Treasurer himself has come up with some amendments on page 19 and he feels the better way to go about it is, rather than defining who and how, stating what the expenditure is actually to be for. It is at 6. 2.1 through to 2.4. He actually thinks that a better way is to define exactly what it is we should pay for, just to allow the government the flexibility. He says at 2.29 that we should keep it effective and efficient and give them the flexibility, and then he makes the suggestions on his own amendments.

The government also includes a chart that would tend to suggest that our FMA is probably one of the tougher ones already.

Ms Dundas: On that point, on closer examination of the actual legislation of other jurisdictions and of our legislation, most other jurisdictions talk about external scrutiny through the Governor, which we don't have here in the ACT, or through discussions with the Auditor-General. It is up to ministers, up to the Treasurer. So I think that that external provision is one that he has not highlighted in his discussion about whether or not we have the most lax or the most stringent requirements under the Treasurer's Advance.

I think we also have, due to our size and the fact that we are a unicameral parliament, actually across the whole Financial Management Act, less stringent regulations about the appropriation bills. So what we are then talking about is how we apply scrutiny to one per cent, one of the highest discretionary amounts of that appropriation bill. Without a governor, without working through the processes that other jurisdictions have to, we have to then make sure that that expenditure is accountable and that requires a tightening up of the FMA.

THE CHAIR: Okay. The second point you made was about funds not expended. Again the Treasurer recommends, in 6.2.3, that where an obligation has not been made, then funds would be returned. Is that the intent of what you're trying to achieve? Their explanation would be that once you've signed a contract, the money should stay where it is, because obviously you've made an obligation to pay, which of course might be over a year, over the coming 12 months, the first monthly payments of a million bucks each or something. Whereas, under what you're suggesting, if it hasn't actually been paid, then it goes back.

Ms Dundas: There are, pros and cons for both arguments. I'll put forward a scenario for you, and this would be quite out of the ordinary and unlikely to happen. Say the government makes a decision that there is an urgent requirement for a new school and they want to start the funding out of Treasurer's Advance. Without having the discussion about whether or not that school is necessary, whether or not it's going in the right location, they then commit to contracts for builders, for teachers even, and start taking the money out of Treasurer's Advance. Depending on the timeline of that, we can, under contract law, actually remove ourselves from contracts if the Assembly then decides that the government is not doing the right thing with taxpayers' money in relation to building this new school without any discussion, and the money then can be rolled back in.

If we're talking about something that cannot wait for a supplementary appropriation bill, that is going to have an urgent time frame of less than six weeks, by the Treasurer's own reckoning, then we would like to see that money start to be expended where it is needed. If it's taking longer than that, then put in a supplementary appropriation bill and have the scrutiny of the Assembly. But the aim is to make sure that the money being used through Treasurer's Advance is used according to the basic principles of what Treasurer's Advance is about; that is, urgent unforeseen expenditure.

THE CHAIR: To go to your school example, the need for a new school would hardly be urgent or unforeseen.

Ms Dundas: As I said, it was quite a ludicrous example. But if the government just decides today, "We want to do this," as a political machination, it commits us to ongoing costs over the life of that school, so it is something that you would expect to see through a supplementary appropriation. But at the moment, because of the way the Treasurer's Advance is set forward, that scenario could actually arise.

THE CHAIR: The use of the word "urgency" raised some interesting conversations last time. Looking at the Treasurer's summary of what other jurisdictions have done, he says that we're the only one that really has this urgency requirement. One or two of the others do, including the Commonwealth. The Commonwealth and New South Wales are the outstanding ones.

Ms Dundas: Other states talk about "extraordinary need" which I think is another way of saying urgent. I think that's Western Australia or Victoria.

THE CHAIR: The Auditor suggested that we use the Commonwealth definition of urgent, whereas the Treasurer himself would like to see the word "urgent" disappear. Do you have an opinion on that?

Ms Dundas: Again I go back to the arguments I've already made. This is one per cent of the entire budget. It's anywhere between 20 and 30 million and there is a high discretion about how it is utilised. If we are to keep the government accountable for how that money is being spent, then I think it should be going to needs that are urgent, needs that are unforeseen.

THE CHAIR: You don't include a definition of urgent, though, in your bill, if I recall rightly.

Ms Dundas: As I've already stated, it's so urgent that they can't prepare a supplementary appropriation bill. That is, I think, the whole point of Treasurer's Advance. If there is no other way that you can find the funds to fix the problem, be that through interdepartmental transfers or through a supplementary appropriation bill, then that's when you use Treasurer's Advance. Urgency is then defined by when the Assembly is sitting and how quickly it takes to get appropriation bills through. Five to six weeks by the Treasurer's own reckoning.

THE CHAIR: Would you find it acceptable to use the Commonwealth definition?

Ms Dundas: Well, as the Commonwealth definition says at 1B(ii), "The additional expenditure was unforeseen until after the last day on which it was practicable to provide for it in the Bill for this Act, before that Bill was introduced into the House of Representatives." So it itself talks about the appropriation bills.

THE CHAIR: Yes. So is that an acceptable definition to you? We don't actually attempt to define it in our act.

Ms Dundas: Well, I think because to an extent it's defined by itself. If it is decided that we need to look at having a definition in there for urgency, then I would say it would be the definition I have put forward to you, that is, because there was no time to develop a supplementary appropriation bill.

THE CHAIR: On reporting, the Treasurer suggests on page 19 or 20 that there should be better reporting and he thought it would be within three sitting days of the TA being used.

Ms Dundas: I have no problems with that at all.

THE CHAIR: Okay, because clearly at this stage, basically we get a report in August.

Ms Dundas: And thanks to the amendments that I moved in 2001, we get a report when a supplementary appropriation bill is tabled, so we know how we are going over the year. And I think that that should continue, as well as the three sitting days, because that means when we're getting new appropriation bills to look at, we get the whole picture and we don't have to—

THE CHAIR: Piece it together.

Ms Dundas: Yes, or scrounge around for documents. But the documentation issue is raised through annual reporting processes all the time.

THE CHAIR: The other issue that comes up is the use of guidelines or regulations. Not surprisingly, the government—and, indeed the Auditor-General—thought guidelines were more manageable than reporting. Do you have a view on either of those?

Ms Dundas: In the interests of transparency and accountability, it needs to be in the legislation.

THE CHAIR: Well, that's me just about done. Is there anything further you'd like to say?

Ms Dundas: I think I've said it all and I think I've said it a number of times over the last half hour, but yes, as I said, I'll be interested to see—now that we've identified the large problems with Treasurer's Advance and the Financial Management Act—that we move to address those problems as soon as possible. With that, I again thank the committee for the spirit in which they are considering this piece of legislation.

THE CHAIR: Thank you. Thank you, Hansard.

The committee adjourned at 2.24 pm.