



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: ACT Auditor-General Act 1996)

Members:

**MS C LE COUTEUR (The Chair)
MR B SMYTH (The Deputy Chair)
MR J HARGREAVES**

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 12 MARCH 2010

**Secretary to the committee:
Mr G Ryall (Ph: 6205 0142)**

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 21 January 2009

The committee met at 1.33 pm.

STANHOPE, MR JON, Chief Minister

CAPPIE-WOOD, MR ANDREW, Chief Executive, Chief Minister's Department

THE CHAIR: Good afternoon everyone, and welcome to this public hearing of the Standing Committee on Public Accounts inquiry into the ACT Auditor-General Act 1996. I imagine that all three of you are well aware of the privilege card and do not wish to have me read it to you. Would that be correct?

Mr Stanhope: Yes, I am sure that is fine, Madam Chair.

THE CHAIR: I welcome our first witnesses for the afternoon, the ACT government, with the Chief Minister, Mr Stanhope, Mr Cappie-Wood and Ms Davoren. Before we begin asking questions, do you have an opening statement, Mr Stanhope?

Mr Stanhope: Thank you, Madam Chair. No, other than to say that the government has provided what we regard as a full submission, a submission that attempts to address the committee's terms of reference. We think it is full and complete. If there are any aspects of the government's submission which the committee would like expanded upon, Mr Cappie-Wood and Ms Davoren stand ready to assist the committee.

THE CHAIR: Thank you, Mr Stanhope. I will turn first to paragraph (5) of the terms of reference: any amendments which would strengthen the role of the ACT Auditor-General as an independent officer of parliament. I am particularly concerned about that because at the last public hearing that we held here Mr Corbell fairly strongly criticised the Auditor-General in terms of her inquiry into the Ambulance Service. How can we strengthen the role of the Auditor-General with comments like that?

Mr Stanhope: I am more than happy for Mr Cappie-Wood and Ms Davoren to seek to respond to that. We probably need to establish some understanding of what the concern is. I think the government would perhaps wish to better understand the substance or the basis of your question. The fact that a government minister expresses disagreement with an outcome or a methodology seems to me simply to be a healthy aspect of a system of review. A report is drafted by the auditor, recommendations are made, a methodology is established and set out, and a minister with responsibility for the area that is the subject of the audit says, "Actually, we don't believe that that particular methodology is appropriate in the circumstances and consequently we don't agree with the conclusions that are drawn as a result of that methodology." That in no way impinges on the Auditor-General's independence or impinges on the capacity of the Auditor-General to undertake her duties. It is simply, I think, an expression of a system that works—an auditor-general raising issues and a government responding.

It would be remarkable to think that there should be, as your question suggests, an assumption that every methodology or every recommendation or every finding made by anybody that presents a report should be accepted without question. It seems to me—

THE CHAIR: That is certainly not what I suggested, not for an instant. But Mr Corbell was very—

Mr Stanhope: He was strong in his view.

THE CHAIR: strong in his views on that, and he also talked about the general level of confidence and not just about specific findings. I guess that is what I found—

Mr Stanhope: I was not privy to that evidence or the giving of the evidence. I have to concede that I have not read the transcript. My only familiarity with the issue is what I read in the *Canberra Times*. I must say that I thought the points made by Mr Corbell were reasonably made and simply suggest a difference of opinion. But, surely, our system thrives on differences of opinion. Indeed, the entire democratic and parliamentary process is posited on an expression of honest opinion as the best way to actually pursue any issue. I am not going to debate the merits or otherwise of a position put in relation to that matter by either the Auditor-General or the minister. They each have an opinion and they have each expressed that opinion. But to suggest that because there is a difference of opinion between an auditor-general and a government minister it in some way reflects on the capacity or the independence of the Auditor-General is a position I simply cannot accept and, indeed, a position that I do not understand.

THE CHAIR: I guess it is not the position that I was trying to present, either. What I really need to have in front of me, which I do not, is the transcript because the statements involved more than a difference of opinion about the audit; there were more general comments about the Auditor-General. But as I do not have the transcript here, I will leave it at that point.

MR HARGREAVES: Madam Chair, perhaps we can move on, if you do not have the transcript.

THE CHAIR: That is exactly what I was going to say.

MR SMYTH: Just on the point: there was an air of ridicule from the minister that she dare look at something in a different manner. Surely a fresh set of eyes is exactly what we need in circumstances like this. To have a minister just say she was wrong because she tried a different approach is unacceptable.

Mr Stanhope: I do not disagree with you over the premise, Mr Smyth. I think the Auditor-General's role is fundamental, to the extent that the Auditor-General brings a statutorily independent set of eyes to government processes. That is indeed the entire basis of the Auditor-General's role as an independent assessor. I would make only one point in relation to that. As I say, I was not here. I have not read the transcript and I did not hear the evidence being presented. Indeed, Mr Corbell can speak for himself. The point I would make is that to suggest that a vigorous exchange of views or opinions as between an auditor-general and a government, and in this instance a government minister, in relation to an area of administrative responsibility for which a particular minister is responsible impinges in any way on independence, role, functionality or capacity is a position that I simply cannot accept.

That is like suggesting that any criticism within the chamber of the Legislative Assembly by the opposition, the Greens or the government expressed in strong and vigorous terms in some way undermines the argument which the opposition and the Greens put in their often vigorous and energetic and, in the view of government ministers from time to time, overassertive, even aggressive manner—that it is in some way a reflection of the strength of the argument which the opposition or the Greens put in the chamber. We are all participating in very serious issues and we are putting views as we see them.

So as not to misunderstand the government's position in relation to paragraph (5) of the terms of reference, I will refer you to the government's submission. Indeed, we are supportive of amendments that would clarify certain aspects of the Auditor-General's role. If you go to our submission you will see that the government is supportive of ensuring that the Auditor-General's role is clear and unambiguous and that her role and function are fully supported.

MR SMYTH: Mr Corbell did say—it is a quote—that the Auditor-General “had invented her own methodology which is not used by anybody except her”. Is it unreasonable for the Auditor-General to take a fresh approach, though?

Mr Stanhope: Absolutely not. It is not unreasonable. But it is also reasonable for a minister to essentially suggest that the methodology is not appropriate. I do not believe that in relation to any issue of public policy we should be setting up an understanding that certain statutory officers in the pursuit of their responsibilities, whether they are auditors-general or any other statutory officer, or indeed any other public official, are to be regarded as infallible or invulnerable. None of us is infallible and the Auditor-General is not infallible. To the extent that she develops a new methodology, a methodology not adopted or pursued by any other government in Australia—and for a minister to point that out in response to a recommendation or a finding based on that unique methodology I think is appropriate.

I am not disputing the Auditor-General's right to develop a new methodology and a new way of looking at a particular issue, but I think it behoves a minister or a government to say, “In response to that you need to understand that what the ACT Auditor-General has done in this particular instance.” I am being hypothetical here because I do not have a depth of understanding of the issue or the presupposed methodology. The minister has said, “Yes, this is what the Auditor-General has done, but you need to understand and know that no other auditor-general in Australia adopts this position, this methodology, and no other government in Australia provides this particular service under those terms.”

That is the fact. The fact is that it is a unique methodology, developed by the ACT Auditor-General, not adopted or pursued by any other auditor-general in Australia and not embraced by any other government in Australia. It seems to me, for the sake of completeness and for the argument and the debate, as well as for community information and understanding, that it is more than reasonable for the minister to point that out. I would have thought that the Auditor-General would have accepted that it is reasonable for the minister to point that out.

MR SMYTH: Minister Corbell has called it a very simplistic way of looking at what

is quite a complex issue. The tone that he used was not a complimentary tone for the auditor.

Mr Stanhope: Are you suggesting, Mr Smyth, that there should be an amendment to the Auditor-General Act that requires ministers to be always polite?

THE CHAIR: Basically—

MR SMYTH: It is that sort of flip answer that diminishes the argument here.

THE CHAIR: Yes.

Mr Stanhope: It does not. Are you always polite in the chamber, Mr Smyth, in the way that you address ministers?

MR SMYTH: I behave probably better than you do, Chief Minister.

Mr Stanhope: Mr Smyth—

MR HARGREAVES: Madam Chair, I think we are getting a little bit further away from the subject than we need to be.

Mr Stanhope: This goes to my point. I think we are—

MR SMYTH: The point is that this is a statutory officer who is attacked by one of your ministers because she has got a simplistic view and there is little data to back it up. Are you aware, for instance, that the data was actually provided by the Ambulance Service?

Mr Stanhope: No, I have absolutely no understanding—we are not talking about the ambulance side of it; we are talking about the terms of reference of the inquiry. If you want to re-litigate the Auditor-General's report in relation to the Ambulance Service, you really should speak to the relevant minister. I have no understanding of the issue at all. I am not able to engage with you in a sensible, intelligent conversation about ambulance methodology. But if you want to prosecute that then I am happy to—

MR SMYTH: But it is about independence and it is about being attacked for being independent.

Mr Stanhope: No, it is about a reasonable expression of disagreement, which goes to the heart of our democratic institutions and to the heart of the parliamentary democracy. It goes to the heart of the strong, independent democratic institutions. What we pride ourselves on in Canberra in the ACT is that we can speak freely and express our opinions freely. Any suggestion that in responding to an Auditor-General's report honestly and forcefully in some way demeans the independence of the Auditor I think adopts a worrying suggestion or trend. That ministers should be denied to some degree a freedom of speech in relation to their response to an auditor-general's report I think is a remarkable suggestion, that members—

THE CHAIR: No-one has made that suggestion.

MR SMYTH: Nobody has, of course, suggested that. You are good at skewing these things—

Mr Stanhope: Madam Chair just now suggested that she felt it would be a good idea if there was a requirement that only certain language or a certain tone should be used in responding to an auditor-general's report. I am not going to legislate that people should respond to a report with which they do not agree. I think it is remarkable to suggest that you have a concern with the tone that ministers may adopt in responding to the Auditor-General's report. I find that quite remarkable.

MR SMYTH: Again, you just demean the issue.

THE CHAIR: Mr Hargreaves?

MR HARGREAVES: I appreciate that everybody likes Brian Pratt's fishing tackle shop and avails themselves of it from time to time. Through you, Madam Chair, to the Chief Minister, I would appreciate your view in relation to the term of reference which talks about the independence of funding for the Auditor-General's Office, the suggestion being that that funding may very well be under a separate act presented by the Treasurer but determined by the admin and procedure committee as a process. The first is: how do you see this in the light of the doctrine of the separation of powers? The second part of the question is: how do you see the independence of the Auditor-General being compromised by executive level funding, perhaps by comparison to other statutory office holders? The bit that I am interested in here is: is this office perceived, anywhere that you are aware of and do you agree, as an arm of the executive or an arm of the parliament?

Mr Stanhope: Thank you, Mr Hargreaves. I am aware of the range of views in relation to the funding of the Auditor-General's Office and I am indeed aware of the Auditor-General's own view in relation to it. As our submission details, the government does not support the view that the budget of the ACT Auditor-General should be set by the Legislative Assembly and not by the executive. We simply do not accept or do not really understand at any level why this one office should be dragged out of executive consideration of the budget and responsibility or power vested in the legislature and not the executive—why you would select just this office in the first instance. Let us not at this stage worry about some of the constitutional impediments. I have advice, and I am sure you are aware of it, that the unequivocal view of the ACT Government Solicitor is that any proposal by the legislature to seek to legislate or appropriate an amount for, say, the Auditor-General contravenes the self-government act and it would not be possible in any event.

THE CHAIR: Could you possibly provide that advice? We do not have it.

Mr Stanhope: I am sure the ACT Government Solicitor would be happy to provide that advice. The view and opinion of the ACT Government Solicitor is that any proposal by the legislature to determine an appropriation for the Auditor-General would contravene the self-government act. In other words, under our constitution, it would be unconstitutional. So we do have a little constitutional issue, a legal issue,

here that we would have to overcome. But even assuming one may overcome that, I see no justification for selecting one from amongst all of the lines of appropriation. If one just refines it and says statutory authorities, on what basis do you independently determine that the executive not be associated with determining the level of funding appropriate for the Auditor-General and not apply the same view or attitude to, say, the Human Rights Commission or the healthcare complaints commission or the Ombudsman or the Public Advocate? What is the point of differentiation between these statutory offices and statutory office-holders: the Conservator of Flora and Fauna, the environment commissioner? I can see no basis on which to differentiate.

We then come to the nub of the issue, which is the appropriateness and level of funding, and whether or not there is a history of underfunding, by comparison with auditors-general around Australia, and what the benchmark is. How do we compare or determine whether or not a level of funding for a particular function is appropriate? What do we do, through the range of measures available to us, such as the Productivity Commission report or any other national benchmarking? I have gone to this issue previously.

The ACT Auditor-General, on both a pro rata basis and on a percentage of government expenditure basis, is the most highly funded auditor-general's office in Australia, on both measures. On a per capita basis, it is the most highly funded auditor-general's office in Australia; on the basis of a proportion of allocation or appropriation against the entire budget, it is also the most highly funded office in Australia. You have two measures. We can measure against the Northern Territory and Tasmania—similarly small, if the arguments are used around capacity and size and critical mass. This government funds the ACT Auditor-General at a higher level than the Northern Territory government funds its Auditor-General on both a pro rata and percentage of overall expenditure basis—similarly, Tasmania; similarly, every other jurisdiction in Australia.

We have, over the last 10 years, increased funding for the ACT Auditor-General by, on average, nine per cent a year. We have, over the last five years, increased funding for the ACT Auditor-General by 17 per cent a year. That is a level of growth greater than the Canberra Hospital receives. The ACT Auditor-General increase in funding under this government is greater than the funding received by the Canberra Hospital. Our Auditor-General's rate of growth in funding exceeds that received by the oncology unit.

MR HARGREAVES: Can I ask a question, Chief Minister, on that basis about the—

Mr Stanhope: So where does this—

MR HARGREAVES: Let me ask the question—

Mr Stanhope: That is this government's response to that term of reference. This is the most highly and generously funded auditor-general in Australia—

MR HARGREAVES: Let me ask this question, Chief Minister—

Mr Stanhope: on any measure.

MR HARGREAVES: about the type of area of responsibility, of critique, that the Auditor-General actually applies herself—in this case “herself”; in any other better world it would be “himself”, in my view. Chief Minister, we only have two tiers of government here. The federal government has one tier of government, and their Auditor-General has a fairly light task. The states have three tiers of government, in a sense, but in terms of their approach to comparisons, we have one to their two. The same thing applies in Tasmania; the same thing applies in the Northern Territory.

Whilst we are a bit smaller jurisdiction than Tasmania, we are a bigger jurisdiction than the Northern Territory. Is it not the case that a comparison with the states’ auditors-general and the commonwealth Auditor-General is inappropriate and that in fact we should be talking about a Canberra experience here, and that the relevance of the relative increase, say, to education, to health and those sorts of things is in fact most appropriate and a comparison of the relative per capita ones around the New South Wales experience is skewed? In fact, they are overfunded, which makes our case in the ACT perhaps a little bit stronger. Would you agree or disagree with that?

Mr Stanhope: I do not disagree at all, Mr Hargreaves, that it is important to take into account local factors, and we do that. We do that across the board. But give me a local factor having regard to some of the efficiencies, the economies of scale, achievable in a city state. We are a city state, a localised area, concentrated, with an auditor-general that is currently the most generously funded auditor-general in Australia. On what basis would you actually take the Auditor-General from the most generously funded Auditor-General in Australia to an even more generously funded Auditor-General? What are the local factors that would impinge on the Auditor-General’s capacity to perform her duty in a way that distinguishes from, say, local factors that would exist in more dispersed and larger states?

MR SMYTH: Competition with the commonwealth government in terms of wages and benefits, for a start. That is certainly one of the reasons quoted by the Auditor-General.

Mr Stanhope: Well, every other ACT government department would seek to make exactly the same case. So Mr Hargreaves goes to local factors. One other local factor is the level of growth in Auditor-General’s funding as against the percentage or level of growth that other ACT government agencies receive, for instance, in health or in education. Seventeen per cent a year in each of the last five years is a massive rate of growth.

MR SMYTH: Sorry, in each of the last five years?

Mr Stanhope: We averaged 17 per cent. We averaged nine per cent over the last 10 years.

MR SMYTH: It is not 17 per cent in the last two years because the increases that the auditor sought and that PAC agreed to in the last two years were rejected by the Treasurer.

Mr Stanhope: The average level of increase in the last five years is 17 per cent. The

average over the last 10 years is nine per cent, and the difference, of course, between the nine and the five years is that there were a couple of years of Liberal government in that 10-year span. We will, of course, table the graphs and the tables that we have.

MR SMYTH: We would be delighted to see them, but I refer to quotes attributed to the Auditor-General in the *Canberra Times* where she says:

In recent years the treasurer has not approved the appropriations for the Audit Office as advised by the committee; in particular, the treasurer has not approved funding for budget initiatives submitted by the Auditor-General and supported by the committee.

Mr Stanhope: Every single head of any organisation in the ACT government would make exactly the same claim.

MR SMYTH: Yes, but the Auditor goes on to say—

Mr Stanhope: The Auditor-General, I understand, on 25 May in budget estimates, asked for \$1.2 million—a 157 per cent increase in funding—and the government said no. The Auditor-General asked—

MR SMYTH: I do not think the committee has ever recommended that.

Mr Stanhope: You are going to what the Auditor-General asked for. The Auditor-General asked for an additional \$1.2 million over and above her existing appropriation. The Auditor-General requested an increase in funding of 157 per cent and the government said no, and the government will say no again, to an increase by any ACT government agency, and particularly one of only two ACT government entities, of course, that was not asked to find an efficiency dividend. So it is a double benefit to the Auditor-General. Other agencies were asked to find, through that period, efficiencies in their operations. The Auditor-General was exempted from that, out of respect for her role and the importance of her role. So in an environment where other agencies were actually being asked to find savings, the Auditor-General was exempted from that requirement and, in addition to the exemption, she was granted, on average over this last five-year period, an increase in funding of 17 per cent a year on average.

MR SMYTH: Could you give us the reference to that in *Hansard*, please?

Mr Stanhope: It was 25 May 2009.

MR SMYTH: You were also quoted in the article of 4 February in the *Canberra Times* as saying, concerning the proposal, that the Assembly might make the decision on the auditor's budget. You were quoted as saying that the government did not like the proposal, that it undermined the Westminster system and was not done anywhere else in the country. How does it undermine the Westminster system?

Mr Stanhope: The separation of powers, which is fundamental to Westminster.

MR SMYTH: So the home of Westminster, being Westminster, actually has a system

where it is set by the parliament?

Mr Stanhope: They obviously have a different constitutional arrangement.

MR SMYTH: How is it capable for the home of Westminster to set the budget of the auditor and not undermine the separation of powers?

Mr Stanhope: I have no understanding of English practice in relation to this, although I do understand the doctrines of Westminster and the importance of the separation of powers being maintained, and this is a—

MR SMYTH: I thought those in Westminster might have understood those doctrines as well. They do not seem to have a difficulty with it.

Mr Stanhope: They obviously have a different constitutional arrangement. We also have a constitutional arrangement, and one of the principles of Westminster, of course, is not to breach the constitution.

MR SMYTH: So New Zealand, which also follows a Westminster style system, also has this arrangement where the auditor-general is funded by the parliament directly? How does that undermine Westminster?

Mr Stanhope: They obviously have a different constitutional arrangement. Mr Cappie-Wood can assist you in understanding the issue, Mr Smyth.

MR SMYTH: I quite understand. I can point to other long-serving Westminster systems that actually use this system and enjoy the system.

Mr Stanhope: They obviously have a different underpinning legal arrangement and constitutional arrangement.

MR SMYTH: Could you explain that arrangement then?

Mr Stanhope: I can. The ACT self-government act does not permit the legislature to initiate appropriation bills.

MR SMYTH: And the Auditor-General Amendment Bill 2009 is not a money bill. I specifically found that out.

Mr Stanhope: We are currently discussing an appropriation, Mr Smyth.

MR SMYTH: That is okay. It is not an appropriation; it is actually a recommendation. And you do this all the time; it is the same sort of defence you had with the roadside drug testing, where you obviously did not understand the bill. But if Mr Cappie-Wood knows more than you I would be delighted to hear from him.

Mr Cappie-Wood: The remuneration practices in the UK parliament revolve around a government-controlled committee and that government-controlled committee, which effectively represents the executive, although it does have representation from the crossbenches and other parties on it, is still a government-controlled committee. As

such, that is an executive recommendation to the parliament, so it is effectively the executive recommending to the parliament for those purposes.

MR SMYTH: And PAC in the past was also at times when the government controlled the committee. Irrespective of that, the principle in Westminster is that it is set by a body other than the executive. Is that not correct?

Mr Cappie-Wood: It is effectively an extension of the executive because it is government controlled.

MR SMYTH: Is it set by a body other than the executive?

Mr Cappie-Wood: It is set by a government-controlled committee.

Mr Stanhope: That recommends to the executive.

MR SMYTH: Is it set by a body other than the executive?

THE CHAIR: Brendan, he has already answered that.

MR SMYTH: No, he has not. They are nice words and it is a semantic argument.

MR HARGREAVES: No. We have heard the same answer three times.

MR SMYTH: No, we have not. We have had three different answers.

MR HARGREAVES: Perhaps, as the Bible says, the cock has crowed three times.

MR SMYTH: It just shows the complexity of the issue, Mr Hargreaves. Mr Stanhope, your response to paragraph (5) of the terms of reference is:

The ACT government considers that the PAC consultation and veto powers already provided ... are suitable for a small jurisdiction.

So, in regard to the PAC consultation process, given that the government has rejected PAC's recommendation for the last two years, I could understand that you would be very pleased with the process where you just simply get to ignore it. Why wouldn't it be appropriate, therefore, given that it is a tripartite committee, that the committee has a stronger place in the appropriation for the Auditor-General?

Mr Stanhope: Because it would be illegal.

MR SMYTH: It would not be illegal to make it a recommendation. It would be illegal for it to be a money bill.

Mr Stanhope: But you are currently making recommendations, and we give the recommendation full and deep consideration.

MR SMYTH: The auditor has warned of staff cuts, given the cost of maintaining her staff in an environment where there is a huge demand for auditors and financial staff

in the ACT, both in the private sector and in the federal government. Are you concerned that not having the appropriate funds will lead to staff cuts in the Auditor-General's office?

Mr Stanhope: In the budget environment we find ourselves in, I think it is quite possible that every single head of an ACT government funded agency at the moment is concerned about their capacity to manage without staff cuts.

THE CHAIR: Do you have any views as to what is the appropriate level of performance audits that the Auditor-General should do?

Mr Stanhope: As I say, we benchmark that against what is accepted around Australia as an appropriate level of funding for an auditor-general and an auditor-general's function. This government funds our Auditor-General at a higher level than any other government in Australia on both a pro rata basis and on the basis of percentage of appropriation as against total appropriation.

I guess the response to Ms Le Couteur is that we believe that our Auditor-General should have a greater capacity to deliver efficiency audits than any other government in Australia. That is our attitude to the Auditor-General and that is a reflection of how important we believe it is. We believe it is more important than does any other government in Australia. In that sense, it is a matter of pride for us that as a government we have been able to find ourselves able to fund our Auditor-General to a far greater degree than any other government in Australia. That is the answer. Our attitude to the number is that we believe our Auditor-General should be able to undertake more efficiency audits than any other auditor-general in Australia.

THE CHAIR: That is possibly slightly unlikely. Although from a percentage point of view per capita I agree with you the funding is, as you said, the highest in Australia, in terms of absolute numbers it is not the highest in Australia.

Mr Stanhope: They are matters for the Auditor-General.

THE CHAIR: I am not suggesting for a moment, Mr Stanhope, that it should be the highest in Australia.

Mr Stanhope: But it is—and we do not propose to cut it.

THE CHAIR: Not on an absolute basis it is not.

Mr Stanhope: Not on an absolute basis, of course; it could not be.

THE CHAIR: So it still leaves open the question: leaving the funding aside, what is an appropriate amount? In an ideal world, what is the appropriate amount of performance auditings?

MR HARGREAVES: To paraphrase, Chief Minister, how often would you like a good flogging?

Mr Stanhope: That is exactly right. That is not the point at all. It is a question of—

MR HARGREAVES: You can nominate the number of times you want to get beaten about the head, and now is a good time.

MR SMYTH: There, the Labor member on the committee speaks honestly. Is this all about when you get a flogging from the Auditor-General you threaten her with cuts—to paraphrase Mr Hargreaves?

MR HARGREAVES: What part of 17 per cent constitutes a cut, Chief Minister?

Mr Stanhope: Exactly right—and 17 per cent a year for the last five years. It is interesting to go back to the level—

MR SMYTH: But is it true: you have got a couple of very poor reports so you threaten the messenger? This is what this is all about, isn't it?

Mr Stanhope: We will go back and get the raw numbers of the level of increase. This has to be done having regard to this fearsome defence by Mr Smyth, a one-time cabinet minister, a minister in the cabinets of 1999-2000, 2000-2001 and 2001-2002 when, by the look of the graph, the Auditor-General's office did not even keep pace with CPI.

This is the reality. This is the graph. The straight line is the Liberal Party line. The Liberal Party did not increase funding for the Auditor-General. Mr Smyth was a member of the cabinet that for three consecutive years did not, by the look of this graph, allow the Auditor-General—

MR SMYTH: You can table the data and we will have a look at it.

Mr Stanhope: Mr Smyth was a member of the cabinet that produced this line. This is funding, under the Liberal Party, of the Auditor-General's office from 1999 to 2001. This is when there was a change of government. This here was the change of government. This line here represents funding for the Auditor-General under a Labor government. The steep increase in funding here—you see the mammoth increase in funding here—under a Labor government—

THE CHAIR: I think you might have to give them a copy of it.

Mr Stanhope: continuing at 17 per cent per year. This line represents 17 per cent a year of increased funding to the Auditor-General in the ACT, the most highly paid Auditor-General in Australia—

MR SMYTH: Perhaps you would come back to the chair's question.

Mr Stanhope: a level of funding greater than the level of funding provided for healthcare services in the territory.

MR HARGREAVES: The question is: is that red mark Sir Edmund Hillary or Sherpa Tensing? I think that is Sherpa Tensing or Sir Edmund Hillary, that red line, isn't it—something of a mountain to climb?

THE CHAIR: Mr Stanhope, could I request that you table this document because I think that it probably is not quite big enough to be seen on the TV grabs.

Mr Stanhope: I may need it for display purposes. These graphs here—

THE CHAIR: Could you possibly table it at the end of your presentation, or we will photocopy it.

Mr Stanhope: I just need to explain that these are the jurisdictional comparisons of audit office funding on a per capita basis. The blue is the ACT. That is, in other words, the highest level of per capita funding at \$16.75 per ACT resident. As against New South Wales's \$4.88, Victoria's \$5.87, South Australia's \$6.66, Western Australia's \$7.68, Queensland's \$8.47, Tasmania's \$10.14, the Northern Territory's \$6.64, the ACT is \$16.75.

THE CHAIR: Mr Stanhope, can we—

Mr Stanhope: We fund our Auditor-General to the tune of four times more—400 per cent more than the New South Wales government.

THE CHAIR: Mr Stanhope—

Mr Stanhope: There is one more graph.

THE CHAIR: can I please ask that you table this because—

Mr Stanhope: We will.

THE CHAIR: we cannot appreciate the benefits of this graph.

Mr Stanhope: This graph here—

MR HARGREAVES: I'm having a great time, Madam Chair; do not let the Chief Minister stop.

Mr Stanhope: This graph here is the jurisdictional comparison of audit office funding per \$100,000; in other words, as a percentage of the total outlays of the government. The blue, once again, is the ACT. So as a percentage of government—do you want me to go through each of the states? It starts with New South Wales at 61c per \$100,000 to the ACT's \$1.70, and that is the—

MR SMYTH: It is called economies of scale.

Mr Stanhope: Per \$100,000, the ACT contributes \$1.70; New South Wales, 61c. So that is the other comparison.

THE CHAIR: Thank you, Mr Stanhope. I look forward to you tabling this. I would point out this is not actually the question I asked—

Mr Stanhope: But it underpins the entire discussion.

MR HARGREAVES: No, but it was a good answer, all the same, Madam Chair.

THE CHAIR: Mr Stanhope, one of the interjections during the non-answer was: how many times do you want to get flogged? It was a paraphrase for my question, which I must say I am very distressed about, because you did not appear to say that was not what we saw as the functions of the Auditor-General's reports. Could I get you to clarify that you do not see the purpose of the Auditor-General's reports as government floggings?

Mr Stanhope: I have never, ever suggested that, Ms Le Couteur. Do you?

THE CHAIR: No, I absolutely do not.

Mr Stanhope: You should give me a lead, then, on exactly what you think the function of the Auditor-General's—

MR SMYTH: Well, it is your colleague, Mr Stanhope.

MR HARGREAVES: I am not dictated to by anybody.

Mr Stanhope: No, he is your colleague.

THE CHAIR: Your colleague, who I believe is an ex-cabinet minister, did make that suggestion.

MR HARGREAVES: Madam Chair, I take exception here that I might find myself being directed by anybody. I do not have a boss; I do not have direction from anybody, and my views are my views, and my views alone.

THE CHAIR: I think, Mr Hargreaves—

MR HARGREAVES: Any suggestion will meet with a very violent reaction.

THE CHAIR: we are all well aware of that. Is it possible to get back to the question that I originally asked? Do you have any idea of what sort of number of performance audits—

Mr Stanhope: Well, how long is a piece of string?

THE CHAIR: would be appropriate? Should an agency be audited, say, every 10 years or something like that?

Mr Stanhope: Those are matters for the Auditor-General, consistent with her management responsibility and her budget.

THE CHAIR: Do you have any idea as to what would be appropriate?

Mr Stanhope: Those are matters for the Auditor-General, and they are matters for the

Auditor-General who controls the most generously funded audit office in Australia.

MR HARGREAVES: Can I also ask this—and you may very well answer this in exactly the same way, Chief Minister. I am aware that the Auditor-General, in doing these reports, actually puts a report to the parliament. I think we have a fairly regular report to parliament, given that this is a small parliament. Perhaps there should be some concern given to the parliament’s ability to actually consider the volume of reports that are given. Do you have a view on that?

Mr Stanhope: The bottom line here is that this government funds the Auditor-General at a level higher than any other government in Australia. In an ideal world, of course, I would love to fund our police force to a higher level; I would love to fund mental health to a higher level; I would love to fund oncology services at a higher level; I would love to fund paediatrics at the Canberra Hospital to a higher level; I would love to put more money into Indigenous education; I would love to pursue a few more waste reduction initiatives; and I would love to increase funding for the Auditor-General. But I can’t do everything. And one of the hardest tasks in government and one of the most serious responsibilities of an executive, of a minister, is to take and make hard decisions about the expenditure of what is a very small pie.

When I sit down at the cabinet table and I look at the level of funding which our Auditor-General receives, I note that our Auditor-General receives the highest level of funding of any auditor-general in Australia. I then move on to have a look at the amount of funding that is provided to oncology services, to mental health, to Indigenous health and education, to waste reduction, and I see that the Auditor-General already has the most generously funded appropriation in Australia. I then look at the level of our services for Indigenous children and the levels of Indigenous outcomes or the arrest rate, and I think, “I’ve got another million dollars here; shall I put it into the Auditor-General’s Office as the Auditor-General has asked or shall I put it into Indigenous issues or health or education?” I must say that, when you have an office that is the most generously funded office in Australia to start with, it is not a very persuasive case to say, “Let’s make her more generously funded than she currently is, at the highest level in Australia,” whilst ignoring the opportunity to try and provide additional funding to areas where we have intractable issues or needs.

That is just an incident of government. What would you do, sitting at the cabinet table, if you had in front of you a bid from the Auditor-General for an increase of 157 per cent in funding, at \$1.2 million, or you had a bid in front of you for a new mental health service at Canberra Hospital for \$1.2 million, knowing that the auditor was the highest paid, had the highest funding, of any auditor-general in Australia, as against the needs in mental health? What would you do?

MR SMYTH: Chief Minister, there is evidence from other jurisdictions that there is a ratio—for every dollar spent on the auditor-general, the government achieves savings or greater efficiencies on the dollars that it spends. Do you agree that we get efficiencies and a better spend with the suggestions that the auditor delivers?

Mr Stanhope: I will look with great interest at the outcomes of the audit that you have initiated of the Auditor-General’s function. It will be very interesting. It will be perhaps the most significant part of your report.

MR SMYTH: Perhaps you misunderstand.

THE CHAIR: Mr Stanhope, that was not Mr Smyth's question.

MR SMYTH: For instance, the National Audit Office of England claimed that, for every dollar of net expenditure, the government achieved savings of up to \$9—or in their case pounds. The public accounts committee of the federal parliament uses a figure of \$1 to \$10. So if we can make savings and efficiencies and deliver services better through the advice and guidance of the auditor, isn't that a worthy objective and therefore—

Mr Stanhope: Absolutely.

MR SMYTH: increased funding, if it delivers a one to nine ratio, is worth having?

Mr Stanhope: If it does, and it will be very interesting to see what the outcomes of the audit that you have initiated will show. But then again, let us go, for instance, to the audit recommendation that excited your interest in relation to the Ambulance Service. If that particular recommendation in relation to the auditor's methodology was implemented, it would cost tens of millions of dollars.

MR SMYTH: Can you answer that? Have you got something that substantiates that in writing?

Mr Stanhope: I read that the head of the Ambulance Service claims that it essentially would require the parking of an ambulance in every second street in every suburb in the ACT if the—

MR SMYTH: It is nice to ridicule, and everyone knows that is not going to happen.

Mr Stanhope: That was the result of the methodology.

THE CHAIR: No, that was not.

MR SMYTH: That was the spin in the statement.

Mr Stanhope: I read it in the *Canberra Times*, and I trust the *Canberra Times*, of course.

THE CHAIR: That was not what the Auditor-General—

Mr Stanhope: I read in the *Canberra Times* that the head of the ACT Ambulance Service claimed, on oath, before you, precisely that. That is what I read him to say in the *Canberra Times*.

MR SMYTH: I think the minister said that.

THE CHAIR: Yes.

Mr Stanhope: And he was supported by the head of the Ambulance Service.

THE CHAIR: Either way, neither of those was what the Auditor-General said.

Mr Stanhope: Anyway, we are arguing around—

MR SMYTH: But if there are savings and efficiencies to be had from the work of the Auditor-General, are you interested in having those savings and efficiencies?

Mr Stanhope: Absolutely. That is why we as the government support the Auditor-General more than any other government in Australia.

MR SMYTH: In terms of performance audits versus financial audits, she is obliged under the act to conduct the financial audits. Modern practice around the country, around the world, seems to be a move towards 50 per cent of the work being financial audits and 50 per cent of the work being performance audits. Does the government have an opinion on achieving that target?

Mr Stanhope: I think it is up to the Auditor-General to direct how she expends her funds. It is a matter for the Auditor-General. In relation to financial audits, of course, she is paid separately and independently by the agencies that she audits. I think in the context of the auditor's overall funding, she receives significant funds through financial audits. So in the context of other budget funding which the Auditor-General receives, I would not wish to interfere with the independence of the auditor in relation to the management of her office.

MR SMYTH: As a general principle would you like to see more performance audits of the government done?

Mr Stanhope: Certainly. I would love to see more oncology services too.

MR HARGREAVES: Chief Minister, Mr Smyth has just indicated that the United Kingdom experience is that the auditor, in the expenditure of £1, generates £9 in savings. The federal government use the figure of \$1 spent on the Auditor-General saves \$10 in their budget. Have you ever considered putting the Auditor-General's Office on a proportion of dollars saved to actually fund them going forward? For example, if they can save and can prove to the government to have saved a certain amount of money, perhaps 10 per cent—

Mr Stanhope: An incentive-type package, yes.

MR HARGREAVES: Yes, an incentive one, based on that. So if they do not save the government money and, in fact, incur expense they get a shrinkage and if they save more they get an increase. Have you considered that sort of possibility?

Mr Stanhope: I have always fancied—I have a certain level of courage, Mr Hargreaves, but it does not go that far.

MR HARGREAVES: So you are committed to funding them on the basis of the appropriation bill on a level greater than any other jurisdiction, knowing that it is not

necessarily proven that their efficiencies are saving the same amount as the other jurisdictions?

Mr Stanhope: In that regard, Mr Hargreaves, quite seriously and genuinely, I am aware that the committee has initiated an independent audit of the Auditor-General's Office. I believe it is appropriate that you did that. I think one of the really interesting findings for all of us out of that audit of the Auditor-General's Office will, hopefully, be the extent to which the Auditor-General's efficiency audits have generated savings for government through more efficient practices and, of course, I think it will be one of the really interesting and significant findings of your independent review of the Auditor-General. It will be interesting to see the extent to which her recommendations and her reports have led—whether or not she has achieved the 10 to one or nine to one benchmark that other jurisdictions have established. On the basis of the outcomes of that particular aspect of your inquiry, the government may very well be persuaded, but we will look with great interest at the outcomes of your review and your report.

MR SMYTH: Chief Minister, in terms of your submission and paragraph (2) of the terms of reference, which is concerned about whether or not there should be changes to the coverage and scope of the act and whether or not the auditor should be able to audit organisations that have received funds from the government, your position is that it should not be changed. Could you explain the reason behind that?

Mr Stanhope: The explanation is contained in the submission. If there is some aspect of the explanation that you do not understand, Mr Cappie-Wood would be more than happy to provide assistance.

MR SMYTH: If you cannot then perhaps we can go to Mr Cappie-Wood.

Mr Stanhope: It is a very detailed explanation in the submission. I cannot imagine which part you do not understand.

MR SMYTH: You are always so good at context. Would you give us the context for your position?

Mr Stanhope: Mr Cappie-Wood would be happy to do that.

MR SMYTH: If you do not know your context we will go to Mr Cappie-Wood.

Mr Cappie-Wood: The term of reference reads:

... whether there should be changes to the coverage and scope of the ACT Auditor-General's audit mandate and, in particular, with the power to audit organisations that receive funds from the ACT Government ...

In the submission itself we have tried to differentiate between what is effectively the audit of the entity, which is, if you like, the time-honoured approach, and trying to make some distinction between that and a broader role of holding government to account. When it comes to the consideration of the audit of the entities—and this is the basis of government's consideration here—the Auditor-General, under sections of its act, covers in those entities departments, territory entities, public sector companies

and joint ventures where the territory is the predominant controlling interest, as well as the trust in similar circumstances. In those circumstances it considered that it is reasonable that the entities have adequate checks and balances and governance arrangements in place in respect of funding agreements with external bodies. So, in other words, the entity is held accountable for how it discharges public moneys to third parties.

Does it have the appropriate government structures, procedures, practices and transparency about the allocation of those funds to the appointed and the appropriated purposes? We think that that is the crux of the matter—that the entities are held accountable for how they discharge moneys to the ends which government has appropriated them.

I would have to say that if you extend the audit scope to chase every dollar down every theoretical burrow, you would find that there would be a plethora of additional audit practice which would not necessarily yield what government is trying to do and, effectively, the Legislative Assembly is trying to do, which is to make sure that the dollars that are appropriated are in the appropriate way discharged, accounted for and that the processes are clearly transparent in so doing. We believe that that is at the centre of being what the audit process is about, hence the submission from government reiterated that point.

MR HARGREAVES: Is this the sort of approach that has been adopted, in opposition to the previous practice, where there was a concentration on process instead of service delivery and the quality of service delivery? I have forgotten the actual term used for that—where contracts were entered into for the smallest possible thing and the concentration on government accountability was about whether or not the process was robust and transparent and not enough attention was on the quality of the service that was actually delivered. The result of that was that small organisations spent more money on administration than they did at the pointy end. This is the logical extension of that, isn't it?

Mr Cappie-Wood: It can be a logical extension of that. The issue about compliance does mean that, in terms of trying to avoid all avoidable risk, you can find yourself in the position of having extended processes in place of trying to make sure that you are spending the dollars in the right way to achieve the service outcomes. There is always a question of where the appropriate balance of risk and outcome is placed. If the performance process is seen as an end in itself then the process will overcome any outcomes. That has to be kept in balance. I believe that that is part of the discussions between the audit processes, both internal and external audit processes, inside the organisations.

THE CHAIR: Mr Smyth, I believe, has one last question.

MR SMYTH: You read to me one paragraph. The following paragraph goes on to say:

It is considered that thorough and comprehensive audits of Territory-controlled bodies should provide sufficient opportunity for the Auditor-General to “follow the public dollar”.

Are you happy that audits currently in territory-controlled bodies are thorough and comprehensive?

Mr Cappie-Wood: Most contracts for the external provision of services enable the transparency of the application of those dollars. So, in other words, they enable the capacity for the entity in its own right to pursue that. That is part of the internal processes, if they see that there is a need to.

MR SMYTH: I go back to the question: are you happy that audits of territory-controlled bodies are currently thorough and comprehensive?

Mr Cappie-Wood: I believe that all the agencies that undertake these particular practices undertake them through their internal audit processes where they review the practices by which public moneys are allocated, the processes by which they are allocated and the means by which they are accounted for. In the circumstances where that is considered to be worthy of further investigation, there are powers within the contracting arrangements which would enable thorough investigation of those third-party entities.

MR SMYTH: Just before we close, the last paragraph says:

CMD is also working across government to develop a new performance and accountability framework ...

How will that affect the auditing of these bodies?

Mr Cappie-Wood: The accountability is, again, one that is entity based, rather than third-party based. I think as we see the progression of that accountability framework, which will be transparent, we will be able to have a further discussion when that is developed.

MR SMYTH: I look forward to it.

THE CHAIR: Thank you very much for your attendance, Mr Stanhope, Ms Davoren and Mr Cappie-Wood.

PHAM, MS TU, Auditor-General

SHEVILLE, MR BERNIE, Director, Financial Audits

ROESSGEN, MS JACQUELINE, Acting Director, Performance Audit and Corporate Services

THE CHAIR: I welcome the Auditor-General and her colleagues Mr Sheville and Ms Roessgen. I am sure you are aware of the privilege statement.

Ms Pham: Yes.

THE CHAIR: Would you like to make an opening statement?

Ms Pham: Thank you for the opportunity to appear before the inquiry regarding the Auditor-General Act. I believe it is a very important inquiry. If I may, I will make some very brief comments about our submission.

The current legislation has provided a sound basis for the discharge of the Auditor-General's functions. However, since the time that the act was introduced in 1996—it was amended in 2004—there have been very significant changes within both the public sector, the accounting and auditing profession, as well as the broader role and mandate now expected of the Auditor-General, so I believe it is very timely to have the opportunity to review and improve the legislation, especially as there were other reviews in other jurisdictions and also the reform done overseas.

We have submitted to the committee that the committee should give some consideration to the following key areas, and we are happy to take questions that the committee would like to ask us. The first one is to review the legislation to give us more authority and power to audit outsourced activities. This is an important area because the government has spent quite a lot of money on non-government organisations to deliver services on behalf of the government and we would like to have the ability to audit these outsourced activities. That means we can “follow the public money”.

The second area is to reconsider the role of the Legislative Assembly in approving the appropriation for the office. The third one is that we would like the committee to look at how the office should be subjected to regular reviews, within three or five years. Currently, there is no minimum requirement in the act to review the office on a regular basis. It is important for the office to be reviewed on a regular basis so we can give confidence to the community that we are operating efficiently and effectively and, if not, a recommendation can be made for us to improve our performance. Certainly, such a regular review would be very valuable.

We raise other issues such as exempting the Auditor-General from the Freedom of Information Act, especially relating to the audit function and not our admin function, and other minor clarification issues in the act. I and my staff are very happy to take questions.

THE CHAIR: Thank you. I must say that one thing I do not quite understand is why you need to or want to be exempt from the FOI act.

Ms Pham: The Auditor-General Act gives a very strong power to get access to any document kept by the audited agency, so we do have power to get access to commercial-in-confidence information, cabinet-related matters. If we are subjected to the Freedom of Information Act, it may compromise the integrity of the audit process because this information is protected information. People would feel very reluctant to provide the information to us if the information cannot be protected under the Freedom of Information Act.

THE CHAIR: Presumably it would have the same level of protection as it would have in the agency it came from. If it was cabinet-in-confidence when you got it, it would still remain so. So it would not expose things any more to FOI.

Ms Pham: It is not reasonable to expect us to make a decision regarding the FOI act as it applies to documents created by another agency. For example, if a piece of information is requested under freedom of information, that piece of information should be requested through the agency and not through the Auditor-General's Office, because the agency is the one in a position to make the right decision about the contents of that document, whether or not that document should be or can be protected within the FOI act. We collect so many documents and information and we would not be in a better position than the agency itself to make that decision. So it means that a request for information under the Freedom of Information Act should be requested directly to the agency and not to the Auditor-General's Office.

THE CHAIR: But presumably there can be FOI requests about the Auditor-General's Office itself?

Ms Pham: Yes. We only seek exemption in relation to audit functions; that means information collected as a part of the audit process, not about admin information.

MR HARGREAVES: It is reasonable to think that the exemption you seek is about third party information really, isn't it? If I FOI you, there are two parties. But it is the third party information that you are seeking to protect.

THE CHAIR: Yes. That seems reasonable.

MR SMYTH: Page 13 of your submission, relating to paragraph (5) of the terms of reference, refers to amendments to strengthen the role of the Auditor-General as an independent officer of the parliament. It is spoken of, particularly here in the Assembly, that you are an officer of the parliament. We talk about you being independent, but there is no specific reference to it in your act, as there is, for instance, in the Auditor-General Act 1997. What is the advantage to your position of having those words "independent officer of parliament" in your act?

Ms Pham: I think the first one is perhaps a more symbolic arrangement. But, importantly, there is a special relationship between the Auditor-General and the Assembly. The Assembly actually oversees the performance of the Auditor-General and the Auditor-General is responsible to serve the parliament in terms of giving independent assurance to the parliament concerning the performance of government agencies. Because of that relationship, the Auditor-General's Office should be independent of the executive and should be independent of the government of the day.

There is a good reason for the Auditor-General to be declared an officer of the parliament, and that is the case in a number of jurisdictions in Australia.

MR HARGREAVES: Where is it written here that the Auditor-General is a servant of the parliament, as opposed to a servant of the executive?

Ms Pham: Because of the independent role of the Auditor-General.

MR HARGREAVES: Is there any difference between the independent role of the Auditor-General and the independent role of the human rights commissioner? Is there a difference, and if so what is that difference?

Ms Pham: I will not comment on the human rights commissioner but I can comment on the Auditor-General Act. The Auditor-General Act says clearly that the Auditor-General is independent of the executive. When we are independent of the executive, we cannot be serving the government. It is basically the key principle of the independence of an auditor-general's office and the role of an auditor-general's office to scrutinise government activities. It is just not the right thing to do. And it is understood widely everywhere that the auditor-general's office is not to serve the executive.

MR HARGREAVES: Is it the case in any other Australian jurisdiction that the auditor-general's office is a servant of the parliament and written in legislation that it is a servant of the parliament? Or is it regarded as an independent agency responsible to improve the delivery of services by the executive?

Ms Pham: There is no particular provision that says that we serve the parliament. But the legislation allows for the parliament, through the PAC, to oversight the work of the office and for the office to respond and report directly to the Speaker of the Assembly.

MR SMYTH: Another part of independence, of course, is funding. I am not sure if you heard some of the Chief Minister's words earlier, but apparently you asked for a 157 per cent increase in your funding in the estimates last year and you have received something like 17 per cent per annum on average over the last five years. Is the budget that you receive adequate for you to do your job?

Ms Pham: I will answer the question but let me address the principle first. I think it is important in terms of talking about the Auditor-General Act to provide the framework for certain mechanisms to protect the independence of the Auditor-General, and then I will answer the other question about funding for the office.

The question of independence of the office is well known in democratic systems. The minimum basic independent principles have been declared by the International Organisation for Supreme Audit Institutions—the INTOSAI. The Australasian Council of Public Accounts Committees, for example, says that these are very basic principles to protect the independence of the auditor-general. One of the principles is to ensure that the auditor-general has the proper resources to fulfil the auditor-general's mandate. Another one is to ensure that the legislature itself or one of the committees of the legislature is responsible for ensuring that the funding of the office

is adequate. For that reason, it is important that the act provides the framework so that the government of the day cannot control the resources of the audit office in such a way that it could affect the way that we perform our functions. So it does not matter which government is in office; we are talking about legislation that will be in place for years to come. So, regardless of what party is in government, it is important that that protection is in the legislation.

I believe that it is perfectly reasonable to consider the parliament to have the role of making decisions about the Auditor-General's budget rather than just a consultative role. That is something I know that the government disagrees about, and that there are wide views on it. From the position of principle of protecting the independence of the Auditor-General's Office, including financial independence, we believe that the Legislative Assembly should have a say. It can be done, and has been done overseas.

So there is no reason to be concerned about the Legislative Assembly having a role in approving the budget for the Auditor-General. New Zealand has done so; the UK has done so. In New Zealand, the Committee for Officers of Parliament received a submission from the auditor-general and a submission from the executive, and they debated it and recommended to the parliament the funding required for the auditor-general's office. The parliament voted on that amount; the Speaker actually is the one who presented the report to the minister to put that amount in, and the amount, once agreed by the parliament, goes into the appropriation bill. So, in a sense, it can be done here.

From the point of view of a practical solution, if, say, the Assembly debated and agreed to an amount which the Assembly believed was reasonable for the Auditor-General to undertake his or her duties, that amount can then be incorporated by the Treasurer into the appropriation bill. That would not in any way be contrary to the right of the Treasurer to put the appropriation bill into the parliament for debate. A similar thing happens in the UK. So other jurisdictions, especially internationally, have moved away from having the executive making the decision on funding for the auditor-general, because they know it is important to remove the control of the budget for the auditor-general from the government of the day.

MR HARGREAVES: We have had self-government now for 20 years or more. You mentioned the removal of the possibility—to paraphrase—of control of the Auditor-General's activity through the budget process. The government of the day can actually decide to curtail audit activities by making sure your budget allocation is down. I think nobody disagrees that the possibility exists if a government would be such a bunch of scumbags as to think of it. Do you have any evidence here or overseas where that has been the case? You do not have to name the scumbag governments we are talking about; if you have got some evidence, I would appreciate a copy of it.

MR SMYTH: The ACT government have limited the increases over the last 10 years. They would be your definition of scumbags, would they?

MR HARGREAVES: Has the Liberal government in the past kept your budget down? The Chief Minister recently indicated a graph showing that it kept you at a low level where you were starving to death and your noses were just above water. Was

that in fact an attempt to keep your scrutiny level of the government down, and this has prompted your need for such sovereignty? To be quite serious about it, have you seen any evidence in the Westminster system where that has been the case and this has been needed? In other words, are we talking about something that has to be done or are we talking about something which would be a good idea to do for protection going forward?

Ms Pham: To answer your question, I believe that it is essential, and an important provision in the legislation, to protect the independence of the Auditor-General's Office going forward. I am not in a position to comment on whether or not there is any government that I am aware of interstate or overseas which has used control of the budget to reduce the funding.

The adequacy of funding is quite a relative concept. The Chief Minister talked about how long a piece of string is. That is really correct; hence it very much depends on the wish of the Assembly or the community as to how far or how big the mandate of activity of the Auditor-General can be. If, say, we have half a million dollars a year, we can still produce two reports. If we have \$2 million a year, we can produce six or seven reports; if we have more, we will produce more. So the question is how much work the Assembly believes the Auditor-General should do to keep the government accountable or to contribute to the efficiency and effectiveness of the government agencies.

I know that some auditors-general may be happy with their funding and happy with the amount of work that they do. I, on the other hand, have a high expectation of what we should do, and I would like to have more money to do so. Let me put it this way: I have a list of some hundred topics that I would like to look at in terms of scrutinising government activities. At the current rate of funding, I can do seven reports a year, and it will take me about 12 years just to get over the current list of areas that I think require audit attention.

MR HARGREAVES: Could you table that list, Auditor-General?

Ms Pham: Yes, I could. At the current rate of performance audit, there will be areas of government which will never be subject to audit attention. There will be situations where significant areas of government activity will never get scrutinised by an independent auditor. So it very much depends on the will of the Legislative Assembly and the will of the ACT community as to how much work the audit office should do and should cover in terms of keeping government accountable and helping efficiency in service delivery.

MR HARGREAVES: Thanks very much for that; that was quite enlightening. Could you answer this blunt question: do you think that your independence is compromised by your dependence on the executive allocation of funding as opposed to the Legislative Assembly allocation? If so, how is your independence compromised?

Ms Pham: At this stage I think I can exercise the independence of my office. I do not feel that my independence has been compromised. What I am saying is that I would like to have more money to have a larger coverage of government activities. Not having funding to do so would mean that I, in my personal view, may not be able to

cover as much as I would like to. That is the situation. But I do not believe that the current situation in any way significantly affects the independence.

I am saying that in principle there should be a section somewhere in the legislation to protect the independence of the office and the funding autonomy of the office. But at the same time there must also be safeguards to ensure that the office operates efficiently. There might be protections to ensure that the office is not overfunded or excessively funded. That is why we have to go to the PAC and the estimates committee to justify our funding. The process used in other, more advanced parliaments, like in New Zealand and the UK—

MR HARGREAVES: Are you suggesting that New Zealand is more advanced than Australia?

Ms Pham: Definitely in regard to—

MR HARGREAVES: Well, all I can say to that is “baa”!

Ms Pham: their views of the independence of auditors-general.

MR HARGREAVES: We are sitting here looking somewhat sheepish, aren't we?

MR SMYTH: The Chief Minister made the point to the committee that you are the best funded on a number of measures—total dollars or per capita. The question is: are there factors that affect your funding here in the ACT that do not exist in other jurisdictions?

Ms Pham: I reported to the PAC before that to use funding per capita without looking at the output and the services provided by the audit office is very simplistic and very one-sided. The mandate of the auditor-general varies from jurisdiction to jurisdiction. For example, the Northern Territory and South Australia do not have a performance audit function, while Queensland have a very limited performance audit function. They do not do full efficiency and effectiveness performance audits; they do what they call an audit of the performance management system rather than a performance audit. New South Wales have smaller scope for performance audits in terms of their relative importance compared to financial audits. So you cannot compare per capita funding without comparing the difference in the mandate.

Our office is required to do more than other jurisdictions in a number of areas. For example, we look into the Public Interest Disclosure Act; other jurisdictions may have anticorruption bodies to take care of this. We have a requirement under the procurement act—a special role under the procurement act. So to compare per capita without looking at the wide range of services provided is quite simplistic.

MR SMYTH: So it is not comparing apples with apples?

Ms Pham: It is not. There are also many other factors which contribute to our higher costs, if you compare costs per capita, and I think it is obvious that there are economies of scale. If you pick any government department here—the Chief Minister's Department or Treasury—and compare per capita with New South Wales, I

can guarantee you that per capita funding for Chief Minister's here could be many times higher than for Premier's in New South Wales. But that is not a good comparison. We also have to look at what we produce with that amount of money. Bernie, do you want to add something?

Mr Sheville: In terms of just the general funding and the discussion around whether we are being funded on a per capita basis, as I understand the inquiry, it is about ensuring that you have got the right framework for the future funding of the office. It is not so much about whether the office has been adequately funded in the past. That is, I think, a very different debate. That is a debate you may wish to have, and certainly our reviewer will be looking at our office and having a look at what we do and seeing whether we do it well. The question is whether the bill actually provides the right mechanism that provides the funding going forward. For me, that is the key issue that we need to come to grips with.

Making comparisons that indicate that the ACT is the most expensive office in Australia and that we are funded better than anybody does not really address the issue that we are trying to address in this inquiry. It seems to me that the issue is about whether this provides the right legislative framework going forward. In our view, we think it can be improved.

THE CHAIR: Can I ask a question about a quite different issue. Speaking for myself, and I suspect speaking for my colleagues, we get a small train of people with problems which they believe the Auditor-General should address—various problems which have some financial dimension and relate to the ACT government but which are not definitely a systematic problem. They may well be instances of systematic problems but you do not know. As I understand it, there is no real mechanism for you to address issues like that. Do you have any thoughts on this? Firstly, am I correct and, secondly, if I am, do you have any thoughts as to what would be an appropriate mechanism for instances like that?

Ms Pham: The ACT community is very well aware of the role of the Auditor-General and also well aware of what the Auditor-General can investigate; hence we receive quite a number of representations from the community to investigate issues which they believe reflect a deficiency in government activities or an unfair decision by government or the waste of money. So there are many reasons why people write to us and want us to investigate. Our legislation is quite broad and gives us the function to do any review and investigation to improve the accountability of government agencies. So we actually can pick any activity to audit.

With the \$2 million funding given to us, we have to take care of performance audits, we take care of all the investigations, public interest disclosure and other follow-up activities that apply to audited agencies, provide information seminars to agencies and develop policy and procedures. So it is not a lot of money to go around and to perform the functions in as timely a manner as we would like to.

May I take the opportunity to correct what the Chief Minister said. We never asked for \$1.2 million extra. In last year's budget we asked for a modest \$200,000 for a very good reason—to comply with new auditing standards. We did not ask for a 100 per cent or 150 per cent increase in our budget. That is not correct. I believe that

the committee would like us to have extra money to do more performance audits but the Chief Minister may confuse that with our request for funding. So, to answer your question, yes we do have a system in place or policy and procedures in place to consider representations made to us, and we consider them in terms of priority and in terms of impact on government activities or the impact on potential improvement to government activities.

Many of the representations we receive are about the tender process. Quite a few people are unhappy with the way in which the government conducts tenders and makes decisions on procurement activities. Some representations are about public interest disclosure—they believe there are some serious issues in government departments. We consider them together with a list of audit priorities in terms of performance audits and make decisions about whether or not we investigate or follow up a matter from the public representation. We usually can incorporate some issues raised by the public into some performance audit when we are planning for future audits in the forward years.

MR SMYTH: The British audit office says that, for every pound they spend, they save the government £9 or extend the service to that limit. I think the JCPAA in the commonwealth says the ratio is something like \$1 to \$10. Have you ever calculated in conjunction with the departments what your recommendations have saved them or allowed them to expand their services by?

Ms Pham: There are a number of outcomes of our performance audits, and not all of them relate to money saving. The outcome of our audits is about, for example, accountability and ensuring that the government decision-making process is transparent, and it may or may not lead to a saving in government activity. In some others, we certainly identify areas where money has been wasted and should be saved. We identify projects where delay has caused a lot of cost to the government. We looked at the emergency services headquarters, for example, and identified a lot of money wasted due to maybe poor decisions. So there are definitely financial implications for the agency to consider and hopefully lessons are learnt for future activities.

We do not have a system to quantify the amount of savings because it is pretty difficult to do so; especially some of the recommendations take one or two years to be implemented before the savings can be quantified. But we have no doubt whatsoever that all of our performance audits contributed in some way, either to accountability of government activity, transparency in decision making or to improved process and improved services to the community. For example, the Ambulance Service review will contribute significantly to the way the government review their ambulance services and improve this essential service to the community.

MR SMYTH: In regard to performance audits, we discussed before the balance between the financial and performance audits and what the ideal would be or where audit offices nationally and internationally are going. There is the ratio of 50 per cent financial, which of course you have to do under the legislation, so 50 per cent of your activity is performance and 50 per cent is financial. Is that something that would be an ideal to work towards, and what is the current ratio of the work that you do?

Ms Pham: Our current ratio is about 30 to 70, meaning that 70 per cent is for financial audits and 30 per cent is for performance audits. That is actually quite a high ratio compared to other jurisdictions because we have always had a strong performance audit function. I think that reflects the legislation and the wish of the Assembly in past years. There were a number of debates about the importance of performance audits compared to financial audits and how valuable a performance audit can be; hence there was some trend to increase the audit capacity. I personally think that a fifty-fifty ratio would be a very good aim to go for. But it means we would need an increase in performance audit funding.

MR HARGREAVES: You are saying you do not want to see the financial audits decreased to go fifty-fifty; you think you will leave it at that 70 per cent in terms of numerical audits and jack up the 30 per cent?

Ms Pham: Yes.

MR HARGREAVES: And that is with a cost; and that is where your extra costs come in.

Ms Pham: The financial audits are mandated within the legislation. We have no option. Every year we have to audit all the financial statements of all government agencies—72 of them—and also performance indicators of government agencies. So we have no option on that one. The performance auditing function is the discretionary one. In our submission we do ask the committee to consider whether or not it is desirable for the Auditor-General to have a capacity to not audit certain agencies under the Financial Management Act because the risk is low and there is no need for the Auditor-General's Office to audit it on a yearly basis. We could do it once every three years, for example, for some very small entities. But that is one of the options to reduce the financial audit costs and then put more money into the performance audit costs.

MR HARGREAVES: Are you suggesting that this committee might consider recommending whether or not to change the 50 per cent requirement in the legislation, in whatever way, but actually to remove that restriction and allow you more discretion to do a risk-based audit rather than a pro forma audit?

Ms Pham: If you want to reduce the cost of financial audits, one of the options to do so is that you do not have to do every single agency every year, although there is some risk there, too. If an agency know that their financial statement is not subjected to audit on an annual basis, they may be a bit slack and not do the right thing in terms of making the right financial statement. So we have to consider the risk versus the saving in money. But, even if we had the ability to do so under the act, I think the saving in financial audits would not be significant enough to cover the desired increase in the performance audit function.

THE CHAIR: Thank you very much for your evidence.

Ms Pham: I forgot to mention something that the committee might like to consider. In Victoria, there are two separate appropriation bills. One is for the general government sector and one is just for the parliament. In the parliament there are the

parliament office and the office of the auditor-general. So in that sense there is some flexibility in terms of debating the legislation for appropriation. You do not tie up the whole appropriation bill with the question of whether or not the funding for an independent office should be decided by the Legislative Assembly. That is one suggestion to improve the role of the Legislative Assembly in considering the funding appropriation for the parliament. The separate bill for parliamentary activity—here, for example, covers the Assembly Secretariat and Auditor-General—as being different from the rest of the government activity. That happens in Victoria.

MR HARGREAVES: In that case, who appoints the auditor-general? Is it the Speaker of the Legislative Assembly who appoints the auditor-general, and what guidance does that person have on the length of appointment?

Ms Pham: It varies between jurisdictions. Again, to ensure the independence of the office, the selection of the Auditor-General should be done by the parliament or a committee of the parliament. I think that would be better than to have the decision made by the minister.

MR HARGREAVES: How does it work in Victoria?

Ms Pham: In Victoria, at the moment I understand that the auditor-general in Victoria is appointed by the Governor in Council on the recommendation of the public accounts committee. In some jurisdictions the appointment of the auditor-general is taken away from the government and is made by the parliament.

MR HARGREAVES: Do you see a problem in that we do not have a governor or an administrator here?

THE CHAIR: We have a Speaker.

MR HARGREAVES: Yes, but the Speaker is not the committee. As I understand it, the PAC or a committee of the Victorian parliament recommends directly to the Governor in Executive Council to make the appointment, in the same way that they appoint ministers and everything else. So that is the process where the parliament, in a sense, approves the appointment, but the actual appointment is approved by somebody. In Victoria, they have got a governor and in the Northern Territory they have got an administrator; we do not have that. Have we applied our minds to how that might happen?

Ms Pham: I think that, in practical terms, it does not really matter who appoints, provided that the selection process is done by the parliament. The parliament or a committee like the PAC can then make that recommendation to the Chief Minister to appoint the Auditor-General. But I think the process of selecting is more important than who appoints.

MR SMYTH: Ms Roessgen, that looks like a marvellous document that you and Mr Sheville were looking through. Is that a state by state comparison of the acts and how they apply?

Ms Roessgen: Yes, it is.

MR SMYTH: Would it be possible for the committee to have a copy of such a wonderful document?

Ms Roessgen: Yes, it covers the range of different legislative processes, what the different functions are of each audit office. It is quite a comprehensive document.

MR HARGREAVES: Is it in English?

Ms Roessgen: Of course it would be.

Ms Pham: Yes, definitely.

Ms Roessgen: It is in plain English, yes.

THE CHAIR: We have to adjourn now. Thank you very much for coming. We very much appreciate your contribution.

Meeting adjourned from to 3.18 to 3.28 pm.

McGUINNESS, MR FRANK, Convenor, Australasian Council of Auditors-General

THE CHAIR: Thank you, Mr McGuinness, for giving evidence via telephone link. I am the chair of the committee. Mr Hargreaves and Mr Smyth are also present. I assume you are aware of the privilege statement and you really do not want me to read it to you.

Mr McGuinness: No, I have received that, Madam Chair. I think we can proceed on the assumption that I have read and understood it.

THE CHAIR: Thank you very much. Have you an opening statement which you would like to make?

Mr McGuinness: Thank you, Madam Chair. I am currently the Convenor of the Australasian Council of Auditors-General. As to the proposed amendments to the act in the ACT, you can imagine that around the country we take an interest in legislative developments. We felt that there were a few comments we would like to put to the committee for your consideration. I do not think there is anything radical that we are putting forward. They are observations in some cases. I am happy to take any questions that the committee might have.

THE CHAIR: One of the major issues in the ACT has been the level of funding and independence of funding. Do you have any views on that? Obviously you have said that it would be enhanced if PAC was more formally involved in it. In particular, can you talk about what would be an appropriate level? Do you have any commentary on that? Perhaps a better way of putting it would be: what would be an appropriate level of performance audits?

Mr McGuinness: It depends very much on the jurisdiction and the way it performs. As a matter of course, there are a number of statutory audits which the Auditor-General must complete. They are normally the financial audits of various statutory bodies, departments and coming up to the accounts of the government as a whole. Around that, you have got performance audits. The ability to deliver performance audits rests on the resources available to you. At the end of the day, my view is that probably a few performance audits well done would be better than a large number of audits which are more of a shotgun approach to the problem. In terms of the resources, it is not easy to determine in advance what the Auditor-General should and should not have. It is a question of what needs to be done, what resources are available to us and what the Legislative Assembly expects.

THE CHAIR: So you would not have any feeling that there should be an expectation that every 10 years or so there would be a performance audit of a particular government agency? You do not have any rules of thumb like that?

Mr McGuinness: There have been attempts at this in past years. I can remember the days when there were attempts to say, "Every program should be reviewed not less than every five years." My view is that the resources are best directed to where the major issues are likely to be rather than attempting to cover every department on a five or six-year cycle. It may be that some departments get more attention than others because that is where most of the expenditure is; it is where the risk is. From my

perspective, there is more risk in areas like Health than there is in some other agencies. Therefore, Health will always get greater attention.

MR SMYTH: The auditor as an independent officer of the parliament: I notice in your submission you talk about the possible inclusion in the act of something that does that. How important is that?

Mr McGuinness: Independence, I think, is the key to the auditor's survival. The person holding the position has got to be able to act without fear or favour. I think there needs to be an explicit statement that the auditor is independent and is seen to be independent.

In the ACT I find the legislation to be perhaps a little curious compared to some of the other jurisdictions. If you look across the country, there are some auditors-general who are deemed to be officers of the Crown because they are appointed by a governor or, in my case, an administrator. In other cases, legislation is quite explicit in making that person an officer of the parliament. That is particularly the case in some of the acts that have been enacted in recent years. Western Australia is one that comes to mind.

The ACT is a little different in that the auditor is appointed by the executive, having consulted with the Legislative Assembly, if my memory serves me correctly. Upon reading the ACT act I was left wondering whether the auditor belongs to the Crown or the parliament.

MR SMYTH: For clarity's sake, who should it belong to?

Mr McGuinness: At the moment it seems to be neither fish nor fowl, when I read it. Probably on balance, as I think legal advice would suggest, the Auditor-General is an officer of the Crown in the ACT and not of the parliament.

MR SMYTH: In answer to paragraph (5) of the terms of reference, you go over to the top of the next page and quote from the act. You state:

The Auditor-General is not subject to direction by the Executive or any Minister ...

You think it could be expanded with the words "any person".

Mr McGuinness: Yes.

MR SMYTH: Why is that necessary?

Mr McGuinness: I think it is probably an attempt to strengthen that independence by saying, "While a minister may not attempt to influence the Auditor-General, under what circumstances might senior bureaucrats or others attempt to exert influence?"

MR SMYTH: Okay.

MR HARGREAVES: In the compilation of your submission did you look at the

constitutional relationship between the Auditor-General in various jurisdictions and, say, the constitution of the various states? With respect to the ACT, of course, we do not have either a governor or an administrator.

Mr McGuinness: That is right.

MR HARGREAVES: Indeed, our governing legislation is the self-government act, which is federal legislation. Do you see any difficulty in the difference between the constitutional relationships between the jurisdictions?

Mr McGuinness: If you look at the commonwealth, the states and the Northern Territory, there is a general broad similarity. The Crown is represented by the Governor-General, the governor or, in the NT's case, the administrator. So you have a clear distinction between the Crown, the executive and the parliament. The ACT seems to be different in that the Crown, in the form of the Governor-General, only seems to enter the fray in the event of, say, an inability to govern, where the Governor-General can suspend the Legislative Assembly, if I remember correctly. The ACT is quite different from other jurisdictions in this regard.

MR HARGREAVES: Today we have heard that in relation to the provisions in the self-government act—I confess that we have not as a committee had a look at the detail of that, but we will be—there may very well be a constitutional difficulty in the sense that we do not have the ability for the parliament to give itself funds, as it were.

THE CHAIR: To appropriate moneys—

MR HARGREAVES: Appropriate money to itself. It does things by way of presentation by the Treasurer.

Mr McGuinness: That is right.

MR HARGREAVES: But also the independence of the Auditor-General from the executive and to be an officer of the parliament, as it were, may be a difficulty under our self-government act. I was just curious to know whether you had actually tackled that one or not.

Mr McGuinness: If you start with the ACT, even if the Auditor-General was an officer of the parliament, the parliament has no constitutional ability to raise money on its account. It can levy legislation but, at the end of the day, it is the Treasurer who brings a budget to the parliament to be voted upon. Whilst the parliament can put a submission to the Treasurer, the Treasurer needs to balance that against a range of competing bids. In that sense, I do not think it is different from any other jurisdiction. Notwithstanding that, for example, the Auditor-General of Western Australia is explicitly deemed to be an officer of the parliament, he has to queue up with everybody else in terms of seeking funds.

You may be aware that last year the Auditor-General of Western Australia bridled when the Treasury saddled him with some efficiency dividends. He argued that his independence prevented that happening, but I think he had to step back from that phrase. I think he realised that he had no constitutional or other grounds to support his

argument and that, whilst he is an officer of the parliament, the parliament itself depends upon the government budget for its own revenues.

I think that, at the end of the day, the situation will not change. The Auditor-General will need to mount quite succinct arguments either to the Treasurer or, with the proposed amendments, to your committee and the committee will have to argue with the Treasurer about what the appropriate level of funding for the Auditor-General might be. The final decision about the shape of the budget will still rest with the Treasurer. It is then for the parliament to debate the adequacy of that funding during the debate on the appropriation bill.

MR SMYTH: Mr McGuinness, I am actually the author of the offending bill that wants to bestow more power on the public accounts committee and the Assembly. You are right: at the end of the day what I propose is not a money bill; it is a recommendation to the government. It is like everything that a parliament recommends to the government of the day: the government either accepts it or rejects it and bears the consequences therein. But, no, we should not interfere with the ability of the government to set the budget of the day, because if you can do it for the Auditor-General you can do it for every department, and then it is an absolute dog's breakfast. And parliaments have the right, when the appropriation bill is called and voted upon, to reject that. As we all know, the standard form is that if your appropriation bill is rejected you go down.

Mr McGuinness: I would have thought that a recommendation from the committee would carry a certain amount of weight in terms of the cabinet deliberations—

THE CHAIR: You would have thought that, but it has not happened in the last couple of years in the ACT.

Mr McGuinness: I am well aware of the machinations of the political process but it is one of those things that the budget cabinet would need to consider in the normal course of events and work out how they balance the requests of the Auditor-General through the PAC against the requests of the minister for health, minister for education and others.

MR SMYTH: But of all the statutory bodies and independent commissioners, the Auditor-General is unique in that it is the only body, organisation or individual whose sole function is to scrutinise the government, particularly the government's finances. So I think it is quite clear that it is independent.

Some of the other issues that we have discussed and you have mentioned are the FOI act and the application of FOI to the auditor. How important is it for the reforms that you suggest in your last paragraph?

Mr McGuinness: It is important because where audits are underway or planned and the auditor is privy to information that might be quite sensitive, I think it is important to protect that from freedom of information requests, if only to enable the auditor to maintain access to information. You can imagine a circumstance where a person might feel very reluctant or would resist passing information to the auditor if they were aware that third parties might get access to that information through freedom of

information requests. From my own experience, the Northern Territory introduced its first equivalent of the Freedom of Information Act about three years ago and a subsequent amendment to the act—not initiated by me, by the way—recognised the risks of information being passed to statutory officers, for example me or the ombudsman, where that information could become subject to freedom of information requests. So it is really for audits that are underway and where information is considered to be quite sensitive. I think there is a good case for arguing that there should be an exemption from freedom of information for those records. But audits aside, with the normal day-to-day operations of the auditor-general's department or office, I can see no compelling reason why they cannot be subject to FOI requests.

MR SMYTH: So her internal operations, yes; the information that they receive from somewhere else, and of course an investigation or that might prompt an investigation, no?

Mr McGuinness: That is right.

MR SMYTH: On the second-last page of your submission, you talk about the power to suspend the Auditor-General in addition to being removed. I have to say I had never thought of that until you raised it. Our act is quite clear. We have a process to get rid of the auditor, but in case you wanted to investigate them there is nothing to allow you to suspend them. Is that necessary?

Mr McGuinness: I think the only concern was that, if we talk about the independence of the Auditor-General, you need to then protect that person from, say, a capricious decision by government to remove the person from office. In a case like that, I would argue that the Legislative Assembly itself must have that final decision, or the Assembly itself needs to be convinced that the grounds for dismissal are valid. In some jurisdictions, there are provisions whereby an auditor-general can be suspended for a period while the grounds for dismissal are considered by the parliament or the Assembly. If they are upheld, the process continues and the auditor-general is removed from office. If they are not upheld, the auditor-general is restored. So the comments really were very much along the lines of trying to make sure that the holder of the office cannot be removed capriciously.

THE CHAIR: Segue into removal. I think for us the term of the Auditor-General is seven years. Have you any comments on whether or not that is an appropriate term and whether they should be able to be reappointed?

Mr McGuinness: I have quite strong views and I think seven years is a very appropriate term. If it is too short, people may not be attracted to the office because there is no real opportunity to settle in and make their mark; too long and people become tired and jaded, I think. My view is that seven years is an appropriate period but there should be no right of extension or renewal, in part to avoid the problem of people being in the job for too long but also, if there is a right to renewal, to come back to independence, there is a risk that the person could compromise their independence with a view to trying to get themselves reappointed.

THE CHAIR: In your section about independence, you are suggesting that we should change things so that performance audits can be undertaken by auditors not

responsible for the annual financial statement audit. Is this something that needs to get changed in our act?

Mr McGuinness: Can you repeat that, please?

THE CHAIR: I am looking at the summary in your submission, paragraph (7):

Under the present requirements, responsibility for undertaking the performance audit rests with the independent auditor who also has responsibility for undertaking the audit of the annual financial statements prepared by the Auditor-General. The ability to have more regular performance audits undertaken could also be enhanced by providing an option to have these audits undertaken by an auditor not responsible for annual financial statement audit.

Mr McGuinness: I think the provisions in the territory legislation in some way mimic those in the commonwealth act and that in the case of the ANAO the independent auditor who is engaged to audit the accounts of the Australian Auditor-General can undertake various audits or efficiency audits into the ANAO itself. But there has been an increasing trend in recent years to have an external reviewer of an office who comes in and looks at the efficiency, the effectiveness and the way in which audits are conducted. It might be done on a three or five-year cycle. So it was really just bringing to the committee's attention that there may be benefit in going down that path, rather than having a financial auditor choose to perhaps do some additional audits. It is really having someone come in to do a review of the office as a whole.

Perhaps I can give an example: in the case of the Northern Territory, there is a provision that each three years the Administrator, who is the governor in effect, will appoint a reviewer of the office. The government or the Administrator sets the terms of reference and the reviewer does the job and reports back to parliament. So the Legislative Assembly up here has a chance to consider the findings and recommendations of the review. I, as Auditor-General, can be called upon to appear before the PAC to run through the findings of that review and they will ask me what steps I am taking to address any issues raised. So it gives a different dimension to the review of the office, whereas at the moment, I think, if you are relying on the financial statement audit, the whole thing can become a bit piecemeal.

THE CHAIR: I had interpreted your paragraph as meaning that performance audits in general had to be commissioned or done by the Auditor-General and that what you were trying to say was that, as there are a huge number of consulting firms who go out and do efficiency audits of some sort, they should, in some way, be brought in with the Auditor-General. I was not interpreting what you said as just relating to the audits of the Auditor-General. I am confused.

Mr McGuinness: Perhaps there are two things here. One is the review of the Auditor-General's Office. The other thing is that when you are doing performance audits you look at the skills available to an auditor-general internally. Are they adequate to be able to do good performance audits and to what extent does an auditor-general need to be able to draw on skills from outside the office to get the right result? I think there has been an increasing tendency across all jurisdictions to draw upon external resources, where possible, for this. Certainly at the commonwealth level I have noticed an increasing use of external firms. At least one

state jurisdiction has basically said to me that they think that 30 per cent of their non-financial statement audit work will be done by firms who are engaged by the office and working to the auditor-general to get the right results.

THE CHAIR: Are you saying that requires some sort of legislative change?

Mr McGuinness: I do not think it does.

THE CHAIR: I would not have thought it did. Quite often you read in the paper about departments who get into problems, for whatever reason, and they decide to get one of the consulting firms to go and do an audit and say whatever they are going to say. Were you suggesting that those sorts of things, which are to quite an extent a performance audit, should be brought under the purview of the Auditor-General?

Mr McGuinness: No, because there may be very good grounds for a department to bring in someone to review its operations. In some ways it is best for the Auditor-General to stay right out of that. What the Auditor-General may want to do later on is to look at the results of those reviews and ask: is it a whitewash or has there been a serious attempt to address the problem and is the department working towards implementing the recommendations? Sometimes in the public sector in some jurisdictions there is an unhealthy tendency to grab consultants to produce a report which can be used to batter off the parliament or others. It is not a serious attempt to address a problem but more an attempt to fend off those who might be a bit inquisitive. In a case like that, I could see the Auditor-General not wanting to get involved but coming along after the event and looking at the results of the review, or the study, the way in which the department or the minister has responded to it and the progress being made.

MR SMYTH: Thank you for that. In the time remaining—the ability of the auditor to audit bodies that are not government bodies, to follow government dollar. What is the importance of that? I notice in your suggestions that some do it on a by-arrangement basis. Should the Auditor-General have power to follow the public money anywhere?

Mr McGuinness: I believe so. If we look at the way things have evolved over the last few years, we have public-private partnerships. We have an increasing use by governments of non-government organisations to deliver services which once had been delivered by a government department or a government agency directly. It is really the old argument of follow the dollar. If your committee is to be satisfied that the public is getting value for the dollar spent then the auditor does need the ability—where that money leaves a government agency and flows, for example, to a non-government authority for the delivery of, say, a particular health service—basically, to go into the health service and ask: how is this money being spent? Is it being spent appropriately? Is it delivering what the government expects? Is the NGO as an agent acting in the best interests of the government or the agency as its principal?

MR SMYTH: Sure. The government in their response said they do not believe this to be something that they would support. They say that they consider:

that it is the responsibility of each individual Territory entity to ensure it has

adequate checks, balance and governance arrangements with respect to its funding agreements with external bodies.

Is that enough or, in your experience, is the power for the auditor to go and audit the external bodies a more relevant way to go?

Mr McGuinness: I do not know whether the government's response is quite sufficient. When you look at the way government agencies sometimes work with NGOs, while there might be initial zeal in terms of monitoring NGOs' performance, that can weaken over time. You ask agencies: how is this money being spent? Are you achieving what you really want to achieve? How are you monitoring the way these NGOs perform? In other words, are you over-monitoring? Are you imposing costs on these organisations? You need to give the auditor the ability to step outside the bounds of the government agency and into the NGO to at least follow the expenditure trail through and really ask those questions. Again, you have the problem with public-private partnerships where a lot of the decisions have been made outside the government agencies but they will have real implications for future government activities, if we are looking at major infrastructure.

THE CHAIR: We have run out of time. Thank you very much, Mr McGuinness, for your evidence today.

Mr McGuinness: Thank you very much, Madam Chair, and members.

WETTENHALL, PROFESSOR ROGER LLEWELLYN, Emeritus Professor of Public Administration and Visiting Professor, ANZSOG Institute for Governance, University of Canberra

THE CHAIR: Thank you very much, Professor Wettenhall, for attending this afternoon. Are you aware of the privilege statement? There is a copy in front of you.

Prof Wettenhall: Yes.

THE CHAIR: Are you happy to abide by it?

Prof Wettenhall: Yes. I have done it before.

THE CHAIR: I thought you were probably well aware of it. Would you like to make an opening statement?

Prof Wettenhall: Thank you. I am now an adjunct professor or visiting professor in the ANZSOG Institute for Governance at the University of Canberra. For 30 years, I have been teaching and researching in public administration, and a special research area for me has been statutory authorities, non-departmental bodies—sometimes called quangos. In recent years, I have come to focus on a group of statutory authorities which are now quite widely referred to as integrity agencies. That is really what brings me here. Typical examples are audit offices, ombudsmen, anticrime and anticorruption commissions, human rights commissions—a few like that.

What I tried to do in my submission was to discuss this concept of the integrity agencies as a kind of backdrop for looking at the ACT Auditor-General Act and then to see how well the present legislation really supports that role as an integrity agency.

With statutory authorities, it is an organisational category that is sometimes pretty blurred, I think. But they really are different from departments and they have somewhat different accountability requirements. That is a very general statement that I do not want to go into now, but what is important is to see that within the group of statutory authorities there are subgroups, and with some significant differences. Do you have my submission here?

THE CHAIR: Yes.

Prof Wettenhall: If you look on the first page, there is a quote from Professor Ian Thynne, who is now at Charles Darwin University. I pick up the last part of it: if you are dealing with an ombudsman or an audit office with a mission to provide checks on government activity, it will need to be structured and equipped to relate well to the legislature and to be some distance from the government. The integrity agencies obviously fall into that group.

With respect to this interest in integrity agencies, there have been several prompts, and I will mention three or four. In the year 2000, Transparency International, an NGO, published a set of institutional pillars for a national integrity system, and audit offices, ombudsmen and anticrime bodies were institutional pillars in that. So that gained for them quite a lot of notice. Then there was an Australian national integrity

system assessment conducted through 2004-05. It produced a number of articles; it also produced a book called *Promoting Integrity*, which I have here. This is about whole integrity systems, but integrity agencies are very important as protectors of systems.

The International Institute of Administrative Sciences had a big conference on the subject in Mexico in 2006. Awareness then developed that New Zealand has pioneered and introduced a new category formally styled “officer of parliament”. I know we talked about that in Australia; we have said: “Audit officers are officers of parliament.” But New Zealand has gone further—there is now a distinct category in New Zealand with a distinct parliamentary committee, an Officers of Parliament Committee, to relate to it.

The last prompt is awareness that, as a response to Kennett’s brutalising of the Victorian Auditor-General, the Victorian public accounts committee conducted a major review leading to a valuable report on a legislative framework for independent officers of parliament. Amongst other things, it reviewed a whole lot of history through all of the Anglo-Saxon jurisdictions. I have that report here, too. You probably do not have time to look at it, but these things are available. These are prompts for taking much closer—

MR SMYTH: What was the title of that report?

Prof Wettenhall: *Report on the legislative framework for independent officers of parliament.* That is dated 2006. There is a very interesting history. It shows that a parliamentary committee can sometimes undertake research better than academics do.

MR HARGREAVES: Was that brutalising of the Victorian auditor-general by the government of the day as a result of some of the investigations he made into the privatisation, for example, of the corrections system and some of the PPPs that were running around at the time?

Prof Wettenhall: It may have been. Of course, what Kennett was trying to do was privatise the audit office.

MR HARGREAVES: It sounds like a reasonable idea to me—and to KPMG, Tohmatsu and many others.

Prof Wettenhall: Just to mention a few other names, Ian Temby was the first independent commissioner against corruption in New South Wales. I have quoted, on page 2 of my submission, a statement from him. Without reading it all now, at the end he points to the terribly important role of parliament as a protector—he says as a parent—because there is parliamentary legislation that creates these bodies. But inevitably they are going to be in conflict with governments. They would not be doing their jobs properly if they were not sometimes in conflict with government. So parliament has also got to be the protector of them. That is what Temby said.

I come to Dennis Pearce, who was Commonwealth Ombudsman. When he left the post of ombudsman to go back to his law chair in the ANU, he simply said that it was par for the course that governments like to have bodies like the ombudsman but that

they were also going to starve them of funds, because if they are doing their jobs properly, sometimes they are going to be very critical of what governments and government agencies do. Governments do not like that, so governments are going to starve them. So you get that kind of dilemma here: governments like to show they have got them, to show that they are nicely accountable, transparent and so on, but they do not want to help them to do their jobs very effectively. There is really quite a clash there.

We had a seminar at the University of Canberra back in July last year on integrity agencies. I spelt out a few propositions that I thought were important, and they are in my paper in italics on pages 3 and 4. The first seven are really just summarising what I have said to you now, but if you look at No 8, it reads:

Of course these agencies also need to be accountable, so it is important to establish arrangements for checking that they do perform their allotted tasks satisfactorily. This also directs attention to the importance of the parliamentary role, for it is certain that the executive government cannot be trusted to make these judgments dispassionately.

When I said that at the seminar, a few people were shocked that I thought governments could not be trusted, but in this context, I stand by that statement unreservedly. I am sure that it is right. It brings you right back to the role of the legislature.

MR HARGREAVES: Before you get off that, Professor Wettenhall, you make the point that that was a very strong statement and people were quite taken aback by that, and I can see quite quickly why. But you must have had some case study or some substantiation of that view. What did you provide to the seminar by way of backing up that statement? Was it just your experience and the generality of it all or was there something quite specific that you could point to and say that there is an inherent predisposition on the part of governments to go down a certain path? Was there something that we can put our fingers on?

Prof Wettenhall: It was partly the statements of people in these kinds of offices.

MR HARGREAVES: On one side of the fence, therefore? I am not being critical here; I am just trying to explore—

Prof Wettenhall: My comment is not particularly an Australian comment. At that international conference I went to, there were case studies of a new data commissioner created in Britain and much evidence there of how government was liking to show that there was a new data commissioner, but interfering in its work in many ways, not listening to its recommendations—just many illustrations like that, not just Australian ones.

MR HARGREAVES: Could I suggest that you said that while governments could not be trusted to do X maybe in fact you can trust them to do the exact opposite if you want them to.

Prof Wettenhall: I am not quite clear about that.

MR HARGREAVES: Let me put it to you another way. You were talking about the review and all of those sorts of things and you said you cannot trust governments to allow the independence to actually exist; they will use funding to manipulate a given result out of an integrity agency. Perhaps in fact you can trust them to be absolutely down that track; you can trust them to starve them of funds to do that? Perhaps that is a little stronger way of putting it.

Prof Wettenhall: You are putting it more strongly than I did, I suppose, yes.

MR HARGREAVES: I would be interested in whether that is your feeling.

Prof Wettenhall: Yes, it is. It does bring you to the question of the accountability of these bodies. They are not always going to be right; I do not think anyone is saying that. Sometimes they will overdo it. But you then have to have some kind of independent measuring mechanism, and my point is that that should be apart from government. That is what you cannot really trust government to do. I am not denying that there should be a mechanism. That is where people like me think that the legislature has to step in when there is such an important problem.

MR SMYTH: You say in your document that the establishment of the auditor-general as an officer of the parliament under, say, the New Zealand model is the preferred path?

Prof Wettenhall: Yes.

MR SMYTH: And therefore the legislature should have some role in setting the budget, independent of the government?

Prof Wettenhall: I think you introduced the bill—

MR SMYTH: I did indeed.

Prof Wettenhall: and I saw Jon Stanhope saying “nothing like that ever in a Westminster system”—or at least he was quoted in the paper as saying that; I do not know whether he actually said it. I think the truth is somewhere in between. If you look at the New Zealand auditor-general, treated as an officer of parliament, there are special mechanisms so that the Officers of Parliament Committee have the first cut at presenting an appropriation bill. Sure, it goes to a treasury to look at and the negotiations go on, and it is thrown back to the particular officer of parliament to comment on too. That system is much more transparent than it would be if it was just an ordinary bit of government machinery.

If I come now to the ACT act, I noted three specific points. As a general comment, I thought it did not do too badly in asserting that the audit office has to be independent. In some of the details that gets a bit trapped. I thought the structure of the act was pretty poor in some places. I would have thought that that act could be taken to bits and put together in a better structured way.

I did make in my paper a general comment about capitalisation. I have just today checked the commonwealth act and in the commonwealth act “Auditor-General” is

capitalised, and so would be the presiding officer of a parliamentary committee. I find it very odd that ; I suppose it is a common ACT drafting practice.

MR HARGREAVES: Sloppiness, one might suggest.

Prof Wettenhall: Yes. It really diminishes the status. If I were writing a thesis, I would capitalise formal titles of institutions; it just aids readability. I think there is a bit of diminishing status of these officers. I note that “minister” gets capitalised all the time. I am not decrying that, but I—

MR HARGREAVES: I would be curious to know whether Mr Smyth’s bill has the capitalisation down to absolute, 100 per cent right. I would expect so, because he is actually fanatic about the English language.

THE CHAIR: And the Auditor-General in particular.

MR HARGREAVES: We might look and see, eh?

Prof Wettenhall: If it comes to this matter of external assessment, looking over the audit office, I found great trouble with that in your act. I really think this part of the act needs redesigning. There is a section 27, which provides for the appointment of an independent audit of annual financial statements. I think that is done by a Canberra commercial auditing firm. It is a ministerial appointment. But there is nothing in the act that lays down any qualifications for that appointment. The commonwealth act has provision for an independent auditor but there are some provisions laying down the qualifications and also providing for clearance with your equivalent, the Joint Committee of Public Accounts and Audit. So it is a much more rigorous provision relating to the independent audit in the commonwealth act than in the ACT act. I would suggest that needs attending to.

In section 29 there is a provision that extends the independent auditor’s role to performance audits as required, I think by this committee—not regular, not every year, but as required by this committee. I gather it is not frequently done. You have one currently going, I understand, by Bob Sendt, a former New South Wales Auditor-General. But the act does not make it clear that that will be a different auditor. It reads to me as though it is the same one running through. I think he might be very well qualified to do it, but the qualifications are not laid down anywhere, which seems to me to be the same issue.

Of course, these, again as I understand it, are just audits of the audit office itself—its financial statements, its performance. They are not really the sort of stand-back audits that might look at a broader review of all the activities and the broader performance of the audit office. It is odd that there is no provision for that. It would not happen every year, of course, but periodically.

Completing my understanding, I think the audit office itself makes some arrangements for this sort of check. I am told that in 2008 there was an exchange of officers between the ACT audit office and the Tasmanian audit office so that the audit staff could really benchmark each other’s performance. That is excellent; there ought to be more of it, and I would have thought there should be provision in the act to

allow for that.

On the other two specific things—and I think it involves this committee—with the appointment of the Auditor-General and handling the appropriations, the budget side of it, I think as presiding member you are consulted. This is just my impression; it might be quite wrong but it comes from reading the act. You are consulted, you give feedback to the minister, but there is really nothing to say what happens if the minister disagrees with you, if there is a stand-off.

MR HARGREAVES: I think there is: they get nothing.

Prof Wettenhall: I could not see what happens.

MR SMYTH: I think you will find that PAC has the ability to veto the appointment.

Prof Wettenhall: There is certainly a heading in the act which says “veto”. But then when I read down the section I could not see anything that really backed that up.

MR SMYTH: PAC has to approve it. It can refuse to give its approval, therefore, its veto.

Prof Wettenhall: But if you do not approve it, you go further over where there is a section which says, “The executive must appoint an auditor-general.”

MR SMYTH: Yes.

Prof Wettenhall: If it does not have PAC’s approval, what happens?

MR SMYTH: I thought the reading of it was they would have to go and find a new candidate.

Prof Wettenhall: I do not think that is actually stated.

MR SMYTH: Okay.

MR HARGREAVES: That is a very good point. What happens if there is an impasse? That is a good point.

THE CHAIR: That is a good point. We can certainly look at that.

Prof Wettenhall: We are trying to show how the idea of integrity agency has developed. New Zealand has a very formalistic way of recognising the officers of parliament. I think that is well worth stating and very useful. In the Australian jurisdiction, I think Victoria has probably gone furthest in copying that. I guess, as a researcher, I would love to see somebody sponsoring a research project to see how all the Australian jurisdictions have moved in this area—ombudsman offices, audit offices and others. I have also suggested to you that on a reading of the act I did find a few areas that I think are in serious need of attention and rewriting.

MR HARGREAVES: Professor, can I have your view? With regard to the

independence of the budget for the Auditor-General, it is possible in the states and the Northern Territory—it is allowable under the constitution, I would imagine—but we heard today that our self-government act precludes that. Do you know anything about that?

Prof Wettenhall: I am sorry?

MR HARGREAVES: We heard today that our self-government act, the one given to us by the commonwealth on our birth, actually precludes that ability for the parliament, the Legislative Assembly, to put forward an appropriation bill for the Auditor-General. It was the first time I had heard that it might be illegal. I was wondering whether you were aware of it. We might have a look at that.

THE CHAIR: It is clear in the standing orders that the Assembly cannot put forward a bill in which it seeks to appropriate money. That is quite clear. Members' bills—

MR HARGREAVES: But that is a standing order. That is not quite as strong.

THE CHAIR: Yes, that is true.

MR SMYTH: The self-government act says that only the executive can put in an appropriation bill. My amendment makes a recommendation to the executive.

MR HARGREAVES: I guess what we are talking about is that the states themselves and New Zealand, I would imagine, have received assent from the Governor-General that the parliament can put forward an appropriation bill to fund the officers of the parliament. We in the ACT, on the other hand, do not have that ability. The mechanism that is being advanced to get around that is what Mr Smyth is promoting, which is to give the PAC the power to create the budget, which would be presented as a separate appropriation bill by the Treasurer—if my reading is correct. It would be appropriation bill No 1. Consideration is currently on foot that the Legislative Assembly itself ought to have that kind of independence so as to make absolute the separation of powers under the doctrine. I am just wondering whether or not anybody has given any thought to those difficulties and how they could be overcome—if they are right. I suppose Mr Smyth's attempt is the best we have got so far. I do not know whether you have thought about that or whether your colleagues have discussed it.

Prof Wettenhall: No. As I said earlier, in New Zealand there are special provisions for consulting. There is an Officers of Parliament Committee. I think other portfolio committees get in on the act too where their officers of parliament relate to them. There is a Commissioner for the Environment who would have a particular connection with that department. I do not think it goes quite as far as giving them carte blanche to work out the budget, but they are much more centrally placed in the process of forming the budget and negotiating with the Treasury and getting feedback to know what the Treasury or the government view is. I am surprised that somebody says that the ACT is more restricted than an Australian state.

MR HARGREAVES: There are significant restrictions.

Prof Wettenhall: It is in many ways, and I have seen that, but in this particular way—

MR HARGREAVES: It is an appalling piece of disenfranchisement. What do you think, though, of the notion that this is the thin edge of the wedge and that if we give the Auditor-General this kind of budgetary freedom and independence we should really be doing the same thing for the Human Rights Commissioner, the environment commissioner, the children's commissioner and all these other people—that they should, in fact, be independent of government too because they have this scrutiny role? The Human Rights Commissioner is the best example.

Prof Wettenhall: I see that one is a bit doubtful—

MR HARGREAVES: What about that precedent?

Prof Wettenhall: The New Zealand situation has very stringent rules, provisions, about only having a very small number of these bodies. A very strong case has to be made to create any more. I think there are probably five of them. It is very unlikely there will be any more. I cannot see it flowing on widely.

The other side of that argument, if you put it broadly—as the Chief Minister was reported to have done—that this is just not acceptable in the Westminster system, is that you can think of thousands of public agencies in Westminster systems generally that are quite off-budget. Whether they have total independence is a big question, but they have got a lot more autonomy in these matters than the on-budget bodies. Our public sectors are a mix of on-budget and off-budget agencies.

MR HARGREAVES: What about the Australian enterprises which have control, if you like, of the revenue stream and the expenditure stream? This particular one, and the Human Rights Commissioner, are not and never will be revenue generating. They are totally dependent for their expenditure on the appropriation bill. There is no way that a parliament or a body like the Auditor-General could generate revenue and be self-sustaining.

Prof Wettenhall: They don't make a surplus, but they do charge fees to the bodies they audit. It is never going to lead to a surplus, but they have a revenue stream that they earn separately. They are not totally budget dependent.

MR SMYTH: Thank you.

MR HARGREAVES: That is food for thought.

THE CHAIR: Thank you very much, Professor Wettenhall, for attending this afternoon. We have reached the end of both our time and our questions. This hearing is now adjourned.

The committee adjourned at 4.28 pm.