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Official Committee Hansard

JOINT COMMITTEE ON PUBLIC ACCOUNTS AND AUDIT

Reference: Corporate governance and accountability arrangements for Commonwealth government business enterprises

THURSDAY, 5 AUGUST 1999

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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Thursday, 5 August 1999

Members: Mr Charles *(Chairman)*, Senators Coonan, Faulkner, Gibson, Hogg, Murray and Watson and Mr Kevin Andrews, Mr Brough, Mr Cox, Mr Georgiou, Ms Gillard, Mr Griffin, Ms Plibersek, Mr St Clair and Mr Somlyay

Senators and members in attendance: Senator Gibson and Mr Charles, Mr Cox and Mr St Clair

Terms of reference for the inquiry:

The corporate governance and accountability arrangements for Commonwealth Government Business Enterprises (GBEs). The JCPAA will explore the following matters:

. whether additional parts of current GBE governance arrangements should be the subject of legislation;

. whether more GBEs should be companies;

. whether governance arrangements are being reasonably applied to GBEs undergoing sale or restructuring;

. the form and content of GBE statements of corporate intent and the process of Parliamentary scrutiny including scrutiny of the financial affairs of GBEs;

. whether governance arrangements relating to GBEs' management of risk need to be strengthened;

. the adequacy of proposed annual reporting requirements for GBEs; and

. whether administrative law should apply to GBEs.

WITNESSES

Committee met at 9.42 a.m.

CHAIRMAN—I declare open this public hearing of the Joint Committee of Public Accounts and Audit, which is an inquiry into corporate governance and accountability arrangements for Commonwealth GBEs. The importance of good corporate governance has been highlighted in the private sector by the corporate excesses of the second half of the 1980s in Australia and overseas and the need to meet the challenges of global competition, technological progress and increasingly integrated markets.

In the public sector, recent reforms to improve efficiency and effectiveness, such as commercialisation, corporatisation and privatisation of government organisations and the role of the board in governing significant assets, have focused attention on the need for various new models of corporate governance. This inquiry will focus on the governance and accountability arrangements of the Commonwealth government business enterprises which have been in place for the two years since 1 July 1997. These arrangements were adopted as part of the government's acceptance of most of the key recommendations of the Humphry review of March 1997 of GBE governance arrangements.

The purpose of the inquiry is to assess the adequacy of the existing governance arrangements and to identify areas where improvements can be made. In making this assessment, the committee will consider a range of comments from GBEs, departments or shareholder ministers and other interested groups. The committee will consider the extent to which the governance arrangements should apply to organisations competing with private sector companies in the application of competitive neutrality provisions in such situations.

In addition, the inquiry will address the appropriateness of the governance arrangements when the Commonwealth shareholding is less than 100 per cent. The issue is particularly relevant in the case of Telstra. Also of interest to the committee is the representation of the Commonwealth's interest by two shareholder ministers, namely, the portfolio minister and the Minister for Finance and Administration. This arrangement was implemented for the first time from 1 July 1997. The committee will assess how it has worked in practice.

In addition to these matters, the JCPAA will investigate particular areas of governance arrangements, including the adequacy of the GBE corporate governance framework, parliamentary scrutiny of GBEs and the adequacy of reporting arrangements, GBEs' management of risk and the extent to which administrative law should apply to GBEs.

Today, the JCPAA will take evidence from the Sydney Airports Corporation, Employment National, the Australian National Audit Office, Professor Stephen Bottomley, the Department of Health and Aged Care, Medibank Private, the Snowy Mountains Hydro-Electric Authority and the Department of Communications, Information Technology and the Arts.

Before swearing in the witnesses, I refer members of the media who may be present at this hearing to the committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to fairly and accurately report proceedings of the committee. Copies of the statement are available from the secretariat staff.

[9.46 a.m.]

ARCHER, Ms Caroline, Assistant Company Secretary, Sydney Airports Corporation Ltd

CHAIRMAN—Welcome. Thank you for coming today and for your submission. Would you like to make a brief opening statement to the committee before we ask you questions about the submission?

Ms Archer—No. I hope my comments will be of assistance.

CHAIRMAN—Since we have just received your submission that is going to make it a bit difficult, I have to tell you. My understanding is that you do not have two ministers, you only have one.

Ms Archer—We have one shareholder minister, the minister for finance. The minister for transport, almost for practical purposes, you might say, has regulatory oversight of the airport under the Airports Act. Sydney Airports Corporation was incorporated as a public unlisted company on 28 May 1998 but the lease was actually transferred across on 1 July 1998. So, in a sense, we do have one shareholder minister.

Mr COX—It is the minister for finance because you are pending privatisation, I assume.

Ms Archer—It is the stated government policy that the government is considering privatising its airports. We need to be aware of that and to be prepared for any eventuality.

CHAIRMAN—Have you had any previous experience in a GBE?

Ms Archer—Personally?

CHAIRMAN—Yes.

Ms Archer—No.

CHAIRMAN—You probably cannot help us, then, in answering whether you think it is an advantage to have only one minister or two—one being the portfolio minister and the other being the minister for finance?

Ms Archer—Personally I do not have experience of it. We heard about the inquiry, that we were invited to come, last Friday. That was my first conversation about it, so we had quite short notice. It may be that there are things that I would have to take on advisement and maybe help the committee in a more indirect manner by referring back to people who could assist you.

Mr St CLAIR—How have things changed in the last 12 months, since incorporation? It has been a year, hasn't it, now?

Ms Archer—It has.

Mr St CLAIR—Are there any comments that you could give to the committee as to what your feelings have been through the last 12 months?

Ms Archer—As you say, it has been very recently corporatised.

Mr St CLAIR—In other words, are there things that you are finding are difficulties or impediments that have been put in front of you over that period of time because of the way that the GBEs are run?

Ms Archer—No. We did not have strong feelings that there were things that were unworkable that we were having trouble with and I think that was probably reflected in our written submission.

Mr St CLAIR—I notice in the summary that you consider it would greatly assists corporation governance arrangements if the overlapping provisions of part 2 of the GBE Guidelines were contained solely in the CAC Act. What are you trying to get at there?

Ms Archer—I suppose we were turning our mind at the time to whether we could come up with some constructive comment as to how things might be streamlined. For instance, SACL has Corporations Law, the CAC Act, the GBE Guidelines and, of course, our own constitution. So I suppose it was a suggestion; it is not one that we have strong feelings about. It is more just a surface thing in that it goes to how many instruments we have reference to—the fewer the better. On the other hand, we are mindful of the fact that there is a certain flexibility allowed for by having the different instruments.

Mr St CLAIR—Do you think one outweighs the other? Have you got any preference?

Ms Archer—Just speaking for SACL, we have not really had problems in coming to grips with what we have got. I suppose the more we have thought about this and worked on the submission, the more we have realised that flexibility is something which is a bit of an advantage and would caution against losing it.

Senator GIBSON—With regard to a single shareholder minister, as opposed to government general policy to have both the minister for finance and the portfolio minister, does your organisation see it as an advantage or a disadvantage having the portfolio minister as the regulatory authority outside the ownership of the company? In other words, there is no conflict of interest.

Ms Archer—That is a question I would need to take on advisement.

Senator GIBSON—Thank you. As a flow-on from that, seeing you do have, if you like, an ownership arrangement to the minister for finance and are therefore not mixed up with the regulatory part of your industry, I ask the difficult question: if you were just run as an ordinary company under the Corporations Law, what would be wrong with that?

Ms Archer—I am sorry, I do not quite follow.

Senator GIBSON—What I am getting at is if, instead of having separate legislation for government businesses, the government businesses were all incorporated under the Corporations Law, and the Corporations Law was the sole guide for running the business, with the ownership vested in the minister for finance—in other words, the government—but no portfolio interference with regard to the way you run the business, why not just use the ordinary Corporations Law the same as every other business? After all, isn't that the way your business is going to go because it is already government policy intention to sell the business?

Ms Archer—I would have to say that the prospect of the Corporations Law becoming even larger than it currently is is even more daunting than working in more than one instrument. It is something the company has not really turned its mind to—as I said, it is recently incorporated and we have been coming to grips with things as they are; it is not something that we thought about an inquiry consolidating to that degree, to the Corporations Law. We are a Corporations Law company, but of a very distinct type. We recognise that, so it does not surprise us that there is currently an additional act and guidelines.

Mr COX—Is the company focusing mostly on preparing for privatisation at the moment or on running itself or what?

Ms Archer—We are mindful that we need to be prepared for privatisation, but a lot of preparedness is in a sense good housekeeping in any event. We have very recently corporatised and we have spent our best efforts in getting on track in corporate governance and every other sense.

Mr COX—Is there any investment that you are currently undertaking or not undertaking because you are awaiting the outcome of the government's assessment on privatisation?

Ms Archer—That is something I would also need to take advice on.

Mr St CLAIR—How big is the business turnover, roughly?

Ms Archer—I would also need to take that one on advisement. It does not come to mind.

Mr St CLAIR—Can you give me an indication whether it is $50 million or $1 billion?

Ms Archer—I would have to check.

Senator GIBSON—It would have to be towards the latter.

CHAIRMAN—Do you know how much capital?

Ms Archer—I just had a blank.

Mr St CLAIR—I did not mean it as a trap question. I just want to have some idea because—

Ms Archer—I know. I apologise for appearing vague. I really cannot think of it. I will come back to you.

CHAIRMAN—You started off last July. By now you have produced one annual report?

Ms Archer—The annual report is currently in preparation.

CHAIRMAN—How about a half annual report? Did you produce one?

Ms Archer—No, not to my knowledge.

CHAIRMAN—I thought the act required you to do so.

Ms Archer—Well, I am sorry, but that is something else I would have to check.

CHAIRMAN—Considering the fact that you are now a privatised company but still wholly owned by the government and competing with totally privatised operations in other capital cities in Australia, what impediments to competition do you face by being government owned?

Ms Archer—That is a very large question.

CHAIRMAN—'Important' I would have thought.

Ms Archer—It certainly is. That is one I would have to take on advisement as well.

Mr COX—Have you appointed any new directors since you became corporatised?

Ms Archer—No. Since starting we have kept the same directors.

Mr COX—So you have not been through the process of recommending names of new directors to the minister?

Ms Archer—Not yet.

Mr St CLAIR—The submission has just come in and you have just heard about it, so we understand your problem. Why did Sydney Airports Corporation put a submission in to the committee?

Ms Archer—We were invited to. We honoured the committee's intention. We could see that the committee was interested in seeking to assist GBEs. We really did not have strong objections to the regulatory framework we had found ourselves in and we thought, in a sense, that was good news. So we thought we would stay in touch on that one.

Mr St CLAIR—Has the business changed much in the way you manage it over the last 12 months, since you have been corporatised?

Ms Archer—We have been steadily consolidating, I would say. I would not say that there have been major changes in direction in terms of putting together corporate governance and various other aspects which the legislation addresses.

Mr St CLAIR—Who decides the direction? Is it the minister who gives you a policy framework and then the directors implement that policy? How does the business physically run?

Ms Archer—Obviously we have our initial framework in the form of the CAC Act and GBE Guidelines. They prescribe to a certain degree, so we seek to address those. We have an ongoing relationship with the Department of Finance and Administration as well with monthly liaison meetings.

Mr St CLAIR—At what level do you meet with—

Ms Archer—We meet with members of the Commonwealth Shareholder Advisory Unit, and also occasionally with advisers to the minister. We also write to the minister once a month where we cover anything that we would like to raise with him following the board meeting, and we write to him also following meetings with the Commonwealth Shareholder Advisory Unit.

CHAIRMAN—Professor Stephen Bottomley, who will talk to us later today, suggested that in so far as it applies, the CAC Act and the appropriate sections of the Financial Management and Accountability Act and other detailed regulations be replaced by a single instrument called the Government Owned Companies Act. It would have a wider ambit and replace all those other things in order to bring it down to one instrument. Would you or your board have a view on such a proposal?

Ms Archer—The CAC Act is the one that we have reference to so I suppose we are limited in our comments to that one. We would have difficulty in seeing the need for any other instrument. We would have difficulty in seeing why that one could not be expanded to take in whatever was required. If it is a question of how many instruments, why not expand the current act? I suppose the wider question of whether there should be a higher level of prescription or detail seems, in our view, to be one contrary to the approach reflected in the current legislation and GBE Guidelines. We would wonder whether there was a need for any further prescription.

CHAIRMAN—How many board members do you have?

Ms Archer—We have nine board members—eight non-executive directors and the CEO.

Senator GIBSON—Following on from the proposition about widening the CAC Act, that relates to my earlier question. You are a company and the government's intention is to privatise at some point in time down the track. When that happens you will be out in the private sector competing with other entities and basically responding largely to the Corporations Law—and whatever other instruments affect you, of course. Why not that now? After all, you would not have the problem, or potential problem, of a conflict of interest, of having a shareholder minister who is also the regulator. He is at arms length from you. The

regulator is setting the rules for the industry and not just for the company. I would be interested in you taking that question back to your board and responding back to us.

Ms Archer—All right. My understanding is that the CAC Act is largely based on the Corporations Law wherever possible.

Senator GIBSON—That's true.

Ms Archer—I will take it on advisement, as you suggest.

Senator GIBSON—By way of a bit of background, when this committee reviewed the CAC Act a few years ago, one of the things floated past the committee was, 'Why are we doing this; why not just rely on the Corporations Law?' The government of the day decided not to do so and proceeded with the separate legislation. We want to know how that is working and how you view that. For the longer term, we are interested in what is going to happen now that a lot of GBEs, by governments of both sides of politics, have headed out of government and into the private sector where they are competing with other people and are subject to Corporations Law. What is wrong with that, if that is what is going to be the eventual thing? Why not do it now and rely on the portfolio minister regulating the total industry? I think that is the situation in which your company finds itself, isn't it?

Ms Archer—Yes, and I appreciate the background information.

Senator GIBSON—I am just raising this as a very serious question for consideration by your board and for them to give us advice about how they see the future and what their recommendations would be to the committee in considering the best structure for government businesses.

CHAIRMAN—On page 3 of your submission you address mismanagement. What are the key components of your risk management strategy?

Ms Archer—We have four subcommittees. They include the safety, security, environment and health committee, which is fairly self-explanatory of the mandate that committee has. That also includes environmental occupational health and safety, and airport security and safety in a more general sense. In addition, we have a finance and investment committee, which makes recommendations to the board on the normal things you would expect of a finance and investment committee. We have an audit committee and also a nomination, remuneration and staff policy committee.

Risk management, according to the various types of risk involved, is dealt with by those committees and at the moment it is a focus of our audit committee, which obviously has the main carriage of relationship with the internal and external auditors of the company. At the moment the audit committee is speaking with our internal auditors, who have a wider ambit than just simply audit. They are looking to formalise and consolidate the actual structure of how risk is addressed, and we are addressing risks already and have been from the start.

CHAIRMAN—Does your internal audit committee test periodically or is it planning to test whether your management activities are yielding positive results, and that there is no

conflict of interest with the Financial Management and Accountability Act? In other words, are they checking that you do not have internal fraud or people spending money they are not authorised to spend or receiving money they are not authorised to receive, et cetera?

Ms Archer—Those sorts of concerns are within the terms of reference of the audit committee. I know the mandate of the internal auditors includes implementation and reporting back, so I would expect so.

Mr COX—You have a reasonably publicly sensitive airport to run in terms of airport noise and such, so you are probably subject to a certain amount of scrutiny from community groups and things like that. Are you presently subject to administrative law, for example, in terms of freedom of information inquiries?

Ms Archer—We noticed that the terms of reference did talk about administrative law. We have turned our mind to it, and we have had cause to consider it since our corporatisation last year, and certain acts have come up—the FOI Act, the Privacy Act, the Archives Act, the Ombudsman Act, the AAT Act and the AD(JR) Act. We have had to consider them on a case by case basis, and I could address each of those if you want me to.

Mr COX—A general issue in the Humphry report is the suggestion that GBEs should not be subject to administrative law. Have you or the corporation got a view that that is the case?

Ms Archer—We do not find ourselves to be subject to administrative law to any great degree. The AAT Act and the AD(JR) Act operate in relation to decisions that are made under another enactment but, compared to the Federal Airports Corporation, our company's decision making is fairly limited.

Mr COX—Are you are spending a lot of time with the Office of Asset Sales and Information Technology talking about the proposed privatisation and whether there are any conflicts between what they see as being desirable and what the board, in terms of the future privatisation, sees as desirable in terms of the ongoing operation of the company?

Ms Archer—That is another question I would need to take on advisement.

Mr COX—Security issues are not directly related to this inquiry but we have recently inquired into—but not yet reported on—aviation security. Does the Sydney Airports Corporation have any concerns about the adequacy of the current aviation security arrangements?

Ms Archer—I am sorry, at the risk of sounding like a parrot, I will also need to take that on advisement.

CHAIRMAN—You have a lot of things to come back to us on.

Ms Archer—I apologise for that.

CHAIRMAN—This is going to be a very long response.

Ms Archer—My bosses will be so happy when I come back! We knew we did not have the scope to turn up to the later session that we understood was on but we thought that at least if we get down here and take questions back we could be of some assistance—albeit in a roundabout way.

CHAIRMAN—We have set you a challenge. We will look forward to receiving your further advice.

Ms Archer—Indeed.

Mr COX—Anything you can tell us about the administrative law workload that the corporation faces would be very useful for the inquiry, because I suspect that you are a GBE that is in the firing line for a certain amount of community—

CHAIRMAN—I think Mr Cox is right, but there is also the issue of you having only a single minister, as has the next witness, and whether there are conflicts set up by not having a portfolio minister as a shareholder minister as well. We would be interested in the board's comments on that.

Ms Archer—Noted.

CHAIRMAN—Thank you.

Proceedings suspended from 10.14 a.m. to 10.28 a.m.

[10.28 a.m.]

HALSTEAD, Mr Rodney Derek, General Manager, Corporate Affairs, Employment National Administration Pty Ltd

CHAIRMAN—Welcome, and thank you for coming to talk to the committee again on another important issue.

Mr Halstead—It is my pleasure, Mr Chairman.

CHAIRMAN—We appreciated your advice on our inquiry into government purchasing policy and practice. I understand you have read our report. We will let that go through until we see what the government decides to do with it. You have not made a submission, but do you have an opening statement you would like to make to the committee?

Mr Halstead—No, we are fine.

CHAIRMAN—When did you become a company?

Mr Halstead—On 4 August 1997 Employment National was established and incorporated under Corporations Law in the ACT.

CHAIRMAN—My understanding is that you have only one shareholder minister—that is, the Minister for Finance and Administration.

Mr Halstead—That is correct.

CHAIRMAN—Can you tell us what conflicts it poses for you not having a portfolio minister but being responsible to a portfolio minister for administrative functions—that is, not having one as a shareholder?

Mr Halstead—We have had an interesting history. We started with two shareholders and recently moved to one. I am sure you would be aware that Employment National was established to operate in competition with the private and the community sector in the government's employment services market—the Job Network, as it is called.

From our perspective, there was probably more potential for conflict when we started than there is now. The reason is that the then minister, and the parliamentary secretary that she had initially and then subsequently he had—they changed portfolio ministers—were the purchaser but also had in one part an input into the company from a shareholder perspective. So the conflict was perhaps greater initially. It was for that reason, partially, that I understand the government moved, as did the department of finance, to a single shareholder.

From our perspective, it probably works much better now, particularly given the environment in which we operate where we are dependent to a large extent on government contracts in operating the business. Those government contracts are determined by the Department of Employment, Workplace Relations and Small Business and the Department of

Education, Training and Youth Affairs, and the portfolio ministers, particularly the Minister for Employment Services, are now not shareholders from a portfolio minister's point of view. So from our perspective it is probably a lesser conflict than it may have been perceived to be when there were two shareholder ministers.

Mr COX—Can you tell us a bit about the events that preceded you moving to a single shareholder?

Mr Halstead—They are probably more in the domain of the department and the department of finance. I understand you will be talking with them subsequently in terms of a move towards single shareholders. We have mentioned on a number of occasions the fact that this had the perception of conflict in dealing with a portfolio minister. When putting briefing notes and pieces of paper to the portfolio minister, we need to ensure it is for shareholders eyes only. As you would know with your own offices, when dealing with papers that have come in, there is a need to make sure they are duly limited both in terms of the reader and the exposure, particularly if you are talking about strategic positioning, decisions by way of tendering, responses to tenders by way of pricing and market positioning. All of these things created some perceptions of potential concerns. We made that comment on a number of occasions to both shareholders in our regular reporting that we were conscious of those concerns and we were pleased that they subsequently took action as they did.

Mr COX—Did you have any external criticism from your competitors that you were in a conflict of interest situation?

Mr Halstead—No, there were none that were stated to us that we were aware of. In fact, we took it upon ourselves to raise this issue to both shareholder ministers.

Senator GIBSON—You are not the only provider?

Mr Halstead—There are 311 providers.

Senator GIBSON—Hence the portfolio minister has to administer that business or the activities of that department as the purchaser.

Mr Halstead—That is correct.

Senator GIBSON—You are just one of a set. With that potential for others to be critical of you, in saying you have an advantage—a perceived advantage—over the other providers, it seems to me to be fairly logical that the portfolio minister should not be a shareholder in order to make sure there is not any conflict.

Mr Halstead—You are correct. It is quite a large market. In the first round it was just under $2 billion worth of business. In the round that is coming up, there is about $3 billion worth of business. It is very complex, and shareholder ministers, from our perspective, need to give strategic advice and support to the company in terms of its positioning, and the portfolio minister obviously needs to manage the policy framework and the purchasing framework of the services that are being put on offer.

Senator GIBSON—What is the turnover of your company?

Mr Halstead—It runs into hundreds of millions of dollars. The issue here would be whether I can disclose that prior to the obligations we have under ASIC, but it is certainly hundreds of millions of dollars.

Mr COX—Your guess would be that you are the biggest and most successful of the 311 providers?

Mr Halstead—I do not have comparative data. Yes, we are the biggest in terms of actual size. We have 1,700 employees, and I would fathom that none of the others would have that many employees. We are in 215 sites around Australia, and none of the others have that coverage or that positioning. If you looked at the statements underpinning the contracts released by the then minister, Dr Kemp, he indicated that we had a third of the market. That was in actual terms based on the offerings on the table. There has not been any comparative data, other than some performance data that the department has put out most recently, which would suggest the Job Network is collectively working at a higher level than the previous arrangement. But individual comparative data is not generally available.

CHAIRMAN—You are in a highly competitive marketplace, but you are owned by the government and you compete against private sector companies for government business. What sort of pressure does this place your board under? Brian talked about some perceived advantage of being owned by the government. To what extent are you disadvantaged by government regulations, by the CAC Act, by the FMA Act and by government regulations?

Mr Halstead—Chairman, you have asked a couple of questions there. Talking generally, I think the board approached this very much as you would expect any board to. We operate in a commercial world and the commercial world means that we take day-to-day decisions about strategic positioning and intent based on the fact that we service a number of contracts, the government being one of them—albeit a very large one. But we have a number of other contracts. For example, 70 per cent of the top 100 Australian companies have contracts with us to deliver employment services—that is across the spectrum of the Australian business environment. If one of those has a particular requirement in relation to how we service their contract, we obviously recognise and account manage that. We do the same with the government. The government is not seen any differently—other than as a major contract that we need to service.

Coming to your second point, I think you are right. We are a wholly owned government GBE with particular reporting requirements as well as being under Corporations Law. Clearly, some of our competitors do not have those requirements; some of our competitors are not obliged to report in the same manner. There are some cost issues associated with that in terms of internal mechanisms to monitor, report, collate information, analyse, et cetera, but you would expect that. Being 100 per cent owned by the government, you would expect that you would have to satisfy—as with the single shareholder—any requests they might have about the ongoing performance of the organisation to ensure shareholder interests are met and there is a return on shareholder funds.

Mr St CLAIR—We talked about the size of the business. Does your organisation produce an annual report?

Mr Halstead—We do.

Mr St CLAIR—It is a public document?

Mr Halstead—It is. I have last year's report here.

Mr St CLAIR—Beaut, but you could not tell us what the turnover was?

Mr Halstead—I can tell you the turnover in last year's annual report, and indeed there will be a turnover figure in the annual report that will be published this year.

Mr St CLAIR—Do you have any idea what that might be?

Mr Halstead—In the hundreds of millions.

Mr St CLAIR—So you do not know whether it is $100 million or $900 million?

Mr Halstead—I do, but I have reporting obligations in relation to the ASIC. They are not audited statements as yet, and I am not in a position to release unaudited information. An audited statement will be published quite rightly in the annual report.

Senator GIBSON—The August to June 1998 figures were $45 million.

Mr Halstead—That was for two months of trading.

Senator GIBSON—Was it?

Mr Halstead—We started trading on 1 May 1998, and the annual report reflects eight months of start-up and two months of trading. The next report will come out at the end of this financial year, and it will reflect the full year for 1998-99. All I am saying is that it is in the hundreds of millions of dollars.

Senator GIBSON—We are talking of around $300 million.

Mr St CLAIR—In 1997 government arrangements provided for an increased level of scrutiny of GBEs both publicly and by responsible ministers. Are the new reporting requirements effective, and in what way can the reporting requirements be improved?

Mr Halstead—From our perspective they are effective—and I can talk only from our perspective. You would probably need to ask the Commonwealth Shareholder Advisory Unit.

Mr St CLAIR—We probably will.

Mr Halstead—We do regular reports in accordance with the obligations laid down, including monthly reports to the shareholder on critical matters affecting the performance of

the organisation, particularly its financial performance; they would go to him each month, so from our perspective they are quite comprehensive. In terms of whether they can be improved, I think we cover most of the bases now. From our perspective, in talking about both positioning and marketing, from the market position point of view, day-to-day operations, performance and industrial relations matters, the spectrum of the organisation in terms of its operations on a month-to-month basis is outlined to the shareholder now.

Mr St CLAIR—So you feel that the communications from your organisation to DOFA are effective?

Mr Halstead—Yes, very effective. We talk to them very regularly at officer level and at management level. The Minister for Finance and Administration would meet the board once or twice a year. He would have regular meetings with the chairman, both face to face and over the phone, about the direction of the company and its positioning. So I would say yes, in short.

Mr St CLAIR—Right. Can we take it further? Telstra in its submission commented that there is excessive parliamentary scrutiny and Airservices Australia proposed in its submission that GBEs should only be required to report the same amount of information and detail as required under the Corporations Law. Do you agree with that?

Mr Halstead—I am not privy to the Telstra and the Airservices submissions, so I would need to look at the context. From our perspective, I can say that, we are not budget funded, we operate in a marketplace and we need to generate revenue on a fee-for-service basis from a contract with a major corporation or with the government. On that basis the issue as to whether we should attend Senate estimates hearings, given that we are not in the budget framework, is a question, and we have raised that question. We do attend Senate estimates at this point in time. We are scrutinised by the estimates committee but, not being budget funded—and I tend to agree with the Humphry review—it does raise a question as to the appropriateness of necessarily attending in that regard.

Senator GIBSON—While you are on that point, what would your organisation recommend would be the appropriate structure? That is the question that Telstra and others have raised.

Mr Halstead—I cannot talk for Telstra, but I think they have a particular set of circumstances, given the nature of the shareholder arrangements that exist there. I am not privy to the position of Airservices Australia. From our perspective, all I am saying is that we report very regularly, both under Corporations Law and under GBE governance arrangements. In relation to the issue of whether there is added value in going into a Senate estimates committee when we are not budget funded, there are no financial figures in the budget documentation or in the portfolio statements that relate to Employment National. The questions we get asked are more about operational performance and positioning than they are about financial matters.

Senator GIBSON—While we are on this point of whether to go before estimates committees or not, others have raised the point that if a GBE—in other words a government owned company—comes before Senate estimates, some of its internal workings are likely to

be exposed, to the advantage of its competitors, when in fact the government's intention in setting up the GBE is for it to compete with others, so why add a handicap.

Mr Halstead—That indeed is an issue.

Senator GIBSON—What is your board's view?

Mr Halstead—Our view would be that, clearly, some of the areas of questioning do go to commercial-in-confidence matters in terms of expenditure patterns, strategic positioning, what market segments you may or may not go into, how you might position products, what the pricing levels are and what share of the market you think you have relative to others. We are very careful in how we respond to those, given the point you make, quite rightly, about competitive positioning. There have been times when we have had to indicate that the information is not available because it is commercially sensitive and that, as you would expect, at times, is not regarded by the senators as being an appropriate response. But, having said that, to protect the very essence of what we are set up to do—that is, to compete in a full and frank manner with our competitors, who do not attend such committee hearings, and we do not have access to their operations, other than through financial statements and annual reports—certainly is an issue.

Mr COX—Would you be able to give us a list of all those occasions when you have had to plead commercial confidentiality before parliamentary committees?

Mr Halstead—Other than going through the *Hansard*, we attend every Senate estimates hearings.

Mr COX—No. I mean that we would then have a list of the issues that you have had to plead commercial confidentiality on so that we would be able to get an impression of where public accountability arrangements are conflicting with your commercial requirements.

Mr Halstead—I do not have them at my disposal. All I am saying is that, other than going through the *Hansard*, over the last 15 months—

Mr COX—That is what I am asking you to do. Will you take it on notice?

Mr Halstead—I might have to ask the department if they could do that. I do not have direct access, other than through the Internet *Hansard*. But, certainly, it is the department of finance, or as a shareholder support—

CHAIRMAN—Considering the competitive position, would it not be reasonable for us, David, to ask the department to provide that information, not the company that needs its resources to compete?

Mr COX—That is right, yes.

CHAIRMAN—We will follow that course of action.

Mr Halstead—But, indeed, there were many occasions over the last six or eight hearings that we have attended since our formation.

Senator GIBSON—Going back to the actual structure of setting up GBEs in relationship with the government, we have talked about the fact that the portfolio minister was involved but is no longer involved because of perceived or potential conflict of interest. So you have a very clean situation, where the Minister for Finance and Administration is your shareholder and the portfolio minister is regulating your industry. I am not picking on you in particular. Given that, others have queried why we should bother with a particular CAC Act for that sort of structure—and I think Mr Humphry raises that in his report. If the government is going to own and run at arms length a particular business in a particular sector, why not have it run under the Corporations Law? Would your board have a view on this? We are genuinely interested in what is the appropriate way to go in the long term.

Mr Halstead—In broad terms I think we would agree that, if you are going to impose requirements on GBEs, you are setting them up to be competitive in the marketplace. They are under Corporations Law, as we are at the moment, and there are particular requirements in relation to Corporations Law that all public companies need to satisfy. If you want to make all companies more accountable, let us make sure the Corporations Law reflects those requirements. However, having said that, I make the point—as I did to the chairman before—that we also recognise, as a wholly owned government company with a 100 per cent shareholding, that it is not unreasonable for a shareholder to require some additional information. Given that it is a 100 per cent shareholding, you would expect that the government of the day may require additional information. The board recognises and complies with that. So, the move towards Corporations Law being the main framework against which you would be accountable, making sure that that reflects the totality of the accountability and the reporting requirements on a GBE, there will be times when the minister or the shareholder requires additional information.

Senator GIBSON—We have a submission from Professor Bottomley suggesting that the CAC Act should be widened.

CHAIRMAN—Or that it should be replaced.

Senator GIBSON—Yes; that is one option. We all know that the CAC Act is a relatively new piece of legislation anyway. Given those two things, I put the question to you again for your board to consider: what is the best framework for the government in setting up its GBEs, be they for temporary or long-term ownership? That is a decision, I think, for the government to deal with, but we are genuinely interested in what the structure should be. Why do we need something different from the general Corporations Law, which applies to all businesses? Why do we not structure government entities such that we give them clear objectives, trying to avoid conflicts of interest, which is what has happened with you? What is wrong with that?

Mr Halstead—I think it goes to the question you are asking indirectly, and that is: what are you setting up GBEs to do? If you answer that question that you are wanting them to compete fully in their own right in the marketplace, and you are setting them up—whether it is because of market failure or whether it is because of a particular government requirement

that you are setting them up—because you have perceived that there is a value added in them, then, from our perspective, Corporations Law is clearly the appropriate framework if they are to be treated in the same way and manner as other public companies.

If you do not want them to operate in that manner, then I think you will have a different answer to your question. But if that is the very essence of what you are wanting a GBE to do, then our board would lean towards Corporations Law being the appropriate framework. Indeed, if you feel that the reporting and accountability obligations need to be enhanced, by all means let us do that for public companies generally. Without having it a bit both ways, the board recognises that, as a GBE with 100 per cent shareholding, inevitably the shareholder minister will ask for and want additional requirements of us.

Senator GIBSON—I am querying that because one could say that if the government has set up a business—yours is a very good example—which is competing with lots of competitors, then we, the parliament, should be quizzing the shareholder minister and his department about the performance of the entity. In other words, was this a good investment by the government? What is the rate of return? What is the expectation of rate of return? Should we keep owning it or get rid of it?

Mr Halstead—Valid questions.

Senator GIBSON—That is one set of questions. The other set of questions which relate to the portfolio and the regulation of the industry should not be your business. They should go to that particular portfolio minister and his department about the total industry and its regulation and not to your particular company.

Mr Halstead—I would agree. Picking up on your point, our success or otherwise as a contractor would depend on our performance in the marketplace. The portfolio minister and his department would then decide on our relative merits or worth as a contractor of services, and that would be based on our comparative performance against other members of the Job Network and, indeed, in the mainstream market. But you are right. The shareholder minister clearly needs to look at our financial performance and our operating performance in terms of their expectations and views about the success rate or otherwise of this organisation—its performance in financial terms, in return on investment and increasing its shareholder value.

Senator GIBSON—I am in ignorance of the detail, but are there CSOs that the government has imposed on your organisation that are set out in legislation?

Mr Halstead—No, there are not, but I need to clarify that because it is complicated. We have not got enabling legislation, but in our constitution there is a provision that the government can call upon us to undertake community service obligations at a reasonable rate, in the sense that it is a commercial arrangement. So, if the market fails in a particular area, then they can call upon Employment National Ltd to undertake a designated task with a negotiated reasonable rate of return for us.

Senator GIBSON—Does that mean that that item would become a budget item—in other words, part of a contract between the government and your organisation?

Mr Halstead—It would be a contract. It would be similar to what Mr Humphry was talking about. I would have to look at the coincidence of timing here. We were set up in August 1997, so I think it would predate the Humphry report.

Senator GIBSON—No, March 1997.

CHAIRMAN—I thought it was March 1997.

Mr Halstead—Yes, but I was thinking of the drafting. The drafting of the constitution would have been in 1996 and the early part of 1997.

Senator GIBSON—I understand.

CHAIRMAN—But that is important stuff.

Mr Halstead—It is embodied in the constitution.

CHAIRMAN—That they did at that time put in something about CSOs.

Senator GIBSON—That is right.

CHAIRMAN—To that extent.

Mr COX—CSOs have been in existence in a form where the desire has been to have them budget funded, or a concession given on expected dividends, since the GBE reforms of about 1987.

Senator GIBSON—Yes, that is right.

CHAIRMAN—In the sense that it was written into their constitution, I find it fascinating.

Mr COX—Have you got any CSOs?

Mr Halstead—No, we have not. This might be a question you might like to ask the department of employment but, as a purchaser, they fully subscribed the market in the first round, and there was no request of us to undertake any work under the heading of CSO. The second tender has just recently been lodged; the closing date was last Friday. In the request for tender there is reference to CSOs in the documentation, and the potential for them if the market fails or they go back to the market and they do not get a response. They reference us in the body of the request for tender as being the response mechanism should they elect to use the constitutional clause in relation to community service obligations. Time will tell whether or not the market responds to the extent that they wish, and if it does not, then there is an opportunity to call upon us.

CHAIRMAN—One of the things that the committee is always interested in is risk management. Would you like to tell us how you have approached risk management?

Mr Halstead—Very seriously. I do not mean that with any sense of frivolity.

CHAIRMAN—It certainly came out that way.

Mr Halstead—It was not intended; trust me.

CHAIRMAN—We accept that.

Mr Halstead—Very seriously, in the sense that, as you could appreciate, working as we do in the market that we do, there are a lot of business risks. I have mentioned some of them in terms of the dependency on the market. There is no guarantee of supply here. This is very much about advertising oneself in the marketplace and attracting both employers and job seekers. It is very dependent on technology, because of the nature of the servicing and the fact that you are Australia-wide. So you have a technology dependence and a human resource dependence. There are business risks as well as legal risks, given the frameworks that we operate under, not the least being occupational health and safety, workplace relations, discrimination, et cetera. We take it very seriously.

Since we started some 15 months ago, there have been two formal frameworks set up for business risk management and legal risk management. They both report to the audit committee. There is a year 2000 risk subcommittee as well which goes to the audit committee. The board reviews this on a regular basis. It reviews the audit committee reports and the risk profile, which is constantly adjusted to take account of the environmental and contextual changes. There is an education and training strategy that goes down through the organisation to ensure that people are attuned and aware. We have 215 sites, and individuals within those sites need to be very much aware of the profile risk that the company works within. We have Intranet based training strategies to ensure that our people are constantly made aware of the policies that the board sets and the day-to-day management. They are constantly reviewed.

CHAIRMAN—Does the FMA Act in that respect cause you any additional expense or inconvenience or whatever for, say, your competitors?

Mr Halstead—No, we are not under the FMA. We only come under the CAC Act.

CHAIRMAN—Dumb question then. To the extent to which the FMA Act does apply—

Mr Halstead—It does not, but good commercial business management would make sure that we have what we have in place. In terms of our competitors, irrespective of whether they existed, you would do what we are doing—make sure that, from a commercial perspective, you are managing risk properly. The board takes it very seriously.

Mr St CLAIR—How big is the audit committee?

Mr Halstead—Just four. There are five people on the board—a chair and four non-executive, and the executive director attends. So, six all-up. There are five non-executive directors. Three of them are on the audit committee—the chairman and two non-executive directors. It is chaired by one of the non-executive directors, who has a finance admin

background—a business management background—and three non-executive directors. The executive director is co-opted.

Mr St CLAIR—Do the other members have a broad background?

Mr Halstead—Very much so. With the exception of one, all of our board are longstanding directors and come from the private sector—both the chairperson and the CEO. They have, as either members or chairpersons, a very broad range of committees in other forms and walks of life. It is very much a business management framework.

Mr St CLAIR—And it works well?

Mr Halstead—It does, particularly given the risk profile that I talked about—both the business risk and with the year 2000 coming up. They meet very regularly. They are scheduled to meet at least quarterly, but they meet more than quarterly. Something that might be more relevant to our environment than to others is that we are coming up to a major second tender. The major second tender raises all sorts of risks—the extent to which you win, the level of business you have now or the mix is different. All that changes the sort of business model you have and how you adjust that business model. There is a lot of preparatory work.

Mr St CLAIR—You mentioned that occupational health and safety issues and risk management are areas that you are looking at. Do you find it is becoming more complicated from state to state?

Mr Halstead—We are under federal legislation so we are, to some extent, protected in the sense that the state regulations do differ quite markedly, as you would know. The federal one still has many aspects which are—onerous is not the word—very defined in terms of the requirements of the act. So we have to manage that very carefully. We are 15 months young and we have rolled out an OH&S framework with designated work groups and representatives. As you would appreciate, given 215 sites, making sure that we are attuned is quite a task. Because we are in so many locations, it is not a compact arrangement.

Mr St CLAIR—How many people are there?

Mr Halstead—There are 1,700 people in 215 locations.

CHAIRMAN—The ANAO has recommended that the 1997 governance arrangements be amended to require GBEs to specify in their corporate plans information about material risks and strategies for managing risk. Does that cause you any additional expenditure or work or make you uncompetitive? It says you are doing all that.

Mr Halstead—I did not pick that up in their report. Are they talking about material risk in accounting standard terms in relation to a 10 per cent impact on profit? Do they have a definitional framework for material?

CHAIRMAN—It says that the ANAO considers the GBE corporate plan should specify the business critical risks and the strategy the board plans to use to manage those risks.

Mr Halstead—Yes, business critical. In general terms, as long as they were broadly based, the answer is no. If you look at an organisation like ours, given the nature of the business, the spread of the business, the dependencies that the business has and the vagaries of the market—as I said there is no guaranteed supply line here; you need to generate the level of interest in the market through very effective advertising and marketing and you need to sustain your business opportunities—it would not be much of a surprise to our competitors who are in the same market and are akin to the same sorts of issues.

I suppose if it did stray into the commerciality of our positioning, there might be some areas about which we would be sensitive and reluctant to expose. Inevitably, all of this costs. At some point in time, the collation, recording, presentation and reporting of information will cost. But, in terms of an annual report, I do not think it would be a big issue if it was broadly based.

CHAIRMAN—If you are already doing this anyway, how much does it cost?

Mr Halstead—It is marginal.

CHAIRMAN—I would have thought extremely marginal, because you already have it in an electronic form and it is presentable in hard copy.

Mr Halstead—As I said, It would depend on the definition of material. If it is just general, critical, then you would expect the board in broad terms to (a) assess those issues on a regular basis and (b) make reference in their annual report on how they are managing those issues and minimising risks.

CHAIRMAN—I would have thought that, in your annual report—which is coming up—you would talk about risk management anyway—

Mr Halstead—Indeed we will.

CHAIRMAN—regardless of the ANAO saying you should or you should not.

Mr Halstead—It is good commercial practice.

CHAIRMAN—I would have thought so, particularly considering the inherent risks that you face that many other companies in different markets do not face.

Mr Halstead—That is true.

CHAIRMAN—One of the risks that you face is all of a sudden the government pulling the plug.

Mr Halstead—Yes, and that is an issue that we are attuned to. This is a market where we have to fend for ourselves. We have to be competitive and bid competitively. We have to deliver services such that we are able to win, roll over and repeat contracts.

CHAIRMAN—Is it considered a risk that the current government at the next election will lose office and that a future government might decide to dump the whole process and leave Employment National with no market other than its corporate market?

Mr Halstead—In broad terms, political risks are business risks that the board considers—the whole spectrum of political risk. That goes to the point you make about changes of government, changes in government policy and change in government directions. All of those issues are real that need to be at least looked at. A probability analysis and consequential analysis should be done to make judgments about how that would impact upon the company and how one would manage in that event.

Mr COX—Has the board considered the possibility of privatisation?

Mr Halstead—Not to my knowledge.

Mr COX—Has any minister, parliamentary secretary or officer of any government department ever mentioned the possibility of privatisation?

Mr Halstead—Not to me and not to my knowledge to the board.

Mr COX—Would you say that Employment National was an ethical organisation?

Mr Halstead—Indeed.

Mr COX—Do you believe that, as a government business enterprise, there is more onus on Employment National to act ethically?

Mr Halstead—Than our competitors or other people in the market?

Mr COX—Potentially, yes.

Mr Halstead—The fact that we are what we are—not only our shape and form but that we are a wholly owned government business enterprise—the size of our organisation, the role that it plays and the responsibility it has, the board quite rightly takes that responsibility very seriously—not only in terms of the law underpinning their appointment but our position in the marketplace. We are very conscious of our behaviour and obligations.

It is not for me to make comment about others, but with 215 offices, hundreds of millions of dollars in turnover and major positioning in the marketplace, we act very responsibly in that regard. Some of our other competitors may look upon that differently if they are single shop operators in particular localised markets, but certainly we take it very seriously.

Mr COX—Would you say that having to behave ethically puts you at a competitive disadvantage with some of your competitors?

Mr Halstead—No. You would expect that we would behave ethically, in any event.

Mr COX—I would expect you would behave ethically, but do you think it puts you at any competitive disadvantage?

Mr Halstead—No. In fact, it could be the reverse. It could give us an advantage. The perception could well be that we are the ones to do business with.

Mr COX—I would have thought so.

CHAIRMAN—Probably everybody around this table agrees with you absolutely. Are there any more questions?

Mr COX—I have two more questions. In regard to board selection, have you replaced any board members since you started?

Mr Halstead—No.

Mr COX—So you have not been through the process of recommending a new board member or a list of potential board members to the minister?

Mr Halstead—No. I answered your question specifically. We have not replaced any; we have added to the board. The board initially started at four plus the executive director, and it is now five. A new board member was appointed six or eight months after we commenced.

Mr COX—Was that board member appointed on the recommendation of the existing board members?

Mr Halstead—Yes. We went through executive search quite widely using a reputable agency to identify a range of potential board members. The board then made due recommendation to the minister, and the minister and government subsequently appointed an additional board member. The additional board member had industry experience and that was part and parcel of the broadening of the board not only to encompass business acumen and professional directors and their capabilities but to actually get somebody who had a broad knowledge of the recruitment services industry as well.

Mr COX—And the board member who was chosen was one of the ones recommended by the existing board?

Mr Halstead—Yes, indeed.

Mr COX—How many people did they recommend?

Mr Halstead—My recollection was that two names went up.

Mr COX—Finally, I wanted to ask about administrative law. There is a suggestion in the Humphry report that administrative law should not apply to GBEs. Does it apply to Employment National?

Mr Halstead—In some cases, yes. My advice is that certainly the Ombudsman Act applies, but the others apply by virtue of the contract. The contract we have with the federal government has in it that we will need to comply with privacy, for example, and FOI, and through that contractual framework we comply with administrative law, as do our competitors. But the Archives Act and Ombudsman Act are two acts that specifically apply to us by virtue of our status as a GBE.

Mr COX—Has Employment National got a view about whether it is appropriate for those things to apply?

Mr Halstead—Again, it probably comes back to good business frameworks. From our perspective, privacy is very important. We are dealing with people and situations which require due attention to privacy, and we have no objections to the privacy frameworks applying and the freedom of information frameworks applying.

In terms of decision making, we are to some extent restricted in the contractual framework we have. It is quite specific as to what we are contracted to do. A lot of the decisions and administrative processes we do are prescribed. The department in its contract actually has quite a detailed attachment about what constitutes service and the nature of the service that you need to provide. To a large extent that is pre-prescribed. From our perspective that applies to all contractors, including our competitors. There is not much onus on us at all.

Mr COX—Who is your auditor?

Mr Halstead—The Auditor-General is our auditor, and they subcontract one of the big six.

Mr COX—Has there been any discussion from your board that you should have an external auditor, rather than the Auditor-General?

Mr Halstead—No, and in fact we are quite happy with the arrangements. As I said, the Auditor-General has responsibility and draws upon one of the big six, as required, to facilitate and help. It does not cause any concerns from our perspective.

Mr COX—If there was a problem—not with your accounts—in the way that employment services were being provided and the Auditor-General did a performance audit of the contracting arrangements and wanted to do a performance audit in that vein of your contract, would Employment National have any difficulty with that?

Mr Halstead—In general terms, I would have to say no, because of the powers, quite rightly, of the Auditor-General. But you are really talking about a contract that has two parties: one is the government, and we are the contractor. The nature of the contract is that it is actually a government contract. The department of employment, education and training, given the nature of that relationship, would be the one that would take that decision, as opposed to us. We have actually bid for one and signed a contract with them, so it is their contract that you would be auditing, not ours.

Mr COX—You are unusual in that you are government owned, but we have an ongoing issue with many government departments about whether the Auditor-General should get access to contractors' books.

Mr Halstead—They have access to ours.

Mr COX—Yes.

CHAIRMAN—Beyond that, realistically, the Auditor-General cannot undertake a performance audit of your company without either a direction from a minister or from us.

Senator GIBSON—That is right.

CHAIRMAN—And either of us can so direct him, and he will then undertake the performance audit which then costs you money. I only point out to you that it pays to keep us all happy, doesn't it? That is in no way an inducement or a threat. Thank you for coming today, for your professionalism and the frank and open way in which you have answered our questions.

Mr Halstead—I am delighted. Thank you.

[11.22 a.m.]

CRONIN, Mr Colin, Executive Director, Australian National Audit Office

McPHEE, Mr Ian, Deputy Auditor-General, Australian National Audit Office

CHAIRMAN—Thank you for coming once again to talk to the committee. We have received your submission and have authorised it for publication. Would you have a brief opening statement that you would like to make?

Mr McPhee—Thank you, Mr Chairman. I do have a brief opening statement. If the committee is happy, I would like to incorporate it into the evidence.

CHAIRMAN—Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

Mr McPhee—Very briefly, our submission explains that the current governance framework is quite robust and seems to be working quite well from our perspective. It is early days. We have done an audit of the oversight arrangements by departments where we suggested some tightening up was required. Agencies have agreed with our recommendations in that respect. We intend to do a follow-up report of the oversight and monitoring arrangements by portfolio departments with the expectation that we would table another report in about September of next year in this respect. The only other thing I would mention is that we recently published the discussion paper, *Principles and Better Practice—Corporate Governance in Commonwealth Authorities and Companies*, which has been well received by agencies.

CHAIRMAN—Mr McPhee, you are not saying that you would prefer that this committee bring down a report saying everything is hunky-dory and make no recommendations?

Mr McPhee—Not at all. I think it is very useful of the committee to explore it.

Senator GIBSON—A good leading question, Mr Chairman.

Mr McPhee—We say it is timely to explore it. What I am saying is that the CAC Act and the governance arrangements, which both took effect in 1997, were a refinement on a previous regime, so a lot of the better practice has been picked up. That is not to say it cannot be improved and there are some areas where it could be improved, but fundamentally I am saying it is a fairly robust framework. What we are saying is that operationally there are some areas where we have found that agencies need to give some more attention to particular aspects of training.

CHAIRMAN—Have you had a look at Professor Bottomley's suggestions?

Mr McPhee—No, I have not seen Professor Bottomley's suggestions.

CHAIRMAN—He suggested a need for a government owned companies act with a wider ambit than the present CAC Act. He said it should include setting up broad policy objectives; requiring notification of parliament by the relevant minister of the formation, acquisition or disposal of a government company; prescribing the basic content of the constitution for government companies; and regulating other inclusions. He said it would also be specifying the procedures by which directors are to be appointed, as well as their duties and obligations; stipulating the reporting and auditing arrangements applicable to government companies; and creating a central register of Commonwealth government companies. As you have just heard about it, you may not have a view.

Mr McPhee—I do have a view and perhaps I should preface it by saying that in earlier days I had something to do with the development of the CAC Act, so I come with a particular perspective on this. When the CAC legislation was being developed, there was a very deliberate decision not to duplicate and override the Corporations Law. The intent of the CAC Act was just to put in place the accountability arrangements between the directors and the minister and, in turn, to the parliament that would sit on top of the Corporations Law

and not create confusion by seeking to duplicate that. I think it is a very good model. I do not think the suggestion of going back to have a specific government companies act would receive a great deal of support.

The best way to illustrate that might be with the audit provisions. I can illustrate that there was a clear intention not to override the Corporations Law. As you would be aware, the Corporations Law has particular provisions about the appointment of the auditor. The CAC Act provision relates to auditing and basically says that the GBE may appoint an auditor under the Corporations Law. If it does not, the Auditor-General may still undertake an audit of the accounts of the GBE.

So it is not telling GBEs that they must appoint the Auditor-General under the Corporations Law. They have not interfered with the operation of the Corporations Law but have said, 'If you do not do that, the parliament still nevertheless wants the Auditor-General to undertake an audit.' So, theoretically, you could have two auditors doing audits of GBEs. No GBE has ever not appointed the Auditor-General—and that is the government's intention and the parliament's intention—but it is illustrative in the CAC Act that there is no intention to limit the director's choice of an auditor under the Corporations Law.

Mr COX—Does the CAC Act say the Auditor-General 'shall' or 'may' audit?

Mr McPhee—Section 35 says the Auditor-General is, in relation to each Commonwealth company, either to be the auditor of the company under the Corporations Law or, if someone else is the company's auditor, to give a report on the company's financial statements.

Mr COX—So it is 'shall'?

Mr McPhee—Yes. That is the model basically, so the CAC Act is very much about the accountability arrangements between the board, the responsible ministers and the finance minister. I think that is a good model. It would get very confusing if we sought to have a special Corporations Law for government companies.

CHAIRMAN—On page 4 of your report you talk about joint ministerial shareholders, one being the minister for finance and the other being the portfolio minister. You also go on to note that 'for more recently established GBEs, a single minister shareholder approach has been adopted.' You say this 'was introduced to address a perceived conflict of interest as the portfolio Minister is also the regulator or purchaser of services from the company.' Would you like to expand on that? I assume you think it is appropriate to have a single shareholder minister. More importantly, do you believe that for those where we have dual responsibility at the moment that dual responsibility should continue? Should we move all GBEs to the single minister model?

Mr McPhee—If we look at history, we have had a situation where, traditionally, the shareholding minister was the portfolio minister. Over time, as GBEs have had the regulatory functions taken away from them and have been given a commercial focus, we have seen the minister for finance take on a stronger role as a shareholder minister.

In re-reading Richard Humphry's report, I received the impression that he was probably looking at a minister—an economics minister—having a shareholding responsibility, but he tempered his view because of the strong response from portfolios and portfolio ministers that they continued to want to have a role here. The reasons he gave for that were very much that the GBEs still undertake certain CSOs and also have certain industry development commitments. In reality, if someone has a problem with Telstra, the portfolio minister is likely to receive the correspondence in respect of Telstra, for instance. Generally speaking, the outcome we have today of dual ministers is a pragmatic response to the situation. The degree of influence of the finance minister, as I read it, is increasing—because of the commercial objectives—and the portfolio minister's responsibility is probably decreasing.

CHAIRMAN—We had the Sydney Airports Corporation and Employment National appear before you today. As you would be well aware, both of those have the finance minister as a single responsible minister. Since you have audited both—or maybe you have not yet audited the Sydney Airports Corporation—

Mr McPhee—We would be auditing it. I am not sure of the details.

CHAIRMAN—I know you have had a look at Employment National.

Mr McPhee—Yes.

CHAIRMAN—Do you perceive that it has caused them administrative problems in having to respond regulation-wise to a minister who is not a shareholder minister but to the minister for finance, who is responsible for their corporative outcomes?

Mr McPhee—I cannot comment with authority on that. As I understand it, the reason that that situation occurred was to avoid potential conflicts of interest, so the intent was to avoid conflicts rather than create them.

Senator GIBSON—Doesn't that principle apply to each of these GBEs?

Mr McPhee—I certainly agree that, given that the regulatory framework and the responsibilities have been removed from GBEs, it is quite a different arrangement from the earlier days.

Senator GIBSON—So wouldn't it be neater in the longer term? The government is obviously moving that way anyway. So shouldn't we highlight that?

Mr McPhee—I think it is worth highlighting. It is clearly something for the government and there is territory at stake.

Senator GIBSON—Sure, I understand that, but for us as a committee, it would be cleaner and neater if there were no perceived conflict of interest. In each of the examples—we have only 12 of them anyway—you could say that there is a potential conflict of interest if the portfolio minister is involved. It would be better for him to be at arms length, because each of these things are really businesses.

Can I just run on from that. As I said this morning, we have had two clear examples about that with the Sydney airport and Employment National. If that is done, the question that was raised by Richard Humphry in his report is why are those GBEs not simply under the Corporations Law, because the regulation is away from them. The CSOs, if there are any, have to be set out in legislation or the articles of association, or whatever the appropriate term is these days—

Mr McPhee—The constitution.

Senator GIBSON—So what is the problem?

Mr McPhee—Are you suggesting that the CAC Act should not apply?

Senator GIBSON—We have had this suggestion from Bottomley, and I agree with your response, of course. An alternative view of that same coin is, why do we need a CAC Act for these dozen GBEs, given current circumstances, and particularly if that segregation is made between the portfolio minister and the shareholding minister? I guess another option for the government would be to have a couple of shareholding ministers, perhaps the Treasury portfolio and the finance minister, as the shareholders and the portfolio minister does the regulation and the purchasing.

Mr McPhee—Yes. I think you still need a CAC Act, for a couple of reasons. One is that there are some important provisions in the CAC Act about the responsibility of the directors keeping the ministers informed of significant events. It also allows the minister under statute to design the accountability framework which best suits the minister. There is very good provision in this CAC Act which is not widely appreciated that allows the responsible minister—

Senator GIBSON—Which minister are you talking about?

Mr McPhee—Whoever the responsible minister might be.

Senator GIBSON—The shareholding minister.

Mr McPhee—Exactly. Under your model, it would be the shareholder minister. So there is a range of provisions which require the GBE to keep the minister properly informed.

Secondly, there are some provisions in there which seek to make sure that the parliament is informed about particular operations of the GBEs, for instance the annual reporting requirements and the auditing requirements. One of the benefits of the CAC Act was that it actually legislated some of the prior government policy, which I think is of benefit for the parliament, because governments can change their mind fairly quickly on particular circumstances without having to go back to the parliament if it only has administrative arrangements in place on top of government companies. So I think is an important protection for the parliament in this legislation.

Senator GIBSON—On the other hand, we had important evidence this morning about Employment National, which is a large entity amongst about 310 different businesses

competing in that particular area. They have been segregated from the regulator and purchaser, so why not just report under Corporations Law, and the responsible minister should be reporting to the parliament about the performance of that in commercial terms.

Mr McPhee—The only difference is that this is a formal framework. I think it was mainly to protect ministers and protect the parliament. It depends on your degree of confidence in the government and the responsible minister doing the right thing at the right time.

Senator GIBSON—I suggest, from my involvement here in the CAC Act hearings some years ago, that a fair bit of that thinking was because portfolio ministers were involved and assumed to be involved. If in fact we moved on from there so that they were not involved for all this, it would be a lot neater and clearer that what we are looking at is performance of the government business enterprise, and the responsible minister or ministers—finance, Treasury or whatever—would be responsible for reporting to the government and reporting to the parliament about how that business actually performs.

Mr McPhee—But on what basis? In response to particular questions, or as a matter of government policy? The benefit of this is that it is actually a framework which the GBE understands and it protects the parliament.

Senator GIBSON—This is the fundamental question. If, as part of a competitive environment, you set up a business which is wholly owned or even partly owned by the government, and it is here to compete with other entities which are responsible only to the Corporations Law, why do we need to put additional requirements on top of them?

Mr McPhee—I think the question is whether they are additional requirements. I guess my question would be, wouldn't the responsible minister still require him or her to be notified of significant events and articulate what those significant events are?

Senator GIBSON—Let us get back to unemployment. We have got 300 entities and, sure, Employment National is probably the largest of them. Isn't it the department's job to actually keep in touch with all entities, including the government owned one, as to what the hell is going on and if there are significant events?

Mr McPhee—It is indeed, but departments have a lot more leverage if there is statute behind them than just relying on a particular relationship. My point is that I do not think there are onerous additional requirements, and most of them would be put in place, I suspect, in any event.

Senator GIBSON—I agree with that. I am just looking to try to simplify the legislative framework. We seem to be adding and adding stuff, and this thing from Bottomley is 'Let's add some more.' I am suggesting, and others have suggested, that we simplify it.

Mr McPhee—Yes. Just on a selfish ANAO perspective, for many years the government had a policy of the Auditor-General being the auditor but there were a few cases where that was not the case for one reason or another. This legislation actually clarified that and made it very clear that the Auditor-General should be the auditor.

Senator GIBSON—But that could be done through the constitution, couldn't it?

Mr McPhee—It could be, but then it becomes a matter for government decision and not a matter that will come to the parliament necessarily.

Mr COX—Was the AIDC one of the ones that did not have the Auditor-General as auditor?

Mr McPhee—I think the AIDC was one of them. There were dual audit responsibilities. It was some arrangement that was entered into in the past; a compromise, I suspect. I think there were a couple of other cases as well.

Mr Cronin—We have one example, which is when we did the audit in 1997 of the Australian National Railways. One of the important reasons why the government needs information is to be aware of very material transactions that go on in terms of essentially using the government's name to go into the debt markets and borrow very large sums of money. Under your general purpose finance reporting, that would not necessarily be fully reported. These GBEs run some of the largest Treasury operations in Australia, such as Telstra. They are actually the government's companies, and therefore they have implicit guarantees. No-one lent to Australian National Railways on the basis of its financial performance.

When we did the audit, it was a classic example of what transferred. Until 1988, when the first GBE arrangements came in, government freed up the capacity of Australian National activities. They still required the Treasurer's approval for explicit guarantees on loan funds, but they could go into the market and undertake debt raisings without using the explicit guarantee, which they did, because the markets led to them on that basis. They then transacted a series of what are called samurai bonds and gold loans, and it took quite a while for this to emerge and then to be unwound. Eventually AN cost the government $1.4 billion to terminate all AN's liabilities when we sold them.

Senator GIBSON—I can understand that, but why couldn't that be handled in the constitution of the entity? Tell me what happens with Telstra today when it borrows—is it government guaranteed still, even though—

Mr Cronin—No.

Mr McPhee—No.

Senator GIBSON—It is not. So the partly owned ones are basically completely at arms length?

CHAIRMAN—Hang on, you say no.

Mr Cronin—The explicit government guarantees are not provided. We have withdrawn virtually all the explicit government guarantees.

CHAIRMAN—But how about implicit?

Mr Cronin—Yes, that is in the minds at the moment.

CHAIRMAN—This 'no' came, boom! How about implicit?

Mr Cronin—Yes. There was a case in point where, in New Zealand, there was the equivalent to AIDC. After it was sold, it struck turbulent waters and various bondholders said, 'Even though it is sold in the private sector, all these debts were actually contracted while the government was there.'

Senator GIBSON—Let us get back to the reality, though. We have only got 12 of them. Nine of them are companies now and two of them are in the process of moving to companies. Which of those 11 companies—which include Telstra, Australia Post and ADI—have risks regarding the problem you just outlined that happened in the past to the Rail Corporation?

Mr Cronin—We cannot comment.

Senator GIBSON—No. Are there likely to be any of those that can go out and borrow with a government guarantee?

Mr McPhee—No.

Mr Cronin—None of those have got government guarantees.

Mr McPhee—In terms of implicitly, of course.

Senator GIBSON—That was the key point, that the guarantee thing has gone.

Mr COX—When AIDC was partially government owned, there was some conflict between the board of the AIDC and the government about access for information, which was one of the reasons for the then government deciding to buy it back. Does the CAC Act provide sufficient legislative framework to make sure that, where a government business enterprise is only partially government owned, such a conflict would not be repeated, and that the government could, in fact, get access to sufficient information to understand perfectly what its exposures and liabilities were?

Mr McPhee—I know the partly owned companies got light treatment in the CAC legislation because of concern about minority interests. As I read these provisions, they are very much focused on the wholly owned companies requiring to keep ministers informed. In terms of the others—unless Colin knows something more than I do—I think it is a lot lighter treatment in terms of their responsibilities.

Mr COX—So there is the potential for a conflict with a board who wanted to plead responsibility of the company and the minority shareholders over any desire by the majority Commonwealth shareholders to know what was actually going on in the company?

Mr Cronin—Some boards have been known to use the Corporations Act against the Commonwealth—certain provisions about disclosure of information, particularly when there

are minority shareholders, which is a provision of the minority shareholders provisions of the Corporations Act.

Mr COX—So without contradicting the Corporations Act, it would be very hard to come up with a set of guidelines, principles or legislation that would cover that, wouldn't it?

Mr McPhee—I think that is why it was left alone in the past in terms of the legislation. There are only a few provisions which relate to partly owned companies. I think it is to do with the annual report and the auditing provisions, and that is about it, basically. I think it had to do with legal issues, Mr Cox, the details of which I am not competent to comment on.

CHAIRMAN—Telstra commented in its submission that there is excessive parliamentary scrutiny and Airservices Australia proposed in its submission that GBEs should only be required to report the same amount of information and detail as required under the Corporations Law. Would you like to comment on that?

Mr McPhee—Of course that is all it does in its public reporting in terms of its accounts, et cetera. Obviously Telstra is concerned about the interaction with the portfolio department in terms of information flows and the requirement currently to send letters on most issues to both ministers—probably issues about time delays in responses, et cetera.

CHAIRMAN—And to appear before Senate estimates.

Mr McPhee—And to appear before Senate estimates committees—absolutely. I guess I understand where they are coming from. Equally they are subject to government control and ownership, and I think that entitles the government and the parliament to have a say in what the expectations are in terms of the accountability framework for those particular bodies.

CHAIRMAN—Can you tell us which findings or recommendations of the Humphry report were not taken up by government?

Mr McPhee—Certainly the Department of Finance and Administration would be better placed to respond to that. There were the ones about administrative law, putting CSOs onto the budget and a few things like that which were not picked up. But fundamentally I think most of the recommendations were picked up.

CHAIRMAN—We will ask DOFA. The Snowy Mountains Hydro-Electric Authority has commented that risk management requirements imposed on the public sector should not operate to the detriment of organisations where a competitive neutrality vis-a-vis similar private sector bodies is concerned. Do you think that government requirements for risk management are more stringent in the private sector, or that they are appropriate or inappropriate?

Mr McPhee—I would have thought they are quite appropriate. My recollection of the governance arrangements are that the GBEs are to consider the material risks facing the bodies and to inform the minister of the strategies they are proposing to take to deal with those particular risks. It seems like good business practice to me in terms of the framework,

at least. Just how that works out in day-to-day operations for this particular GBE, I am not sure. But it is pretty hard to argue with the logic of the governance arrangements.

CHAIRMAN—In order for you to be able to undertake a performance audit of a GBE, the CAC Act requires a request from the shareholding minister, the finance minister or this committee. You also have the option of being able to ask one of those three authorities for permission to undertake a performance audit. To the best of my understanding, to date you have not undertaken any performance audits of any GBEs. Do you propose to undertake any next year—notwithstanding that we are supposed to already know what you are doing next year; I apologise for the fact that I am not as well briefed this morning as I might have been—and, if so, which ones?

Mr McPhee—Certainly under this legislation we have not been requested and we have none where we would be proposing to come to the committee to suggest that you ask us.

CHAIRMAN—And we have not asked you for any either?

Mr McPhee—And you have not asked us for any either.

CHAIRMAN—Would it be your view—the view of ANAO as an entity—that the clauses in the CAC Act that deal with this issue are appropriate?

Mr McPhee—We have basically accepted the provisions in the Auditor-General Act and the CAC Act, and we have not sought to reopen them. It is not an issue I have discussed with the Auditor-General recently. This matter has been considered by government in the past. There is an argument to say that the Auditor-General should have complete discretion as to the audits that he or she chooses to undertake—providing, of course, that the body is government controlled. That argument has been played out. This is the result of the government's decision and the parliament's decision, and we are quite comfortable with it.

CHAIRMAN—I would have thought that realistically, considering the political atmosphere surrounding any request from you to this committee, it would be highly unlikely that such a request would ever be denied.

Mr McPhee—I agree with that, Chairman.

CHAIRMAN—In fact, I could not imagine a circumstance in which it was likely to be.

Mr McPhee—Yes.

CHAIRMAN—But then, strange things happen sometimes, I suppose. Has anyone got anything else to raise?

Mr COX—I have a few more. Do any of these GBEs have boards where the directors have directors indemnity?

Mr Cronin—That is not unusual. For example, often with public floats, where you have the transition, there are indemnities provided to directors. There have been movements in

terms of directors taking commercial cover. It would vary in terms of where they are actually up to. The old Finance direction 21 was frequently invoked. Directors have got a huge exposure out there in terms of the companies. We have not kept up with the movements in the Corporations Law, which at one stage prevented directors taking cover; that has changed. We would have to look into the internal workings of the companies.

Mr COX—I think it is a relatively significant question, so I would be grateful if you would. I know there are indemnities where there is privatisation going on, and that does not strike me as being all that unreasonable when it is probably the minister for finance who is going to set the price. But are there situations where there are ongoing indemnities of any description for directors just for the ordinary course of business activities, and even in some cases—as I know there have been in certain state GBEs—indemnities or legislative exemptions from libel and other risks that they might incur? That is one question. The second one that you might be able to enlighten me on is: how do the administrative orders work in relation to two ministers being a shareholder?

Mr McPhee—Good question. We will take it on notice and let you know.

Senator GIBSON—A good answer!

Mr McPhee—I suspect it is probably the portfolio minister who is shown under the administrative arrangements orders, but we will confirm that.

Mr COX—And under what authority, then, does the minister for finance act when he is the other one?

Mr McPhee—Yes.

Mr COX—A third thing that you may have a view on, or you may like to go away and consider it as well—and you might even like to think about doing a performance audit on this—is the capacity of the department of finance to evaluate the financial performance of GBEs.

Mr McPhee—That is, of course, what we will be looking at in our next audit that we will do next year. The whole regime is designed to allow the department of finance to understand how the GBEs are going—the corporate plans, the discussions, the reports on performance. The regime is designed to do that. I know Finance has centralised its administration of that monitoring. In the past, it used to be spread in a number of areas in the departments and there was always a question of whether the particular areas had the necessary skills to get across the GBE performance, the risks, the issues. It was always a great risk for the department of finance that it might have something in the paperwork that was showing a problem, and it not being detected. That is a monitoring risk, if you like, so Finance, as I understand it, in recent times centralised its oversight arrangements. Obviously, we will be looking at their administration when we do the audit. We expect to start it shortly.

Mr COX—My impression is that the overall talent pool in the department of finance is diminishing.

Mr McPhee—It is interesting that the pure finance skills are in great demand these days, so I think it is an issue for a lot of departments in terms of getting the requisite financial skills. Given the change in the budgetary arrangements, the accrual accounting, the business focus that the reforms have brought to the departments, it is a wider issue and it is probably a more particular issue for the department of finance itself.

Senator GIBSON—Do you know whether they ever use outside consultants to come and help them with the GBEs, particularly their performance?

Mr McPhee—I do not know. Colin may know. One of the recommendations we made in our previous report was that they should consider getting some independent evaluations of the corporate plans of the GBEs just to get that external quality assurance into the process.

Mr Cronin—It is also in the line agencies that look after them—they have even got smaller pools of people to draw on, and the people move on quite a bit. In terms of retaining that corporate knowledge, you need the specific financial knowledge, you need the knowledge of the GBEs' activity. That is very difficult to maintain in an agency that might have one or two of these GBEs, and it may not be considered a high priority. Maintaining that pool of expertise is quite difficult.

CHAIRMAN—So what are you saying—we are relying more on the boards of directors of the GBEs themselves than we are on any oversight role of an administrative department?

Mr Cronin—The front line is the boards effectively maintaining these entities. Any monitoring role is always going to be after the event; it is not live, otherwise you would have a public servant sitting on the boards which has tended to be something else that has drifted out over time. And if you have got a public servant on the board, are they appropriately qualified or are they just there for their position? There is a whole raft of issues that are raised through this process. In the audit we undertake, we will be looking at the department of finance's administration because of their increasingly important role now compared with the old 1993 arrangement, and also looking at the agencies. We hope to cover that.

Mr St CLAIR—But that is why you have a board, though, isn't it?

Mr Cronin—Yes, we do.

Mr St CLAIR—They are there to do that.

Mr McPhee—And you do not want to detract from that at all.

Mr St CLAIR—Absolutely.

Senator GIBSON—On the same point, I remember when this committee went to New Zealand five years ago and the New Zealand government had a little two-hand unit. They were the aggregators of all GBE information and I think they also used some external advice. I think both the Treasury and finance ministers were the shareholding ministers over

there. This little unit was basically preparing the comparative information—they had a whole heap of damn GBEs—and providing the advice to the ministers about that.

Mr McPhee—You would need to make sure you sufficiently resource it to be able to be responsive to the GBEs because of requirements for GBEs to inform you about new partnerships in new companies et cetera. You need a responsive service.

Mr COX—You might want to comment about the differences between a wholly government owned GBE and one that is listed on the Stock Exchange, in terms of the amount of outside market scrutiny. There is a substantial difference between all of the accountability mechanisms for a business that is listed on the Stock Exchange and is fully out there exposed to the market and one that basically has this close relationship with government.

Mr McPhee—I agree with that. I think the Humphry review suggestion which was picked up about having a statement of corporate intent was designed to inform the parliament a little more about the directions of the particular GBEs. It is fair to say that, under this framework that is in place, the CAC Act seeks to ensure both the minister and the parliament are properly informed. But the governance arrangements are very much directed to the government perspective or the minister's perspective and the corporate plans et cetera are not public documents. So I think it is quite fair to say the government, ministers and the departments are properly informed and it is a good arrangement, but when it comes to the parliament the amount of information is certainly a lot less. I think the Richard Humphry suggestion about having the statement of corporate intent at least was to go some way to inform the parliament about the overall strategic directions of the GBEs and as a broad summary of the corporate plan information.

Mr COX—The only advantage I can see for the government in having a partially government owned entity is that at least if it is listed on the Stock Exchange you do get some idea of what the market thinks the value of the company is, which is a bit of external scrutiny. I cannot think of any other. If you can think of any other I would be most interested.

Mr McPhee—I think it is always a difficult situation for governments to be in with partially owned companies.

Mr Cronin—In terms of your first question, Mr Cox, it would be difficult for us to actually respond on the directors' indemnification arrangements. They will be issued by either DOFA or the individual ministers or agencies, or they will be internal to the company itself and their arrangements, or there may be directors who take their own specific indemnification. The departments themselves and DOFA would be most appropriately placed to advise on that.

Mr McPhee—If you like, we could ask DOFA what their policy or practice is. It may be that if you want specific details it could be something that you could pursue with them. We will ask them.

CHAIRMAN—We could ask that.

Mr McPhee—If you are happy to do that.

CHAIRMAN—We should not go asking third parties to ask our questions.

Mr McPhee—Okay.

CHAIRMAN—We are perfectly capable of doing that. We are properly resourced.

Mr COX—Is there still a primary industries bank of Australia? There was a little offshoot—

Mr Cronin—There was the Development Bank attached to the Commonwealth Bank.

Mr COX—That is right.

Mr Cronin—That has gone.

CHAIRMAN—Thank you very much, gentlemen.

Proceedings suspended from 12.07 p.m. to 1.02 p.m.

[1.03 p.m.]

BOTTOMLEY, Professor Stephen, Director, Centre for Commercial Law, Australian National University

CHAIRMAN—Welcome. We have received your submission. I now invite you to make a brief opening statement before we start to ask you penetrating questions.

Prof. Bottomley—I just stress that my submission is intended to address only some of the aspects of the committee's inquiry, particularly whether additional legislation is needed with regard to the government's arrangements for GBEs and the other question of whether more GBEs should be companies. My submission is not limited in its ambit to GBEs. It derives from a wider set of concerns about government companies in general. As I see it, GBEs raise a particular set of concerns within that wider context. Lastly, and this will be apparent, it is a submission written from the perspective of an outside observer. As for the rest of it, I will leave that to questions.

CHAIRMAN—On page 2 of your submission you said:

Importantly, the formal independence of a GBE will not be negated by the level of control which government exercises over the GBE. This was illustrated in the case of *The Commonwealth v Bogle* (1953) . . .

Can you tell us about that? I am an engineer.

Prof. Bottomley—We can assume the purpose behind setting up a government company is to create a legal entity which will be able to operate independently of government structures—that is, it creates a separate entity with its own legal powers and its own capacity. Having set that up, there may be concerns within government to make sure that this entity does not drift too far off, that it does not operate completely independently.

The legal question is whether, having created a separate legal entity with its own powers, its own capacity to engage in legal actions, there are any ways of controlling, from the legal point of view, what that entity does. In the Bogle case a Commonwealth company was running government hostels in Victoria. It was wholly government controlled: the government controlled all of its finances, held all of the shares and appointed all of the directors. Nevertheless, at the end of the day, the High Court held that this was an independent legal entity, it was not a government entity.

The issue of that case was whether the entity could take advantage of immunity from state legislation. The High Court held that it could not because it was an independently operating legal entity. The point of the reference in the submission is to underline that when a GBE is established as a separate legal entity it is creating attention, and it is one that could be addressed more clearly in legislation.

CHAIRMAN—As I understand your proposal, you would like us to recommend that a new instrument—the Australian companies act—be set up to replace the current CAC Act

and replace the effect of the Companies Act on wholly owned government business enterprises. Why do you think such extreme measures are necessary?

Prof. Bottomley—It is not as extreme as that. What I am proposing is an act—I have called it the government owned companies act—which would take over what the CAC Act currently does. My submission is that the CAC Act does not go far enough. The CAC Act is concerned primarily with financial accountability and, by and large, that is an appropriate set of measures but things are left out, and then it has this difficult relationship with the accountability regime that is set up in the Corporations Law.

The purpose of having a government owned companies act would be to have a more thorough-going statement about the accountability environment within which government companies are presumed to be operating, to be a much more public statement about why it is that government chooses to conduct some aspects of its operation through the corporate form rather than through the departmental form or non-corporate agency form.

I am not proposing that the mechanisms that exist in the Corporations Law should simply be put to one side. The Corporations Law, in its own terms, contains a very strong set of accountabilities in corporate governance arrangements, but they are governance arrangements that are set up and aimed primarily, if not exclusively, at private sector companies. They are drafted, they are interpreted by the courts and they are reformed by reference to the needs and the dictates of private sector companies. In my submission that model is not a wholly appropriate one when the entity is a government owned or government controlled entity.

The CAC Act goes some steps towards recognising that—indeed, as I understand it, that is why it was enacted, to address some of the shortcomings in the application of the Corporations Law. I am proposing that we take it one step further to supplement the CAC Act provisions with further provisions. In particular, I have suggested that provisions should be introduced which would address the start-up phase—why it is decisions are made to set up an entity as a government company and in particular whether there are reasons for the choice between using the statutory corporation method and the Corporations Law method.

Senator GIBSON—Only a few years ago we had 20 GBEs; today we are down to 12—of which nine are companies and two are in the process of becoming companies. So we could say that, in the near future, 11 out of the 12 GBEs will be companies. So the number of GBEs is coming down as governments of both sides have sold off their businesses. The other thing that has also happened, as we heard in evidence this morning from Employment National and the Sydney Airports Corporation, is that this government has shifted those two entities from two responsible ministers back to one portfolio—finance. For those particular entities it is finance only. Why? Because there was concern about a perception of conflict of interest for the portfolio minister—who was, after all, the regulator and probably in some circumstances also the purchaser—so that Employment National, which is a business out there competing with 300-odd other entities, should not have any particular advantage.

With that model of the finance minister being the only shareholder, leaving the regulatory portfolio minister out of the shareholding because of that real or perceived conflict of interest as the regulator, the question has been put to us: why do we need the CAC Act? We have only a small number of entities and their numbers are getting smaller, and we have

segregated the regulation and purchase from the running of the ownership of the business. If it is just the ownership of the business we are looking at—we are looking for performance of how these government owned business actually perform—what is wrong with just relying on the Corporations Law?

Prof. Bottomley—I guess the simple answer is that they are government owned. The Corporations Law model operates under the assumption that the owners of the company are the shareholders in the company. So there is a direct involvement. In the case of a government owned company, the general public or the taxpaying citizens—whom I would regard as being the ultimate owners of the company—do not have a direct involvement. Their involvement is indirect.

Senator GIBSON—But the nominal shareholder is the finance minister.

Prof. Bottomley—He is nevertheless an indirect form of representation. I take the role of the minister—whether it be the minister for finance or the portfolio minister—to be there in part as a conduit between the operation of the entity and parliament. These entities operate within not only a corporate governance environment but also a parliamentary governance environment. Their ultimate accountability is to the Australian public, not just to the minister. It does not stop there. That is the model in the Corporations Law. The accountability of directors stops with the shareholders. In the case of a GBE, the immediate accountability is to the immediate shareholder, whomever that may be. In the case of a minister or in any other case, it extends beyond that. That is why I think it is appropriate that there be some added umbrella of recognition of that, and the CAC Act performs that at least at the level of finance.

Senator GIBSON—If you follow that route of making sure that the portfolio minister is not involved, then additional requirements by government and by clients can—if necessary for particular businesses owned by the government—in fact be put in the constitution.

Prof. Bottomley—Of the company.

Senator GIBSON—Of the company.

Prof. Bottomley—That is true. As I understand it, in the past that practice of inserting governance arrangements into what used to be the articles of association of the company has been adopted. The difficulty I have with that is that, whilst corporate constitutions are in one sense public documents, they are available as a matter of public record—if one chooses to do a search of the database or via the Securities and Investments Commission. Nevertheless, it is a much less public way of demonstrating the governance arrangements and the accountability arrangements which apply to those entities. That is the case with putting it up front in statutory form. If the concern is that that is a lot of effort for such a small number of GBEs—I am not in a position to explain why it is the numbers have been declining—one might equally suggest that it is a cyclical thing and over time we get back to—

Senator GIBSON—Yes, but governments are getting rid of business. It is a world wide thing—they perceive they are getting back to their core role of what they are really on about, and that there is no need to be involved in the business world.

Prof. Bottomley—I certainly agree that there must come a stage where an entity that is operating in a commercial environment wishes to operate as closely as it can on the same terms as its commercial private sector competitors. That entity may wish to have to worry only about Corporations Law forms of regulation rather than any additional forms. It seems to me the issue then is not what is the best governance arrangement we can try to construct for that entity. By that stage the question has become, 'Is this a case of privatisation or, indeed, should the government be involved at all?' If there was a choice for no government involvement then the need for the CAC Act disappears.

Mr St CLAIR—DOFA has said that 'providing for additional parts of the governance arrangements in legislation risks locking in practices that can become outdated'. Do you agree or not agree?

Prof. Bottomley—Any attempt to put anything in legislation carries that risk. There is a policy choice or a trade off that has to be made between wanting to maintain flexibility and wanting to maintain transparency and public accountability. I think the risks of inflexibility with putting things in legislation can be overstated, and there are ways around that. This is the model that we see already operating in the Corporations Law, to the extent the Corporations Law presumes or sets up default provisions. The basic presumption is that these will be the rules which will govern the internal governance operations of private sector companies. They are free if they wish to alter or vary those. Perhaps that is the model that could be considered.

The question comes down to the level of detail that you want to prescribe in a government owned companies act. Clearly you need some flexibility. My concern is that sometimes the desire for flexibility also means that what is happening is not publicly visible or accessible. It is a bit difficult to determine what governance arrangements pertain to a particular company. If it is written into the company's constitution that presents one avenue, but you have to know where to look and you have to know that there is something to go looking for. If something is put into legislation at least there is a signal that these are the sorts of arrangements which government believes to be appropriate.

Mr St CLAIR—You do not think that is too prescriptive? We took evidence this morning about community service obligations being put in constitutions so that there is some mechanism in there in case something changes. You do not think you are getting towards being too prescriptive as to what should be there?

Prof. Bottomley—I do not think so. Things like community service obligations could be put into legislation in a way which allows for shifts, as market conditions changed—I mean, community service obligations should not be set in concrete for all time nor should, necessarily, the governance arrangements. Just as we find with corporations or companies that there are capacities to change, to amend, to shift as the situation of the company changes, that could also happen in relation to government companies. The other part of the answer I suppose is the argument that government sector bodies ought to be able to be held out as examples of best practice in certain areas. Part of the price of that may be slightly less flexibility when it comes to meeting, in the market, with their private sector counterparts.

Mr St CLAIR—You do not think that then would put an impediment in their competitiveness in the marketplace?

Prof. Bottomley—In certain situations it may do. My view is that is part of being a government in a business enterprise. If what is desired is full competitiveness, meeting private sector counterparts on their own terms, then, as I said, I think the question is not how free can you let them go, but should you let them go altogether? It becomes a debate about privatisation, not a debate about appropriate corporate governance.

Mr COX—In relation to partially privatised government enterprises, there is the issue of oppression of minority shareholders and that has, on occasions in the past, conflicted with the Commonwealth's need to know what was going on inside a government business enterprise where it had significant exposures. There was one case where one of these organisations made substantial losses and the board took the attitude that the Commonwealth was not really entitled to know anymore—despite the fact that it had 70 per cent of the company—about what was going on inside the company than any of the minority shareholders. Do you think there is a role for the sort of legislation that you are proposing to resolve that difficulty in favour of the Commonwealth?

Prof. Bottomley—Yes, it is one of the core problems that faces these sorts of entities in matching both Corporations Law governance framework with parliamentary governance obligations. I very much see a need in an act like this to set out quite clearly what is the position of the board of the company in relation to the responsible minister, to make it clear that the board does have obligations to disclose.

There is already some indication of that in the CAC Act, as it is currently framed. Section 41, I think, requires the board of such a company to keep the minister informed of various matters. It is worded somewhat vaguely and it gives out particularly at the point when, in its own terms, it does not give the board any assurances that, by giving information to the minister, they are necessarily absolved from any liability under the Corporations Law. Questions about breach of confidentiality in Corporations Law terms could well be an issue. That is one area where I think something like a government owned companies act could perform a real service.

Mr COX—Would you propose then that that government owned companies act would effectively override so much of the Corporations Law as would allow an action by minority shareholders who believed they were being oppressed?

Prof. Bottomley—That is an issue that would have to be addressed. I do not know what the final answer to that would have to be. The situation, in which partly owned companies find themselves, varies. Some on the path towards privatisation are on either a very quick or a very slow process. You would not want to be depriving shareholders of remedies if the ultimate aim is a quick privatisation of that company. The most I can do is identify it as an issue that needs to be addressed. I think some specific legislative enactment is the way to do it. I think more work needs to be done on coming up with the appropriate way of resolving that problem.

Mr COX—If you had any more thoughts on that over the period that this committee is deliberating, it would be helpful if you could send them to us.

Prof. Bottomley—Yes.

Mr St CLAIR—With litigation being the way it is in companies, in the performance of companies, in a situation where the minister is the shareholder and is providing some direction to the company would the board feel that is going against the performance of the company and that it, therefore, opens itself up to some form of litigation? If there is not, that is fine, but if there is, do you see that as forming any part of any change that would happen?

Prof. Bottomley—From the point of view of corporate law, the strict answer is that the minister, as shareholder, has no legal position to give a direction to the board. Under our system of Corporations Law, shareholders have no legal power to go into the boardroom and tell the directors, 'This is what you are going to do and how you are going to do it.' That is certainly the case in all companies which adopt standard constitutional provision which says that the management of the company lies in the hands of the directorates. The courts for a long time have said, 'That being the case, the shareholders only avenue is to attend general meetings to decide to vote on or off directors and so forth.'

If the minister is not a shareholder, or if the minister is not wearing the shareholder's hat but wearing the ministerial hat, and gives direction, then the question is whether that direction is being given pursuant to some legislative authority to do so. If that is the case and the board acts in response to that direction, on my reading of the CAC Act there is still some area of uncertainty as to where that leaves the directors, if ultimately it turns out not to be in the best interests of the company, or if another shareholder takes that view. If the minister is acting in the absence of any specific legislative power to do so, then the question arises as to whether the minister might not then be regarded as a de facto director of the company. My understanding is that that is an issue that has arisen. There have been concerns that ministers be not seen to be too close to the board, and that their directions are more general than specific.

Mr St CLAIR—Has there been a change over the years? My understanding was that to be a director of a company, you had to be a shareholder.

Prof. Bottomley—No.

Mr St CLAIR—Was that ever the case?

Prof. Bottomley—No.

Mr St CLAIR—So you could be the director of any company without holding a share?

Prof. Bottomley—Yes.

Senator GIBSON—I have a question about your previous point. In the case of, say, the finance minister being the single shareholder of a GBE, he can influence the directors through a general meeting.

Prof. Bottomley—Through a general meeting, any shareholder can put propositions to the board as to what direction they want to see the company go, but ultimately the directors have got to do it. The directors rely on the constitutional power that they have.

CHAIRMAN—A 100 per cent shareholder can sack the board and do whatever he likes. I felt that was self-evident.

Mr COX—I would like to come back to the question of minority shareholders. If the Commonwealth is a 70 per cent shareholder and 30 per cent of the company is widely held, and the Commonwealth decided to go down the path that Senator Gibson has just suggested and put up a proposition at a special general meeting and then voted for it and enforced it, and it was clearly an oppression of the minority 30 per cent, what legal remedy does the 30 per cent have in that circumstance?

Prof. Bottomley—They can rely upon their rights under the Corporations Law to bring an action for oppression. There are several doctrinal hurdles that they have to jump to get that. Ultimately the question is going to be: what remedy are they seeking? But they have the same rights as any other minority shareholder. Their position will be enhanced—in theory, anyway—once the CLERP bill has been passed, and once the statutory derivative action has been introduced, part of which is designed to overcome some of the common law problems that single shareholders face in bringing actions to protect the interests of the company.

CHAIRMAN—On page 4 of your report, you say:

1. while the immediate shareholders in a GBE may sometimes be Ministers or departmental officers—

and I would question that statement—

in all cases the ultimate owners of the enterprise are the taxpaying citizens . . .

Could you explain to us the logic of legal thought that led you to such a conclusion?

Prof. Bottomley—On the first point, the statement that they 'may sometimes be ministers or departmental officers,' simply relies upon my own research about the shareholding patterns—

CHAIRMAN—Which GBE has a departmental officer as a shareholder?

Prof. Bottomley—I could not name one specifically.

CHAIRMAN—I should think you could not, because I do not think there are any. How did you arrive at the conclusion that the owners of the enterprise are the tax-paying citizens?

Prof. Bottomley—If the government is a controlling shareholder, or a significant shareholder in the enterprise, the government is there, not in its own right, but to represent the tax-paying and voting citizens. So it is they, ultimately, who are the owners of the

company. It is they who have provided the government's position to take up that ownership position.

CHAIRMAN—I would be very surprised if the High Court would agree with you. I am only an engineer; I am not a lawyer. I would have thought the government is the owning enterprise if it owns all the shares, not the taxpayers.

Prof. Bottomley—The government owns the enterprise for legal purposes; the government is the owner of the shares. I would have thought that, as a matter of public policy, the purpose of the government owning those shares is so that it can discharge its constitutional obligation, which is to run government for the purposes of the Australian citizen.

CHAIRMAN—We will agree to disagree then.

Mr COX—I think it is an item of theology.

Prof. Bottomley—I thought it was more grounded than that.

CHAIRMAN—I doubt its legality in constitutional law, my friend.

Mr COX—I am not going to contradict it.

CHAIRMAN—His statement?

Mr COX—Yes.

CHAIRMAN—I see. You say in your submission that an underperforming GBE is immune from the threat posed by a potential takeover of the organisation. So what?

Prof. Bottomley—Companies in the private sector incorporated under the Corporations Law operate, in general, under the prospect that, if the managers of the company do not perform properly, if they are not using that company's assets to their most efficient use, then the market will recognise that and the company becomes a likely target for a takeover.

CHAIRMAN—Will or may?

Prof. Bottomley—It depends upon market conditions. The economic argument is that the—

CHAIRMAN—Or the company might go broke?

Prof. Bottomley—It may go broke; it may go down. Nobody may be interested in taking over that company. But if the company is not completely beyond redemption, if the company is underperforming and not simply misperforming, the argument goes that a prospect of being taken over supplies a discipline in the minds of directors to perform adequately for fear that if they do not they will lose their jobs.

CHAIRMAN—I do not think any of us deny that.

Mr COX—It is one of those market signals, I guess, that is absent with a public company but is there with one that is completely in the marketplace. It goes to one of the deficiencies of corporate governance with a public company, I think.

CHAIRMAN—I would not argue with the proposition that it is immune from the threat posed by a potential takeover, but this committee is trying to come to grips with whether the CAC Act provides the discipline that is necessary and the reporting mechanisms to allow us, the parliament—or representatives thereof—to review performance and for the Auditor-General to review performance and whether all those put together provide a reasonable assurance to the Commonwealth that its business enterprises are running on a proper basis. But you maintain that most of the CAC Act is insufficient and that we need a new, wider vehicle.

Prof. Bottomley—The CAC Act goes a long way towards achieving that. Indeed, one way of viewing the CAC Act is to see it as a substitute for the operation of market forces that otherwise do not affect the operation of GBEs and, indeed, the operation of the Auditor-General as well. They supply what the market would otherwise be supplying.

CHAIRMAN—Your submission states:

In 1989 the Senate Standing Committee recommended that general provisions for the formation, reporting, audit and disposal of government companies be set out in such an Act.

It also states:

. . . the WA Inc. Royal Commission made a similar recommendation.

Do you maintain that the 1977 CAC Act does not meet that recommendation?

Prof. Bottomley—No, not entirely. The CAC Act kicks in after a company has come into existence. It does not require any register or any record be kept of the existence of these companies—I should say here I am talking more broadly than just GBEs. It does not contain provisions for the formation. It does contain provisions, of course, for reporting and audit, but it does not start until after the companies have come into existence.

In my submission I am concerned where there is that absence. It is very difficult to discern what is the policy behind the decision to create a company, as opposed to creating a statutory corporation. Once those bodies have been created, it is very difficult to determine where they are, what they are and what they do.

As an outside researcher in this area, one is left to combing through annual reports which may or may or not disclose the full ambit of companies that have been brought into existence. There used to be the list of statutory bodies that was published—I understand that is no longer being published—and even that was, sometimes, by its own admission, only a sort of partial pick-up. So the argument there, and the argument that was put by the Senate committee back in 1989, was that, if a large part of government activity or even a small part of government activity is going to be conducted through independent entities, then at the very least there ought to be a mechanism for, in a regular way, making that activity public not only in terms of reporting and audit requirements but in terms of letting outsiders know

about the creation of those bodies—where they are and what they do. That was a concern of the Senate committee.

CHAIRMAN—Thank you very much, Professor.

Prof. Bottomley—Thanks for the opportunity.

CHAIRMAN—We will continue our deliberations and, ultimately, we will bring out a report and send you a copy.

Prof. Bottomley—Thank you.

[1.41 p.m.]

MOODY, Ms Donna, Acting General Manager, Finance and Business Development, Medibank Private Ltd

WHELAN, Mr Michael, General Manager Assisting the Managing Director, Medibank Private Ltd

REYNOLDS, Mr John Thomas, Acting Assistant Secretary, Corporate Development Branch, Department of Health and Aged Care

CHAIRMAN—We welcome representatives of the Department of Health and Aged Care and Medibank Private to today's hearings. Thank you for coming. We have no submission from Medibank Private. We do have a submission from the department. Would any or all of you have a brief opening statement you would like to make before we ask you questions?

Mr Reynolds—Members of the committee, I would like to thank you for the opportunity to appear before the committee and present the views of the Department of Health and Aged Care on the inquiry into corporate governance and accountability arrangements for GBEs. The Department of Health and Aged Care has two GBEs—Medibank Private Ltd and Health Services Australia Ltd—in its portfolio. Medibank Private Ltd provides a wider range of private health insurance services, including hospital insurance for private patients, ancillary insurance, ambulance insurance and private health insurance for overseas students and for visitors to Australia. Health Services Australia Ltd provides a range of comprehensive health and assessment and advisory services primarily to Commonwealth and state governments. These include health assessments, occupational health and safety advice, medico legal workers, compensation and superannuation advice, and travel health, vaccinations and advice.

Generally the department views that the corporate governance arrangements for Commonwealth GBEs are operating well. The governance arrangements have provided more accountability for GBEs and focused their operations on a more commercial footing. The governance arrangements have also made operations of GBEs more transparent and have increased public accountability for GBEs.

The joint reporting arrangements between the Department of Health and Aged Care and the Department of Finance and Administration have provided a basis for objectivity in the analysis of the performance of GBEs and a capacity to provide ministers with impartial advice and detailed performance information. There is a high level of communication between the Department of Finance and Administration and the Department of Health and Aged Care. There is also a high level of cooperation between GBEs, the Department of Health and Aged Care, and the Department of Finance and Administration.

Mr Whelan—While Medibank Private did not make a formal submission to the committee, we thank you for the opportunity of appearing today and answering any questions concerning Medibank Private. We thought it might be useful to provide you with some brief information about Medibank Private before we start.

Medibank Private was created in 1976 and operated for 21 years as part of the Health Insurance Commission. On 1 May 1998 the operations of Medibank Private were transferred to Medibank Private Ltd, a company limited by shares wholly owned by the Commonwealth and operated as a government business enterprise. The Commonwealth shareholder interests are represented by the Minister for Health and Aged Care and the Minister for Finance and Administration.

Medibank Private receives no funding from the Commonwealth budget, has no community service obligations, nor does it pay the Commonwealth a dividend. The latter makes Medibank Private a relatively unique GBE. This uniqueness is a function of the fund's registration under the National Health Act as a not-for-profit fund. As at 30 June 1999, approximately 40 of the 44 registered funds under the National Health Act—approximately 90 per cent of the industry—operated on a not-for-profit basis.

Medibank Private is Australia's largest private health insurer. It provides cover to some two million people nationally. As at 31 March, Medibank Private's national market share was approximately 27 per cent, which is significantly larger than its nearest competitor. The company is managed by a wholly commercial board comprising individuals with banking, medical, accounting and industrial backgrounds.

CHAIRMAN—How many board members?

Mr Whelan—Presently seven.

CHAIRMAN—Mr Reynolds, you were telling us about the two GBEs that you have. You did not tell us anything about Australian Hearing Services. The Department of Finance and Administration advises us that, while they are currently a statutory authority and they are not formally classified as a GBE, they are in the process of corporatisation, which I would have thought would change their status. Am I right?

Mr Reynolds—The starting point is that there are nine bodies under the CAC Act, two of which are formally GBEs—the two I have mentioned—within the portfolio.

CHAIRMAN—Within your portfolio?

Mr Reynolds—Within the portfolio.

CHAIRMAN—Really?

Mr Reynolds—Not all of them are GBEs. The two that I have mentioned are Medibank Private and Health Services Australia. Australian Hearing Services is a statutory authority, as you mentioned. It is planned that legislation be considered by the government to establish the statutory authority as a company. Under Corporations Law, I would expect that GBE status would follow. The existing arrangements whilst they are still a statutory authority is that they mirror GBE guidelines, but they are not classified as a GBE. The other bodies under the CAC Act vary. Some are regulatory and I can go through those, if you wish.

CHAIRMAN—Yes. We would be interested.

Mr Reynolds—There is ANZFA, the Australian New Zealand National Food Authority. I will read them out, if I may.

CHAIRMAN—Instead of taking up time, why don't you send us a note?

Mr Reynolds—I can provide those, yes. They are primarily research bodies and regulatory bodies and not in the business of trading or carrying out business activities.

CHAIRMAN—That is probably what we needed to know. You said in the attachment to your letter, which is your submission, actually:

> . . . the current Governance Arrangements permit a degree of flexibility which is necessary given the differences in the nature of each Commonwealth GBE. However, we do see merit in considering amendments to the CAC Act which would require Commonwealth GBEs to conform with competitive neutrality.

You go on to talk about state tax equivalence. Could you tell us which GBEs do pay state tax equivalence, and which do not?

Mr Reynolds—When it was established Health Services Australia had in their enabling legislation to establish the company—which primarily related to the transfer of assets and staffing rights—a provision that enabled them to be exempt from the payment of state and territory taxes in the expectation that a tax equivalent regime would exist. It is government policy and not specifically enshrined in legislation that Health Services Australia would pay tax equivalent regimes to the Commonwealth instead of paying state and territory taxes. The link to competitive neutrality is the government policy that requires GBEs or business undertakings to pay tax or tax equivalence, the point being that the tax equivalence is not necessarily enshrined in legislation.

CHAIRMAN—It is my understanding from the documentation that you have both the portfolio minister and the minister for finance as the shareholder ministers.

Mr Whelan—That is right.

CHAIRMAN—Since you have the minister for health and family services as both a shareholder minister and a regulator, does that cause you any problems?

Mr Whelan—It does not affect the day-to-day operations of Medibank Private.

CHAIRMAN—At board level?

Mr Whelan—Not that I am aware of. In terms of the interaction with the portfolio minister in a policy sense, I would imagine that it was very similar to the relationship that our major competitors have with that office as well—the opportunity to provide input and advice on policy arrangements for the private health insurance industry. As to government arrangements, the relationship with the minister through his shareholder advisory unit is not dissimilar to that with the minister for finance.

CHAIRMAN—Are you happy that across your industry competitive neutrality does exist?

Mr Whelan—The private health insurance industry is not what you would describe as a normal industry, that is, normal in the sense of being representative of industry. I should perhaps clarify those remarks.

CHAIRMAN—We think we know what you mean.

Mr Whelan—As I have mentioned in my opening remarks, the industry is dominated by mutuals operating on a not-for-profit basis. Most of them do not have shareholders in the traditional sense and there is limited external accountability beyond their boards. The other factor is that under the National Health Act, those funds registered as not-for-profit health funds do not pay income tax, whereas those funds registered as for-profit do.

To that extent there are some funds within the industry which have a different tax regime to others. Medibank Private faces the same tax regime as those other funds registered as a not-for-profit health fund, and we pay all rates and taxes in the same way as our other competing funds. In that sense, in terms of the tax load and other arrangements, Medibank Private operates in a competitively neutral way with its competitors.

Senator GIBSON—Are there complaints—not from your company, but from other mutuals in the industry—that, by having a shareholder minister, the minister does face either a real or perceived conflict of interest as being both a shareholder of your company and, secondly, the regulator for the total industry? This morning we had a couple of examples of government GBEs—in fact, the Sydney Airports Corporation and Employment National—both of which have retreated to a single minister shareholder because of this either real or potential problem, in order to keep the regulator or purchaser at arms length from the shareholder. Wouldn't that same problem arise in your industry?

Mr Whelan—Certainly my comments were not meant to suggest that there are not others in the industry who may perceive that to be the case and, certainly, Medibank Private's history is marked by its competitors making observations about its structure and its relationship to government. I think in many respects a number of those issues were addressed in the separation of Medibank Private from the Health Insurance Commission last year. That is not to say that there have not been calls recently from some of our competitors for government to cease to be involved in operations of Medibank Private, but I am not aware of our competitors suggesting that the minister for health should cease to be a shareholder and be replaced solely by the minister for finance, although that might be a perception that exists amongst competitors.

Senator GIBSON—Two government businesses have already done it because of the perception of this particular problem in those areas—Sydney airport and Employment National. Employment National is competing against about 300 other businesses and they did not want to be in conflict with their regulatory minister who was also the purchaser. We are talking about exactly the same sort of thing for your industry, so wouldn't it be neater and clearer to make sure there are not any conflicts, or perceived conflicts, if the shareholder was just the finance minister or maybe the Treasurer and if the regulator—in other words, the Minister for Health and Aged Care—influenced you through your constitution or legislation setting whatever the government requires you to do?

Mr Whelan—Perhaps the difference is the history of the organisation in the sense that the minister for health, the minister of the portfolio, has essentially been responsible for the organisation for 23 years—and it is not a recent situation.

Senator GIBSON—I understand that.

Mr Whelan—And, perhaps to that extent, the organisation has attuned itself to that relationship and therefore does not perceive the same conflict as perhaps those GBEs or others do. Certainly, at an operational level, I would describe our dialogue with the Minister for Health and Aged Care and his office and the shareholder advisory unit as very similar to that that we have with the minister for finance—that is, as a shareholder—and then we have an interaction as a major fund within the industry that I would again describe as not necessarily in similar terms to that of MBF or National Mutual or HCF.

Senator GIBSON—But you can understand the concern of this committee, that we are looking to what is really best for government for the longer term. Given some of the moves that have already taken place—and we have not got many GBEs, there are only 12 of them, and four on the way—

CHAIRMAN—There are a couple on the way out, too.

Senator GIBSON—Yes, that is right. Hence the reason for the question of what is the best structure for these sorts of enterprises.

Ms Moody—One of the differences with, for instance, Employment National is that the department or the minister in that case is also a purchaser, as you mentioned.

Senator GIBSON—That is right.

Ms Moody—In this instance, while the minister for health is a regulator, he is not actually a purchaser of services of the industry.

CHAIRMAN—As though the 30 per cent rebate was a big purchase item.

Mr COX—Would you say that your competitors resented Medibank Private's position when it was part of the Health Insurance Commission and shared the same offices as—

Mr Whelan—I think they are on the public record, in fact, to a public accounts committee in that regard. I think the committee found that their views did not have evidence to support them; nonetheless, I think those views were held and in some quarters are still held.

Mr COX—So, whatever their negative opinions of Medibank Private are at the moment on your existence, they are much lessened by the separation.

Mr Whelan—I think that our competitors recognise Medibank Private as a very vigorous competitor and will take whatever opportunities they can to limit that vigour in the marketplace. While I think there is a closer working relationship between all of the major

funds than there used to be, there are still occasions when those tensions arise and the issue of the government's ownership of the fund is raised by my competitors.

Mr COX—Apart from the government's cognisance of negative perceptions of your competitors about you having been part of the HIC, were there any other reasons why the separation was made?

Mr Whelan—I am not sure at the end of the day that that was the sole reason. I think that in the press statement and the like that went with separation the minister identified a number of reasons why the government had done that, but certainly one of them was to address the issue of perceptions of competitive neutrality. I do not recall the other reasons at the moment, but I know they were documented at the time.

CHAIRMAN—You said while governance arrangements provide a guide as to what should be included in the SCI—statement of corporate intent—it might assist GBEs, particularly recently established GBEs, to be provided with some assistance as to the form of the SCI. Can you elaborate on that for me? You said that in attachment A, page 2.

Mr Reynolds—Mr Chairman, I guess the issue with the statement of corporate intent is addressing the scope of what might be included in the document given that it is not in fact a corporate plan. It is a statement of the mission and the broad objectives of the organisation, and I guess that links in to whether a body's corporate plan is a public document or not—and it is not as there is no requirement for a corporate plan of a body to be tabled in parliament, but there is a requirement for the statement of corporate intent. I think subsequent questions or subsequent subjects for discussion touch on this issue of what might be included in the corporate plan and what might not.

The comparison of the private sector and the publication of information versus information as supplied to the Stock Exchange I think is a relevant issue. So it comes back to what is the purpose of the statement of corporate intent. Our view is that there is scope for that framework to be expanded, but certainly not to be expanded to the extent that it captures the format of a normal corporate plan.

CHAIRMAN—One of the things that interests us in this inquiry is the extent to which regulation and/or parliamentary requirements of government on enterprises impose a financial and/or regulatory burden on public sector companies that are not correspondingly imposed on private sector companies, whether they be proprietary limited companies or listed corporations. Do you have some views about that—Senate estimates, for instance, et cetera?

Mr Whelan—Since you raised the Senate estimates as an issue, it is the one that immediately flashed to my mind. It is something that none of my competitors need to appear before. It is something that, at a personal level, an organisational level, we are now quite familiar with. In a practical sense, in separation from the HIC, I think with the exception of the first estimates hearing thereafter, I do not think we have been asked a question at Senate estimates, and I do not think we have been asked to appear—but we are available to appear in accordance with the committee's guidelines.

So in that sense it is the potential appearance that is an issue, and to date there is no burden from appearing there. In reality, I expect that senior executives have to spend six, 14 to 20 hours from time to time, but in a sense those requirements are no different to senior executives having to appear before annual general meetings of shareholders and other public accountabilities that listed companies are faced with. To that extent, I do not believe there is any burden on Medibank Private.

CHAIRMAN—A very good statement. That put things in context.

Mr COX—Yes.

CHAIRMAN—Mr Reynolds, you said:

The current system of accountability appears to be working well in the Health and Aged Care Portfolio. More intrusive scrutiny of financial affairs of GBEs may reduce the competitiveness of GBEs in the marketplace, and could adversely impact the shareholder value of each GBE.

Can you tell us any more about that?

Mr Reynolds—I guess it depends on how much detail is provided. There is commentary later on about risk management and how that might be dealt with. To the extent that there is a legislative requirement to get into detail of commercial activities—commercial, in terms of relativity of costs to revenue and pricing, information in relation to investment opportunities that might impact adversely, the market share or opportunities for a government owned business operation—I expect that there is a risk that some level of detail would adversely affect the competitiveness of a government owned provider.

Again, I go back to the Stock Exchange guidelines. The guidelines get into some detail as to what might be provided by a company to the Stock Exchange—giving examples of what they see as risks—and I would invite the committee's comparison with that if we are looking at publicly owned compared to privately owned bodies. We believe there is no clear, generic answer where one glove fits all. The issue is about how much detail a government owned provider makes public compared to how much detail is provided to shareholder ministers acting on behalf of the Commonwealth as owners, and I think a Stock Exchange listing is a good guide.

CHAIRMAN—You just mentioned risk assessment. This is an area in which this committee is always interested in—how you manage risk and whether you account for it. Mr Whelan, could you tell us how Medibank Private manages risk and what the structure is from board level down for risk analysis and management?

Mr Whelan—Medibank Private has a comprehensive risk management framework from the board level down. The board has two formal subcommittees and an audit committee which is chaired by Ms Penny Hutchinson, a chartered accountant and a director in BDO Nelson. She is a director in a number of other government and commercial boards and is also chair of another audit committee. She brings considerable experience to that audit committee. We also have a Health Benefits Committee which has a charter to oversight the management of the health benefit outlays of Medibank Private which, at the end of the day, are the most significant parts of its expenditure. Those two committees take an active interest

in the risk management arrangements for the organisation. They are outlined in a risk management manual, a document that a number of people in the organisation have access to.

As a general philosophy, the organisation has taken the approach of providing senior managers and line managers with training in risk assessment and risk analysis, and requires them to integrate risk management and risk identification components into all operational strategies. As a framework, we have looked to integrate risk management with day-to-day operation as opposed to, if you like, overlaying it as an independent stream of strategy. We felt that the latter approach, which we have seen adopted in other organisations, often implies to managers that risk management is something extra as opposed to being integral to what they are doing on a day-to-day basis.

So it is a fairly integrated process. Accountability for the identification and management of risks is assigned to, what we call inside the business, a key success factor or functional managers who have accountability on a quarterly basis to the chief executive and through him to the audit committee and the Health Benefits Committee for the identification and management of risk. I would have to say that that process to date seems to be working extremely well.

CHAIRMAN—Tell us about your independent audit procedures which check on whether you have managed risk or whether you blew it.

Mr Whelan—As you are aware, the Australian National Audit Office are responsible for the external audit activity for Medibank Private. They have currently contracted that service out to Arthur Andersen, which have been with us now for the last six months or thereabouts. One of the first assignments that they undertook—which was integral to their approach to the audit in any case, but it fitted in very well with what we had hoped for—was an independent review of our risk assessments, using their own methodology. Largely, they validated the risks that we had identified, reviewed the risk management process and provided management and the audit committee with some considerable comfort as to the quality and substance of those arrangements.

CHAIRMAN—That is for an external audit. How about your own internal audit procedure? We would be interested, as we are in the departments. In fact, I have to say that this committee has been somewhat critical of the slowness of statutory bodies to take up the philosophy of a very aggressive internal audit program.

Mr Whelan—It would be fair to say that, given the commercial nature of the board of the company, one of the things that they brought to the table when first taking up the appointment was a very commercial attitude to the management of risk. Through the company secretary, who is responsible for the internal audit function, the internal audit area drove the initial roll out of risk management and the philosophy of risk management across the organisation. But, having done that, it did not continue to retain responsibility for risk management.

Importantly, part of that roll out was about transferring that responsibility to line management. They have an ongoing review role internally that complements the external audit role. The frequency of that reporting is clearly more regular than external audit, but

that review of risk assessment is now built into their strategic internal audit plan, which is also reviewed by external audit. They actively monitor the risk as part of their audit program.

CHAIRMAN—It is the CAC Act itself that requires that your external auditor is the Auditor-General. Are you happy with that?

Mr Whelan—The Auditor-General has always approached that issue with me in private and in a very flexible and cooperative way. We have always found that the Auditor-General's department has been very open about the directions it has wanted to pursue in terms of external audit contractors. It has involved us in review of potential contractors, it has sought our advice and it has certainly made it clear that it would not be bound by it, but we have not faced any difficulties with having external audit in the hands of the Australian National Audit Office. But, to that end, if they were not to be responsible for external audit, I do not think that we would be concerned by that either. We have been fortunate to be audited by Arthur Andersen and before them KPMG, two very good audit teams. I think they have added a lot of value to the business. The audit office has provided a framework for those activities but, in terms of what they have contributed to the business, it has facilitated that appointment process.

Mr COX—There has been a suggestion that administrative law should not apply to GBEs. To what extent does administrative law apply to Medibank Private, and how do you feel about it?

Mr Whelan—I guess because we are one of the more recently formed GBEs, far less administrative law applies to Medibank Private than other GBEs. In fact, to my knowledge the only element of administrative law that applies to Medibank Private is the Archives Act. We required that to apply to us as a function of separation from the Health Insurance Commission so that Medibank Private and the HIC could both jointly access historical corporate records that we could not split at separation. That is the only area where it applies.

We wanted maternity leave to apply in terms of our industrial relations enterprise—

Ms Moody—And continuity for our staffing.

Mr Whelan—and we were not able to get it to apply to us. So, the only bit of administrative law that applies to Medibank Private is the Archives Act, and we are quite comfortable with that.

Mr COX—Have you been involved in any discussions with ministers or other elements of the bureaucracy about privatisation of Medibank Private?

Mr Whelan—No.

Mr COX—Do you have a view about the capacity of the department of finance to evaluate your financial plans? I presume that they review them.

Mr Whelan—The department of finance shareholder advisory unit and the Department of Health and Aged Care shareholder advisory unit both receive briefings in terms of our

corporate plan, which contains detailed financial projections for the next three years. Both of those units have undertaken fairly vigorous examination and questioning of those strategies.

It seems to me, on the basis of the questions and the analysis that they have undertaken, that they seem to have the skills and understanding of commercial accounting and financial analysis. They have brought some value to bear on that process. I think they both struggled at first with the fact that we are a not-for-profit, non-dividend-paying GBE and that perhaps financial outcomes for the entity had to be adjusted from those that were perhaps traditionally applied to GBEs. That was something that we worked through fairly cooperatively very early on and it has worked well since.

Mr COX—Have you had any board replacements?

Mr Whelan—We have had one board appointment since separation—that was Dr Michael Bollen—and we have had a separation, which was Mr John Everett's. He was the managing director and that was in February. He has not been replaced as yet.

Mr COX—What was that?

Mr Whelan—He resigned.

Ms Moody—When the board first took up control of Medibank Private as a separate entity, the board actually had one more director than it has now. That was a transitional arrangement. Two of the Health Insurance Commission directors came across. They both subsequently retired and one was reappointed with Dr Bollen. The other was above the number that was ultimately wanted. But it was seen as a transitional thing to bring some history to the new board.

Mr COX—So you have not actually added anybody who is a new person?

Ms Moody—Dr Bollen.

Mr Whelan—I would look to clarify that. The board was a separate and new board from that of the Health Insurance Commission. It was independent to the extent that the chairman was Chairman of the Health Insurance Commission at one stage. He was also Chairman of Medibank Private. He has since resigned as Chairman of the Health Insurance Commission, so it is a stand alone separate board. The only changes are the ones that I and Ms Moody have described.

Mr COX—So there has been one person put on who was not there at the beginning. Is that right?

Mr Whelan—At the beginning of the company, as opposed to the beginning of the GBE. The company was created in December 1997. Since that time three directors have left, there has been one addition to the board in that time and we are expecting a further addition.

Mr COX—With the one addition, was the addition made on the advice of the board? Did the board put up a list of potential candidates to the minister to select from?

Mr Whelan—That was certainly the case for the establishment of the initial board. I am not aware of what the situation was for the replacement. I do not know the details of Dr Bollen's appointment.

Mr COX—I am going through this thoroughly with every authority that appears before us. Could you check whether the addition was on the advice of the existing board and, if there were a number of candidates put to the minister, whether in fact the person who was ultimately put on the board was one of those who were nominated by the existing board?

Mr Whelan—I will find out.

Senator GIBSON—In pursuing the line of whether the shareholder ministers were separated from regulation on your part so that only Finance and/or Treasury were owners of, to take your example, Medibank Private Ltd, a theme raised in Richard Humphry's report of 1997 was whether, if you had a structure where regulation was at arms length and well away from you, there was really the need for a CAC Act: what is wrong with you operating under the Corporations Law in the same way as your competitors and any additional regulations required by government being put in your constitution?

Mr Whelan—While it is not something I believe we have turned our mind to in the past, certainly at face value there do not appear to be too many operational implications in that to Medibank Private. At face value, I would not see many changes to the way the business currently operates.

Senator GIBSON—If you have any further thoughts on that, please let us know. We would be interested in hearing about that. Do you have any comment, Mr Reynolds?

Mr Reynolds—The only thing I would add is that the main requirement in the CAC Act that is not in the Corporations Law is to do with the preparation of a corporate plan and the periodic reporting against that corporate plan. The question then would be: should that be enshrined in a company's constitution? I see no difficulties with that, other than the capacity to change the constitution, and obviously the owners can do that at any stage. All you need is for it to be enshrined in legislation. I think that is the main issue, and I agree: I expect it would not have major impacts on the operation of the business.

Senator GIBSON—Thank you for your comments. We have had a submission from Professor Bottomley from the ANU suggesting that the CAC Act ought to be broadened, and he has made some specific suggestions. On the other hand, given the history—and the number of GBEs has been going down at a reasonably rapid rate over recent years, with both sides of politics in power—it makes one wonder why we should not head towards trying to simplify the situation rather than complicate it.

Mr Reynolds—Yes, we would agree with that.

CHAIRMAN—One of the things that came up in our last session, as I recall, was the competence or otherwise of department officials to review the operations of their department's GBEs and to report to their minister. How is the Department of Health and Aged Care placed in this regard?

Mr Reynolds—From an internal perspective, I would say it is in reasonable shape. We have a unit of half a dozen people dealing with GBEs and other broader portfolio issues. We specifically recruit for the purpose of providing authoritative advice to ministers and knowing when to go out and engage external advice that might be outside our charter. We have done that, and I guess we will continue to do that. One member of the group is a member of the Institute of Company Directors and two are qualified accounts, one a CPA with external financial controller experience. We are intentionally looking at not being the sole point of advice to ministers but being in a position to provide advice of a routine nature and being able to make a judgment about whether something is or is not outside our sphere of expertise. So far, we are not shy and neither are ministers shy in asking for the engagement of external providers. We usually engage one of the top four accounting groups.

CHAIRMAN—And you report to both ministers, notwithstanding that you have a portfolio minister?

Mr Reynolds—My unit reports to the Minister for Health and Aged Care. I cannot think of circumstances where we have gone it alone. We have usually engaged officers from the Department of Finance and Administration in that joint consultancy. My earlier comments about working well together when you do engage external expertise really rest on how you draw up terms of reference and a whole host of things. We are pretty conscious of making sure that they are public accountants who are not just used to government accounting but who are aware of the sensitivities of the commercial environment.

CHAIRMAN—Thank you very much. We will ultimately get to a report, and we will be delighted to send you a copy of our deliberations.

Proceedings suspended from 2.25 p.m. to 2.41 p.m.

DEWING, Mr Glen, Acting Group Manager, Finance, Snowy Mountains Hydro-Electric Authority

GOOD, Mr Vincent Maxwell, Commissioner, Snowy Mountains Hydro-Electric Authority

CHAIRMAN—Welcome. Thank you for your submission to the committee and thank you for coming today. Would you like to make a brief opening statement before we ask you questions about your submission?

Mr Good—I would like to point out that the Snowy Mountains Hydro-Electric Authority is a rather unique Commonwealth government business enterprise. I am sure everyone claims to be unique, but we truly are. We have experienced governance from a number of areas, being associated with three governments. We are a Commonwealth statutory authority but we have state governments which claim at least to be stakeholders, if not shareholders, as we move towards corporatisation.

Senator GIBSON—Could you explain the corporatisation process, where you are now and where you are going?

Mr Good—We have been in the corporatisation process for probably four or five years. The three governments, the Commonwealth, New South Wales and Victorian governments, have passed corporatisation legislation in each of those jurisdictions. The New South Wales government required as a precursor to corporatisation that a water inquiry be conducted on environmental flows within the rivers and streams of the Snowy Mountains area. They appointed a commissioner to conduct the water inquiry and the commissioner was asked to bring down costed options for each of the governments to consider. It is our understanding that as part of that process there will be a government decision on what the environmental flows will be in a number of rivers, including the Snowy River and the Murrumbidgee River below Tantangara, as well as other rivers.

Senator GIBSON—That report has been received?

Mr Good—The report was received in October 1998. Originally there was a deferral until 30 June 1999, and it is my understanding that at least one of the state governments is seeking a further deferral at this point in time. Our corporatisation will not happen until such time as that water inquiry is considered and an outcome given. It will be for the Snowy Hydro Ltd, which will be the corporatised entity, to implement the outcome of that water inquiry and to achieve the environmental flows that are recommended within that.

Senator GIBSON—What will be the structure of that entity?

Mr Good—The entity will be a government business company that is 58 per cent New South Wales owned, 29 per cent Victorian owned and 13 per cent Commonwealth owned. Each of the three bodies will have equal voting rights within that company as long as the three governments are represented.

CHAIRMAN—Have any or all of them made any statement regarding any future plans to move from corporatisation to privatisation?

Mr Good—I think it is fair and reasonable to say that the Victorian government own few, if any, electricity assets today and they would certainly want to privatise. There have certainly been moves throughout the corporatisation process where, when Victoria have become frustrated, they have indicated that perhaps moving straight to privatisation would be the way to go. But I think it is fair to say that the three jurisdictions have agreed on a set of principles. Corporatisation is the first step.

Mr COX—Was the allocation of equity done on the basis of states' rights to particular amounts of power?

Mr Good—To the outputs of the scheme. The Commonwealth has secured 670 gigawatt hours on an annual basis and that equates roughly, in an average year, to 13 per cent; New South Wales had a share 58 per cent share and Victoria a 29 per cent share. So, yes, it is based on the outputs of the scheme.

CHAIRMAN—You said in your report:

. reporting requirements—'As they currently stand, some of the **reporting requirements** being imposed on GBEs which appear to relate to whole of government reporting requirements **are, in the view of the Authority, counter productive**. In particular, the Authority considers that the requirement to include fixed asset reconciliation tables in its annual financial statements to be of limited usefulness' (p. 2);

Could you expand on that, please?

Mr Good—Yes. The fixed asset tables are done in such a way that they become data. It is 10 pages of data rather than 10 pages of information and the purpose of that data is unclear. It is an inclusion, in our opinion, of unnecessary detail to try to achieve a basic whole of government position. But, if the data is needed, we would suggest that there may be better ways in which that data could be incorporated in reports to government, rather than in annual reports that are made public. We think that, if anything, it makes what is in there data rather than information.

Mr Dewing—What the tables actually show is a reconciliation of movements in the opening and closing balances of assets for the year and the accumulated depreciation that sits with those. From the point of view of the actual financial statements, they add no new information other than what is already shown in a more summarised form elsewhere. I have been unable to determine a reason why that information needs to be published as part of our annual financial statements.

CHAIRMAN—In a general sense, one of the things we have talked about with all the respondents to this inquiry so far has been whether or not, and the extent to which, Commonwealth—and in your state maybe state as well—reporting requirements differ so far from that of the private sector as to cause you financial or practical stress.

Mr Dewing—In terms of the asset reconciliation tables, I certainly consider that there is an inordinate amount of work required, from our point of view, to prepare that information

when I have been unable to identify a reason why it is needed. It certainly takes a person a fair amount of time at the end of the year to prepare that information when, in all honesty, we are preparing it only because we are told we have to.

Mr Good—We would suggest that it does not add value to the report.

CHAIRMAN—Any others?

Mr Dewing—Not in terms of imposing a requirement of that nature.

CHAIRMAN—You are of course still a statutory authority?

Mr Dewing—That is correct.

CHAIRMAN—How many responsible ministers do you have to report to?

Mr Good—From the organisation's perspective, it really only has two ministers. It has the Minister for Industry, Science and Resources.

CHAIRMAN—Is that all?

Mr Good—And the finance minister. We report only to the Commonwealth.

CHAIRMAN—Really?

Mr Good—Yes. If you understand, the scheme was set up in a way in which it operates and maintains the scheme under the direction of a body called the Snowy Mountains Council. The Snowy Mountains Council has two representatives from the Commonwealth, two from New South Wales, two from Victoria and two from the authority. That body is the body that directs the operation and maintenance of the permanent works of the scheme. So, you have that. You have a commissioner who is also responsible in part. It is a duopoly; that is one of the problems and one of the reasons why the organisation needs to be corporatised.

It is a Commonwealth authority that does that. It was a net cost of production body which would recover the money that was provided to build the scheme—close to $1 billion—over a 70-year sinking fund arrangement. The states then wanted to safeguard their position. This is as I understand it. The scheme started in 1949 when the Commonwealth legislation was passed. The states protected their position with an agreement and that agreement is an arrangement between the two states and the Commonwealth. I think it came after threatened constitutional challenges as to whether the Commonwealth could build under the defence powers and other things.

As a result of that, what happened then was that through the state electricity commissions—the SECV, Pacific Power, which were EC and SW originally, and ACTEW—the states became the recipients of the power. On that basis, they were entitled to the outputs of the scheme. The only way they got a say in it was through their representation on the Snowy Mountains Council. Then there were always the tensions that arose out of that

between water and electricity, because the scheme was built mainly for irrigation purposes, but it was funded from electricity.

We have only two ministers and they are Commonwealth at this point, but once corporatisation arrives, it will be more than that. It is fair to say that there is a fair amount of pressure today on us not to necessarily abide by the legislation that exists at the moment. That legislation is 50 years old and the comment in certain circumstances is that it is not contemporary and that those are not the things you should be following. As a result of that, we have a lot of duplication put upon us in regard to reporting and other things, firstly, in terms of being able to meet the act and agreement and, secondly, being able to meet contemporary standards, so that other people can understand where we are.

We do not have a revenue stream. As we moved closer to corporatisation, the jurisdictions through Pacific Power and SECV set up a private company, Snowy Hydro Trading Pty Ltd, which is the company that trades our product into New South Wales and Victoria or the national electricity market. They have their own board of directors and they have agreements with ourselves and with other parts of the industry.

Senator GIBSON—That single entity phase is the revenue stream?

Mr Good—Technically, yes. The agreement says that, should their revenue streams be such that they do not earn enough to pay it, then the liability still rests with SECV, Pacific Power and the Commonwealth government, but as long as they earn enough, then they can pay it.

Mr Dewing—Snowy Hydro Trading Pty Ltd acts as an agent for the original entitlement holders.

Mr COX—It is one company, not two?

Mr Dewing—Yes, it is one company; Snowy Hydro Trading Pty Ltd. Could I go back to the point where the commissioner was talking about the Snowy Mountains Council? The Snowy Mountains Council prepares its own annual report. That annual report is tabled in all three parliaments, but it contains no audited financial information. It is not subject to audit by any of the auditor-generals involved.

Senator GIBSON—Isn't it?

Mr Dewing—There are a lot of things unique about the Snowy Mountains.

CHAIRMAN—When you said that you were unique, we accept your statement without equivocation. I dare any of my colleagues to contradict me.

Mr Good—You might also then understand why we have been corporatising for four or five years. It will be on 1 July.

Mr Dewing—No year specified.

Mr Good—I cannot tell you which year.

Mr COX—Is there really any progress in working out the environmental flows and water allocation?

Mr Good—I think there is. To be fair, there were a series of costed options found by the commissioner which ranged from memory from probably six per cent to 28 per cent, although the environmental claim was starting at 28 and perhaps moving up to 42. The commissioner went beyond his terms of reference and, in fact, brought down a recommended option which was option D. Option D was a recommendation, from my memory of some 12 months ago, for opening releases in the vicinity of 15 per cent into the Snowy and Murrumbidgee Rivers and moving over five years to 20 per cent.

Since then a statement has been made by the Premier of Victoria on the radio and in the newspaper. I have heard him on the radio, so I can quote him. His preferred view was the 15 per cent option. I think there needs to be a clear understanding that, depending on whether you are on of the western side of the Great Dividing Range or the eastern side of the Great Dividing Range, depends where you sit between zero and at least 28 per cent. There are very difficult competing options that have to be considered.

CHAIRMAN—I understand there are also very different competing pricing, depending on whether you are the Victorian government or the New South Wales government with respect to power.

Mr Good—There are certainly different outlooks. If we look at what is being claimed by Victorian generators at this point, which is that New South Wales is not behaving in a commercial fashion, one can only accept that up to a certain point. The reality is that the exchange of power between New South Wales and Victoria, or any of the interconnects, is reasonably thin. At best you are talking 10 or 15 per cent of whatever might have happened in New South Wales or Victoria actually coming from the other state. If we look historically at what has tended to happen in recent times—and I mean recent history and not past history—in the main Victoria tends to be meeting its own market requirements and, in addition to that, is exporting to New South Wales. It is difficult to believe that New South Wales is necessarily affecting the market in the way that Victorians might claim, but I am sure that they are each contributing something to the argument.

Senator GIBSON—The grid prices have been down.

Mr Good—In fact, in the last year one could argue that they have come up. Fifteen or 16 months ago it was really down $9 or $10 often, but it is above 20. To get up to new entrant prices, over time it needs to get up to about 38.

CHAIRMAN—How many times have we paid for the original infrastructure?

Mr Good—The reality is that it has not been paid for. I would estimate that in the last 20 years the profits to EC New South Wales would have been in the vicinity of $2 billion, the profits to Victoria would have been in the vicinity of $1 billion and the ACT would have probably benefited by $500 million or $600 million. If just one-third of that or less had been

put towards paying the debt—which they could not do because of the way the agreement is written—then there would be no debt. It would be a very competitive company.

CHAIRMAN—That is what I asked. Then you have paid for it several times.

Mr Good—I would say that we could have paid it off three or four times and, on that basis, it is very difficult when people who do not know that, simply look at the authority's annual reports and say, 'You have never been profitable' and that happens often.

CHAIRMAN—This is a different debate, but it is a debate that I have been very actively involved in for a long time and that is the potential for long-term use of renewable resource energy development, for instance, tidal power. We either need different accounting mechanisms or, when using the same accounting mechanisms, we need to take into account up-front that the power costs for the first few years will be higher than they might otherwise have been after an initial period of 20 or 30 years of normal accounting records. Then the capital cost is paid and the power output is at such low values that it beats anything else.

Mr Good—My understanding is that there is a proposal in Derby, Western Australia.

CHAIRMAN—That is absolutely correct.

Mr Good—My understanding is that in recent times they have considered withdrawing that proposal on the basis that they cannot really capitalise it appropriately, whereas 12 months ago they were dead keen; they were going to get it up. What happens nowadays is that people tend to look at the short-term solution—gas or whatever—which is cheaper and easier to get up, but it is not necessarily the right long-term solution that the country should be looking at.

CHAIRMAN—I have been advised that the West Australian minister, Mr Barnett, has selected two companies from the short list to continue with the process. Both of those are gas companies; Derby Hydro Power is no longer being considered by the government. The public statement I have seen from Mr Barnett simply indicated that the up-front capital cost was too high. I put that on the public record, and say that, in my view, it is a very bad mistake.

Mr Good—I would support that view.

CHAIRMAN—Let us get back to this inquiry. We did move very far afield; I am sorry about that.

Mr COX—We will send a copy of the transcript to the West Australian state opposition!

CHAIRMAN—Thank you very much, you are perfectly welcome to do so. I can assure you that I will be on the public record shortly, anyway.

Senator GIBSON—Are there many West Australian voters in your electorate, Bob?

CHAIRMAN—Very few. I do not have much potential for tidal energy, hydro-electric power generation or geo-thermal energy on top of Mount Dandenong in Victoria, now or forever more!

Senator GIBSON—I would like to ask a question. Assuming that you are corporatised—

Mr Good—1 July 2000.

Senator GIBSON—A suggestion has been floated for some time and was referred to in Richard Humphry's report of March 1997. It really questions the need for the CAC Act. It suggests that, as long as government makes its objectives clear, GBEs could be simply made subject to the Corporations Law. If there are additional requirements, they can be put in the constitution of the company. Do you have any view on this?

Mr Good—I certainly would feel that if a government business enterprise is to operate in a highly competitive market and to seek to have competitive neutrality, that would be a very good way to achieve it. Certainly what we see in government business enterprises is additional requirements overlaid over the top, which in many ways defeat competitive neutrality and create additional costs to the company. I could certainly support such a suggestion.

Senator GIBSON—Associated with that, of course, is the suggestion that portfolio ministers should not be shareholders of GBEs, so that the matter of regulation and/or purchase is separated completely from ownership.

Mr Good—One of the things that is of concern to GBEs relates to when it comes time to report. I will digress a little, if I may. If we talk about statements of corporate intent or corporate plans that become a basis for a minister—be it the portfolio minister or the minister for finance—to play a role in the company and set the direction in which they want the company to go—sorry, I have lost my train of thought.

Mr Dewing—The issue comes back to one in which you are expecting portfolio ministers to exercise a degree of oversight of their GBEs, when they have the bureaucracy interlaid between them, and the only thing that they have to rely upon is the corporate plan and the information that is being provided. From a GBE's perspective, we can face a lot of questions from the bureaucracy in the middle, trying to anticipate which questions they think are going to come down the line from the minister's office.

Mr Good—Thank you, Mr Dewing. That was the point I was going to make before I lost myself on the way. That really was the point.

CHAIRMAN—What we are really addressing here is the tensions that can be created between two masters, realistically, when one has a regulatory responsibility as well as an oversight responsibility.

Mr Good—Yes. I think the other thing is that—and I know that there are one or two around—the bureaucrats themselves become worried at the questions that the minister will ask. As a result of that, immediately before the report or the corporate plan or the half-yearly

or yearly report goes to the minister, one gets phone calls at all hours of the day and night seeking answers to questions that, in the main, are never going to happen. It comes about because the people who are trying to respond to the minister either are overworked because they have half a dozen or so GBEs that they are operating with, or that they do not understand the business. And, on that basis, they want to prepare themselves for every eventuality that might arise from the minister and not be embarrassed.

Mr COX—Which department is worse in that regard—the department of resources or the department of finance?

Mr Good—With my Finance colleague in the room, I would have to say the Department of Finance.

CHAIRMAN—But, Mr Good, to what extent does that differ from the private sector where, at annual report time, those preparing the statement for the board to produce an annual report are anticipating what the shareholders might ask at an annual general meeting?

Mr Good—I accept that, Mr Chairman. But the difference is that those involved in that process actually understand the business and they really do approach it from a business perspective.

CHAIRMAN—It has been put to us that we should question departments on the degree of corporate capability within departments about portfolio and shareholder ministers in understanding the nature of the businesses that they supervise, for which they have responsibility, and their more detailed operations. You are saying that you think we have a problem.

Mr Good—Yes, I am. I am saying I believe that, if they are going to add value, they need to understand the business processes of that business. If we take electricity, for example, here is a business that, 48 times every day, has a new price on the product. That price might be anything from $9.00 a megawatt hour to voll, which is $5,000 a megawatt hour. That can change in a matter of half an hour. That is the sort of risk management that the business needs to be able to deal with.

CHAIRMAN—Don't you also sell water?

Mr Good—No, we do not sell water; nor do we own water, unfortunately. Water is provided, from our perspective, free. It is paid for by electricity. In the legislation that was passed, it indicated that Snowy Hydro Trading Pty Ltd would not own the water. It simply owns the right to change the timing of the releases of the water.

CHAIRMAN—Who, then, charges for the water rights?

Mr Good—In the case of New South Wales, the DLWC, the Department of Land and Water Conservation. There is a body in Victoria that equally does that. My understanding on the charges are that those charges are related more to the operation and maintenance costs of water than the sunk costs in the head works. Certainly, we get nothing for the sunk cost in our head works from anyone who is a consumer of water.

CHAIRMAN—I am beginning to understand the kinds of tensions you live with. I do not know how you do it.

Mr Good—One becomes accustomed over time.

CHAIRMAN—With commissioners and ministers, you have got it all. Have you ever tried to draw a flow chart of responsibility?

Mr Good—Yes, we have. It starts as a duopoly, and God knows what it ends up as.

CHAIRMAN—Were you successful?

Mr Good—Not really. Even more so, I think, if you try to look at it from a legal perspective. It becomes a minefield.

Mr St CLAIR—I look at these questions in front of me and wonder about the relevance of some of them. Telstra in their submission commented that there is excessive parliamentary scrutiny. Do you agree with that in your particular case?

Mr Good—I am going to have two bob each way here. Yes, possibly. It depends on the circumstances in which the company finds itself. There is greater room for scrutiny in a corporatised body than in, say, a privatised body. I would feel far more concerned in a privatised body that had a government constantly scrutinising what we were doing in a way that might put at risk the commercial information of the company. Things can come out that give a competitor an advantage, and they do not have to be major things. For example, if you have to report what your senior executives are earning, that gives competitors a bit of an eye as to what they might have to pay to buy them away from you and other things like that. I do not feel as strongly as Telstra would, but I believe it depends on the circumstances. Too much public scrutiny of companies may be bad for those companies in competitive situations. Telstra are in the unique position of being government on the stock exchange and God knows what else. Personally, I believe some of the information that has been made publicly available has assisted Optus and others in at least being able to compete.

CHAIRMAN—One of the things that constantly interest JCPAA is risk management, although you are a statutory authority, not a GBE.

Mr Dewing—That is not correct. Under the CAC Act, we are designated as a GBE.

Mr Good—They could not work us out either.

CHAIRMAN—Thank you for that. Since you have come under the CAC Act, to what extent do you—through your board of directors—address risk management?

Mr Good—If we accept that the authority is a corporation sole, I am the sole director. None of the members of council is a director. The CAC Act says categorically that the commissioner is the sole director. On that basis, we have a formalised process in which we require our group managers to assess their operational risks and what exposures they have. These assessments are based on a consequence likelihood basis. We identify the actions that

we are able to take, and we use mitigation processes where we can. The whole idea is to have a process that assesses and accepts residual risk but does not create a circumstance in which we adopt risk without really knowing that we are doing it.

In recent times, we have changed our audit committee, not having other directors. Our audit committee is a group of our senior officers. We have now changed that to an audit and risk committee so that they are also able to sit over the top and provide advice to the commissioner, so that he or she is not one out in making decisions with respect to risk. The idea is that we need to identify all risk, look at how we might mitigate it and at least be aware of what residual risk we are taking and how that places the company.

CHAIRMAN—For the first time, the CAC Act has clarified the fact that you have no choice—the Auditor-General will be your external auditor.

Mr Good—Correct.

CHAIRMAN—Do you have a problem with that?

Mr Good—No, we do not. We have had a very good relationship with the Auditor-General's office. My chief finance officer came from that office, so we have a good relationship there. This year, they have contracted out that work. The work will be done under a senior officer of the Australian National Audit Office, but it will actually be done by one of the private companies.

Mr COX—Does all or none of administrative law apply to you?

Mr Good—It is fair to say that some of it does. Where possible, we would not want to be disadvantaged by decisions under AAT, et cetera. In the main, most of it applies to us.

Mr Dewing—Yes.

Mr COX—Is FOI a particular burden?

Mr Dewing—Not to any great extent. We do not face a lot of inquiries.

Mr Good—May I make a point? I have had a philosophy all along that, where possible and appropriate, one should provide information without FOI. When people want information, we try to encourage them with respect to what they want and how we can provide it, rather than how we can avoid providing it. We are lucky that, on average, there would be no more than two FOI applications a year. A lot of that comes from a positive attitude to saying, 'Look, what is the information, and how may we go about providing it?'

Mr COX—Are the AAT decisions that you have had to deal with from your employees?

Mr Good—I am not aware of an AAT decision. We are sometimes concerned about what the legislation might bring, but it is a fear rather than a reality at this point.

CHAIRMAN—Thank you. When we report, we will be delighted to send you a copy. As I said, we agree that you are unique.

Mr Good—Thank you.

[3.20 p.m.]

BADGER, Dr Rod, Executive Director, Information Technology, Telecommunications and Broadcasting, Department of Communications, Information Technology and the Arts

BULLESS, Mr Neil Brian, Director, Enterprise Policy, Department of Communications, Information Technology and the Arts

NEIL, Mr John Brian, General Manager, Enterprise and Radiocommunications, Department of Communications, Information Technology and the Arts

CHAIRMAN—Welcome. We have received your submission, for which we thank you. Do you have opening comments which you would like to make to the committee before we ask you questions?

Mr Neil—No, Mr Chairman. We are happy to take questions.

CHAIRMAN—This question is one of the things that we are asking everybody. Where you have both a portfolio minister and a shareholder minister, as you do in Telstra and Australia Post—which is not yet a GBE—being the Minister for Finance and Administration, in your view, what are the tensions that are set up? We will be asking both Australia Post and Telstra what they think about the nature of having a portfolio minister with regulatory responsibility also having responsibility for board level direction of a company that is supposed to make a profit, versus the more singular responsibility of the Minister for Finance and Administration? Can you tell us about some of those tensions, your views?

Mr Neil—Currently, we operate under a joint shareholder model, wherein our minister and the Minister for Finance and Administration share responsibility for both Telstra and Australia Post, as government business enterprises. Under those arrangements, we have a working protocol at a departmental level between us and the Department of Finance and Administration, under which it has been agreed that Finance will take the primary responsibility for financial aspects and financial oversight issues in relation to the two GBEs. That protocol includes understandings on providing joint advice to ministers and on who will deal with particular issues.

Under that arrangement, the Department of Finance and Administration takes primary responsibility in relation to issues like financial targets, financial performance, significant investment and divestment proposals, capital structure and borrowings, dividend policy, risk profile, interpretation and application of financial aspects of governance arrangements. We deal with issues on a more operational basis. We have not divested our responsibility for the financial issues, but to avoid duplication and to get the best out of the resources available to both departments, we have agreed on that split of responsibilities.

Our experience to date is that, at least at a working level, that arrangement works relatively well. The effective imposition of additional requirements on Telstra and Australia Post is minimal. Basically, it requires them to send copies of the relevant information to both

departments and both ministers, rather than simply to one minister or one department. To my knowledge and my understanding, the arrangement, subject to what is in the Telstra submission, has not caused major difficulties or tensions in the relationship.

On the issue about shareholder responsibility versus regulatory responsibility, the government and our minister in particular have made it clear that, in decisions in relation to those sorts of issues, getting good regulatory outcomes for the good of the community will take precedence over accretions to shareholder value in Telstra in particular. And with the passage of the most recent legislation for privatisation, all of the regulatory responsibilities have been clearly separated in separate acts from the Telstra legislation. Similarly, we are moving to do much the same in relation to revised postal legislation that we are preparing at the moment. We are intending to introduce into the parliament a postal corporation act and a postal regulatory act.

If there is an issue about the tension in the government being a shareholder of Telstra in particular—a partly privatised company such as Telstra—then it is an issue for the government as a whole, and my view would be that the allocation of ministerial responsibility would only be a marginal player in that issue.

CHAIRMAN—Do you think Telstra will tell us that that arrangement—other than the fact that it would simply have to report to government and the shareholders as well, since they have to report to the share market—does not place them at a particular competitive disadvantage because one of their ministers is a regulatory minister as—

Mr Neil—I do not think I would presume to put words into Telstra's mouth on whether they have a view about whether the shareholder responsibility should be with Mr Fahey or with Senator Alston.

CHAIRMAN—I simply thought I would ask Mr Neil.

Mr Neil—I think I will leave that for September.

CHAIRMAN—Do you remember Dick Humphry's report?

Mr Neil—Yes.

CHAIRMAN—His recommendations 9, 10 and 11 dealt with CSOs. In recommendation 9, he said:

CSOs should only be carried out by GBEs if there is an explicit government direction or legislative requirement to do so.

In recommendation 10, he said:

CSOs should be budget funded, with the cost of the CSO negotiated as part of a separate and legally binding contract between the GBE and the purchasing department.

And in recommendation 11, he said:

CSOs should be costed using the avoidable cost methodology.

Do you have any comments on those recommendations?

Mr Neil—In relation to CSOs or the universal service obligation in telecommunications, that is dealt with under separate legislation from the Telstra Corporation Act and is subject to an arrangement for a universal levy under which Telstra's competitors subscribe and pay a share to the cost of provision of the CSO. Telstra pays the bulk of it because it is the largest revenue earner in the country. I think that by and large in telecommunications the arrangements would be consistent with what Mr Humphry was suggesting—and they are costed on an avoidable cost methodology, to the best of my knowledge.

In relation to Australia Post, the government examined a report by the National Competition Council last year and came to a view that they would continue to subsidise the universal service obligation that Post carries under its act via an internal cross-subsidy and that Post would be allowed to retain an element of a reserve service for letters weighing less than 50 grams to help them fund that. This is a step down from the previous reserve of 250 grams which is still to be legislated, but that is the announced position. Again, Post's CSO that derives from the USO is costed on a non-unavoidable cost methodology.

CHAIRMAN—Thank you for that. Professor Stephen Bottomley from the ANU today in his submission to us recommended that the government consider either expanding or replacing the CAC Act to something more resembling a Commonwealth government companies act which had broader charter and outlining of responsibilities rather than more generically relying on the companies act. Would you have a view on those issues?

Mr Neil—Not a strong view. Reading Professor Bottomley's submission, I was not clear on precisely what he had in mind in terms of how far you could go in specifying a lot of issues. I think there are some tensions in being able to provide flexibility. My understanding of the CAC Act was that it was a mechanism to try to provide a standard set of conditions to cover a fairly wide range of bodies from Telstra, which is worth X billions of dollars, down to some fairly small agencies at different levels of corporatisation and so on. So it sets a fairly standardised set of principles, which I think was largely drawn from the postal act at the time. There are limits as to how far you could go in trying to specify down those things. You then have to rely on particular corporations acts in relation to the individual corporation to specify particular conditions which might be relevant to their particular circumstances. This is just a view, and it is certainly not a greatly considered view. I read his submission at lunchtime.

Senator GIBSON—I want to go back to the separation of regulation and business activity. This morning we had two GBEs giving evidence before us—the Sydney Airports Corporation and Employment National. Both of those entities have a single minister shareholding—the finance minister. As you know, these have been mentioned in relatively recent times. Employment National made the point that the portfolio minister has a regulatory role and is also a major purchaser in that area. As they are just one of 300 entities out in the marketplace in the employment business, it was seen to be important that the portfolio minister was separated from the business. Shouldn't this same situation apply in communications?

Mr Neil—I would not argue that there is anything fundamentally wrong with having a single shareholder for either Telstra or Post, if that was the government's preference. I tended to indicate before that there are possibly some perception issues that would serve for the government to be seen to be separating the two in a portfolio sense. We certainly tend to—more so in relation to Telstra than Post—have separate branches that deal with the bulk of the regulatory aspects.

My branch does cover radio communications policy. As I indicated before, I would regard it more as a perceptions issue that the business of government is to balance all the interests in the community. That includes their stewardship for the shareholder interest in GBEs along with their broader regulatory responsibilities. I do not think there is necessarily a benefit to be gained. You could argue, for example, that creating a champion for a particular GBE in the form of a strong central department with a strong influence in processes could, in fact, tend the government to favour their GBE's interest or give greater stock to it than they would in the case where it is left with a minister who has to balance both.

Senator GIBSON—Telstra's competitors, for instance, would see that as being unfair.

Mr Neil—What I am saying is that some of Telstra's competitors have argued that the shareholder responsibility should be with the minister for finance. What I am saying is that they might find that that could lead to exactly the opposite outcome to the one they are seeking.

Senator GIBSON—Maybe.

Mr Neil—As a perception thing, yes, it looks like it is more separate, but it is just an issue.

Dr Badger—In discussions where Telstra have raised the issue, they have talked about the perceptions concerned. I think our minister has responded to that on a number of occasions, particularly in the context of the sale of Telstra. You would have to say that there are also concerns that Telstra's competitors have with the arrangements as they are now. Telstra have concerns, but they are for the mirror image.

The practical situation is that we have not run across instances where people can point to what they really do consider to be a problem. As you know, it is an issue that the government has had the opportunity to address. Certainly, the government has done a lot of assessment of telecommunications policy in recent times and we have the assessment of where we are.

Senator GIBSON—Going on from that, there have been further suggestions that if those two roles are separated, why do we need a CAC Act, because if there is a clear business objective for the GBEs to be separated from the regulatory minister or purchaser—for example, Employment National—then what is wrong with that GBE simply operating under the Corporations Law? If there are additional requirements it either requires a separate statute, which you have got in your particular two cases, or additional requirements being put by the owner, with the government, in the constitution of the entity. Remember, this is with

the background of a reducing number of GBEs. Governments over quite a few years have been getting rid of them.

Mr Neil—It is arguable, as the Humphry report did, that all of the GBEs should be made Corporations Law companies. That would significantly reduce the need for the CAC Act. There are other organisations that are covered by CAC that are not GBEs—

Senator GIBSON—That is right.

Mr Neil—but certainly in relation to GBEs. And, yes, you would then, I would think, be able to deal with any additional issues, as we do with Telstra, by having some specific provisions in a corporation act which covered any other additional requirements the government felt were necessary.

Mr COX—Have you got a definitive statement about Telstra and Australia Post CSOs?

Mr Neil—The fundamental legislation provides definitive definitions; if you turn up both acts, they are there. I cannot quote them. I was good at quoting the Telstra one and it has changed in recent times. The postal one is basically to provide a standard letter service to all Australians wherever they may live. Essentially, there is a requirement for Telstra to provide a standard telephone service throughout the country. That has recently been supplemented by some additions of a digital data service requirement. But the acts spell it out in specific detail.

Mr COX—There is nothing about availability of public telephones in it, is there?

Mr Bulless—Yes, there is. It is in relation to the standard telephone service.

Mr Neil—Yes, the standard telephone service has a requirement for public telephones. Just to expand slightly, I should say in relation to Post that the government last year set some standards for performance which related to the availability of post boxes and post offices and those issues and which actually set some standards for the first time for the universal services. It was by regulation. It made it more specific.

Mr COX—There is some suggestion that GBEs should not be subject to administrative law. To what extent are Telstra and Australia Post subject to administrative law?

Mr Neil—Both are still substantially subject to admin law. I can give you the detail. Telstra is not subject to the Privacy Act, but Post is. The AAT Act does not apply to either of them. The Ombudsman Act applies to both. The AD(JR) Act applies to both and the FOI Act applies to both. The government has accepted the Humphry recommendation in relation to the removal of those things. When the Telstra legislation was before the parliament, some of those things would have fallen away automatically if the government had sold down below 50 per cent. We will go back to government and ask what they want to do in light of the most recent things. You can do some of these things by regulatory arrangements.

Similarly, in relation to Post, we are in the process of drafting more legislation to implement the government's decisions on the NCC report and, in that process, we will

confirm with the government whether they want to take steps in relation to administrative law. If the government so decide, then the legislation will reflect the removal of those provisions.

Mr COX—Has there been any discussion within the government about the privatisation of Australia Post?

Mr Neil—Not with me. Only over a beer or two, maybe!

Mr COX—How do you judge the department of finance's capacity to analyse the financial information provided to them by Australia Post and Telstra?

Mr Neil—My consistent view is that the department of finance take a very professional approach to their responsibilities, and I have not seen any evidence of significant deficiency in their ability to provide ministers with relevant and effective information on the GBEs.

CHAIRMAN—Following up on that, ANAO did recommend in 1997-98 that portfolio departments should periodically commission independent assessment of the corporate plans of GBEs. Is that happening? Do you think it should happen more often?

Mr Neil—I am not aware of it happening. The issue of financial analysis is one that we have deferred to Finance on under our arrangements. It is certainly open to them to obtain outside assistance. Telstra, in particular, has been gone over with a fine toothcomb in recent times. In the history of my involvement with it, it has never been subject to more scrutiny by more people inside and outside of government in all the processes leading up to sale.

CHAIRMAN—Mr Neil, we accept your explanation without qualification!

Mr COX—How much does that scrutiny within government cost?

Mr Neil—I am not in a position to ask. I think those questions are being answered in relation to the cost of sale.

CHAIRMAN—Telstra, in their submission, told us that in their view there was excessive parliamentary scrutiny of them as a GBE. Could you comment?

Mr Neil—Their persistent complaint is that they are subject to the estimates process on two grounds. The first concern is that they have to run the risk of having to reveal information, that they would rather not, on commercial grounds. They take that a little bit further to suggest that that may lead them to have to disclose information prematurely to meet obligations to the Australian Stock Exchange. I am not prepared to comment on that aspect of it, but they certainly have a concern about that. The second concern is about the process itself, the number of times they have to appear and the amount of resources that takes.

The minister put forward a proposal to the relevant committee last year, suggesting another way of dealing with Telstra via an examination by the committee—not constituted as an estimates committee—to have a look at the annual report, supplemented by a briefing by

Telstra of interested parliamentarians on the half-yearly results. The estimates committee turned down that suggestion, and we now continue with the process of estimates.

CHAIRMAN—The JCPAA is constantly interested in risk management, and we join the Auditor-General in that regard. Can you tell us your view of both your GBEs—Telstra and Australia Post—and of whether the risk management strategies put in place by their boards are sufficient? To what extent do they use internal audit procedures to prove the point?

Mr Neil—Both organisations have very professional boards and very professional managements, by my judgment. We have certainly taken on board the concerns that have been raised in the past by the ANAO about risk management in relation to GBEs, and it is an issue that we have raised with the organisations in terms of corporate plans and asking for comment on the issues and asking for indications in the corporate plans of their approaches to risk management. We have regular briefings with both organisations; rather more regular with Telstra than with Post. With Post we still operate on a quarterly report basis. But the issues of risk analysis and so on feature in those discussions. I would not want to comment specifically on how they deal with it in terms of internal auditing. I would be quite confident that they do, but I think you should rather ask them.

CHAIRMAN—That is okay; we will ask them.

Mr COX—If you replace directors on Telstra, a list of possibles goes from the board to the minister for consideration. Is that correct?

Mr Neil—That is one possible mechanism. There is no standard requirement for the board to provide a list of possibles. Telstra is a Corporations Law company, and under its memorandum and articles of association the directors are elected at the AGM on a rotation of one-third. Anybody can in fact write to Telstra and seek to be a candidate at the AGM, but if you do not have the promise of the Commonwealth's votes you are probably wasting your time. There is a provision by which casual vacancies can be filled up until the AGM, with provision for that to be done by the board in consultation with the minister. Anyone appointed by that mechanism would stand until the next AGM, when they could stand for re-election. Again, they would require the support of the Commonwealth, given our continuing share ownership, to be elected. Appointments to the board go through an internal process that applies to all major appointments within government in terms of the cabinet process. Ministers take forward nominations about who we will support if there is a Telstra vacancy.

Mr COX—What about Australia Post?

Mr Neil—Australia Post is still appointment by the Governor-General, so the minister, after consulting with the board, writes to the Prime Minister nominating an individual or individuals. It goes through a cabinet process and goes to the Governor-General. That is the standard statutory corporation type approach. Again, suggestions will come from the Post board as to whether they would like to see someone either retained or replaced and suggestions about who, and of course ministers have their own means of obtaining nominations from the general community or wherever.

CHAIRMAN—Thank you very much for coming today. We will eventually get to a report.

Mr Neil—I will look forward to it with interest.

CHAIRMAN—We will certainly send you a copy.

Resolved (on motion by **Mr Cox**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.49 p.m.