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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND  
AUDIT

**Reference: Review of the Financial Management and Accountability  
Act 1997 and the Commonwealth Authorities and Companies Act  
1997**

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**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

**Monday, 13 September 1999**

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

**Senators and members in attendance:** Senators Gibson and Watson, Mr Charles, Mr Cox and Ms Gillard

**Terms of reference for the inquiry:**

Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997.

**WITNESSES**

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**Committee met at 2.13 p.m.**

**CHAIRMAN**—The Joint Committee of Public Accounts and Audit will now take evidence, as provided for by the Public Accounts and Audit Committee Act 1951, for its review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997. Although operating for less than two years, the Commonwealth's financial management and accountability legislation is essentially the same as that introduced five years ago before many of the accrual based reforms were introduced.

The committee believes there is value in reviewing the current legislation in case it needs refinement. The committee also has an ongoing interest in the legislation because it reviewed the Financial Management and Accountability Bill and the Commonwealth Authorities and Companies Bill in 1994 when they were first introduced to the parliament. The committee notes that the annual report guidelines are under review in the light of these recent changes. Under current legislation these guidelines have to be approved by the committee—that is, us—before they can take effect. Witnesses from the Department of the Prime Minister and Cabinet, the agency responsible for coordinating those guidelines, will appear later this afternoon. Representatives of the Department of Finance and Administration, which has responsibility for the legislation, are the first witnesses this afternoon. The committee has scheduled DOFA to reappear at the end of the hearing tomorrow so the committee can question its representatives on the issues raised by other witnesses and provide an opportunity for a response.

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

[2.15 p.m.]

**BOXALL, Dr Peter, Secretary, Department of Finance and Administration**

**MORANT, Ms Anne, Acting Branch Manager, Financial Framework, Department of Finance and Administration**

**WRIGHT, Dr Diana, General Manager, Resource Management Framework, Department of Finance and Administration**

**CHAIRMAN**—Dr Boxall, before you arrived, Dr Wright said that today represented the seventh time she has formally appeared before this committee since last November. She is uncertain as to whether it is corporate training or punishment!

**Dr Wright**—I am not sure that I used the word ‘punishment’!

**CHAIRMAN**—That is a little bit of poetic licence. Dr Boxall, do you have a brief opening statement you would like to make before we ask our usually telling questions?

**Dr Boxall**—Yes, I do. We thank you, Mr Chairman, and the committee very much for the opportunity to appear before you today. We welcome this inquiry into the effectiveness of the package of legislation comprising the Financial Management and Accountability Act and the Commonwealth Authorities and Companies Act. The introduction of the FMA and CAC acts on 1 January 1998 represented a significant milestone in addressing the government’s commitment to improving public sector performance. The substantial changes introduced by the legislation provided a key foundation for the reforms in public administration across the Australian Public Service. The legislation represented a major change in the framework of financial management, accountability and governance of Commonwealth bodies. It introduced in particular a clear framework of obligations and responsibilities focused particularly on chief executives and directors of authorities, strengthened accountabilities for financial reporting and performance to ministers and to the parliament and, for FMA agencies, removed the detailed prescription of financial management which was no longer relevant to the needs of the APS.

The legislation was designed to be sufficiently flexible to accommodate evolutionary changes over time—for instance, in financial management and internal governance practices and processes. We are not complacent, however, about the legislative framework. Significant reforms have already been adopted by the government or are before the parliament. Changes to the FMA Act were made from 1 July 1999. These largely involved the repeal of provisions dealing with fund accounting in order to better accommodate the new accrual budgeting arrangements implemented from the 1999-2000 budget year. Fund accounting had its origins in the Audit Act, and its continuation was considered inconsistent with and a costly impediment to the new arrangements. The government has also introduced into parliament the Corporate Law Economic Reform Program Bill 1998, which proposes comprehensive changes in the duties of directors under the CAC Act. These changes would align the CAC Act with broadly equivalent changes in directors’ duties under the Corporations Law.

My department has an ongoing concern with the effectiveness of the legislation. For this reason, we initiated a review earlier this year. We were keen to know how the legislation had been working in all its aspects. We also sought out developments outside our jurisdiction in the relevant states and territories. The feedback attained from the many agencies who made submissions to the DOFA review and who spoke with us in discussion forums was positive and constructive. As is already evident from the submissions received by your committee, entities across the Commonwealth have a keen interest in ensuring that the framework legislation and the principles on which it is based remain relevant to their operational needs. My department is still considering the results of its review. This committee and other committees of the parliament have made a valuable contribution to the development of the current legislative framework, and I am sure this will continue.

**CHAIRMAN**—As you know, a lot of things happened on 1 January 1998: the new Audit Act came into place, our act was amended, substantially changing our role and giving us broader and much more extensive powers, the FMA Act came in, the CAC Act came in and regulations for GBEs came in at about the same time. As you know, we are inquiring at the moment into corporate governance for GBEs. Notwithstanding the fact that you have just looked at these two acts, we thought it was appropriate that we do so too so that, while it has only been 20 months, we could at least satisfy ourselves that things are working reasonably well. I do not think anybody is proposing to overturn anything. Perhaps there are minor adjustments that need to be made. I do not know what you have found.

We have started working through our new responsibilities with respect to audit. There are a few words in the legislation but no procedures. We have had to develop our procedures as we went along, and some of it we are still finding out about. We just found out about one three weeks ago, and that is the extent to which we are responsible for giving the Auditor-General advice on changes to his performance audit schedule. We are now clear on how we advise him ahead of the financial year on audit priorities in the parliament. We have worked through that and developed procedures, and it is now working well. But we were hit with one out of the blue to change the audit program, and we do not know how to cope with that. So we have to work through that. These things happen—as they have when we have had to deal with you on a number of issues. One of them was when we report to the parliament on our view of the budget for ANAO. The first year we reported after the budget came down whereas the second year we reported at 6 o'clock before the Treasurer spoke. These things take some working through.

One of the things that fascinated me in reading the background papers for today was that the National Crime Authority comments that the audit office and you—and they do not say us, but we do too—are willing to tell departments and authorities that they need to manage risk but, while saying that, have not yet figured out how to allow them to take risks and have failures. Do you have any thoughts about that?

**Dr Boxall**—This is a very difficult issue in an environment where failures can be treated much more harshly than, and out of proportion to, success. We have a situation where the environment might be encouraging some agencies to be more risk averse than otherwise might be the case. The discussion which has taken place on risk management in recent years—since I have been secretary and probably before—has been very constructive. People are now talking about it. They are talking about having risk management programs, which is

in the FMA Act. CEOs are now starting to weigh up these issues as more responsibilities devolve to them and are starting to make a judgment.

It is a difficult issue for each CEO to work out what the appropriate risk management program is and what failure can be tolerated. Clearly, there are some areas where you would not tolerate any failure and where you would try to put in place measures where you would hope that nothing would ever go wrong. There are other areas where you could put in a program which would allow some probability of failure. But it is very much up to individual CEOs, and it depends on the nature of the business that the CEO is running. One of the important steps that the package of financial legislation passed by parliament does is devolve that authority to CEOs to make a judgment of what is most appropriate for their business.

**CHAIRMAN**—If the National Crime Authority is right, we have done nothing to educate the parliament, the bureaucracy or the public of the fact that risk management implies taking risks—and if you take risks there are always going to be failures—and to educate people that sometimes something will go wrong. In the private sector, these things can go wrong and nobody finds out about it, or they may go wrong big-time, like BHP recently, and then everybody knows.

**Senator WATSON**—What about GIO?

**CHAIRMAN**—I would have thought BHP was pretty dramatic. Do both of us or either of us have a role to start, if you will, an education campaign saying, ‘You can’t have it both ways’? You cannot have the old assurance that everything will be right because everything was written down in a set of procedures for the public service to follow—and that is the way everything was done, totally unlike the corporate sector—and you expected everything to be done exactly and properly because, if you followed the rules, nothing could go wrong. Do we have to change that culture?

**Dr Boxall**—My impression is that the Audit Office and DOFA have been talking with agencies about risk management procedures and proposals.

**CHAIRMAN**—It is not that. We talk to everybody about risk all the time in almost every inquiry. We are talking to all the GBEs at the moment on our GBE inquiry about their management of corporate risk, what they are doing and what they do with internal audit committees. It is the question: do we change the culture so that people understand that there will be, from time to time, a failure but that systemic failures will not be countenanced?

**Dr Boxall**—I think that is the way to go, and I believe that is the way we are going. But the progress is relatively slow because it is a difficult area. There is a large number of agencies to be educated and a large number of stakeholders to be brought into the loop. But there are opportunities for agencies—when they are answering questions at Senate legislative committees, for example—to point out what their risk management programs are and what the results are. With the new annual report framework—which is part of the new accrual budget framework, as you know—there will be a read across from the appropriation bills to the portfolio budget statements through to the annual report where agencies will be reporting on their performance against key indicators. Probably for the first time we will have systematic reporting of outputs and outcomes by agencies against performance indicators,



and agencies will be able to discuss where they succeeded and where they did not and to put that into a framework.

I know personally that a number of agencies have made an effort to put in place audit committees—DOFA has one, for example—and that agencies are at different stages in developing their risk management programs. Having been a secretary now for 2½ years, my experience is that awareness now is greater than it was 2½ years ago. I think the passing of the Financial Management and Accountability Act and the CAC Act and the devolution of authority to CEOs, who then have to take responsibility and make up their minds about what are the appropriate programs for their agencies, has helped a lot.

**CHAIRMAN**—You have just brought up the fact that you are all having a look at the annual report process. The submission from PM&C says, amongst other things, that at the moment any revised reporting requirements with respect to annual reports are submitted to JCPAA for approval. They go on in the paper to say that the new methodology for review includes:

. . . circulation of draft revised requirements together with departmental comments to JCPAA . . . for comment.

It goes on, on page 4:

In providing the proposed requirements to the JCPAA for comment . . .

I recognise that I am asking you to comment on another secretary's proposal, but we work very closely with DOFA, as you know. I cannot recall at any time in the recent past that we have devolved responsibility from this committee back to the bureaucracy. I thought it had been coming the other way, generally speaking. In fact, you just hit us with coordinating it. You asked us to do it and we did it. We said that if you gave us some secretariat support we would do it, and you did. This is cooperation.

**Dr Boxall**—Exactly. I think it is best that PM&C representatives comment on that.

**CHAIRMAN**—I thought you might. One of the things that really interests this committee—at least I think it does—is how we hold department CEOs to account. In this new devolved environment that is increasingly important, and we increasingly say so in reports out of this committee. I will cite, as an example, a recent report on Commonwealth government procurement, which is of interest your department and to Dr Wright. We made some strong recommendations that purchasing statistics be put into the annual report in order that we can keep track of whether or not department CEOs are doing the kind of job that we think should be done in order to promote Australian industry and give small business and medium-sized business a fair go, without being overly prescriptive. How do you see that we can define, in regulation or however, mechanisms for holding CEOs increasingly to account for performance?

**Dr Boxall**—In a general sense or with respect to these guidelines?

**CHAIRMAN**—In a general sense.

**Dr Boxall**—In a general sense there are a couple of mechanisms. One is that, as you know with the latest pay decision for secretaries moving on to performance pay, the Prime Minister and the executive will be assessing CEOs' performance. The other mechanism is again the procedures of the new accrual budgeting framework, which means that agencies are to report in their annual report against key performance indicators and against other indicators in achieving the outcomes. If an outcome relates to, for example, an industry development aspect of purchasing or something like that, then clearly the agency responsible will be appropriated money to achieve that outcome. The Senate legislative committee and others have a right to ask how they are doing. In terms of actually getting something written into the annual report on a specific thing, I will hand over to my colleague Dr Wright.

**Dr Wright**—As we discussed last time at the inquiry into purchasing, it is quite a difficult task to collect meaningful information on Australian industry and Australian goods. The principle at the heart of the procurement guidelines is value for money through which agencies are encouraged to assist and give a fair go to Australian industry. But that is not the sole driving force, value for money is.

However, the trend is away from very prescriptive detailed reporting in annual reports on a statistical basis; but information can be accessed, as Dr Boxall says, by looking at reporting on performance and outputs. It is quite difficult to know, even if one were to look at that information, on what basis to collect it. Is one looking at Australian industry or Australian content?

**CHAIRMAN**—I felt we made some pretty good recommendations in that regard.

**Dr Wright**—And we are in the process of responding to them, too.

**CHAIRMAN**—I hope you are not telling me today that you are rejecting them.

**Dr Wright**—Not today, no.

**CHAIRMAN**—I am not sure I like that answer, either.

**Senator GIBSON**—Mr Chairman, following on from your earlier questioning to Dr Boxall and Dr Wright, with regard to assessing the performance of chief executives of the agencies in a risk framework and thinking about the next year or two, can this committee help the education process by perhaps together picking several agencies and chief executives in them and highlighting the successes that have happened and what their risk assessments had been prior to the events and perhaps also a few failures and again what risk assessment was done within the agency prior to the events? In other words, we could try to build up a balanced view across the risks of sets of events and treating chief executives fairly and trying to get the message through that one small mistake is not going to get criticised by us, representing the parliament.

**Dr Boxall**—Senator Gibson, there is merit in that suggestion. You would recall that, when we discussed the business of passing back the role of coordinating the responses to the JCPAA, one of the issues we discussed and on which we had agreement between the committee and DOFA was that this was important in terms of CEOs' accountability to an

important parliamentary committee. If what you are suggesting is that, as part of the accountability to this committee, CEOs and other senior people would come up here and discuss and answer questions on that sort of thing, I personally would be happy to do that.

**Senator GIBSON**—I would want to make sure that the CEOs are not adopting risk-averse procedures simply because they do not want to have any failures. I guess that together we have got to try to build up an attitude as to expectations.

**Dr Boxall**—As I am sure you will appreciate, there will be different risk management strategies for different agencies. There are some agencies where it is optimal and sensible—and every other reason—to have a very low risk tolerance or even zero in some cases. There are other agencies where it is optimal to have a higher than zero tolerance for risk. As long as any enquiry is done in that context, remembering that it is legitimate for different agencies to have different risk profiles, I think that would be worthwhile.

**Senator GIBSON**—To go on a completely different tack—the CAC Act. As you know, we are doing another inquiry into the GBEs—there are 12 or 14. There have been several submissions, which are out on the public record, suggesting that all that is required is the Corporations Law, and to get away from other acts affecting those particular GBEs, including some general recommendations about GBEs in general terms. What is your view? Do we really need a CAC Act? What do we need in the CAC Act that is, if you like, over and above what is in the Corporations Law?

**Dr Boxall**—We do not have a final view on that yet because, like you, we are just reviewing it at the moment and we have yet to have substantive discussions with our minister. So I think it would be premature for me to express an opinion on that.

**Senator GIBSON**—Thank you.

**Senator WATSON**—This question of risk averse management is not just common to the sector that you are dealing with, Mr Boxall; it is almost endemic through the whole of the market at the moment. So, while you speak about freeing up and providing greater flexibility to give devolution to the CEO, after all the CEO is responsible to the board and it is the board which is really clamping down on taking any risk because of their personal liabilities. So, in a sense, while you might say you are devolving more responsibility to the CEO, you are not doing anything to help the board because they have got increased personal responsibilities in terms of the discharge of their fiduciary duties. I see a real conflict here.

**Dr Boxall**—I am not sure I understand the point.

**Senator WATSON**—In most of your organisations I presume you would have a governing board of some sort.

**Dr Boxall**—Many CAC organisations have a board of directors and many FMA organisations have a management board. For example, DOFA has a management board. I did not mean to suggest that it is only the public sector that has to worry about risk management—of course not. What I was referring to was the devolution of responsibilities to CEOs—which was done by parliament. They passed the FMA and CAC Acts. It was not an

executive decision; parliament devolved additional responsibility to CEOs. In a sense, you could say that the governing body—that is, parliament—decided to devolve more responsibility to their CEOs and to hold them more accountable. That is what I was saying when I said that, when you do that, they will feel freer to put in place risk management strategies. They will try and work out what is the best risk management strategy for their organisation. I think I said—if I did not, I will say it now—that I think it is a positive development.

**Senator WATSON**—But where you have a CEO who is subject to a board, the board itself is often very risk averse. So while technically the CEO appears to have these extra responsibilities or this extra responsibility devolved upon his shoulders, the board increasingly becomes averse to any form of risk because of their personal liability. This applies in the private sector. It is a big problem.

**Dr Boxall**—Yes, I appreciate that. But, if that were to be the case, in effect the CEO would not have effective responsibility devolved to them. I think what has happened is that parliament, by passing the FMA and CAC Acts, did devolve responsibility, and I consider it to be effective responsibility because CEOs are making decisions now which they were unable to do under the old legislation.

**Senator WATSON**—How does this come back to the responsibility of your governing board?

**Dr Wright**—Currently there are amendments proposed through the CLERP Bill which will bring CAC bodies more into line with Corporations Law. Corporations Law is actually the responsibility of Treasury, not us, but currently the onus on boards is slightly more onerous than it is in the private sector, so we are at least aligning those and mirroring them. The issue you raise is really Corporations Law specific, and I think that is better targeted at Treasury as to what if any changes should be required there.

**Senator GIBSON**—The CLERP Bill includes a proposal to bring in a business judgment rule, which would make it easier for directors.

**Senator WATSON**—At the same time, there is this personal responsibility of directors to have the appropriate risk management statements in place and to ensure that they are appropriately monitored. So that very process is fairly intimidating.

**Dr Boxall**—Dr Wright said it is really a Treasury issue, because the amendments to the CAC Bill are an effort to bring the CAC Act more into line with Corporations Law.

**Senator WATSON**—Dr Boxall, you mentioned the feedback to the review you are currently going through. In your presentation you outlined your particular approach, but could you share with the committee a synopsis of some of that feedback? I think that really would be useful to the committee at this stage. I know your evaluation is not complete, but given the nature of our assignment I think it would be helpful to have some sort of synopsis of that review at this point in time.

**Dr Wright**—I think it is too early. Clearly a large number of issues that have been raised with us have also been raised in agency submissions to the JCPAA. There could well be some finetuning that we could do in the immediate future. There is a view that the acts are working well at present but that it is still early days for more strategic, longer term issues. I think we would need to reflect on whether they should be addressed now or whether we need to take stock a bit later on.

**Senator WATSON**—Are there any common themes running through that feedback that you could share with the committee?

**Dr Wright**—By and large it is early days, but things are going pretty well.

**Ms Morant**—The submissions to the DOFA review basically raise the same issues that have been raised in the submissions to this inquiry.

**CHAIRMAN**—Nonetheless, what the senator asked is: can you give us a summary of the responses that you have had? If the answer is yes, then we can decide if we will require it from you. You have got one of two choices.

**Ms Morant**—More than the summary we provided in our submission on page 8?

**Senator WATSON**—That was your point of view. I am asking for the feedback.

**CHAIRMAN**—That is correct. Because you had said, and you said in your submission, that you were going to provide a summary of responses to your discussion paper. You said that DOFA advised the secretariat in June that a summary of agency responses would be circulated in mid-July. However, DOFA has since decided not to distribute a summary of responses. The senator has asked you: will you give a summary of those responses to us? If your answer is that you want to do that in camera or you can offer some reason of commercial-in-confidence, then say so; otherwise, may I suggest to you that the proper response to the senator's question would be, 'Of course, Senator'—without being too dictatorial.

**Dr Wright**—We will certainly look at giving you a summary of the responses. We will have a look and see what we can do. Whether we can do it by the time the committee closes tomorrow, I am not sure, but we will see what we can do.

**Senator WATSON**—It would be helpful if we could get the feedback. Under sections 15 and 40, there are certain communications required from the outside organisation back to the minister. To what extent can these be public documents, essentially those of a material kind?

**Dr Wright**—You are referring to sections 14 and 40 of the CAC Act?

**Senator WATSON**—It is 15 and 40.

**Dr Wright**—Sections 15 and 40 of the CAC Act?

**Senator WATSON**—Yes.

**Senator GIBSON**—It is paragraph 28 of your submission.

**Dr Wright**—I am advised that the report on operations, commonly known as ROO—report of operations—requires that this information be disclosed in the agency’s annual reports.

**Senator WATSON**—Is that just for material items or for all items?

**Dr Wright**—I can confirm that it is significant events so, therefore, by definition, it is material items. Section 10C of the orders of Commonwealth authorities and companies for reports on operations is what I am referring to.

**Mr COX**—Does that mean actual liabilities or does it mean contingent liabilities as well?

**Dr Wright**—I would suspect that that was a matter for interpretation, but certainly I will seek clarification and come back tomorrow.

**Senator WATSON**—I think that does need clarification because corporations are required to at least have a note to their balance sheet about contingent liabilities and major events that could impact on their future profitability as well as their current profitability. Is that covered under your provisions?

**Dr Boxall**—They are listed in section 15 of the act—‘the responsible minister to be notified of significant events’—and then it lists that the directors of a Commonwealth authority must immediately give the responsible minister written particulars of the proposal, and it lists six of them.

**Senator WATSON**—Coming back to my earlier question, you can see there is a real conflict because, in evolving responsibilities to CEOs to become greater risk takers, at the same time you are putting responsibilities on directors in terms of a wide range of disclosures.

**Dr Boxall**—As we mentioned earlier, that is an issue to be taken up with Treasury, I would suggest, because if the government is proposing some amendments to the CAC Act to make it more like the Corporations Law—and the Corporations Law bill is, as you know, the responsibility of the Treasurer—the government and parliament will be making judgments on the appropriate balance between disclosure.

**Senator WATSON**—What is your role in this? Don’t you give advice? You do the administration.

**Dr Boxall**—Our role is to give advice to the Minister for Finance and Administration on the CAC Act. That is our role.

**Mr COX**—But if the CAC Act is being changed to fit some other act that is administered by some other minister you cannot just devolve responsibility to that minister for matters that go to Commonwealth authorities.

**Dr Boxall**—Of course you cannot do that, and that is not what we are suggesting you do. We advise our minister on the CAC Act. The government has made a decision to align the CAC Act more closely with the Corporations Law. I would suggest, Mr Chairman, that, if members have questions about the Corporations Law, it is more appropriate to ask the Treasury than us.

**Senator WATSON**—The purpose of our questioning is to try and get back to your role as the administering entity in terms of the acts under consideration about the impact of these changes in terms of risk taking and responsibilities for directors. This is the essence of what this inquiry is all about.

**Dr Boxall**—Our role is to advise the Minister for Finance and Administration, and the government has decided to align the CAC Act more closely with the Corporations Law.

**Mr COX**—More closely, or totally?

**Dr Boxall**—I think the words are ‘more closely’. The government made that decision and, as you know, we cannot divulge what advice we gave to the government.

**Senator WATSON**—Can I ask you this question: what changes in terms of directors’ responsibilities will that devolution entail?

**Dr Boxall**—I understand that the bill is scheduled for consideration in the Senate in the week beginning 20 September and that what it would do in terms of the responsibilities of directors under CAC bodies is that it would make more clear that they are allowed to get advice from outside people in terms of what actions they might take. There would be a business judgment rule. The reason why it is a bit tricky to answer is that the Corporations Law is changing too, so not only is CAC changing but the Corporations Law is changing and CAC will be changed to marry up with the Corporations Law.

**CHAIRMAN**—Is this risk factor in the current bill?

**Dr Boxall**—It is care and diligence, business judgment rule, the directors’ reliance on the advice of others and conflicts of interest, improper use of position and information, and a penalty regime.

**Senator WATSON**—Increasingly CEOs have been rewarded according to performance. However, there does not seem to be any sort of penalty for bad decisions or non-performance, so it is a bit of a one-way ticket. Obviously you might say, ‘Well, they are not going to get reappointed after their term of five years,’ but I have some concern about the very high rates of remuneration that some people are getting for taking decisions. It could lead to the situation where there is all reward and no penalty.

**Mr COX**—They might be rewarded for their political performance and not for their financial accountability.

**Senator WATSON**—There has to be some sort of penalty or punishment somewhere. How do we ensure that there is this proper balance, otherwise people will rush off and make decisions?

**CHAIRMAN**—We seem to be heading down a blind rabbit hole. At a subsequent hearing why don't we get Treasury in?

**Mr COX**—I do not think we are perfectly satisfied about the advice we are getting from Finance on the public sector side of this though.

**CHAIRMAN**—How do you mean?

**Mr COX**—I still think they are issues where there is a separate and discreet answer for the FMA Act and the CAC Act, regardless of what general corporate law says.

**Dr Boxall**—We are happy to answer any questions, Mr Chairman.

**Senator WATSON**—Do you have a response to my question?

**Dr Boxall**—With respect, I am not sure what your question is. I am happy to answer any questions put to me.

**Senator WATSON**—My question was that your CEOs have more responsibility devolved upon them, they are encouraged to take greater risks and they get rewarded for performance, but what is there to safeguard the instrumentality and the customers where there are bad judgments? I am not talking about minor indiscretions; I am talking about significant losses.

**Dr Boxall**—As I understand, this is a question which goes to the remuneration of CEOs of FMA bodies, mainly secretaries. It is an issue on which the government has taken advice from the Remuneration Tribunal and just made a decision. As we all know, the appointments of secretaries are at the discretion of the Prime Minister and, presumably, the Prime Minister can take action if he and other ministers believe that, and I think it is the Prime Minister's discretion to remove a CEO. I am not sure, with respect, what the question is. We are happy to answer any questions.

**Senator WATSON**—What are the circumstances where a prime minister is going to move in and dismiss a CEO of Telstra?

**Dr Boxall**—That is a CAC body.

**Senator WATSON**—Yes. This is our difficulty. We are dealing with three acts. We are trying to get a common theme to come through all of them in terms of accountability, responsibility and risk taking. With respect, when I ask a question in relation to a CAC body, you refer to an FMA.

**Dr Boxall**—With respect, I do not. If you want to ask a question about a CAC body, I will try and answer it. If you are asking a question about the appointment of a CEO of



Telstra, that is a CAC body, and there are procedures set in place for the appointments of a CEO of a CAC body. I do not have those details at my fingertips, but I do have staff who can get the information and bring it back tomorrow afternoon.

**Senator WATSON**—You could give me a response and say that the answer in relation to CAC is such and such, and the response in relation to FMA is something else. Then we can marry the two up, if we so wish, but we are getting neither at the moment. That is my frustration.

**Dr Boxall**—The response is that in general the heads of FMA acts are appointed by the Prime Minister, for example, secretaries. The heads of CAC bodies are appointed by the board, and there are different procedures put in place in terms of rewards for performance.

**Senator WATSON**—And non-performance?

**Dr Boxall**—And non-performance, yes.

**Senator WATSON**—What are some of those processes or procedures for non-performance?

**Dr Boxall**—The case of secretaries ahead of FMA bodies is a question better put to the Department of the Prime Minister and Cabinet. I would say that having performance pay is one thing. We also have a situation where we can be removed from our jobs. In the case of CAC bodies, I think you will find that the terms of appointment differ from body to body. They tend to be more the private sector model, which also has performance pay associated with the job. Presumably there are mechanisms by which CEOs can be removed.

**Mr COX**—You were talking earlier about there being various areas where any failure was totally unacceptable and that there were some areas where a degree of failure was acceptable. Have you ever set those out clearly? Would you be able to take that on notice and do that for the information of the committee?

**Dr Boxall**—I do not think it is the role of the Secretary to DOFA to outline which areas of other departments are acceptable and which are not acceptable. That depends on the CEO who is managing the department. It depends on the minister. The minister may well express a view that there are certain areas of the operation that they just do not want a failure in. Therefore you put in place a risk management procedure which effectively eliminates any risk of failure. On the other hand, the minister might express a view to the CEO or the CEO might advise the minister, ‘There is a risk to this but we think, on balance, it is worth taking.’ I do not think it is the job of the Secretary to DOFA to talk about what areas of another agency should or should not have zero risk tolerance.

**Mr COX**—So it is a matter between agencies and their respective ministers?

**Dr Boxall**—No, it is a matter under the FMA Act and the CAC Act. I am happy to talk about both, but let us talk about the FMA, if that is OK with you, Mr Cox. Under the FMA Act these things are devolved by the parliament to the head of the agency. Clearly, the CEO of any agency works closely for advice with their minister, who is their customer and under

whom they serve the public and other people. I would easily imagine that if a minister said, 'It is really important that we do not have a failure in this area,' the CEO would put in place one risk management strategy as opposed to another.

**Mr COX**—I notice it is still the situation that some ministers, particularly statutory marketing authorities, have got the power to provide government guarantees to those organisations. Do you monitor those? Do you have any concern about what SMAs are doing given that the track record over the last 10 or 15 years has seen some fairly spectacular problems?

**Dr Boxall**—We do, and that is reported in the budget papers. There is a section in there about liabilities and contingent liabilities and a statement of risks.

**CHAIRMAN**—We just reviewed the audit on that issue.

**Mr COX**—Do you think it would be sensible to put granting of those guarantees back in the hands of the Treasurer?

**Dr Boxall**—My understanding is that there are certain guarantees that cannot be entered into without the authority of the Minister for Finance and Administration. We can clarify the answer to that question tomorrow when the people return.

**Mr COX**—Could you give us a full list, even if it takes longer than tomorrow, of all of the areas where there is some prescription as to who can and who cannot provide government guarantees and who the responsible parties are for providing those guarantees?

**Dr Boxall**—We will attempt to give you the detailed information you want but regulation 14 of the Financial Management and Accountability Regulations 1997, which are made under the FMA Act, says in relation to entering into loan guarantees, which I know is only one form of guarantee:

(2) A person (including a Minister or Chief Executive) must not give a loan guarantee on behalf of the Commonwealth unless:

(a) a proposal to spend public money for the guarantee has been approved under regulation 9 or 10; and

(b) the giving of the guarantee has been authorised by the Finance Minister, or another person authorised by the Finance Minister for the purpose.

**Mr COX**—There are some other big areas like national interest account and EFIC insurance, and it would be interesting to have a look at the present practice on those. The contents of annual reports: they are currently set by the Department of the Prime Minister and Cabinet. Do you see there would be advantage in DOFA or the Minister for Finance and Administration having a role in determining what the financial requirements are in annual reports?

**Dr Boxall**—We actually do work very closely with the Department of the Prime Minister and Cabinet on that issue, so we have quite a bit of input.

**Mr COX**—Do you think there would be any dismerit in the legislation being changed so that Finance had a statutory role?

**Dr Boxall**—I do not think there would be any dismerit in it. I think we do a good job, but so does PM&C.

**Mr COX**—Ministerial approval of contracts: from my experience there is a bit of tension between government agencies coming to their minister seeking approval for contracts. This particularly applies to GBEs or to other CAC Act agencies getting ministerial sign-off on contracting arrangements. I think there is a bit of a shift in responsibility, by doing that, from the managers of those organisations to the minister rather than management taking responsibility themselves. Do you have any views on that?

**Dr Boxall**—I am not aware that that is an issue.

**Ms Morant**—That is raised as part of the feedback from agencies on the FMA CAC review that we are undertaking. For some enabling legislation where you have the limits on contract approval that has to go to the minister, they agree with your proposition that it does become a bit bureaucratic. So we are actually looking at that as part of the FMA CAC review in terms of what is the appropriate level for some agencies. It is appropriate that you have ministerial approval at certain levels but for others it is not necessary. I guess it is an old style where the enabling legislation needs to be updated for current practices.

**Mr COX**—In most of those instances ministers would have a power of direction, I would expect. My gut feeling about it is that the agencies ought to get on and manage, and perhaps they should report contracts over a certain level to their ministers but not actually seek formal approval of them signing those contracts.

**Dr Wright**—There is a requirement for external reporting of contracts and purchases over \$2,000 anyway in what was the former transigo, so that becomes public domain information anyway. Certainly with this issue whether there are areas of enabling legislation that need to be tidied up, these are the sorts of minor things that we could possibly take on board in the short term as a result of this review.

**Mr COX**—The other thing that I was interested in is the contents of the budget papers. There was a little bit of a leap into the unknown this year, and they were better in some places and worse in others than previous years' budget papers. How do you feel about prescriptive reporting of estimates—having requirements to provide estimates in specified forms in terms of outlays and revenues for comparability purposes, summary tables, reconciliation statements?

**Dr Boxall**—Comparability across agencies?

**Mr COX**—Both across agencies and between years.

**Dr Boxall**—There will be comparability between years as the new system is put in place. As you know, this year—which is a transition year—agencies made an effort to make sure that we had two years of data so that you could compare this year's budget with last year's.

So obviously, over time, that becomes less of an issue—or am I missing the point of your question?

**Mr COX**—I think there was concern this year about some whole of government information that had been there in past years and was not available this year.

**Dr Boxall**—Can you be more specific about that?

**Mr COX**—I could possibly give you a list.

**Dr Boxall**—Unless you are going to be more specific, I am having trouble answering that.

**Mr COX**—Okay. The other thing that I am particularly interested in that has not been done for a number of years is the presentation of outlays information in a decomposed form so that you can see contribution to growth from, say, population changes, policy changes and standards of service. Have you looked at doing an exercise like that again?

**Dr Boxall**—Is this for individual programs or for expenditure as a whole?

**Mr COX**—For individual programs. This has been done and published at least once before.

**Dr Boxall**—We can take that suggestion on notice.

**Mr COX**—Lastly, I was wondering whether you could send us a table giving us an organisational structure for the department and a breakdown of SES officers by their number of years of experience in the department—say, in March 1996 at the point when you became secretary and now—showing how many officers had more than between nought and three years experience in the department, between three and five years, and more than five years.

**CHAIRMAN**—What the heck does that have to do with this inquiry?

**Mr COX**—I am interested in the corporate knowledge of the Department of Finance and Administration for managing this area.

**Senator WATSON**—Mr Chairman, can I put two questions on notice. Obviously, Dr Boxall, you are going to take that one on notice?

**Dr Boxall**—As the chairman says, what does that have to do with this inquiry?

**Senator WATSON**—I have two questions that I would like you to take on notice. Firstly, what are the advantages of the department of finance being responsible for coordinating the guidelines for annual reports? As you know, this is currently undertaken by PM&C. What are the advantages of coordinating bodies such as yours doing those guidelines? Secondly, can you give us those organisations that essentially come under the CAC Act that are not at arms-length? My understanding is that arms-length organisations operate under the CAC Act and those organisations that are not at arms-length from the

executive are under the FMA Act. What are the examples of those authorities that come under the FMA Act—

**CHAIRMAN**—I think we already have that.

**Senator WATSON**—that are not at arms-length compared with those that are at arms-length that should be under the CAC Act but are not under it? Are there any exceptions to that general rule and, if so, I want to know what they are?

**CHAIRMAN**—I think we have that information in the GBE inquiry—that is, we have a list of all those organisations that come under Corporations Law, which puts them under the CAC Act, and everything else is FMA.

**Senator WATSON**—But I want to know the exceptions. Are there any exceptions to those? That is my question. You can take it on notice because we are running short of time.

**CHAIRMAN**—I think if you look through your submission to the GBE inquiry, Dr Wright, you have the answer there already.

**Dr Wright**—We have a table.

**Senator WATSON**—But it is the exceptions that I want.

**CHAIRMAN**—Fine. Thank you very much for coming to talk to us. We look forward to talking to you again tomorrow. One thing before you go: last Wednesday in Melbourne we very firmly got the impression from at least two GBEs that your departmental personnel who are responsible for the financial shareholder minister came up with big A pluses.

**Dr Boxall**—Thank you very much. We appreciate the positive feedback.

**CHAIRMAN**—It was my pleasure to tell you that. I thought you would like to know something good.

**Dr Boxall**—I would. I will pass that on to my staff. Thank you very much.

**CHAIRMAN**—They said that it is working really well. They like the relationship. Maybe you are too close to them.

[3.22 p.m.]

**BARRETT, Mr Patrick Joseph, Auditor-General, Australian National Audit Office**

**COLEMAN, Mr Russell Charles, Executive Director, Corporate Management Branch,  
and Chief Finance Officer, Australian National Audit Office**

**HAY, Mr Edward, Group Executive Director, Assurance Audit Services Group,  
Australian National Audit Office**

**HOLCROFT, Mr Norman, Senior Director, Corporate Management Branch, Australian  
National Audit Office**

**CHAIRMAN**—I welcome representatives of the Australian National Audit Office. Thank you for coming once again. Did you have a brief opening statement that you wanted to make? We have received your submission, for which we thank you.

**Mr Barrett**—If it is all right with you, we have a less than one-page opening statement which merely encapsulates the main points we have got in the submission. I am happy to hand that over to *Hansard*.

**CHAIRMAN**—Is the committee happy to receive that as *Hansard* evidence? There being no objection, it is so ordered.

*The document read as follows—*

**Senator WATSON**—As long as everybody has a copy of it so that we can question you on it.

**CHAIRMAN**—Mr Barrett, I was interested to read in the National Crime Authority submission to the committee that they seem to have some concerns that you and we and others keep talking about risk management but that we have done nothing to prepare either the parliament or the public for the fact that if you are going to manage risk that means you must be taking risks and if you are taking risks sometimes it is going to come adrift. And if we clobber the department every time it has a failure when it is taking a legitimate risk that it knew it was taking, then we will just continue the same old risk adverse culture which has been part of the Public Service forever. Have you got any comments about that?

**Mr Barrett**—I did read that. Without any disrespect to Mr Broome, if that comment had been made five years ago, I would have said that, yes, I was concerned. You and I both know that a lot of water has gone under the bridge, particularly on risk management, in that time. I suspect the comment was made insofar as—I say this advisedly; this is my interpretation—it is a plea for greater parliamentary understanding, particularly in the estimates committee context.

As you would know, both this committee and my office have produced many reports that have argued and put forward risk management. You and the previous chair of this committee have spoken on risk management issues, and I have spoken in numerous public forums. It has been an issue that unfortunately—as I was saying this morning to another group—people might get sick and tired of hearing us talk about. The problem with risk management is that we do not do it—still. The problem is not necessarily that people do not understand. It comes down to a core problem that we have spoken about many times, and that is the inevitable trade-off between pure price efficiency and the accountability expected in the public sector. Clearly there is a risk element there.

If the parliament expects the accountability requirements that the parliament and the government of the day have laid down to be put in force by CEOs and boards, then it is up to those particular individuals and groups to ensure that proper risk management practices are put in place. It is not as if there is a shortage of guidelines. There are plenty of guidelines around. We have published better practice reports on this, and there are many good examples.

**CHAIRMAN**—Senator Gibson, Mr Cox and I could all tell you that last Wednesday both Telstra and Australia Post impressed upon us that they have very strong subcommittees of their boards that were audit committees, that they have a very strong internal audit function and that their internal audit functions have adopted their own internal culture rather than being imposed externally. I certainly was impressed by what they told us, but then they are acting like private sector companies; they are not acting like a bureaucracy.

**Mr Barrett**—If I could just make a quick observation on that, both those corporations have very good corporate management structures. I have alluded to that and used them on a number of occasions. We are trying to get similar corporate structures in the core public sector, using similar approaches, but we recognise that the inevitable trade-offs that I just

referred to are obviously far more stark and more compelling in core government sector activities than they are in non-core government sector activities.

**CHAIRMAN**—Annual reports are an important part of our consideration of the two acts that we are looking at in this set of hearings. Beyond what is there currently, how would you suggest we get better transparency in terms of accountability of the CEOs without becoming overly prescriptive—which is what we have been getting rid of, and this committee has been part of that. DOFA, which was just here, and this committee have been wiping out prescriptive rules with respect of annual reports for some time, and it continues apace. How do we—we the parliament, not we the executive—hold the CEOs, the secretaries, accountable through the annual report without being prescriptive?

**Mr Barrett**—Clearly, the annual report cannot be the only accountability document. It is a very important one. I would argue that all agency heads have to get their performance information in a format that is agreed by the parliament and that the parliament can understand because, ultimately, that is the way the organisation, including the chief executive officer, is going to be judged. The personal responsibility, as the secretary to Finance and Administration said, is the contract between the minister and the CEO. In the case of a CAC body, it is between the board and the CEO. In terms of personal accountabilities, unless this committee and the parliament want to interfere in that process, it seems to me that those are the proper forums for that to occur. In terms of the broader accountability—and that is from the point of view of the taxpayers, the citizens—it is absolutely essential that we get better at getting good output and outcome measures, because that is the way in which you will be able to judge the CEO's performance. At the end of the day, under the FMA Act, the CEO is responsible for the efficient, effective, economic and ethical use of resources. In the case of a CAC body, the board has similar responsibilities.

**CHAIRMAN**—I accept the public sector is different from the private sector. Accepting that, we know that we are not only looking at financial data. When BHP produces the annual report the only thing that anybody is interested in is shareholder value. Has it gone up? Has it gone down? What is the profit, and what is the distribution for dividends on my ownership portion of that company going to be? When it comes to a public sector body, though, there are some differences. We try to take out of the GBEs the community service obligations, the CSOs. Government has not done a bad job of trying to segregate those, make them separate, particularly if they are majors as in the case of Telstra or Australia Post, so that we are not penalising those companies that are competing in the marketplace. Fair enough. But beyond that and because all the departments are public sector departments, there is some public good that they are trying to accomplish. How do we get statements of success or failure—not that they will want to report failure—into those reports or other reports?

**Mr Barrett**—I would expect the parliament is really looking for the way in which the taxpayers' money is being spent and whether there is value for money. There will be, and should be, appropriate performance indicators that talk about the efficiency, effectiveness and productivity; there will be information that talks about time, cost and quality with regard to major contracts; and there will be performance information that specifies how well the agency has met the nominated outputs that it intended to provide in its corporate planning processes and also the way they contribute to the outcomes that the government have nominated they want to achieve. The fact of the matter is—and I understand parliament's



frustration with this, and this committee's frustration as well—that we have not done that as well as we should have. That is where I would think the major requirement is. We have to get those output and outcome measures that much better because they then reflect how accountable and performance oriented the CEO and the organisation are, or the board and the CAC body are, and how they are applying themselves to that objective at the end of the day.

**CHAIRMAN**—Is it reasonable for this committee to ask specific things like: are departments meeting their commitments to purchasing 10 per cent or 20 per cent—whatever the rules are—of their goods and services from small and medium sized businesses? Is that becoming horribly prescriptive? Are we out of court in asking things like that where we perceive there is a public good to come from such a policy?

**Mr Barrett**—Not at all. These are the sorts of distinctions one has to make. In fact, you could easily ask that question in relation to the performance audit I do on Australia Post, which I have just reported on. The parliament in its wisdom has a whole series of performance criteria. It requires a report from the Post and me to audit each year. You could say that is interfering in the commercial nature of the business, but in the light of the obligations that Australia Post has to Australian citizens parliament in its wisdom has decided that it should get such information in order to make sure that it can hold Australia Post accountable. Basically, it is delivery type information. I do not see any difference in terms of any other policy that the parliament of the day in its wisdom decides should be put in place.

The only thing that I would say, and we tried to make this point in our submission, is that you might decide—and I would certainly urge you as a committee or the parliament to decide—to review those requirements from time to time and really to look at the extent to which agencies are meeting them. If you are satisfied, then you remove the requirement. In other words, what happens is that these things stay around and they get added to. That was the frustration for annual report requirements. We got up to well over 100 individual items that the department is supposed to report on.

What I am saying is, yes, there are requirements that parliament wants to see at specific times, and specific times where in fact there may be new legislation that they want to see agencies respond to in a positive way. In the future it may well be environmental accounting. It may well be that parliament wants to see more in the way of the environmental assessment. It really is a case of saying, 'This is the accountability information we require, but we will also review that from time to time to see how agencies are going.' If they are going reasonably well, you withdraw that requirement. If subsequently you have reason to think that they have gone back from that, then you reinstate it.

**Mr COX**—We had just had a fairly interesting conversation with the Secretary to the Department of Finance and Administration about risk and failure. I think he eventually concluded that what was an acceptable level of risk was a matter for ministers and agencies. He did not seem to think that there was a role for essential agencies or, indeed, for the parliament. Do you have any views on that?

**Mr Barrett**—Again, I have some sympathy. I do not think the Public Service has to be spoon-fed, but I have some sympathy for the view that, if when reviewing legislation,

particularly enabling or program legislation, there are particular issues that parliament wants reports on. Parliament should make that quite clear and not necessarily expect that it is going to come up as a matter of course. These trade-offs are now occurring between the cost of getting information and the cost of reporting information, particularly when parliament is saying—as they did say some years ago—‘Look, we are overburdened.’ I can remember quite well, and a number of you will also, there was an information overload for parliament.

We do not want to go back into information overload, I suggest, but if it can be clear that this information is required and why it is required then those accountable officers will ensure that that information is supplied as a matter of course in their accountability documents—and so they should. That does not mean that that requirement, as in the case of Australia Post I referred to, has to be an annual report requirement. It is simply there as part of parliament’s requirements when they reviewed the legislation or whatever it was that was put in place. That will be taken up by the executive agency involved.

So, in terms of assessment of risk, I can only say that I would welcome personally, where parliament is concerned in an accountability sense for individual programs or activities undertaken by agencies for identification of particular risk profiles that agencies should take account of. It seems to me that that is pretty powerful. It always has been, to my knowledge, a pretty powerful persuasion on agencies to make sure that they report, and they do not need to have PM&C telling them that they have to report in their annual report.

**Senator WATSON**—On the same issue, do you think there should be more prescriptive or different risk management statements for FMAs compared with those agencies that operate under the CAC rules, because there is a difference in responsibilities and in their arms-length relationship to the executive? Again, should they be different? If so, where? Should they be more prescriptive in cases of FMAs?

**Mr Barrett**—Let us go back to the trade-off I was talking about earlier between accountability and market price effectiveness or efficiency, if you like. By definition, I would think that it would be desirable to obviously have greater transparency in terms of the requirement of an accountability that you expect agency heads to carry out.

We have had various reports on the operations of statutory bodies, including statutory corporations. As you recall, the last time we had a review of this there was a deliberate decision to trade off some of the accountabilities for performance. That was subsequently endorsed. It was felt that, in the more commercial environment, those statutory bodies and government business enterprises would have sufficient discipline on them to ensure that they met the requirements that parliament would expect. If they are also expected to behave commercially, that obviously, as day follows night, would be the expectation.

As we have discussed on previous occasions, it is a great frustration to private sector boards that, while they are to act commercially, they have undue emphasis on non-commercial factors and they are meant to provide some kind of balance balancing act between them. They are, if you like, the meat in the sandwich because they are the ones who have to make the trade-offs. Someone else has said what is required but no-one has given them an indication as to what the potential trade-off is, unless, as the chairman indicated, it is a community service obligation or a public sector obligation in which the government of

the day has indicated the price that they are prepared to put on that particular obligation. So that is the problem.

It seems to me that, with a lot of the obligations that we do put on bodies, there is no real price, so that creates the uncertainty, but I would actually argue that some accountability requirements are immutable. Certainly the ones in the public interest I would put in that category.

**Senator WATSON**—Therefore you favour a more prescriptive regime for those agencies operating under an FMA jurisdiction compared with those operating under a CAC one?

**Mr Barrett**—I think we are on the same wavelength, but I would actually put it the other way, in a more favourable way. That is, I would argue for a less restrictive CAC than an FMA.

**Senator WATSON**—To what extent should these be transparent?

**Mr Barrett**—I think absolutely. That is the only way that accountability can work.

**Senator WATSON**—In what manner should that transparency be revealed to the taxpayer or to the public?

**Mr Barrett**—As I said, I would hate to clutter up legislation unduly. If it were of significant importance, as was the Australia Post case I gave you, then Parliament might decide to elect to go for having that accountability requirement in legislation. It may be that it is just a requirement that is given to the board by the government of the day to say these are the things they require. That would be public, so there would be no equivocation; it would be out in the open and people would know what is expected.

**Senator GIBSON**—Minister Fahey's letter of January to Minister Reith gives a list of all the entities under the CAC Act. There are about 90 all told. I think 12 are currently GBEs and I understand that a couple more are being proposed to be GBEs. As you know, we are also holding an inquiry into GBEs. Last week we had several witnesses from several entities, including Mr Humphry, who had done a report about the governance of GBEs, basically making the suggestion to us that really, given there is only a small number of them, they would be best managed under the Corporations Law and so be free of extra responsibilities under a specific act or the CAC Act. Do you have any particular views about this?

**Mr Barrett**—Yes, I do. I hate sounding like a worn-out record, but it does come back to this core/non-core dichotomy in the public sector. Let us forget 'core' for the minute. I put that aside because I think we have now agreed that it has to include a proper accountability framework, and in some way that is likely to be more compelling than the one for non-core.

What we are talking about now is the differentiation in the non-core area of the public sector and specifically between GBEs that most look like corporations and statutory bodies which half look like FMA bodies and half look like CAC bodies. Of course, ATSIC is one that sits right between both. It is both an FMA and a CAC agency.

You have heard me on this before. I was actually hoping over a period of time that distinction or dichotomy would be used by the government of the day to actually make those distinctions. In other words, the FMA would apply to the core government sector, the CAC Act would apply to the non-core one and, where it was on the margin, someone would make a decision and say, 'We really believe they are an FMA agency,' or, 'We really believe they are a CAC agency.' It would force the issue, and that is what I was hoping for. That is my personal view.

I suppose I am a bit betwixt and between. I am all for freeing up competitive government business enterprises that have to act commercially and be in competition particularly with the private sector. But I am also keenly aware that these bodies are under the control of the Commonwealth. Typically, most times that means more than 50 per cent owned by the Commonwealth, meaning owned by the taxpayer.

We are also aware that parliament has a particular role to play, as opposed to the executive, in all these circumstances. I am sympathetic to the viewpoint that there can be a tendency to marginalise parliament in the CAC-GBE type environment, if you in fact want it to be commercial, because in essence everything is sacrificed, if I can put it dramatically, to get that bottom line that the chairman referred to before—shareholder value. We know that—and we have seen examples of this over the years—with local governments, states and the Commonwealth GBEs getting themselves into problems. That has created political problems for the parliaments or the councils involved and, at the end of the day, for citizens, who have wanted action taken. Action has been duly taken, not without some considerable consternation.

So in that sense there is a difference and I am saying, 'Vive la difference.' In this process we talked about before of a commercialisation continuum, if we are working towards moving particular activities or agencies into such a stage that they will either be in competition with the private sector fully or they will be privatised, let us do that, but until such time as that happens they are still part of the public sector and are under the ambit of the parliament.

So I am not saying I do not want to see that personally, because in fact it makes my life very difficult as well in trying to ensure that there are appropriate accountability requirements and in reminding public sector boards which, as I said earlier, get quite frustrated at being the decision makers and having to balance the kinds of decisions I heard Senator Watson listing earlier about what they should be taking on—for instance, if I can put it bluntly, admonitions from the minister to do something, as opposed to their Corps Law requirements to act in the best interests of their shareholders as a whole. You have heard me on the partial privatisation issue. That makes your point quite dramatically: the partial privatisation really exposes the problems for an auditor and for the parliament.

**CHAIRMAN**—And for the profit of the privatised company.

**Mr Barrett**—Yes, I am very sympathetic to the boards in that respect.

**Ms GILLARD**—You refer in your submission to the question of information gaps which might emerge because of the devolution of authority. I was wondering if you could give us

some examples of that—bearing in mind the NCA’s submission—whether that information gap problem is more prevalent for smaller entities rather than bigger entities where, just as a function of size, all of the necessary expertise might not be in-house.

**Mr Barrett**—This probably is not a very good example, but I make it because it is relevant because this committee not long ago did its inquiry into procurement. In that inquiry, quite rightly, the committee was quite concerned about who is responsible—in fact I remember the chairman asking the question—at the end of the day for assuring this committee or assuring the parliament that the guidelines that were being put in place were actually being adhered to. I think you got no answer to that at the end of the day, if my memory serves me correctly, other than perhaps it was for the CEO of the agency somehow to provide assurance that those guidelines were being met.

Again I would argue that it is not a case of trying to put into the annual report some specific tick and cross boxes: ‘Have you adhered to procurement guidelines, hazard management guidelines, internal audit guidelines, the audit committee guidelines,’ or whatever it is. I am not advocating that. But we have said in our submission that we would like to see more of an emphasis put on the corporate governance framework. I know we are saying that quite frequently to you, but the framework involves all of these elements, and really you are asking the CEO to say, ‘I have put in place a robust corporate governance framework that addresses all of these issues.’

If subsequently in an audit, in any committee inquiry or in anything else it comes out that this was not the case, then the personal sign-off that the chief executive officer has given the parliament is then obviously subject to criticism, and clearly there will be follow-up action taken in relation to that. So it is exposure, if you like, and it is transparency in that way that ultimately backs up the accountability requirement.

**Ms GILLARD**—In view of the NCA submission, though, do you see that realistically happening for smaller, particularly non-Canberra based, agencies? That seems to me to be where the rub is. It is harder the further you are away from the centre and the smaller you are.

**Mr Barrett**—Yes, I understand the point you are making. I also have some sympathy for the small agencies in this respect, because at the end of the day the action that they might take in procurement is really not going to be terribly significant. That is not to say that they should not be adhering to parliament’s requirements. I think that you should expect from time to time that when the Audit Office is doing an audit we will canvass those kinds of requirements to see whether or not agencies are in fact doing the basics.

We are just doing benchmarking of control requirements. In fact, we have just reported to the parliament in a six-monthly report. We see that benchmarking exercise being extended to talk more generally about the control environment for agencies, and by its very nature—because a lot of it will come out of financial statement audits—we would tend to get into more detail than we would tend to get into, say, other performance audits. So we actually do see ourselves as being very much an arm of this committee and the parliament in benchmarking performance and in looking across to see whether individual agencies are in fact undertaking the commitments that are part of a robust internal control framework. By

internal control, I mean adherence to government guidelines, parliamentary requirements, good practice insofar as financial reporting is concerned and the like.

**Mr Hay**—I think implicit in the NCA's submission is that there is a gap in the context of where they go to get help to put together the internal control procedures and structures that enable them to put in place procurement processes and asset management processes. What we have been trying to do over the last four or five years is to put together better practice guides. We have seen some of the experience of bigger agencies, and we have tried to bring that together in a document which is then made available to the whole of the public sector to provide them with an insight into how they might construct their own control structures. We hope that that is a way in which this gap can be better managed, at least. I guess it is a downside of devolution.

**CHAIRMAN**—They might be small in terms of size or the expenditure of the Department of Defence—in terms of both personnel and dollars for the purchasing contracts—but they are not exactly small compared with a hell of a lot of the private sector in this country.

**Mr Barrett**—Yes, absolutely.

**CHAIRMAN**—Let us keep things relative. Even the corner milk bar has got to have insurance, and they have to have a lawyer, and they have to have an accountant.

**Mr Barrett**—Your point is well taken. That is what I was trying to balance off before.

**CHAIRMAN**—So, when they complain about that, it is a bit suss from time to time.

**Mr Barrett**—In the better practice guides we are not saying one size fits all. We are trying to look at small, medium and large agencies and differences in practices and approaches. We do not see ourselves totally fulfilling that gap. I have said this to the committee. That is not our responsibility. We see it as an important adjunct to our auditing responsibilities, but we cannot do everything.

It is not for me to argue the rights and wrongs of devolution and the lack of central agency provision of guidance in these areas, but it strikes me—and let me give credit here—in terms of the outputs-outcomes framework that the Department of Finance and Administration has put out a whole series of papers that would help departments and agencies through that, and they have got a help service as well. The same goes for the pricing reviews that have been undertaken, and the same will go for the new units being set up under Eric Thorn in the Department of Finance and Administration, with the implementation of the GST. And that is fine.

If these guidelines are there and it can be reasonable for this committee, the Senate Committee on Finance and Public Administration, legislation estimates committees or references committees to ask individual agencies—in front of them, for whatever reason—what they are doing in relation to this particular guidance material, that represents a fair accountability forum as far as I am concerned, because the agencies are always on notice then that someone at some time is going to ask them the question. We will, but we cannot

say to you that we are going to do it all the time. We will get it from time to time, as you know.

**CHAIRMAN**—Are you suggesting that we do?

**Mr Barrett**—I think it is quite clear that, from time to time, the opportunities will arise for this committee and other committees to ask specific questions. I am talking about when the aspect is being dealt with—‘What is your practice? How do you ensure that you fulfil these guidelines? What do you do? How do you ensure that your staff are aware of them, to start off with?’

Most of us now, and even small agencies, have got data warehouses where we have available guidance material which, literally by pressing a key on your PC, you bring up the guidance material and then it takes you through a series of steps. That is what we would hope a lot of agencies would put in place so that their staff will have proper training but they also have back-up to ensure that this element, as part of their overall governance arrangement, is brought to the attention of the individuals who are responsible for these areas.

**Senator WATSON**—In an environment of the devolution of responsibilities to CEOs, to what extent as an auditor do you examine and report on the adequacy of the robustness or otherwise of corporate governance arrangements and risk management statements?

**Mr Barrett**—We are now trying to do that as a matter of course. In our performance audits when we are reviewing specific aspects we try and look at the governance arrangements in the particular agencies concerned. As you would know, we actually have done a number of reviews of corporate governance arrangements: the Electoral Commission, Austrade—

**Senator WATSON**—Is that done as a matter of course?

**Mr Barrett**—As a benchmarking exercise we will do aspects of that. Clearly risk management, clearly internal control, as a matter of course every year.

**Mr Hay**—As part of the financial statement audit, we would be looking at component parts of the corporate governance framework but not all of it. It is a question of just being able to do the full ramifications of the corporate governance structures that are in place. Performance audits have covered off a large amount of them. The focus of the financial statement audit is very much narrower, so it is only looking at very small components of that corporate governance framework such as risk management.

**Mr Barrett**—Risk management and any internal control.

**Senator WATSON**—So you would do it on a spot basis, would you?

**Mr Barrett**—It is part of the financial statement audit.

**Senator WATSON**—As a routine?

**Mr Barrett**—It is going to be.

**Senator WATSON**—It is going to be?

**Mr Barrett**—Well, we have done it in the past, but we do have a concerted effort for that six-monthly report we have just given to you.

**Mr Hay**—We do look at the internal control structures of organisations but in a very broad overview to enable us to get a feel for how much work we need to do to verify the figures in the financial statements. For example, we would look at the corporate governance issues impacting on liabilities and assets within an organisation. I just trying to qualify that response to say that it is not an all-encompassing review of corporate governance. Its objective is very much different to that, and we look at those component parts that we need to enable us to form an opinion on the figures in the financial statements.

**Senator WATSON**—What I am suggesting is that we are moving in an environment of devolving more responsibilities to CEOs. The question is how parliament gets in on this act in terms of identifying emerging problems. I would be expecting the Auditor-General to be moving into this area of looking at corporate governance perhaps a little bit more closely than in the past, where the arrangements have been more prescriptive, because there do seem to be some difficulties as far as the parliament is concerned. In the future we will be looking at overall performance and at the same time, with increasing rewards going to CEOs for good performance, there does not seem to be a framework for providing for below average performance, apart from not getting reappointed.

**Mr Barrett**—I came in at the end of the conversation you had with the secretary of Finance and Administration on the difference between FMA and CAC agencies. Clearly a contract between the minister and the agency head would dictate the personal accountability at the end of the day, and that would be where action is taken or not taken, as the case may be.

As I said, from a parliamentary point of view, there are two aspects. There is the assurance that parliament is looking for that the control environment that the CEO is responsible for as part of the corporate governance framework is robust and meets the current parliament's expectations. That is something you can expect us to report broadly to you. That is what Edward was saying.

From time to time, we will do more specific investigations of aspects of that corporate governance framework. What I am trying to say to you is that we will not do it all the time. We will do it periodically, and we will do it either for individual agencies, if they are important enough, or groups of agencies. For instance, we did reports on internal audit and on audit committees. We have done reports on risk management and applied MAB/MIAC principles to organisations like Tax and Customs, for instance, where there are significant financial risks involved. We will continue to do that. We are now going to do a benchmarking exercise on a regular basis when we are looking at how agencies are performing in relation to their control environments, which obviously includes risk management.



**CHAIRMAN**—Thank you very much, Mr Barrett and colleagues. We appreciate your input as always. Some day you will probably get tired of coming in and talking to us.

**Mr Barrett**—Never, Mr Chairman.

[4.12 p.m.]

**BELCHER, Ms Barbara, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet**

**HAMBURGER, Mr Peter John, Assistant Secretary, Parliamentary and Government, Department of the Prime Minister and Cabinet**

**McCLELLAND, Ms Robyn Jessie, Coordinator, Annual Reports Review, Department of the Prime Minister and Cabinet**

**CHAIRMAN**—I welcome the representatives from the Department of the Prime Minister and Cabinet to today's hearing. When the Joint Committee of Public Accounts reviewed the Public Service Bill in 1997, it noted in its report that the then explanatory memorandum stated:

. . . as a matter of practice, the annual report will be in accordance with any direction by the Prime Minister following consultations with the JCPA.

The committee's first recommendation in its report was that clauses 56 and 63 of the bill be amended to require annual reports to be in accordance with guidelines approved by the JCPA on behalf of the parliament.

The government accepted the committee's recommendation both in the second reading speech and in the response provided to the committee. However, the current Public Service Bill does not mention the now JCPAA at either clause 56, which no longer appears to be relevant, or at clause 63. The explanatory memorandum states that 'annual reports will be prepared in accordance with the general requirements as in force from time to time'.

In your submission you state that the Department of the Prime Minister and Cabinet is responsible for maintaining the annual reports requirements. You go on to say that the revised reporting requirements are submitted to JCPAA for approval. You then go on at page 3 to say that the methodology for review includes four dot points. The fourth dot point states:

. . . circulation of draft revised requirements together with departmental comments to the JCPAA and the Senate Finance and Public Administration Legislation Committee for comment

On page 4 you state:

In providing the proposed requirements to the JCPAA for comment . . .

How did we all of a sudden get from approval to comment? Is it your intention to downgrade the role of this committee or was this just an accident?

**Ms Belcher**—Certainly the current legislation sees you as more than commenting and obviously that is the requirement. We would certainly be forwarding requirements emerging from the current process to you in the way that they have been submitted in the past.

**CHAIRMAN**—The current act does not say that any more.

**Ms Belcher**—The current bill.

**CHAIRMAN**—I cannot tell you what my colleagues' attitude would be, but I suspect that it would be the unanimous view of the committee that we would not care to be downgraded at all.

**Ms Belcher**—You—

**CHAIRMAN**—We keep taking on additional responsibilities. We are not used to having them taken away.

**Ms Belcher**—I can assure you that there is absolutely no intention to downgrade them from the current requirement. When the requirements are in draft form in October we would be planning to forward them to the committee in the usual way. As for the draft legislation before the parliament at the moment, I understand that is a matter for discussion between the government and the opposition. Negotiations have been taking place and I cannot tell you exactly where those negotiations have reached.

**CHAIRMAN**—On behalf of the committee, could I ask you to take back to your secretary, who was not able to be with us today, our concerns regarding that position and the current legislation.

**Ms Belcher**—Certainly, yes.

**CHAIRMAN**—Beyond that, I suspect we can take it up next week at our first private hearing. I will ask you the same thing I have asked everybody else so far, and will probably continue to ask. One of the things of great concern to the committee is, as we change from the old Public Service mentality, centralised management and all of that to individual departments having responsibility for their own affairs and increasing responsibility placed on an individual in each department, that being the secretary or the CEO, how does the parliament get in the annual report or elsewhere an adequate explanation from each of the departments as to the real performance of the department and/or the CEO, both good and bad?

**Ms Belcher**—I believe that, with the advent of accrual budgeting, the revamping of PBSs and the rewriting of the annual report requirements, there will be an emphasis on outputs, outcomes and reporting again. We would expect quite a disciplined approach in annual reports to that reporting against outcomes in the future. As you know, there are requirements to report against a whole range of activities, not just financial but APS values. There is nowadays a whole of service report from the Public Service Commissioner. We feel that there are requirements on individual departments to report, but there is also an overview on how the service as a whole is going.

**CHAIRMAN**—This committee has participated in reducing the individual, discrete requirements of the annual reports—that is, getting rid of a lot of the prescriptive detail. We have signed off on heaps of that and will continue to get rid of that. Let me put this in real

live situations. You may or may not know that in June we tabled a report on Commonwealth government procurement. Included in the few recommendations we made was that department secretaries be increasingly held accountable for a couple of factors: (1) to make sure that small and medium size businesses are getting their fair share of the cake; and (2) that the Australian government development is achieving proper attention and that we are not throwing all the Commonwealth bickies away buying the cheapest new French, English or German goodie, whatever it might be—that is, that industry development is taken into account. Do you think it is appropriate that a few of those prescriptive things wind up in the requirement for annual reports or is there some other mechanism by which we can hold department secretaries accountable to meet those things which we think are important as well as the financial statements?

**Ms Belcher**—You would be aware, because this committee has assisted us in removing a lot of the close prescription that existed, that we had been worried that every time there was any new direction in government or expression of particular interest in one of the houses we added to the requirements so that they became somewhat unwieldy. That does not mean that particular concerns might not mean that a requirement is added to the annual requirements from time to time. What we are keen to see is a regular review—nothing that takes an enormous amount of time—so that the requirements remain suitable.

If agencies take on a responsibility to report and it becomes an intrinsic part of their reporting, whether it be through annual reporting or some other way, or their performance improves, then that is the sort of thing that can drop out of requirements. It is often the case that good management itself requires that some of these issues are absolved by the departments. So writing them into annual report requirements would not always be our preferred option. That does not mean that, if there are good reasons why something should be put in, even if it is just for a few years, that should not happen.

**CHAIRMAN**—There is not much sense me asking whether PM&C is the right department to handle annual requirements versus DOFA because Max Moore-Wilton already told us so in his letter to me. It is obviously your view that PM&C is the right agency.

**Mr COX**—Would there be any merit in the legislation being changed so that Finance had a statutory role in setting the financial requirements out in annual reports?

**Ms Belcher**—I could not say that it is impossible for someone else to do it. That would be ridiculous. PSMPC or Finance could do it. Prime Ministers have tended to keep to themselves that requirement as part of a whole of government responsibility for machinery of government matters. I suppose the argument I would put forward, but not with great stridency, is that PM&C would not want the annual reports to be seen just as a financial reporting mechanism. It is broader than that.

**Mr COX**—What I mean is having a joint responsibility. Finance would determine the financial requirements in an annual report whereas PM&C might cover everything else, such as the affirmative action requirements?

**Ms Belcher**—In effect that is what is happening. We always work closely with Finance. In every one of the changes that we have proposed to the committee over time Finance have

had its input. With the current review they have been involved in all our discussions with departments. It really is something where they must be involved. There is no way we would set out to write the financial aspects of those requirements without Finance's helps. I do not believe that we would be equipped to do it satisfactorily. They are very closely involved. I do not really see a need for that to be enforced legislatively.

**Mr Hamburger**—I think that the statutory basis for financial reporting in annual reports would be under the FMA Act anyway. So, in effect, what we have already got is a statutory responsibility on Finance under FMA and on PM&C under the Public Service Act for the financial and non-financial parts of the guidelines.

**CHAIRMAN**—I can see the logic in the secretaries themselves being responsible for the guidelines on the annual reports.

**Mr COX**—I do not see any inconsistency in that. They are not set out as annual report requirements, are they? They are just set out as reporting requirements?

**Mr Hamburger**—The contents of the financial reporting would mostly be in the orders rather than the act, but their statutory authority would derive from the FMA Act, I would think. I was starting to look through the act to check that. The Finance people would be able to confirm that quickly. I have just been told by a DOFA officer that that is correct. The content of the financial statements are set by the Minister for Finance and Administration under the authority of the FMA Act.

**Mr COX**—Right.

**Senator WATSON**—Are you satisfied that the devolution of responsibilities to CEOs has been matched by adequate performance matched indicators and corporate governance requirements? It seems to me that the parliament is increasingly left out of this accountability equation as we are devolving more and more responsibility. Can you satisfy the committee that they have been matched by adequate performance indicators and government governance requirements?

**Ms Belcher**—Each department in its annual report has set out its performance targets and increasingly has been coming up with indicators that mean something. Obviously, the relationship between secretary and minister is one where the minister judges performance across a whole range of issues but is informed by the performance of departments before the parliament, the ability of the secretary to answer to the parliament and to the Auditor-General about efficient and ethical performance of their duties.

**Senator WATSON**—You have not answered my question. My question was: are you satisfied that the devolution of responsibility to CEOs has been matched by adequate performance indicators and corporate governance requirements that are not transparent to the minister but transparent to the parliament?

**Ms Belcher**—I am not aware of any shortcomings. I believe that the annual reports have attempted in recent times to show the parliament the level of performance by the CEOs and the departments as a whole.

**Senator WATSON**—So you are satisfied about the adequacy of those performance matched indicators?

**Ms Belcher**—I am not aware—

**Senator WATSON**—For example, you are responsible for the guidelines. To what extent do you oversight the individual indicators that are outlined in the reports or do you just rely on the Auditor-General to do that?

**Ms Belcher**—We certainly do not attempt to oversee the performance of other agencies or examine their annual reports.

**Senator WATSON**—How do you know that they are adequate if you do not oversee them?

**Ms Belcher**—We believe the requirements provide the basis for adequate reporting, but individual agencies or departments will report against the requirements. It is for the individual minister and the scrutiny of the parliament to give CEOs the opportunity to answer against those.

**Senator WATSON**—So you really believe it comes back to the responsibility of this committee to look at the adequacy of the reports?

**Ms Belcher**—That is one element of it, obviously.

**Senator WATSON**—Because you do not do it; the Auditor-General does it on an ad hoc basis and increasingly it will become a more important part of his audit. Who has the responsibility of day-to-day scrutiny? The Department of Finance and Administration certainly does not seem to do it.

**Mr COX**—Who determines a secretary's performance based pay?

**Ms Belcher**—The Prime Minister would make recommendations to the Remuneration Tribunal and the Remuneration Tribunal makes the formal determination.

**Mr COX**—When he is making those recommendations, if you are not maintaining an overview of departmental annual reports, on what basis is he doing it?

**Ms Belcher**—The Prime Minister would take into account the views of his ministers and his overall understanding of the performance of departments and secretaries.

**Mr COX**—So there is no disciplined rigorous departmental input into that process?

**Ms Belcher**—The Department of the Prime Minister and Cabinet would not be, at our level, making any recommendations to the Prime Minister.

**Mr COX**—And not providing any advice about the performance of agencies?

**Ms Belcher**—We do not oversee performance of agencies or police them in anyway.

**Mr COX**—So it is a totally subjective process?

**Ms Belcher**—I would not want to get into that.

**CHAIRMAN**—Just for your information, in New Zealand every department secretary or CEO signs a two-part employment contract. One part is with—not the Public Service Commissioner but the same sort of thing.

**Mr Hamburger**—It is the State Services Commissioner.

**CHAIRMAN**—Yes, that is right. The other part is with his or her minister. That is a performance contract that is based on certain parameters that they agree on and write down on a piece of paper. The performance pay is based on meeting or not meeting those parameters in a document between the department's CEO and the individual minister. Everyone does it differently, I guess.

**Mr COX**—It would be a bit of a moral hazard if you were running monetary policy.

**CHAIRMAN**—Thank you.

[4.41 p.m.]

**BROOME, Mr John Harold, Chairperson, National Crime Authority**

**HAWKE, Mr Dene, General Manager, National Crime Authority**

**CHAIR**—Welcome. Thank you for your report and thank you for coming today. One of the most interesting things I found in your report deals, as you would expect, with risk management. Because we had already authorised your submission, in a speech this morning on the other side of the lake I did say that you had mentioned to this inquiry that you had concerns that people like us, the Auditor-General and perhaps even the public still perceive risk as being, ‘Don’t ever make a mistake’—because you are still operating under the old Public Service mentality. Contrast that with risk assessment, which means you are going to take some risks and that some time or other you are going to fail, because that is what risk is all about. If you can spend enough money and have enough money to make sure there are no risks, then maybe you will not fail—except it does not always work out like that, for one reason or another. While you have stated the case quite eloquently that risk aversion is different from risk management, I did put that question to the Auditor-General and he felt that perhaps those views would have been more appropriate five years ago than they are today. Would you comment about that?

**Mr Broome**—I can think of recent examples in the parliament where there was an excruciating examination to the point of very precise detail as to whether certain contracts had been entered into with every procedural ‘i’ dotted and ‘t’ crossed. My point is that that is exactly what parliamentary committees expect. It is what the press expects when something goes wrong. It may well be what the public expects of those who are spending public funds when something ‘goes wrong’.

The point I am making is not that we should not be prepared to be risk managers. I am very relaxed about the concept. What I am concerned about is that when inevitably, as you say, the risks still eventuate occasionally and one is looking behind for support because one has been a risk manager, all that one sees is the dust behind as those who have advocated such approaches are busily travelling in the opposite direction to the one that you are.

**Mr COX**—Who do you mean?

**Mr Broome**—I would mean the minister, parliamentary committees, the Auditor-General and so on.

**CHAIRMAN**—Was that in the parliament or was that Senate estimates?

**Mr Broome**—Senate estimates, and I think the Senate estimates is the parliament for this purpose.

**CHAIRMAN**—Can I say to you, Mr Broome, that the Senate estimates does not necessarily represent the parliament; it represents the Senate. The Senate is not representative of all of the parliament.



**Mr Broome**—I think I am with Senator Watson on this one.

**CHAIRMAN**—This committee, for instance, has representatives of all four parties, both members and senators. I would say that we were reasonably representative of the parliament. We take our responsibilities pretty strongly. We have another inquiry at the moment into government business enterprises. We were talking to Telstra and Australia Post last Wednesday, and they were quite vehement in their dislike at having to appear in front of Senate estimates. They think it is a waste of money, a waste of time and quite intrusive, and most frequently answers to questions display a need for confidentiality because of commercial pressures, which is reasonable.

This committee has no authority, input or anything else to deal with Senate estimates. We have been the audit committee of the parliament since 1 January 1998. We examine every single audit report, and we further inquire into some, typically three per quarter, and then we report on those. Through that process, while I have been part of this committee—and that process has been happening only since I have been here anyway—we have been willing to accept from departments a mistake here and there, as long as the department understands the mistake that was made, and this is not a procedural matter that needs to be dealt with or it is not something that happens over and over again.

For example, we have queried Defence from time immemorial on purchasing policy and contract administration, over and over again, because we keep finding the same blessed problems. The Department of Employment, Education, Training and Youth Affairs, as it was then, placed a contract with the South Sea Island Cruise Ltd, or something like that, and blew a couple of million dollars worth of training money. Nobody was very happy about it, but they really learnt quickly. They came in and said, ‘We are sorry, we have learnt a lot from it and these are the procedures we have put in place to see that we do not do that again.’ We said, ‘Good.’ Does that help part of your anxiety?

**Mr COX**—Not about the Senate.

**Mr Broome**—Let me give you an example that I have actually discussed with our joint standing parliamentary committee, which is a statutory committee, on the National Crime Authority, which is in fact a parliamentary committee. It has senators and members of the House and it covers the Democrats, the government and the opposition. We have talked in that committee about controlled drug deliveries, a matter which they are currently inquiring into. We have pointed out the practical problems. If one issues a controlled delivery certificate in accordance with the Commonwealth Crimes Act and a certain quantity of drugs are allowed to run, if at the end of the operation we successfully arrest the perpetrators, we would generally be regarded as successful and we may get a ministerial pat on the back.

Because we are dealing with real live situations in circumstances where you cannot control the intervention of third parties—you might try to limit but you cannot control—it is possible that circumstances may arise in which one has to make choices about whether the drugs are in fact allowed to actually run because the alternative is to risk the lives or the safety of your own people or members of the public.

I have pointed out to that committee—and I have had no dissent from any of them—that, in the event that we had a successful arrest, we would be praised; in the event that we were unsuccessful and the drugs were allowed to run, we would be criticised. Irrespective of how well the plan had been put in place or what we had tried to do to cover our risks and how well we had managed the risks, failure for whatever reason would give rise to criticism, and that committee has agreed with me on that proposition.

All I say is that I welcome the attitude of the Public Accounts Committee. I hope it spreads to other parliamentary committees and, indeed, to the press. All I am pointing out is what I believe to be the reality of life in this day in age, and that is that if failure occurs it is not rationally analysed in terms of whether there was something which was unforeseen and unforeseeable, or over which those involved made no genuine attempt to control events, but nonetheless the failure would be criticised.

All I am really asking for is that there be a preparedness when events go wrong for those who advocate—and I do not have a problem with it—a risk management approach to stand up and say, ‘Well, this is the inevitable price that we as a society pay for taking away a fixation on process and on the necessary expenditure which goes with it’—no more, no less than that.

**CHAIRMAN**—Would you accept that perhaps your organisation is more likely to take risks than most public sector organisations are which might result in some high profile public criticism?

**Mr Broome**—I think history would suggest that that is a correct assumption, yes. Can I say, by reflecting on history, criticism has been levelled at this organisation for events which were absolutely outside its control, where no-one sat down and said, ‘Let’s have a risk management analysis of whether this prosecution should have been unsuccessful or not.’ The invective was poured well and truly and it took two years for the dust to settle in a sense and for the reality of events to become generally known. But in that sort of context no-one was saying, ‘What about risk management?’ No-one was saying, ‘Of course you are not going to win every prosecution.’

It would be, in my view, a very dangerous situation if every investigation that we were involved in led to a successful prosecution. There are one or two reasons for that. Our justice system would be failing because you cannot expect to win every case every time, or we would be doing the soft cases, the easy ones, and we would not in fact be doing what we should be doing. That is a very practical example of the kinds of problems I am talking about. I am not arguing that we should not be going down the track we have been going down. I just think there needs to be a little bit more support for those who are prepared to be risk takers.

**Senator WATSON**—Don’t you think the parliament needs some mechanism to provide some early warning signals when it may well appear that things are starting to go wrong, or the CEO is taking it down the wrong course? Why do we have to wait until somebody has fallen off the cliff before we call the ambulance?

**Mr Broome**—I do not think you have to wait if evidence becomes apparent that there is a problem developing.

**Senator WATSON**—What is the sort of evidence that should be presented to this committee in a meaningful way, or to the Auditor-General or some other responsible entity, to at least get on the telephone and say that there is something going wrong?

**Mr Broome**—I suppose the continued operation of the Audit Office is the best ongoing protection, isn't it? It is looking at the organisation consistently. If it believes that there are problems, it should do two things—one being to bring it to the attention of the organisation. It obviously has a capacity to report to the committee as well.

**Senator WATSON**—You are saying basically under this freeing up of the CEOs in risk management that we wait until the Auditor-General comes in and expresses some concern before we act?

**Mr Broome**—The freeing up of CEOs I think needs to be analysed in terms of what exactly we are talking about. The legal position at least has been that statutory office holders have been free to behave as they believe they should within their statutory responsibilities for a long time. What we have seen delegated to departmental secretaries and agency heads over the last decade is a whole raft of previously centralised responsibilities, the creation of positions and so on, and now a whole range of employment responsibilities which I think give rise to some interesting challenges. Those have all occurred, and in the case of the statutory office holders, in one sense, they have perhaps had more ongoing responsibility. There may have been, in practical terms at least, the case for, say, secretaries, because they are going to be performing under a statute which provides them with certain powers and functions.

In our case, every single statutory power which I exercise is reviewable by a variety of mechanisms—judicial review and so on. I cannot make a decision under the Public Service Act, I cannot make a decision under the National Crime Authority Act and I cannot make a decision under other legislation which may apply to us without that decision being reviewed. People can and should be able to review those decisions.

**Senator WATSON**—How often do they get reviewed, say, in your case?

**Mr Broome**—Reasonably frequently. Probably more so than many other statutory office holders.

**Senator WATSON**—But that review mechanism does not necessarily apply to most agencies; it is because of the unique nature of the NCA that you have those review mechanisms. It raises the question that, if it is good enough for the NCA, why isn't it a requirement to have appropriate review mechanisms for all other departmental heads or statutory heads. Obviously they might not be as intensive, but shouldn't they still be there?

**Mr Broome**—I do not in conceptual terms have any problem with that at all. I think we have removed some areas of decision making from what was a very complicated and a very intensive review process. For example, in relation to employment decisions in the public

sector, we have opened it up in the last 15 years and taken the level at which employment decisions can be reviewed from all decisions and we have reduced actions very substantially, which I think has actually been a move in the right direction.

When we are talking about review, I think we need to talk about the nature of the decision which is the subject of the review process. I do not think one size fits all. Judicial review has its place and can be appropriate, but judicial review is a very clumsy hammer with which to crack a nut on occasions and I would not advocate that that be the process by which a whole range of day-to-day decision making be reviewed; I think it is quite inappropriate. When you have bodies like the Ombudsman and the Auditor-General you do have parliamentary and Senate committees who perform that function at various times in different ways—standing and select committees, estimates and so on. There are a variety of means by which issues can be brought to attention. In this day and age whistleblower legislation enables people who may well have a greater knowledge of the relations going on within an agency than those outside it to bring those issues to the fore. So there are a variety of mechanisms, but conceptually I have no difficulty with them applying whatsoever.

**Senator WATSON**—Do you think there is a role for this committee, apart from reviewing and picking up the pieces and seeing why it went wrong, to be calling in agencies and making some sort of evaluation? If so, how do you make that evaluation?

**Mr Broome**—I think one of the things that parliamentary committees do not do very well, if I can say so with respect, is to deal with what I would describe as complaint handling. We have got a parliamentary committee, and because, wrongly in my view, the NCA is not subject to either the Ombudsman or some other complaint handling body—a view we have argued against for a decade and I hope will be resolved soon—we have seen a parliamentary committee try to be a complaint handling body in respect of the NCA. So disgruntled people who were the subject of the investigation want to use the parliamentary committee as a complaint body. I think the committee would agree, and we would certainly agree, that it has been spectacularly unsuccessful. Committees do not have the investigative capacity, resources or structures to do any of that. It is really a very silly thing to try to have committees do that.

Committees are much better looking at broad, strategic and policy issues, and I think they generally do that very well. That is where the committee structure has great potential. When you get down to the individual circumstances and it gets into that complaint handling area, then I think it starts to become very difficult. You do not have the resources or the processes that necessarily work very well, and you certainly do not have the committee staff to support an inquiry process.

**CHAIRMAN**—We cannot call it other than to say that we have parliamentary responsibility for the Audit Act but we do not undertake audits.

**Mr Broome**—Precisely.

**Mr COX**—With regard to a slightly different aspect of your letter, you say:

To a significant extent agencies have been left on their own to sink or swim. There has been little support provided at the portfolio level. Nor has there been much support provided by the Department of Finance and Administration.

Would you like to elaborate on what support is available from the Department of Finance and Administration?

**Mr Broome**—Over the last couple of years one would have to say that whatever support was there has been removed. The provision of services has been removed, such as major accounting provisions that used to be there. I will get Dene to talk about the detail. It has been one-way traffic. Again, I do not have a problem with agencies being expected to look after their own affairs, but I do not think that we should pretend that that necessarily produces effective or efficient consequences. I can think of a couple of specific examples that we might come to.

My concern has been that we have lost, in a number of areas, the benefit of a capacity to analyse issues in a service-wide context and that leaving individual agencies to make it up as they go along, against a theory that says this will produce greater accountability or it is more like a private sector model or whatever the rationale is, does not necessarily produce those kinds of outcomes. It seems to me absolutely ridiculous that, under a piece of legislation like the FMA, every single chief executive is supposed to make up their own set of instructions. We did not. We obviously went out and used what was available and finetuned it for our particular circumstances. Yet that was the basic concept.

**Mr COX**—You actually have better things to do with your time than to be deciding finance instructions.

**Mr Broome**—Yes. That is a classic example. While we have moved away from some of the process driven approach of the predecessor documents, it is still a fairly procedurally driven view of the world. But, getting back to what I said before, that is the correct judgment about where one needs to be. It is silly to have literally dozens, if not hundreds, of agency heads going off and doing those things separately. It is just a waste of resources. We have got ourselves in the situation where we are individually dealing with contracts in circumstances where there may be much greater efficiencies—and, I dare to suggest, maybe some savings—by having the general purchasing power of the Commonwealth still able to come into play rather than it being left to an agency of our size, which has very little clout whatsoever.

**CHAIRMAN**—Are you talking about the old common use contracts?

**Mr Broome**—As an example, yes.

**CHAIRMAN**—What else?

**Mr Broome**—One area where I would like it to go the other way is Comcover.

**CHAIRMAN**—Yes, you said that.

**Mr Broome**—We have been told to buy from a single provider, which does not fit the current model. I find many aspects of the Comcover policy to be curious, to say the least.

**CHAIRMAN**—But you want to be able to pick and choose, don't you? You want a general government procurement model in one instance and you do not in another.

**Mr Broome**—No, I am saying let us be consistent about the policy. I am saying the policy is inconsistent. Why do we have Comcover at the same time we are going down a very deregulated and differential route in a range of other areas? It is not my choice, but whoever made it seems to me to be doing something which is totally out of whack with what the general trend has been. The result, I think, is a contract which is fairly unsatisfactory from a client point of view, a cost structure which I simply do not understand and a minimum claim figure which is, quite frankly, ludicrous—\$250,000 for a single event or circumstance is the minimum claim.

**CHAIRMAN**—Quite frankly, that is all fascinating, but it is outside the terms of reference of this inquiry. It might be appropriate for our next inquiry into contracting. We will think about that. Maybe we will transfer the evidence across.

**Mr COX**—Mr Hawke, can you elaborate on what the Department of Finance and Administration does or does not do for you that it used to?

**Mr Hawke**—I think one of the issues—and this is from a small agency perspective—is that we were able to go to an expert desk that would be able to provide the latest information or someone with expertise that you did not have in your own organisation. Being a small organisation, you have to cover an extremely wide waterfront, and so what happens is you distil a lot of that expertise, because one person has to cover several different specialties. In the past you were able to go to a central area and get some advice on what A, B or C were doing so that you did not reinvent the wheel all of the time. That has gone. So now you have to go around to other departments and try to get information that way. If I were in private industry, I would be able to go to the Metal Manufacturers Association or to the Master Builders Association and say, 'Look, I have this particular problem,' and they would say, 'This is the way you solve it.' We have got nothing now.

**Mr COX**—Now you cannot even go to the department of finance.

**CHAIRMAN**—You want a bet?

**Mr Hawke**—I have not done it recently, but that is how it used to happen some years back.

**CHAIRMAN**—Good luck!

**Mr Broome**—Maybe we have made it then to the private sector model.

**CHAIRMAN**—I was going to say to you: you are complaining, and you have a \$50 million budget. When I finally sent my company to God I think we were turning over \$10 million, and I had all the requirements that a \$200 million company had. I had to find my

own auditor, my own accountant, my own lawyers—everything. I set up my own accounting systems, the lot. I did not have anybody to help me, and certainly the MBA was not going to tell me how to set up an accounting system or who was the best lawyer. They did tell me how to approach Industrial Relations and that was to sign their model caving in to the unions—whoopee!—for whatever that advice was worth. I would have thought that a \$50 million organisation was pretty sizeable. I am having some difficulty understanding your complaint.

**Mr Broome**—Let me put it this way: if our \$50 million organisation spends a certain amount of resources on inventing a particular wheel and the next one of \$10 million and the next one of \$50 million and the next one of \$75 million does the same thing, I do not see how that is getting particularly good value for the taxpayer. A classic example of that is the negotiation processes in relation to AWAs where industry associations have provided expertise to employer organisations. In common contracts, for example, agency heads were told last year not to talk to each other, not to swap notes, not to exchange drafts, because it all had to be done at an agency level. The employees did. They knew more about what was on the table than the agency heads, until I forced the issue by having it said at meetings of various agencies, ‘I want in writing from either the Department of Employment, Workplace Relations and Small Business or the Public Service and Merit Protection Commission a directive that I am not to talk to other agency heads and not to swap our drafts or we will do so.’ When it was pushed to that level, what had been said to us for six months miraculously evaporated. But we had been discouraged from talking to each other to work out what might be the available elements of the AWAs. That is what I would have expected in a well-run industry association, but there was no well-run industry association for government. That is my point.

**Senator WATSON**—How do we overcome that problem?

**Mr Broome**—I suspect, and I say this with great respect, that what will happen is that sooner or later there will be a gigantic stuff-up of a kind which will see us not go back to where we were—and I am not advocating that we go back to where we were five or 10 years ago—but a much greater level of activity from the central agencies again, because it will be a reaction to a real problem. In fact, if you look at the last 25 to 30 years of public administration, we have seen that kind of movement. You decentralise, things go wrong and there is a reimposition of a central control mechanism. This is happening nowhere near as much as it was, but it is the old two steps forward, one step backward perspective. This will happen in relation to contracting. One of the skills that we need to develop inside the public sector is contract management, which is a skill that has not previously been necessary with things like common purpose contracts. We are learning that. It is a very interesting process as you have disputes with suppliers and so on.

I have had a recent example of this with a particular contractor. It is quite clear the contract did not cover certain eventualities. We were not parties to the development of the contract. Certain people worked on our behalf as clients to negotiate the contract, and the company concerned was on the other side. Certain eventualities have come to occur which the contract does not deal with. It has been put to me by the company that the way that this would be solved in a private sector environment would be a business solution—that is, we would pay some of the costs that they are having to bear, they would say pay some and we

would all go on as happy contractual partners in the future. I have said, 'I'm sorry, I'm not prepared to pay tens of thousands of dollars that I have no obligation to pay, because the ANAO wouldn't like it.'

We have been met with this interesting challenge. I am sticking to the letter of the contract, because I believe I am not only obliged to but required to, where the contractor is facing very real additional costs that perhaps were unforeseen at the time. I am not in a position to voluntarily hand over taxpayers' dollars because they are having a bad time out of the deal. We are not going to have a long-term relationship for other reasons. If we were, we might want to approach it in a more 'businesslike' fashion. It is a good example of where the contract was not a very good contract, although it cost a lot of money to develop. It has got faults in it, and we have learnt from that experience.

**Mr COX**—How much money do you think you are spending a year, out of your \$50 million, on reinventing the wheel and other inappropriate arrangements?

**Mr Broome**—Not a significant amount. Dene might have a figure in his mind. Most of our expenditure is simply salaries, rent and payments to DASfleet. We have a very large motor vehicle pool, for obvious reasons, given the nature of our work—and that is an interesting contract arrangement as well. That is where most of our expenditure goes. We very much pay for people, a building, vehicles and that kind of expenditure. We are not in the large-scale business of acquiring services.

**Mr COX**—What proportion of your time are you wasting on it?

**Mr Broome**—Me personally?

**Mr COX**—Yes.

**Mr Broome**—A great deal more than I should. Maybe five per cent.

**CHAIRMAN**—Would it be an imposition, accepting the fact that you are already overburdened by parliamentary committees—

**Mr Broome**—I did not say that that was a burden!

**CHAIRMAN**—We are about to start another inquiry into contract management. We are asking only five agencies, so we will not burden you, but if you have any information that you could easily supply us on this contract that has gone bad without eating up all kinds of bureaucrat time—

**Mr Broome**—I think we are chasing a fair bit of work on it, because the ANAO is doing an effectiveness audit.

**CHAIRMAN**—If you could give us some information without it causing you to take agents out of the field or whatever, we would appreciate that.



**Mr Broome**—It will be a task for my successor; I finish at the end of next week. I will leave that in the in-tray.

**CHAIRMAN**—If it is possible, we would appreciate that. It is not to do with this inquiry, it is to do with another one, but it would be interesting to follow that through where an inappropriate contract has been written.

**Senator WATSON**—One last question from me, Mr Broome. You indicated the inevitability of some major catastrophe occurring because of the lack of central agency direction or oversight. What role can this committee have in trying to prevent that sort of thing happening or minimising the impact of what could have the potential to be a major embarrassment.

**Mr Broome**—I suspect little. That is not in any sense to decry the committee, because I believe it has performed a very valuable service over a long period of time. As someone who has spent 25 years in government administration, I think the benefit of the committee's work has been recognised by many people inside the system. But I think the difficulty with these kinds of circumstances is that it takes a major problem—such as a contract that goes horribly bad—and then people try to unscramble the eggs and identify what the problems were, you write the inevitable report that highlights how it all went wrong and the reaction of government is to say, 'We better do something to make sure that it does not go quite so wrong in the future.' That tends to be the way that these things operate.

The Parliamentary Library would be full of reports of various situations where things have gone wrong over time. Governments—whoever is in power—inevitably tend to react by trying to at least plug the more obvious perceived holes in that system. Don't get me wrong; I do not say that we should go back to the old kinds of centralised controls because, quite frankly, they were controls very much in form rather than in substance. Again, they were an example of people focusing on process rather than the real issues. I am not arguing for that whatsoever, but I think we are losing a capacity to focus on some of the real issues—that when you outsource there are consequences that you need to think about. You need to think about the skills base that you have and often the decision to outsource is externally imposed.

You learn about the mistakes in the process in the course of the contract being played out. You were not able to recruit, train or acquire the relevant contract management skills including, sometimes, the initial negotiation skills. Then you might spend the next five years living with the consequences of the problems, particularly if the savings have been taken up-front but they were supposed to be delivered over the life of the contract. So I think there are real dilemmas there. We need to discuss the issues more. It has not been possible to have much of a discussion over the last decade, in my experience, that there might actually be some downsides to some of the things we have been doing. I think there is a great deal to be said for having a discussion with parliamentary committees and the public about some of those issues.

**CHAIRMAN**—You say there has been a bit of an overshoot.

**Mr Broome**—Yes.

**CHAIRMAN**—We tabled a report in June on government purchasing policy which recommended not a wholesale shift back or anything but a bit of additional responsibility to DOFA. Whether they pick it up or not remains to be seen.

**Mr Broome**—That is a classic example of what I think will happen in a number of areas.

**CHAIRMAN**—Does anybody else have questions?

**Ms GILLARD**—What sort of support did you get from DOFA in relation to the new accrual accounting framework?

**Mr Hawke**—There was a desk that we could go to and get information from. The problem is that when we were going to accrual accounting all of our staff were in, let's say, government accounting. So we had to train them, and get new people on who had the skills, in a very short period of time. We did not get any supplementation or any assistance from anyone, so we had to use our own resources to develop all the systems, et cetera that we have in place. That meant that we were, to a degree, taking funds away from what we were supposed to be doing, which is catching crooks. So the overhead level of accrual accounting has been significant in small areas such as ours because, in a large agency, there may be one person who is able to control, say, the financial accounting aspects. We do not have that luxury, so we will have someone doing the financial accounting, the treasury accounting or whatever, all in the one. So you have a distillation of expertise and you really have no-one to go to—you have to get someone in from outside to assist.

**Senator WATSON**—So couldn't you get somebody from a major accounting firm?

**Mr Hawke**—That is the point I am making. Yes, you can; you have to go outside and that costs you money.

**Senator WATSON**—So does everybody else in the private sector; they have to go out and get the expertise.

**Mr Hawke**—Yes, and I have no problem with that, but we have not been set up on that basis. We were set up on a government accounting basis, which meant that you did not need those skills. Now we have moved and so we do need those skills, and they are costly. We have not been supplemented for that; therefore, we have to draw funds from really what we were put on this earth for.

**Mr Broome**—That is inevitably a price.

**CHAIRMAN**—Fair enough.

**Mr Broome**—That is the price that is paid when you go through change. The other thing that we have had to do in the last 12 months has been to change both our human resource and our financial management systems because both NOMAD and FINEST were withdrawn. They were withdrawn unilaterally with no consultation, just a letter that said it was all going to fall over come X date—'Please go and make your own arrangements'. We have done that.

But we in a small agency had to do those two things at the same time as the change to accrual accounting. I have worked in large departments, small departments and in statutory authorities of various sizes. There is absolutely no doubt in my mind that the larger organisations have an inevitable capacity to absorb and to ride with these kinds of changes much more so than small agencies—unbelievably so.

**Senator GIBSON**—Are you over the hump now with regard to the changes?

**Mr Broome**—Yes.

**Senator GIBSON**—Are your staff happy about it now?

**Mr Hawke**—I do not know about happy. They are actually finding it challenging, to be quite honest.

**Mr Broome**—That is true.

**Mr Hawke**—It is very challenging moving from where they have moved. They are getting a fair amount of job satisfaction, but it has been a hell of a lot of weekends and long hours to pull it off.

**CHAIRMAN**—Welcome to the world of private enterprise.

**Mr Broome**—As we work in law enforcement we would probably have more people readily working at weekends and nights. I do not mean till 8 o'clock at night, I mean till 3 o'clock in the morning, as in most agencies. So it is not exactly something with which we are unfamiliar.

**Senator GIBSON**—Sure.

**CHAIRMAN**—We accept that.

**Mr Broome**—I have to get the plug in where I can.

**CHAIRMAN**—Gentlemen, thank you very much for your submission and for coming here and talking to us today. If you can find it within your financial resources to give us that information on the contracts, that would be helpful.

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 5.24 p.m.**