COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

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

TUESDAY, 14 SEPTEMBER 1999

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to: **http://search.aph.gov.au**

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Tuesday, 14 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, Mr Charles, Mr Cox and Ms Gillard and Mr Somlyay

Terms of reference for the inquiry:

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

WITNESSES

Committee met at 9.36 a.m.

CHAIRMAN—The Joint Committee on 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.

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

[9.36 a.m.]

KENNEDY, Mr Maurice John (Private Capacity)

CHAIRMAN—I welcome Mr Maurice Kennedy to today's hearing. Mr Kennedy, would you by any chance have an opening statement that you would like to make?

Mr Kennedy—No, Mr Chairman.

CHAIRMAN—We thank you for your submission. I note for the record that you were involved in drafting the Financial Management and Accountability Bill, and appeared before the committee in July 1994 as Assistant Secretary to the Department of Finance and Administration.

Mr Kennedy—Yes.

CHAIRMAN—Do you think the act has met its aims?

Mr Kennedy—The proof of the pudding is in the eating and, reading the submissions that have been made to this inquiry, it appears as though the legislation has and is meeting its aims. The thrust of my submission focuses less on the legislation per se and more on how it interacts with some other things—for example, appropriations and the way banking is now being conducted within the Commonwealth.

CHAIRMAN—In a general sense, the committee is concerned to be sure that, now that departments and statutory authorities operate to a very large extent independently, the chief executive of each of those independent organisations becomes responsible for performance of the organisation so that we are not looking at an overall government result in terms of whom we purchase things from and whom we use to provide legal advice, external accounting advice or whatever. Do you believe that the way that the acts are operating gives us enough of a fix on CEO accountability?

Mr Kennedy—Accountability is a word that trips off a lot of tongues far too easily. The essence of accountability certainly is visibility, but the mechanics of accountability is something that, if not overlooked, is not given the emphasis that it deserves. Accountability is not something that one offers; it is something that somebody else calls for. If accountability is going to mean anything not only in the context of the statutory framework that you have here in this legislation but also in a real sense, the people or the institutions that do the calling to account are going to have to lift their game. Certainly there are processes in place that make accountability easier, but it is the person or the parliament that calls chief executives to account that really need to identify for themselves what it is they are calling officials to account for.

Section 44 of the Financial Management and Accountability Act talks about chief executives being required to promote the use of Commonwealth resources in an efficient, effective and ethical way. That is intended to flag what chief executives ought to be called to account for; namely, how they have managed within those three aspirations. We need to put a harder edge to that in an auditing sense and in a parliamentary sense but also within the

executive itself that ministers really ought to focus on what they want to call their chief executives to account for. I think it is the person or body that calls to account that has the more important role.

CHAIRMAN—How do we go about that?

Mr Kennedy—I was here in the audience yesterday and I listened to the questions along those same lines. One of the avenues that was being considered was whether requirements ought to be put into the annual reporting guidelines to make the rendering of accountability easier. One of the essences of this legislation is that it enables one size not to fit all. It allows for flexibility. If you put something into the annual reporting guidelines, it means that everybody—from the largest to the smallest reporting entity—is going to have to dance to the same tune, and that does not make a lot of sense.

An idea that crossed my mind is that if, for example, this committee were able to develop a template of a series of things that it wants to know about the performance of chief executives and, on a regular basis, perhaps once or twice a year, wrap that up into a parliamentary question that members of the committee could put to every minister, you could get your responses that way, according to the nature of the agencies that the minister will render account on behalf of. If as a result of the answers to the questions you wanted to pursue it further, you could pick it up and run with it.

CHAIRMAN—Just off the top of my head, that sounds a bit slow, doesn't it?

Mr COX—It is only because your ministers do not answer questions properly.

CHAIRMAN—Our ministers are no worse than your ministers were, with respect, Mr Cox, so don't come the heavy with me. You know that is true as well as I do, and if you want me to get the stats I will get the secretary to get the stats. You might find yourself embarrassed.

Mr Kennedy—I am sorry, I didn't mean to cause dissension among the committee members.

CHAIRMAN—He had too many weeties for breakfast. I hear what you say, but it could be a bit slow.

Mr Kennedy—It could be a bit slow.

CHAIRMAN—In fact, it could be interminably slow.

Mr Kennedy—The point is that if agencies knew this was coming, say, twice a year, they would—

CHAIRMAN—They would sit around in fear and trepidation?

Mr Kennedy—No, they would not. They should have the answers prepared; in the same way they would have the information prepared if they were required to put it into an annual report.

CHAIRMAN—What do you people think about that? I know this is a formal hearing. That is an innovative thought.

Mr SOMLYAY—How is that process so different from Senate estimates?

Mr Kennedy—I am conscious that I am under oath here.

CHAIRMAN—Don't let that bother you; we haven't taken anybody to court for years.

Mr Kennedy—Senate estimates committees are useful but they have their limitations insofar as Senate estimates committees exist for the opposition. They are fraught with opportunities to score points. There is nothing wrong with that, but it detracts from them as a vehicle for fair dinkum accountability.

Senator GIBSON—I agree with that.

CHAIRMAN—Yes, I do too. We point out that this committee has credibility because it does not try to score points. It has a long history of coming down with, if you will, bipartisan recommendations and reports so the executive pay attention, whereas they do not pay a lot of attention to Senate estimates.

Mr Kennedy—They do, but often the attention is diffused because of the politics.

Mr SOMLYAY—Yes, but CEOs also have a line of accountability, surely, to the executive, to the minister.

Mr Kennedy—Absolutely.

Mr SOMLYAY—We have seen recently an example of that. Where does the parliament fit in to the accountability equation vis-a-vis the executive, who also demand accountability, and the minister, who should then be accountable to parliament?

Mr Kennedy—I would postulate that parliament's requirements for accountability should have a different focus from the executive's requirements for accountability for the same people—and this leads into the appropriation act problem that I raised in my submission—for the simple reason that parliament is not concerned with management; it is concerned about but it is not concerned with management. The executive government is concerned with how it manages, but the parliament, I think, is concerned with stewardship, which is different from management. Of course there are overlaps, but the parliament's role is to call the executive to account partly for how it is managing but mainly for its stewardship of the resources that the executive is entrusted with.

CHAIRMAN—I do not know what my colleagues think but I am not sure that I agree with that. In this committee we spend almost all of our time looking at management issues.

Because we are an audit committee now, we review every audit report that ANAO produces. We make further inquiries on some things and have big inquiries on other things. Just looking at the CAC Act and the FMA Act, and our companion inquiry going at the moment on the corporate governance of GBEs, they are all management issues.

Mr SOMLYAY—Mr Chairman, this committee looks at mismanagement issues, not management issues. And that is what the Auditor-General looks at.

CHAIRMAN—I am sorry, but in terms of this inquiry and the GBE inquiry we are not looking at mismanagement; we are looking at management.

Mr COX—It is unusual, but it is true.

CHAIRMAN—When we looked at Collins class submarines or JORN, then we were looking at mismanagement. I accept that.

Senator GIBSON—It is the same for when we look at each of the audit reports.

Mr Kennedy—This is an area where the overlap occurs, and there is not a problem with that. Perhaps I can illustrate my point: in the variety of parliament's functions I think its primary function is its law making function. In making laws it certainly has to have regard to what are good laws and what is going to help create the environment for good management. But its law making function is different from its ex-post calling the executive to account function. As far as creating the environment for good government, through good laws and good processes, what does parliament need to call the executive to account? What sorts of things does it need to know about the executive's performance? Management performance and stewardship performance both intersect and overlap, but they can be at different ends of a not very large spectrum—but at different ends of the spectrum, nevertheless.

Senator GIBSON—In relation to your suggestion about us sending out questions, if you like, for the ministers or for the chief executives to answer, the only difficulty is that we do not know enough of the detail to be able to do that effectively. That is why we as an audit committee need the Audit Office to go and do their performance audits—to feed us the information so that we can pursue the matter further. To bypass that detailed procedure would make us quite ineffective, I think.

Mr COX—If that was the only thing we did.

Senator GIBSON—Yes, I know, but I cannot see how we could otherwise learn enough detail of our own volition, if you like.

Mr COX—We could ask a set of consistent questions of all chief executives.

Senator GIBSON—Yes, we could, but they would tend to just become pro forma things.

CHAIRMAN—Going back to my purchasing thing, if DOFA actually accepted our recommendations in our report—I do not know if they are going to or not but if they did—then we could ask the chief executives to report against the guidelines.

Senator GIBSON—That is true.

CHAIRMAN—They could be asked: what percentage of the purchases have been for small and medium sized businesses, what percentage were Australian, all contracts over $5 million, tell us about Australian industry development, and all that sort of stuff.

Mr Kennedy—Interestingly enough, even if DOFA did not accept your recommendations, there would be nothing to stop you as individual members asking that same question.

CHAIRMAN—That is true, except we would not get any answers because there would be no data. That is the problem.

Mr Kennedy—Good point.

CHAIRMAN—Without the data everybody is going to say, 'We cannot answer your question.' I have been through that before.

Mr COX—As part of this accountability process, the concept of ethics seems to be undefined. When a requirement for CEOs to act ethically was put in the FMA Act, what was contemplated?

Mr Kennedy—Interestingly enough, when the notion of ethical use of resources was raised at the stage when the legislation was being formulated, a number of people said, 'You can't put that in because it is indefinable.' For efficiency and effectiveness you have at least got some sorts of empirical things to go by, but ethics—what is that? Scotch mist? We argued that ethics did not need to be defined, and in any event it is a movable feast over time anyway, just with the evolution of civilisation. But to put ethics on the table and be able to call chief executives to account by at least asking them, 'Why do you think your action in this situation here was ethical?' is positive in terms of making chief executives conscious of the need that their ethics are capable of being questioned. But it is also a deterrent insofar as it can persuade people not to take the expedient course if that seems to nudge up against the boundaries of ethics. So, to answer your question, there is no definition, but as a concept it is a very positive one.

Mr SOMLYAY—Wouldn't it depend on the minister individually?

Mr Kennedy—Yes.

Mr SOMLYAY—I can recall instances in federal parliament where CEOs have appeared and claimed executive privilege.

Mr Kennedy—Yes.

Mr SOMLYAY—Where does parliament go then?

Mr Kennedy—Possibly where it has always gone when that happens—you either come up against a brick wall and accept it or you start to think of ways to demolish that wall or get around it in some way. You are always going to come up against that problem when you are dealing in this environment with human beings.

Mr COX—With decisions that are ultimately taken by a CEO, there can be instances where they are given direction, either implied or in writing, to do certain things. It would probably be better, in terms of accountability, when they are faced with that kind of ethical dilemma, because of pressure that has been put on them by their minister, that they seek the minister's direction for them to do something.

Mr Kennedy—Yes.

Mr COX—That would absolve them, themselves.

Mr Kennedy—Yes.

Mr COX—But if they do not then in my view the accountability rests jointly with the CEO and the minister.

Mr Kennedy—Yes. That is exactly right. Section 44 does have an escape clause to it, in subsection (2), that allows chief executives to do as best they can efficiently, effectively and ethically if they have to comply with, say, a law or direction. Putting in that escape clause in fact invites chief executives to do the right thing by their own ethical standards and to seek a direction if that is called for.

Mr COX—They probably do not do it often enough, I suspect, given their limited tenure.

Mr Kennedy—It is a learning experience for them. To make it work properly—to give that particular aspirational clause in the FMA Act the edge that it ultimately needs—people, committees, parliament, the media or whatever have to start asking the question: is this ethical?

Mr COX—Do you think it would be helpful if committees like this one started cataloguing unethical styles of behaviour? The Auditor-General has obviously had some problems in some areas coming to judgments about things because there was a lack of written standards or guidelines.

Mr Kennedy—It might. As far as unethical behaviour and as far as—

CHAIRMAN—How do you define ethics?

Mr Kennedy—Yes, I am coming to that. Any publicity is better than no publicity. But it is in the eye of the beholder.

CHAIRMAN—Very good. That is right.

Senator GIBSON—Mr Kennedy, in paragraph 21 in your submission you talk about the appropriation acts. Towards the end of that paragraph you say:

> . . . imagine how it would perform when it is under pressure from the most adverse of circumstances—say, exploited by a hypothetical bad and unscrupulous Executive.

Did you have particular examples in mind or what hypothetical examples did you have in mind?

Mr Kennedy—Hypothetical examples. Hypothetically, every government—federal, state or local—carries in its saddlebags the seeds of if not corruption then at least practices that seek to circumvent proper processes. Of the things that keep those seeds in the saddlebags—rather than have them spread and germinate—first and foremost is the inherent good character of the members of the government and, secondly, is the good practices and processes that operate to disclose or allow disclosure of those seeds. Members of this committee would know as well as I do, or perhaps better than I do, that there are instances when a government, a minister or a chief executive will seek to push the boundaries beyond where they ought to be pushed. They are sometimes well motivated, but nevertheless they go beyond what ought to be. It is where the 'can do' bumps up against the 'should do'. In this context that you have quoted from, I believe that the present form of appropriations damages the existence of those systems. If you create systems that make it easier to push the boundaries, you will get them pushed—this time for the best of reasons, next time for the worst of reasons.

Senator GIBSON—So what have we done in the FMA and CAC Acts, to do that?

Mr Kennedy—You have not done anything in the FMA and CAC Acts. My concern is in relation to the form of the appropriation acts.

CHAIRMAN—Do you want to go back to jam tins?

Mr Kennedy—No.

CHAIRMAN—Are you sure?

Mr Kennedy—Finance's submission—and I heard Dr Boxall mention it yesterday—is that you get a clear read from the appropriations to the portfolio budget statements to the annual reports.

CHAIRMAN—Yes.

Mr Kennedy—To me, that is a bit like removing pylons from a bridge so that you get a clear view of the other side. Yes, you get a clearer view, but it is not terrific for the integrity of the bridge.

Mr COX—Why? What is wrong?

Senator GIBSON—Can I just say again that, from my point of view, putting the portfolio budget statements, the appropriations and the annual report into a common format helps mokes like us to actually see through what is happening and understand what is happening at the end. Otherwise it is very difficult for us from outside.

CHAIRMAN—It was impossible.

Senator GIBSON—Yes, that is right. So I am not too sure. What have we lost?

Mr Kennedy—I think you have lost the ability to exert influence on government for the nature of its spending.

CHAIRMAN—How can you say that when you could not get out of the budget statements a comprehensive knowledge or understanding of what any particular program spending was? You could not. And across the various budget papers you had different results.

Mr COX—I think it is even less the case now. It is even less the case that you can comprehend them now.

Senator GIBSON—We have not had a full cycle yet, so we have to hold judgment about that. But it seems to me that we who are representing the parliament were very much in the dark about what was actually happening and it seems to me that we will be better off with the new system because of that coordination between the three lots of reports. Maybe within the bureaucracy and particularly from the background that you have had, you would see it as not so strong. But from our ignorance outside I definitely see the way we are going as an advantage.

Mr Kennedy—To have appropriations expressed in outcomes, you can cover a lot of things under the heading of a broadly expressed outcome.

Senator GIBSON—Yes, good point.

Mr Kennedy—I do not believe that it is impossible to translate what outcomes the government is spending its money on. I do not believe it is impossible that if you, nevertheless, have your appropriation acts expressed in a more detailed cash form—God knows they certainly needed revision—there is no impossibility in translating that through the portfolio budget statements into the larger realm of budget statements that does express outcomes and includes the accrual information.

The Australian parliament does not approve the budget. Other countries approve budgets as a whole. We approve the annual appropriation bills and then separately we approve other legislation that contains special appropriations. We approve other legislation that contains revenue measures, but we do not approve the budget.

The strength of approving appropriation bills is that constitutionally one of those bills, the one that is not amendable by the Senate, is for what is described as ordinary annual services of government. The drafters of the Constitution saw that concept as being the

amount of money required to staff and equip departments to allow them to function. That is an incredibly powerful ring of control that the parliament exercises over the executive in that it can permit the government to function.

What government spends its money on is important to the parliament. You do not need a long memory to recall the influence that the Senate exercised over, for example, Dr Lawrence's legal costs. You would not be able to do that under the present form of appropriations. Dr Lawrence's legal costs would be submerged in an outcome somewhere. Leaving aside the politics of the Lawrence case, that is the last one I can remember where the parliament actually exercised influence over the executive about what it was spending its money on—not what it was achieving, what its outcome was, but what it was spending on.

Mr COX—The Senate expressed a view in relation to the community education information program for the new tax system that all of that expenditure was inappropriate, but it did not try to cut off the appropriation since the money had already been spent.

Mr Kennedy—Yes.

CHAIRMAN—I do not quite understand paragraph 19 of your submission. This is what we are discussing now. Your last sentence reads:

> Overall, however, and especially in relation to Parliament's ability to control Executive action, that form of appropriation appears to have provided a greater transparency to Parliament about what the Executive was seeking from it.

I do not understand what you mean.

Mr Kennedy—The Lawrence case is an example. The executive was seeking from the parliament an appropriation that would allow it to pay Dr Lawrence's legal costs. The Senate said, 'We will agree to that but not—'

CHAIRMAN—You say 'about what the executive was seeking from it'. What is 'it'?

Mr Kennedy—'It' is the parliament. The executive seeks from the parliament permission to spend.

CHAIRMAN—Okay.

Mr COX—If the descriptions of functions and outcomes are at a too high level then the parliament has insufficient control over what the executive is spending money on, is that correct?

Mr Kennedy—This year the portfolio budget statements give a translation of last year's itemised matters into this year's outcomes. Looking down the track, in two or three years time you are going to have last year's outcomes into this year's outcomes and there will be no level. That will be the tendency.

Mr COX—What about internally? I can remember an incident about a decade ago where a department failed to implement a cabinet decision and the finance minister's retribution

was then to break down what was a high level appropriation into a number of much smaller jam tins, as the Chairman refers to them, to make it a little clearer about what the department was actually able to spend its money on. Is that still possible under the new FMA?

Mr Kennedy—It is not a FMA problem, it is an appropriation act problem.

CHAIRMAN—The FMA is very broad.

Mr Kennedy—I do not think that that would necessarily be able to happen. If you are appropriating in outcome terms, the pattern seems to be, from my reading of the appropriation acts, not for suboutcomes.

Mr COX—If we are looking at this in private sector terms, which this government loves to do, if you characterise the finance minister as the government's financial controller then he has less control over what is happening around the bureaucracy than was previously the case?

Mr Kennedy—That is possible. The finance minister could, however, issue drawing rights against this high level appropriation and attach conditions as to how and what those drawing rights, which allow agencies to draw money for spending, would be and restrict them in the way in which they went about that. The drawing rights provision is in the FMA Act. It allows the minister to impose conditions on drawing rights.

Mr COX—You heard John Broome's evidence yesterday that there was much less support in terms of financial management available from DOFA than previously. Can you outline the range of functions that DOFA used to provide for departments when you were running those areas?

Mr Kennedy—Basically, they were advisory functions. They were a promulgation of good practice issues and also a promulgation of examples of bad practice. We had a requirement that if fraud or loss occurred in an agency they had to advise Finance. The reason for this was that if we perceived that there was any systemic problems we would be able to write out to everybody and alert them. We did this on a number of occasions where there were breakdowns in internal controls that were systemic. I have been out of Finance for 18 months and I do not know the extent to which, if at all, they are doing that.

Mr COX—What about providing agencies with financial management improvement advice? At the moment, if John Broome's evidence is indicative of other small agencies, they seem to have to waste a large amount of limited resources developing systems and approaches for themselves.

Mr Kennedy—We operated what we used to call financial management forums where we not only promulgated issues but also provided the opportunity for agency people to come in and kick around common problems and help them find solutions.

CHAIRMAN—We appreciate your attendance and your advice. You have given us one thing to think about anyway. It has some potential.

Mr COX—If we do not do it, nobody else will.

CHAIRMAN—That is for sure. There is no question about that. The issue is the extent to which we want to set ourselves up as being the body to decide what questions to ask.

[10.20 a.m.]

JOHNSTON, Mr Rob McLean, Chair, Senior Management Coordination Group, Parliamentary Departments

CHAIRMAN—I welcome the representative from the parliamentary departments to today's hearing.

Mr Johnston—Thank you. Because I have not had the opportunity to consult with my colleagues when I comment on evidence given yesterday or today I will give that evidence individually as the Assistant Secretary, Corporate Services of the Department of the Parliamentary Library.

CHAIRMAN—Would you like to make a brief opening statement?

Mr Johnston—Yes, if I may. The five parliamentary departments consider the FMA law a considerable improvement and provides a sound set of principles. What we are concerned about primarily, in our submission, is how that applies in the parliamentary environment given our separate constitutional and administrative position and, in particular, whether the subsidiary legislation, as well as the act, compromises the independence of the parliament. In this respect, I note Mr Kennedy's comments, which Senator Gibson drew out, that how the system of law performs under adverse circumstances as well as in the best of times needs to be considered.

The legal advice provided with the submission supports the view that the expenditure policies of the executive do not automatically apply to the parliamentary departments. That is consistent with most but not all constitutional views.

One matter I wanted to comment on, because it is not in the submission and it arises from me refreshing my memory over the weekend on the Auditor-General Act, is three sections of that act which this committee had a lot to do in ensuring they went in: firstly, section 50 which guarantees availability of parliamentary appropriations for the Auditor-General; secondly, section 51 which prevents the finance minister from cancelling or varying a net appropriation agreement with the Auditor-General, unless the Auditor-General agrees; and, thirdly, section 54 which requires the finance minister to advise this particular committee of any requirement that the finance minister imposes on the Auditor-General to provide information and the reasons for that.

The explanatory memorandum to the Auditor-General Act states that those particular sections are to protect the operational independence of the Auditor-General from the possibility of interference by the executive. I am submitting to the committee today that that same reasoning could be applied in the parliamentary environment. Accordingly, in addition to the submission and recommendations, which were cleared by my peers, I am suggesting that perhaps the committee could consider the inclusion of specific legislation within the FMA Act such that the executive is not able to restrict or direct parliament's spending once moneys have been appropriated. Mr Kennedy's evidence in relation to the issue of drawing rights and your questions are particularly relevant to that issue.

In this respect, I also note that subsection 9(3) of the Appropriation (Parliamentary Departments) Bill (No. 2) 1998-99 requires—it uses the word 'must'—the Presiding Officers to comply with directions given by the Minister for Finance and Administration in relation to the Comcover insurance reserve. I consider that inappropriate. Given that the parliamentary departments pay insurance premiums, any insurance payment back to the parliament should be allocated how the parliamentary Presiding Officers determine, not the executive. That is a classic example of this difficult area of, constitutionally, where the parliamentary departments fit, when they should comply with broader Commonwealth requirements and where they should be different. That is a classic case, in my view, where it has gone too far. That is a most recent case. They are my general comments.

CHAIRMAN—Thank you. Are you saying that you think the parliamentary departments should have a unitary right to set their own budgets?

Mr Johnston—Constitutionally that is not possible because of the requirements on money bills being submitted by ministers, and so on. The sorts of processes which in the Westminster system apply cannot apply in this environment, and the parliamentary departments would never suggest that they had a unitary right.

Clearly the parliament itself and the parliamentary presiding officers—with government, because of the constitutional requirements—have a role in determining the level of budgets for the parliamentary departments. Senator Gibson in particular would be well aware of the interesting discussions which have been held under a number of governments between the Senate Appropriations and Staffing Committee and various ministers for finance. I certainly remember some discussions that Peter Walsh used to have which were quite vigorous, shall we say, in that area.

But, like all things, it is not black and white in this area; it is very much a sense of balance. What I am saying is that the parliamentary departments, from our discussions, very much see strong advantages in our being subject to the same accountability requirements, including financial ones, and being seen to be subject to those requirements as the parliament imposes on other Commonwealth agencies. Primarily that is the reason why we would seek to be under the FMA Act rather than a separate act.

CHAIRMAN—So you are really asking for treatment similar or identical to that given to the ANAO?

Mr Johnston—I am suggesting that—and I have to state that my comments about this matter were not pre-discussed because I refreshed my memory on it only yesterday—the principles inherent in that apply equally to the parliamentary departments. For example, whilst the legal advice states that the section 36 provision in the FMA Act essentially provides that, as I have said, that is only advice. A clear legislative base would also be of advantage for exactly the same reasons as the committee itself considered at the time of the drafting of the Auditor-General Act.

CHAIRMAN—Did you raise this issue during the time of the drafting of the FMA Act, the drafting of the Auditor-General Act and the amending of this committee's legislation?

Mr Johnston—We raised the principle, but not those specific points, with Finance on a number of occasions. It is one of those situations where I think, as we become more familiar with the legislation and its implications, we will understand more closely how it will work. Certainly the principle of constitutional independence was raised and raised frequently.

CHAIRMAN—What was the response of the Department of Finance and Administration?

Mr Johnston—The department of finance saw section 36 at the time as a substantial improvement on the previous provisions under the Audit Act whereby the provisions were set out in regulation. In considering the parliamentary departments, it is an issue of not having the tail wag the dog but at the same time recognising that there are differences between the two. Clearly, the differences need to be considered but, at the time of the development of the FMA Act, it was the very strong view of the parliamentary departments that we should be as similar as possible. Essentially, that is a view which I have repeated here today. Whilst protecting the independence of the parliament—of the parliament itself, not the parliamentary departments—remember that the expenditure of the parliamentary departments essentially is by delegation from the presiding officers and is not in that sense independent.

CHAIRMAN—You think that section 36 does not isolate you from the Minister for Finance and Administration saying how much money you can spend.

Mr Johnston—The legal advice states that it does, but contrary legal advice could possibly be obtained. I am saying that, if there is an explicit requirement, that saves the many disputes at the margin at officer level.

Mr COX—Can you tell us a little about the process that is gone through and what the negotiations are like when parliament's appropriations are being set?

Mr Johnston—The process in the Department of the Senate is different from that of the other parliamentary departments because of the existence of the Senate Appropriations and Staffing Committee. There is a formal process which is established and laid out, and that is something which I am not really capable of commenting fully on.

In terms of the other parliamentary departments, normal general negotiations occur. Should there be a particular proposal, in essence, the issue is looked at under a new policy proposal process. In general, the presiding officers do not appear in front of cabinet again for that reason—although there have been cases where they have appeared in front of cabinet. In the past the Minister for Finance and Administration has taken the proposal forward. So we already have a problem in that the Minister for Finance and Administration will take it forward only if the minister and/or the department agree that it should go forward.

Mr COX—Have you had a problem with that since Peter Walsh was the minister?

Mr Johnston—The short answer is yes.

CHAIRMAN—I am not sure that you wanted to know that.

Mr COX—Was it with one of my subsequent ministers?

Mr Johnston—Perhaps we should say that there is always tension in this situation. There is some tension between the parliamentary departments because Finance tries to treat parliament as a portfolio, but each of the parliamentary departments is unique. For example, the Senate clearly is not in the same portfolio as the House of Representatives—that is, in terms of being two departments rather than two chambers—whereas loosely the three joint departments perhaps could more be treated that way. So there are tensions between the parliamentary departments. In fact, for a number of reasons, two years ago some funds were transferred from the Joint House Department to the two chamber departments to pay for the cost of security equipment. That was done as part of a request from the presiding officers.

Mr COX—Is there more tension between the parliamentary departments than there is notionally between the presiding officers and the government?

Mr Johnston—You mean between the parliamentary departments and the department of finance?

Mr COX—Yes, between each other.

Mr Johnston—No. The parliamentary departments generally work extremely well together because we are here for the same purpose overall. Sure, there is some contention in relation to which policies go in. But we have methods of resolving that. The heads of the departments have a regular meeting. In addition, the heads of corporate management, my opposite numbers and I, have a monthly meeting and we have a revolving chair; I am chair for this particular year and it will pass on to the next department next year. So we have these coordination mechanisms to look at processes. Most submissions go up to the presiding officers jointly, having been signed by the department heads for all five departments. I think the system is working as well as it can. Cooperation has been very good in recent years.

CHAIRMAN—On page 5 of your report you make a recommendation that does trouble me somewhat. You talk about the fact that, in our report on the Collins class submarines, we recommended that the Auditor-General have access rights to Commonwealth records and, if necessary, to contractor premises where Commonwealth property resides. You now recommend appropriate access rights for an agency to relevant contractor records and that that be put in the FMA Act. Why on earth should a Commonwealth department, a GBE or a financial agency have those kinds of rights? Rights such as those do not exist anywhere in the private sector. What on earth makes government service so special that contractual relationships can be thrown asunder to allow the purchaser right of access to the supplier's records?

Mr Johnston—With respect, it is not proposing that the rights of contract be thrown asunder but that the framework within which a contract is made possibly be amended. For example, should the material be submitted to a parliamentary committee, an estimates committee or some other process, that access to those records be quite clear. Under contract where for intellectual property and other reasons the contractor finds that they are Commonwealth records, obviously the normal processes under contract apply.

In relation to this matter, I can think of a hypothetical example which was put by one of my colleagues. There are a number of outsourced functions within the parliament itself, and these impact directly on senators and members. For example, should the House Committee, the Library Committee or estimates committees want material, processes would be facilitated if, with access in difficult circumstances where there were contractual difficulties between the Commonwealth and the contractor, one did not have to go through the formal court type processes to obtain that material.

CHAIRMAN—Mr Johnston, two of us are members of the House Committee. What do you reckon, Alex? Wouldn't it be nice if we could ask the Hyatt to give us their P&L costings on a bottle of wine.

Mr SOMLYAY—Excellent.

CHAIRMAN—We can send Mr Johnston in. He can have a look at their records and come back and tell us what their margin is. We can then say, 'Oh, it's too high. Come down, down, down.'

Mr Johnston—No, Mr Chairman. In fact, the phrase 'suitably balanced to the contractor's commercial rights'—

CHAIRMAN—I cannot think of one circumstance in which your recommendation would be appropriate, not one.

Mr COX—Can you outline any examples where you have had a problem that could have been resolved by having that access?

Mr Johnston—At the moment, no. The attempt was to consider where this access may be necessary at some time in the future to meet our obligations to the parliament. As I have said before, I support the basic principle that legislation should most definitely try and make operations effective and efficient, but equally it has to consider the worst possible cases at the same time.

CHAIRMAN—In essence, what we proposed was that, when contracts are written, the contracts themselves specify that the Auditor-General—not us, not anybody else, but the Auditor-General—will have right of access to their records with respect to that contract. That happens to be a condition that he would use very seldom—more in Defence contracts, I would think, than anything else. It is a condition that is appropriate in a number of other countries' jurisdictions.

Mr COX—We are going to have enough trouble winning that argument, let alone any other.

CHAIRMAN—That has been running for years. If we get it up this time, we will have finally done it. I am not going to advise you whether I think we will or we will not, but we should know before too long.

Mr Johnston—Clearly the primary objective would be, as is your recommendation, that the Auditor-General obtain access in those certain circumstances.

CHAIRMAN—Yes, but you are asking for agencies' rights to contractor records.

Mr Johnston—To records of the Commonwealth. Perhaps the point has been badly expressed. I have been trying to suggest that this is where there are records technically owned by the Commonwealth. An example of that might be where you have an internal auditor with the working papers technically being owned by the Commonwealth, and that is in your contract. It is the access to those which you have under contract law but which, in a difficult set of circumstances, one has to go through the legal process to get. It is a timing issue. I am not suggesting in any way whatsoever that the internal commercial records of any corporation be accessed. The issue relates very specifically to where redress under contract law is not obtained in a timely way and the information is needed for a parliamentary purpose.

CHAIRMAN—We will consider your recommendation. Another recommendation that you made on the same page, page 5, is that 'some improvement be made to legislation in relation to outsourced functions and terminology'. Can you expand on that somewhat? We are at a little bit of a loss with that recommendation.

Mr Johnston—Yes. Talking about the second matter first, I note that the Auditor-General made some comments also in relation to terminology. The suggestions which I put in the paper, for example, relate to consistency in language across our legislation and I refer to the terms 'official', 'officer', 'employee', 'secretary' and 'CEO' or 'chief executive'.

I believe that, if we are to move towards a new Public Service Act and possibly a Parliamentary Service Act—and that is subject to the parliament—but, regardless, we need a consistency across both of these, and a consistency not just in the primary legislation but also in the subsidiary legislation. An important part of the accountability process is held within the Public Service Act, which you would be well aware of because of your own role under subsection 25(7).

The very strong improvement in accountability which comes also from chief executives being subject to the codes of conduct—there are two codes: a public service code, and a parliamentary service code—relates to matters where we need to use consistent language. We need to use consistent language not just to make it easier for bureaucrats to understand—because where you have inconsistent language you have to look up definitions to see whether there is any difference—but also for the application of legal principles. For instance, in one act there is a finding that a particular term means a particular thing, and consistency in language makes it easier to apply that term to the other act.

I am asking for the public sector legislation, the accountability legislation and the management legislation to be treated in a more holistic way so that the terminology across the two primary items of legislation—that is the current and any future Public Service Act and the FMA Act—be more consistent. There are ways in which this has been done. For example, one of the requirements in the new code of conduct is that people must use Commonwealth resources in a proper manner. That is not defined in the Public Service Act

or regulations, whereas 'proper' has a very clear definition in section 44 of the FMA Act. They are the sorts of issues that we are talking about there.

Senator GIBSON—So your main concern is about staying under the FMA Act and, if you like, your recommendation 2.17 about the possibility of FMA parliamentary departments' regulations and FMA parliamentary departments' orders. Is that your major concern?

Mr Johnston—No. The recommendation is that we stay under the FMA Act—

Senator GIBSON—Yes, I understand that.

Mr Johnston—But that there be a clearer distinction for those areas where, for parliamentary reasons, the policies of the executive government of the day should not be applied to the parliament. As a general principle, the policies of the executive government of the day have been applied by parliamentary presiding officers. At times they have chosen not to apply them fully; at times there may be contention between the houses as to which particular policies be applied. In essence, we are saying that is the basic principle—that the parliament and the presiding officers of the parliament have the ability, whether through separate sections of the act, whether through the example I gave as to how under the Public Service Act currently there is the ability to have some separate regulations where there is a distinction.

A classic distinction, for example, is in the new values. One of the values put out by the government in regulations is that essentially the first loyalty of APS agencies is to the government. Clearly, the loyalty of the parliamentary departments is to the parliament, they are separate, and we need clear distinctions in that sense. They are the sorts of issues which we are trying to clarify. But, equally, there have been a number of occasions in the past when DOFA officers have tried to push the limits. For example, very junior DOFA officers have pushed their agendas in the past in terms of amalgamation of parliamentary departments and other issues which, quite frankly, are matters for the parliament more than for the executive.

Senator GIBSON—To achieve that end, are you suggesting the FMA Act be amended, expanded on from section 36, with provisions such as those in the Audit Act?

Mr Johnston—Although we can live with the current process, there would be an advantage in clarity if that were undertaken. Probably a second best solution would be the ability for the presiding officers to do parliamentary departments' regulations in particular cases. Notwithstanding that, there are advantages in the other way around. For example, if you take your report No. 369, which we have talked about, as you yourself have said, Mr Chairman, there are a number of recommendations which the government may or may not decide to accept. In the parliamentary environment the committee has a different role because, whether the government accepts those recommendations or not, the presiding officers could potentially accept certain matters. Does the committee believe, for example, that its recommendations which are not accepted by the government potentially should apply to the parliamentary departments? They are the sorts of issues which come up day upon day.

CHAIRMAN—Do you feel neglected?

Mr Johnston—Actually, we are in a very fortunate circumstance at times because clearly an executive agency, if it is told by Finance to jump, often jumps and snaps its fingers and says, 'How high?' The parliamentary departments and the presiding officers have the advantage of being able to say, 'Well, cabinet decisions do not technically apply to us,' unless the presiding officers wish them to apply or they are put into law. In negotiating with Finance, Finance finds it somewhat difficult at times to deal with us.

CHAIRMAN—Were you here yesterday when we talked with the National Crime Authority?

Mr Johnston—Unfortunately I missed that session, but I have read the submission.

CHAIRMAN—One thing they said—and they talked about it at some length—was that the new public sector culture is, by and large, for each department to operate independently and that, with the disappearance now of many of those common services that in the past were supplied across the Public Service, individual agencies will have to do their own thing, such as figuring out their own banking, their own insurance and their own purchasing practice while paying attention to the guidelines, et cetera. With your being small too, have you found that there are synergies such as being able to combine with other small agencies in order to get better value?

Mr Johnston—We do this in a number of areas already. For example, we buy essentially off what used to be called PISO and is now TSG—I have not got used to the new term yet—a contract for personal computers, and we are consulted by PISO at the time the contract is provided. We also buy off a number of Joint House contracts. Again, we try to make savings there. But there is no doubt that the efficiencies and the economies of scale which come from certain joint contracts at a Commonwealth level have cost us in direct terms and in administrative terms.

Eighteen months ago, there were proposals to have a common travel contract for the Commonwealth. Shortly before that was due to be signed we were told, 'Thou shalt have thine own,' and the five parliamentary departments got together and we did our own. But there were costs involved in that process and clearly the sorts of discounts which we could get on a $2 million travel contract are not quite on the same scale as those with a $30 million one for some of the other clusters or an $80 million—or whatever the figure is—contract for Defence, notwithstanding the fact that the parliamentary contract is often seen in positive terms by tenderers. So there are certainly some diseconomies.

In relation to having independent financial management information and HR systems, clearly for proper management we need these systems. But there would be advantages in perhaps very small agencies not having to buy those with standard contracts, because they tend to be designed more for the bigger agencies.

CHAIRMAN—So there are times when you would like to be part of the family and times when you would like a divorce?

Mr Johnston—There are times when it is best to have the option, yes, and that is an advantage.

CHAIRMAN—Do I get the feeling, Mr Johnston, that you want the best of all worlds?

Mr Johnston—No, Mr Chairman. What the parliamentary departments are concerned about is not that controls or standards apply to them. As I indicated before, we see a strong advantage in consistent processes applying to us and being seen to apply to us, otherwise the parliament is exposed to the accusation, 'You say one thing but do another thing.' However, we are concerned that the constitutional separation, the independence of the parliament, be protected and be seen to be protected and that the protocols between the parliament and the executive be complied with in the sense that there are times, for example, when it is more appropriate that the minister or the Prime Minister write to the presiding officers when things happen for political reasons and for constitutional reasons. So, whilst there certainly are advantages in being separate, there are disadvantages as well. We work within this framework—it is a constitutional framework that we all work within—and it has some advantages and some disadvantages for the parliament.

CHAIRMAN—So you want to live in the same house but not be married?

Mr Johnston—The analogy is perhaps not one that I would have chosen.

Mr COX—There are some distinctions in the Parliamentary Service Bill which give the parliamentary departments some advantages, presumably in relation to the tenure of people's positions and things like that, that make it desirable to have a piece of legislation separate from the Public Service Bill. Yet in the case of the FMA Act that is boring, arcane and irritating and you are therefore quite happy not to be burdened by it and to have your own act in that area.

Mr Johnston—As an individual, I have long been a proponent of a consistent Public Service Act. When I came to this environment from the Audit Office to implement efficiency audit reports in DPRS and then in DPL, the Parliamentary Library, I was strongly pushing the line that where practicable we be consistent and that we be different only where we can justify that difference, and I still consider that to be appropriate.

The initiative behind the separate Parliamentary Service Bill was in fact a prime ministerial or executive initiative and that has now been accepted by the presiding officers, but I do consider that there is a different environment. The different environment is that legally, in contract law and in the broader law, we as parliamentary departments are still part of the Commonwealth and, in a legal and financial sense, any contract we sign commits the Commonwealth. So I do see a distinction between the FMA Act and the Public Service/Parliamentary Service Bills.

Notwithstanding that, it is not an issue for the officers of the parliament but an issue for the parliament itself to make that decision. But there is no push at the moment from the parliamentary departments' people who are responsible for the corporate management areas—the people I am representing here—to push for a separate process. In fact, as I said,

we see strong positive advantages in being, to the extent that it is necessary, consistent, which is why I found your analogy perhaps too strong.

CHAIRMAN—Thank you very much. We will consider your recommendations as we consider our report into these two bills.

Proceedings suspended from 10.56 a.m. to 11.09 a.m.

DAVIES, Mr Graham, Director, Procurement Policy, Australian Taxation Office

KERWIN, Mr Jim, Chief Finance Officer, Australian Taxation Office

STAUNTON-LATIMER, Mr Ian Alexander, Director, Financial System Assurance, Australian Taxation Office

CHAIRMAN—I welcome representatives from the Australian Taxation Office to today's hearing. Would you have a brief opening statement that you would like to make?

Mr Kerwin—I would like to give a little bit of an overview of where we came from in relation to the recommendations that we made. Although these are probably recorded on the first page, I might take a short period of time to talk about them.

CHAIRMAN—Please proceed.

Mr Kerwin—One of the first things we acknowledge is that the FMA Act has established a beneficial framework. In particular, it is not a scheme for doing things which is built around a need for rules; it is a scheme of things which is built around guidelines and the exercise of professional skill in managing a business. It takes public sector businesses away from the necessity of observing rules that may have levels of relevance to the necessity of observing guidelines and standards which can be tailored to the particular needs of the business. I think that is a very positive thing.

The second thing is that, in relation to public sector businesses as a whole, they are at the moment very clearly in a process of evolution, not just here but broadly around the world. Taxpayers are making much greater demands on their public sector businesses in terms of accountabilities and in terms of delivering those accountabilities to the particular parliaments and to themselves.

The third point concerns ethics. We are finding ourselves in a framework under the FMA Act—as it has been applied in relation to the areas which we will talk about—which, broadly, has been built out of private sector businesses. It is a framework that has stood the test of time; however, it is concerned with wealth maximisation. In our particular businesses that is not our objective. Our objective is something else, and ethics are extremely important as part of the parcel of efficiency, effectiveness and ethics. That stands at the background of what we will talk about.

The final point, but by no means the least, in terms of what we will talk about is that, as public sector businesses, we are quite different in some senses from private sector businesses. In particular, in a private sector business if you have some competitive advantage you exploit that, it goes to your bottom line and you find that your balance sheet is probably where you want it to be. In our particular businesses we need to step back a little bit and, in enabling legislation such as the FMA Act, recognise that we can cooperate with each other without losing an advantage.

In fact, the more we cooperate, the more of a competitive advantage we will gain over others who are able to provide these services. So, if there is some level of competition between whether a public sector business can deliver something as effectively and as efficiently as any business driven by profit motives, there is a competitive advantage for our businesses. That is, we can share things without a loss at the bottom line. So that sets out the background.

CHAIRMAN—Thank you for that. Have you considered contracting out the collection of taxation?

Mr Kerwin—Not at the moment. The government would need to come to that decision, I think—although there has been some interesting history on that in the past, of course, around Roman times.

CHAIRMAN—Yes.

Mr COX—They do it in the states with poker machines—the robber barons.

CHAIRMAN—I will let that go through to the keeper. You have made a number of recommendations in your report. One of them says:

It is recommended that the existing legislative framework be expanded to incorporate provisions for consultative arrangement to exist between DoFA and parties affected by the exercise of powers provided to DoFA under the FMA ACT.

How and why do you think it is necessary to spell that out? Anyone can cooperate with anybody, I would have thought.

Mr Kerwin—To answer the question of why you would do it is at the end of the day a question of fact and whether on balance people might see that as being a positive thing to do or not a positive thing to do. We are saying something like: we have some enabling legislation which basically says that the Minister for Finance and Administration without reference to anyone can cause something or other to happen, can walk away from agreements with departments, can do a whole variety of things of that nature. Once again, in terms of how our businesses operate nowadays, they should not or do not need to operate as bureaucracies; they do need to operate in a fairly flexible way such that accountabilities can be clearly defined and people can plan into the future.

The minister for finance does at the end of the day have a valid role to do these things. But in reality, if you have your businesses conducting themselves along different models to just obeying rules, you will find that when rules are applied, arbitrarily perhaps, although in the best case scenario there will be a general good resulting from that, there will be instances where individual business are going to be adversely affected. All we were suggesting here was, if there is consultation to identify the issues—not to prohibit the decision—that the decision be made in the full light of those issues rather than the decision being made and then in the background particular businesses having to pick up and adjust their plans and frameworks.

So, in my mind, the positive thing that might come from this would be that consultation would occur and would reveal what may be issues for particular areas. The decision can still go ahead but, if it does go ahead, all of the parties should be aware of the consequences. You can probably manage them a bit better that way, rather than having the consequences perhaps hidden within our businesses.

CHAIRMAN—The next recommendation, talking about whether the legislation meets the needs of the accrual budgeting framework, says:

Resource agreements between DoFA and agencies should effectively eliminate the need for Section 31 annual reviews . . .

Are you recommending that section 31 become operational in exceptional circumstances only?

Mr Kerwin—If I can paint a picture around that—

CHAIRMAN—That would be good.

Mr Kerwin—One of the things that public sector businesses should be engaging in at the moment, which private sectors businesses necessarily do because they have a bottom line to worry about—and I think so do we—is putting a financial plan in place. In that plan we would have a balance sheet in terms of how we expected to go in the current year and in outyears. We would have an operating position with the same sort of framework, and we would obviously have our cash in the same framework. In order to get levels of certainty around that and in order to ensure that the department of finance are not approached too frequently for minor amounts of resourcing, our public sector businesses are moving along the track of getting resource agreements between themselves and the department of finance going over a number of years. The Taxation Office already has one of these agreements in place for the current year and for two years out.

An understanding around those resourcing arrangements is: 'This is where we believe our balance sheet, operating statement and cash flow position is going to be. These are the outcomes that we're going to deliver in the period. Here are the measures. Here is the target on those measures. They are reflected in the portfolio budget statements.' What I am painting for you here is a picture of how public sector businesses are probably expected to operate currently, and that picture is more complicated than doing agreements on an annual basis and reviewing levels of revenue when there are resourcing agreements in place which go over a number of years.

Senator GIBSON—Section 31(3) says there can be a concession:

. . . including a period longer than a financial year.

And section 31(1) says:

. . . may enter into agreements . . .

So what are you—

Mr Kerwin—Probably what I am reflecting is the practice that we have to go through at the moment—an annual review.

CHAIRMAN—Just to change the question around rather than looking at your resourcing to run the ATO, for any particular tax that you collect have you done costing analysis and do you keep it updated so that you know whether collecting that tax is cost effective?

Mr Kerwin—The answer to your question at this moment is no. But, in terms of the yes answer, we do know on a total basis. There is still an evolution going on, and I will explain what I mean by that. We know, for instance, that the cost of $100 worth of tax revenue is in the vicinity of 90c. If the parliament gives us basically, on average, 90c, we will deliver $100. There are particular markets where it might cost $5 in order to get the $100, but the overall average position is one that we know about.

CHAIRMAN—Are you sure there are none where it might cost $200 to get the $100?

Mr Kerwin—I would be very surprised.

CHAIRMAN—But you do not know.

Mr Kerwin—No, we do not know at this point in time.

Mr COX—Has the average cost been going down?

Mr Kerwin—Yes, it has.

Senator GIBSON—Are there published statistics on that?

Mr Kerwin—It is in our annual report, and it has been there for quite a number of years.

Mr COX—I am relieved it has been going down because when I used to do negotiations with the commissioner 10c rather than 90c would get you $1.

Mr Kerwin—No—90c will get you $100.

Mr COX—Or, in this case, $10 million would get you $100 million.

Mr Kerwin—In terms of where we are coming to, some legislation has gone through recently which allows us to operate more like a private sector business. In the past, because the Public Service has been built around cash, when the Taxation Office has traditionally spoken about revenue, it has spoken about cash collections or receipts as they come in the door, through the cash register or however they get into the organisation. We are now coming into a world where we are changing our systems so that when we talk about revenue we are talking about accounting revenue. We are talking more from a sales perspective. We are talking more from then understanding the nature of our sales, or the nature of our revenue, rather than the cash flows that are occurring with that. Our objective is to do

exactly what you have identified, and I have said we are not differentiating things. We are doing it globally, but we are not doing it in a differentiated sense.

CHAIRMAN—Are you starting to introduce time sheets?

Mr Kerwin—In our departmental expenses, yes, we are—not necessarily time sheets but time recording in various areas.

CHAIRMAN—If you do not know what it costs to collect FBT versus capital gains tax—

Mr COX—There are some things you have to do to stop large holes appearing in the tax net.

Mr Kerwin—Yes, there are.

Mr COX—Those things should not be considered on an individual tax collection transaction basis.

Mr Kerwin—Absolutely. But our objective is to know the unit cost of heads of revenue. With GST we obviously will, because we are setting our system up to do that. We have a great demand to do that.

CHAIRMAN—It is not necessarily obvious. It might be obvious to you, but it is not obvious to us, because we do not know that you are going to collect time data and allocate costs.

Mr Kerwin—The reason why I said 'obvious' was that we have got states looking over our shoulders, and they are needing to know the costs of the revenue that will come out of the GST framework.

Mr COX—Have you revised that cost of collecting the GST from when the regulatory impact statement was published when the bills were introduced?

Mr Kerwin—I cannot answer that.

Mr COX—Could we get an updated estimate?

Mr Kerwin—Yes.

Senator GIBSON—This is getting a bit away from the FMA, but there was a 1995 paper done by Access Economics for the states and territories which looked at the deadweight costs of taxation and collecting revenue. For the Commonwealth, it was said to be 24 per cent. This is not only your costs but the compliance costs from all entities. Are you aware of that paper and is there anything about that in the public arena that we can see? What can you advise us about those numbers from that 1995 Access Economics paper?

Mr Kerwin—I cannot particularly tell you about the 1995 Access paper.

Senator GIBSON—It was not done for the Commonwealth, I might add. It was done for the states and territories.

Mr Kerwin—What I can tell you is that, within the tax office itself, one of the outcomes described in our portfolio budget statement is cost of compliance. Internally, we look at seeing what our costs are. We do not look to hand out the costs that may have been incurred in the organisation to put those into businesses and into individuals. We do, on an annual basis with the University of New South Wales, a survey that looks to identify how the cost of compliance is going within the community. In addition to that, we have regulatory impact statements.

Senator GIBSON—ATAX do that for you, don't they?

Mr Kerwin—Yes.

Mr COX—Is that survey published?

Mr Kerwin—Yes, it is. The Treasurer would publish that.

Mr COX—Could we get a recent copy of it?

CHAIRMAN—For what purpose?

Mr COX—For interest.

CHAIRMAN—Let's just make them spend some more money because we might be interested. What does it have to do with this inquiry?

Senator GIBSON—Nothing much. On page 5 of your submission, there is a recommendation about the fact that the ANAO provides a going concern opinion on public sector entities. Could you please expand on your thinking behind that?

Mr Kerwin—If you are a private sector business and you are, say, listed, your auditors will give a view about whether you are a going concern. Your balance sheet operating statement position, et cetera will be there for all the world to see and then, independent of that, your auditors will let the world know whether you are going to be there next year and perhaps the year after. In terms of our businesses and the arrangements that I believe are starting to come into existence between us and DOFA, the bottom line is that it is quite likely a public sector business will not fail per se because the government will ultimately support it.

CHAIRMAN—As long as you do a good job.

Mr Kerwin—However, I would think that on an annual basis, particularly if our chief executives are managing balance sheets—and I think they need to at the departmental level—and the operating statements, the cash, they need to represent to the world whether they are viable and therefore a going concern. I believe this would bring audit into the arena of saying about public sector businesses, even though they are budget funded and particularly

if they are under resource agreements and the other structures that are coming into place, that their bottom line is not looking good. In the legacy that our balance sheets have got around employee leave entitlements, they have not been funded. They have always come from the pit of money that exists in government whereas chief executive officers nowadays—and we are going through a transition with DOFA around this—will need to manage their employee leave entitlements. They will need to say how they have made provision in order to meet the cash flow requirements of them as well as how they minimise them. They will need to operate like a private sector business.

Senator GIBSON—Do you think that concern should be expressed in the act?

Mr Kerwin—I would think so. Change occurs when you create structures that put a little bit of focus on things. If the Auditor-General on an annual basis is going to be looking at statements and is going to be giving this view, I think that would be a very good move, particularly if we are going to reap positive things of the private sector type framework that we are operating in—the balance sheet and the operating statement. That will cause a variety of tensions. It will cause tensions within the organisations, it will cause tensions in relation to policy that will come out of DOFA, because the policy there and the practicalities of it need to support a framework where the balance sheet means something and where the operating statement means something. I believe those sorts of things are important.

CHAIRMAN—One of the questions that we have tried to ask everybody—and something that we are trying to come to grips with—is whether, in this divulged world where departments act more or less independently and do their own thing and the chief executive officer becomes responsible for the outcome just like in a private sector company, you see that the parliament can make chief executive officers more accountable. What mechanisms might we use to get reporting of that accountability? Do you have any bright ideas?

Mr Kerwin—I will just give you a little bit of my background so that you will perhaps be able to see where the answer comes from. My background has been mainly in the electricity industry in Queensland. I spent some time in local government, and I have been in the Public Service for four years. In terms of the changes that happened in each of those areas, including our own area now, the reporting framework that exists in its infancy in the Australian Public Service at the moment is a reporting framework which I believe is going to give you that information. If I were a parliamentarian and I was sitting in your chair, I would look for that framework if it did not exist—I would like to have it exist.

The framework is the balance sheet, the operating statement, cash flows, target measures of performance in an outcome definition of the world and reporting on performance of those. The reporting would be exactly the framework that DOFA is working to at the moment; that is, the portfolio budget statement provides resourcing to do certain things and to reach outcomes at certain levels with not only statements of where we would like to get to but also target measures on them. When you come to your annual report that would be revealed, the variations would be revealed and spoken about, and the chief executive would stand on those outcome measures and variations and explanations on those.

The chief executive would stand on what the balance sheet looks like. The balance sheet can be reasonably sophisticated. For instance, if you have public sector businesses that are not in the business of using or bringing into existence fixed assets, you would look at the balance sheet and wonder why they might have a lot of fixed assets in there. Other people are in the business of fixed assets. Nowadays, technology will drive things so quickly that, if you hold something of a fixed asset nature, you will find it very difficult to get a return on it. I am just using this as an example because, apart from the bottom line, the balance sheet can tell you some things. The operating statements can certainly tell you some things, and assurances around cashflows will definitely tell you things. So if I were sitting on your side of the table I would look for those and I would be pretty rigorous about the levels of performance that can be expressed that way.

CHAIRMAN—That is fine, but in fact you are not in the private sector, you are in the public sector, and there are other things which the public, we and in fact your executive require of you. I cite the example that this committee is interested in purchasing policy and purchasing outcomes. We would like to know what sort of percentage of a department's purchasing dollar is going to small and medium sized enterprises, what percentage of it is going to Australian or New Zealand companies and to what extent is each department supporting Australian industry development. They are the things that we would like to know.

Whether DOFA ever agrees with our recommendations or not we will find out some day. We would like to know those things, but we are not going to find them in your annual report, DOFA's annual report or anybody else's annual report at the moment. By the same token, this committee might think it was pertinent to find out how many small business the Australian Taxation Office drove into bankruptcy by overzealous collecting and pushing for back taxes.

Do you understand where I am coming from now? How do we get to those issues which are not private sector issues? When private sector enterprises produce annual reports, they also try to add all the good things they do for the community and for the environment, and if they have stuffed up they say where they stuffed up. They do not just give a bland financial statement. They talk a lot about corporate intent and what they have produced. How do we the parliament play our role? We understand the executive has a role, because the departments have to respond to the executive. That is fair enough. But parliament hangs around here too, and we have a role—and we guard that pretty jealously, which you would expect. So how do we get those kinds of performance measures against chief executives?

Mr Kerwin—Whatever you do, the time to do it would be when the portfolio budget statements are being put together and being approved. You may in fact have a class of performance indicator in there which is exactly what you are looking for, because the class that you are looking for is very consistent with, as you said, what you would normally have in your annual reports. One of the things I mentioned in relation to annual reports is that the elements that they are going to have in there include the chief executive saying why they have been successful, measures in relation to the client and measures in relation to the government with respect to, for instance, how the business has furthered the objectives of the government of the day. Perhaps in terms of highlighting that even a little bit more and taking a parliament view of this, there can quite readily be other measures in there, but identified

much earlier in the piece and targets established that can then be reported on. In that way, businesses can plan to report on these things. In any case, they can probably already do it.

CHAIRMAN—You would agree, though, would you not, that we do not want to get back to the bad old days where there was a detailed prescriptive list of 150 items that everybody had to put in there?

Mr Kerwin—No.

CHAIRMAN—This committee has cooperated with the departments, particularly with DOFA, to scrap as many of those as is humanly possible.

Mr Kerwin—Personally, I look forward to the day when we can produce a set of annual accounts that are not as thick as they are now. One of the philosophical approaches that we probably have in our business is that information does not increase with volume; it probably gets lost. Information increases with focus and with levels of discipline about what goes into reporting internally within the organisation and certainly in relation to the annual accounts. I do not think a bigger list will not get you more information. A specific, targeted, disciplined idea of things will certainly get you some information, with the intention that it is ongoing and there are comparable things that happen year in, year out, rather than this this year and something else the next year.

CHAIRMAN—Purchasing is just an example of where we think that a Commonwealth bureaucracy is different to the private sector in that it has some community obligations to meet. Maybe you call it community service obligations, I do not know. There are things that we ask the bureaucracy to do for the good fo the country that we cannot force or ask private sector companies to do. Without being unduly prescriptive, they are probably reasonable things.

Senator GIBSON—I have a question on annual report guidelines. On the last page of your submission, page 9, you say:

In a similar vein Annual Report Guidelines would also benefit from involvement from those public sector businesses responsible for meeting client, community and stakeholder expectations.

The guidelines now are basically set by the Department of the Prime Minister and Cabinet and come through this committee. This comment implies that there is not enough consultation with departments and agencies in setting the guidelines. Is that what you are saying?

Mr Kerwin—Yes and no. On the no side, I am saying that public sector businesses are coming into a new world. We have been in it a year or so. In terms of the notions that I mentioned before that masses of information will not get you any additional information understanding, necessarily the world that we are coming into is one where there needs to be a concentration and a rigour around what it is that we tell the parliament about, for instance. In order to come to what that might be, you probably need to bring in a variety of views, and they would be from within the Public Service. They might represent the views of chief executives saying, ‘This is what we would like to be in there.’ They might represent the

view of Prime Minister and Cabinet which would be, 'This is what we would like in there with respect to the government of the day.'

In terms of the diversity of views that may be around this initial stage, we might also bring in people from the stock exchange who have been around the promotion of governance, and promotion of governance may pick up some of the other things that the chairman spoke about earlier in the annual accounts. With respect to practises for the future, you cannot necessarily draw from the past because we need a lot more diversity around, particularly in the early days, coming to the decision making. That can be departments or outside people who have expertise in this area and you can bring those together as a consensus, somehow or other.

Senator GIBSON—As you rightly note here, because this committee is involved with those guidelines, we can do something about it. So your suggestion to us is that we ought to look fairly widely for advice and comment before agreeing about guidelines?

Mr Kerwin—Yes.

CHAIRMAN—You said that public sector businesses do not compete with one another and therefore scarce resources can be shared without jeopardising competitive advantage. You also say that DOFA and other agencies might work together. We have had suggestions in submissions to the committee and from people appearing before the committee that perhaps we overshot the mark when we disaggregated—that is, when we let departments go their own way and made CEOs responsible: in other words, the new Public Service model versus the old centralised command model. Some of the overall coordinating role that DOFA used to do might well be picked up again as a cost effective mechanism. You might recall that one of the things that was suggested during the purchasing inquiry, was common use contracts. There are also things like common banking and insurance and so on. This would mean that small agencies would not have to spend lots of money reinventing the wheel.

Mr Kerwin—The comment that was made was certainly not to look for a centralised command but rather that diversity will be very important in communicating a whole range of things that are new. For instance, just talking hypothetically about any government department in relation to the accrual framework that has come into existence, it may have been very useful to have had people from that department go along with DOFA people to talk to the minister or the minister's office staff about what it would mean. The role of DOFA would be to say, 'Here is the framework' and the role of the other people would be to say, 'Have these expectations about the operation of this framework and this is where we are up to in relation to this framework.' A whole lot of a communication could have occurred if there had been a joint arrangement rather than a separate arrangement.

The other thing is that at the moment accountants in Australia are in very short supply. We have had state governments and local governments who have gone down the accrual track. The Australian Public Service has gone down the accrual track. We have tax reform on the go at the moment. There will be whole new arrangements around taxation. So the accountants that exist in our community at the moment will either be drawn into these other businesses or drawn into tax reform.

We will not have the luxury of having levels of expertise in individual agencies without having to pay a lot of dollars or because they just will not be there. It will be harder than it is now to get very good accountants. Around accrual accounting, around this new framework, you need people who know what they are talking about.

CHAIRMAN—Why don't you hire engineers!

Mr Kerwin—Hire engineers?

CHAIRMAN—Engineers are usually pretty good at accounting!

Mr Kerwin—I used to work in the electricity industry, so I know about engineers!

CHAIRMAN—They are laughing at me, Hansard!

Mr COX—Do you have the tax office's properties on your balance sheet?

Mr Kerwin—Which properties are these?

Mr COX—The buildings that each office is—

Mr Kerwin—No.

Mr COX—But you pay rental for them?

Mr Kerwin—Yes.

Mr COX—Is it right that most or all of those properties have been sold in the last few years?

Mr Kerwin—In the last few years, there has been a rationalising going on and we are looking to put people where the work is, et cetera. Yes, you are right, some of them have been sold. There are probably more to be sold in the future.

Mr COX—It is generally more expensive to rent property than to own it, if you are going to be a long-term holder of it.

Senator GIBSON—Not necessarily.

Mr Kerwin—The way the tax office operates in, say, five years might be very different from the way it operates now. So we would probably not want to enter into long-term leasing arrangements. For instance, in 1999-2000 and certainly 2000-01 we are looking at having, for the small business area, 3,000 to 4,000 people in the field. These people will not have dedicated office space. They will have hoteling arrangements, and those hoteling arrangements will be distributed in a way that is totally different from the old framework which was built around deputy commissioners. The level of flexibility that we will need will probably mean that we will not have ownership and we will certainly not have long-term

leasing arrangements. As the technology starts to emerge, we will use the technology and we are trying, with our working arrangements, to respond to that accordingly.

CHAIRMAN—Thank you. We appreciate your submission and for coming and talking to us today.

[11.50 a.m.]

WALKER, Ms Judith Kathryn, General Manager, Legal and Copyright, Australian Broadcasting Corporation

CHAIRMAN—I welcome the representative from the Australian Broadcasting Corporation appearing at today's hearing. We have received your submission, for which we thank you. Would you like to make a brief opening statement before we ask you some questions?

Ms Walker—Very brief. In general, and probably with only one exception, the ABC has not encountered any real difficulties with the provisions of the act and supports it in its intent of proper reporting, accountability and duties of directors and officers. I think the one exception that we have is outlined in the submission.

CHAIRMAN—Do you want to go into some detail on that particular item, that is, the lack of indemnity for directors or officers?

Ms Walker—Yes. Section 26(1)B prevents the ABC indemnifying directors or officers in circumstances where they have acted with a lack of good faith. As you would be aware, we are party to a number of defamation actions. That includes our officers as well as the ABC itself.

The concept of good faith is fairly important in defamation law. It applies to a number of provisions in a number of jurisdictions. One example I would like to give you is in the code states of Queensland and Tasmania. There is a defence that is available there which the ABC has used successfully on a number of occasions, but that defence is defeated if it can be shown that the publication was not in good faith. 'Good faith' is defined in this particular circumstance in terms of whether the matter was relevant to the discussion, the manner and extent of publication, the motivation of the person making the publication and the belief in the truth or otherwise of the matter. In particular, manner and extent of publication and relevance. Do not raise issues of dishonesty or lack of belief in the truth of what you are publishing. You may raise the issue of whether it was in good faith to name someone in relation to a publication or whether the publication should have not identified that person. There are all sorts of issues.

Our difficulty is that, if at the end of the day, the tribunal of fact finds that the publication was not in good faith, and if one of our employees is a party to those proceedings as a co-defendant with the ABC, any indemnity that we have given our employees—and we do indemnify our employees; we do not indemnify talent, but we do indemnify our employees—would be invalid and that person may incur substantial damages. You do not know that until the end of the trial. As I said, it is not necessarily issues of dishonesty or a lack of belief in what you have published. It applies in other circumstances. It applies in New South Wales in the defence of comment in some circumstances, and it applies generally in the concept of malice which defeats a number of defences as well.

CHAIRMAN—What do you want us to do?

Ms Walker—We would like the act to simply provide that that prohibition does not apply to defamation actions. We have had a number of letters back and forth between the department and the Attorney-General's Department. I do not want to overemphasise this. This is not going to arise every day, but it is conceivable that it could arise, and we certainly do not want to expose our employees to that risk.

Senator GIBSON—It has not arisen yet.

Ms Walker—No, it has not arisen yet. In the most recent trial in Queensland we succeeded on the good faith issue, but it could have gone the other way.

Mr SOMLYAY—What reaction do you get from A-Gs?

Ms Walker—A-Gs thought it was relatively a non-issue. First, it was difficult for them, I think, to appreciate the problem that we were having. Then they thought it really was not a big issue, and I accept that. I accept that it is not a big issue in the scheme of things and in the operation of the act itself, but it is a concern that we thought could be easily remedied by a simple exemption. I note that in the proposed amendments to the act that prohibition is still there.

Mr COX—There is a bit of difference between providing that exemption for the ABC, which is, after all, in the business of publishing, and providing it for the directors of any other Commonwealth entity.

Ms Walker—I would have thought it should apply generally across the board to defamation actions themselves. As I said, if the concept were simply one of dishonesty, I do not think we would have the same problem with it, but it is a much broader concept. We are certainly not asking for it simply to be confined to the ABC or the ABC and the SBS.

CHAIRMAN—You are just suggesting that indemnity apply in case of defamation only.

Ms Walker—Yes, that the prohibition on us indemnifying does not apply. In other actions, I do not think it is an issue for us.

Senator GIBSON—So just on the issue of good faith, 26(1)B?

Ms Walker—Yes.

Mr COX—I would have thought that, if there is an argument for that, it should apply only to the publishing activities of the organisations.

Ms Walker—If an officer or a director of another organisation in the course of their duties made statements and someone sued for defamation, there would perhaps be an argument that it should apply to them as well.

Mr COX—My impression was that the Commonwealth usually stood behind ministers or public servants who had a defamation action taken against them for something that they had done in the course of their duties. But the Commonwealth would not necessarily feel

obligated to stand behind them if it was thought that they had done it in bad faith. In the publishing area, the people are exposed on a day-to-day basis. In commercial organisations, I suspect it is a commercial judgment for some organisations between news worthiness and risk. One hopes that is not the case in the ABC.

Ms Walker—Certainly not.

Mr COX—That puts it in a slightly separate category to somebody who happens to be the director of a Commonwealth entity and decides to do something in bad faith for their own reasons.

Ms Walker—I suppose my only difficulty is that of the width of the concept of 'bad faith' in defamation law, or rather the width of the concept of 'good faith', which I suppose is the opposite. If it were restricted simply to someone acting with an improper motive or saying something which they knew was not true or to spite someone, I would agree with you. But it is a wider concept. There are other aspects like relevance, and manner and extent of publication. If a director of another agency went on the ABC and published something, perhaps believing it was true and having reasonable grounds for the belief, but the decision of the tribunal of fact was that they should not have named the person and that it was not necessary for whatever story was going to air that day, that may be an issue that would decide against that person on the issue of good faith. That is probably the difficulty.

CHAIRMAN—In your report you express concerns about the practical administration of the CAC Act. You said:

. . . there appears to be a tendency for elements of Government administration to fail to recognise the ABC's independence from direction under section 28 of the CAC Act.

Ms Walker—Yes. It is probably wider than the CAC Act, and I think it arises when we receive letters and other documents that are not intended solely for the ABC. There is maybe a statement that implies that the agencies generally should be enforcing the policies of the government. It comes to the ABC in the course of that, and that is where the concern is. We go back every time and say, 'Look, we are not subject to direction from the government, and our act provides that. There is an exception that was brought in after the CAC Act came into being to protect us. Government would not want that, I am sure, anyway. If you want to inform us of general Commonwealth policies that relate to administration or broadcasting, the board is required to consider them but it does not have to enforce them.' It happens more when it comes not just to the ABC but to a number of agencies, and we get caught up with the rest of them.

CHAIRMAN—To what extent are you subject to administrative law?

Ms Walker—We are subject to administrative law. There are some exceptions under the FOI Act, for instance, where our program material is exempted at this stage. Under privacy legislation, our program material is exempted, but otherwise we are subject to it. We are also subject to ADJR and other aspects of administration, and the Ombudsman again in terms of administration. As a matter of convention, he does not involve himself in decisions on

programming matters, but he will involve himself in administrative matters that may have led up to a decision. It is a fine line, but it has worked fine for us.

CHAIRMAN—And your annual reporting requirements?

Ms Walker—Our annual reporting requirements?

CHAIRMAN—Yes.

Ms Walker—They are set out in the ABC Act and our corporate plan requirements. Those requirements are amended by the CAC Act.

CHAIRMAN—But that is all in your act, not in the CAC Act.

Ms Walker—Yes, I believe so. I do not want to mislead you. I am pretty sure that they are all in our act.

CHAIRMAN—So you do not comply with the minister for finance's orders.

Ms Walker—Yes, I think there are separate provisions. The only section of the CAC Act which we have a specific exemption from is section 28.

Senator GIBSON—In pages 3 and 4 of your submission you give some examples about lack of recognition of your exemption from section 28 of the CAC Act. Do you think today that the rest of the government departments understand that?

Ms Walker—No, not always. I do not think they do until we point it out to them. However, I have to say that, with the Judiciary Amendment Act, which did raise concerns for us because we were unaware of the amendments until they were enacted, the Attorney-General has recognised our independence. We have got an exemption from a legal services direction subject to further discussions with Senator Alston, and the Attorney-General wants us to satisfy certain matters. I have not actually received formal advice to this effect, but I know it is coming. So Attorney-General's did recognise it, but I think it is a matter of pointing it out, which possibly should not be necessary, but it is.

Ms GILLARD—So you have a lack of regulation applying to you, and then you need to be exempted from it, rather than having your particular issues addressed before.

Ms Walker—That is exactly right.

CHAIRMAN—You talked earlier about the accrual budgeting framework.

Ms Walker—Yes.

CHAIRMAN—You said that in the CAC report of operations format and in the financial standards under the accounting standards you have got some concerns about the degree of alignment or divergence between those requirements and the accrual budgeting framework format.

Ms Walker—I was asking my colleagues in the finance department yesterday about this. I am told it is really a matter of presentation rather than content. The categories are different. I think it simply involves presentation of the same material in two different ways. I understand there have been continuing discussions with DOFA. It is not so much a problem with the act as its administration.

CHAIRMAN—So this is something that your people need to sort out with the department people, and we need not concern ourselves with it.

Ms Walker—I think that is right, Mr Chairman.

Mr SOMLYAY—You heard Mr Kerwin, a previous witness, talk about the difficulties of getting quality accountants who understand accrual accounting. Does the ABC have the same problem?

Ms Walker—I think the problem is keeping staff as much as it is getting them. I think that is a problem throughout the public sector in a way. The salaries are probably better outside. It seems to me that in our finance area we have a reasonably high turnover of top-level people, but it is the same in IT. It is not restricted to accountants, I do not think.

Mr SOMLYAY—Do you want to suggest a solution? Is it higher salaries?

Ms Walker—I am not sure; it may be. That is obviously a part of it, I would say. But also people move on more regularly now than they at one time did. People do not stay as long in jobs. Lawyers could get better money outside the ABC. You stay in the ABC for job satisfaction and the variety of the work. That for lawyers—speaking for myself—more than compensates. Maybe accountants have not got the same level of satisfaction. Maybe the same variety is not there.

Ms GILLARD—I am sorry, I came in late, but have you formed the view that the construction of the term 'lack of good faith' in 26(1)B would bear the same meaning as 'good faith' in the various state based defamation jurisdictions?

Ms Walker—We are not absolutely sure, but there is no definition. I suppose we do not want to run the risk that one of our employees would be exposed in that way. What we are saying is that, to overcome any risk that may exist, if there were an exemption for defamation actions, that would reassure us. I do not think that would undermine in any way the provision of the section.

Ms GILLARD—I think that is more directed to the absence of bad faith rather than the positive duty of good faith.

Ms Walker—Yes, we thought about that. I think the wording in the bill has slightly changed, too.

Ms GILLARD—Because it would be unusual for an indemnity not to flow unless there was evidence of bad faith.

Ms Walker—That is right.

Ms GILLARD—Whereas the defamation obligations are probably a bit wider.

Ms Walker—It could be. As I said, because there is no definition, we are really at the mercy of the court until the trial is over. Then we are hit with something that may cause severe difficulties. I think the words used in the amendment to the bill are 'and did not arise out of conduct in good faith'.

Mr COX—Is it capable of rectification by a definition being inserted into the FMA?

Ms Walker—We are not subject to the FMA Act.

Mr COX—Sorry, the CAC Act.

Ms GILLARD—No, I think that is probably too difficult. There would be so much case law about what constitutes good faith or the lack of good faith that to try to codify it would be a very difficult task.

Ms Walker—There is a definition of good faith in Queensland and Tasmanian defamation law but not in the other jurisdictions.

CHAIRMAN—Thank you very much for coming, and thank you for your submission.

Proceedings suspended from 12.09 p.m. to 2.02 p.m.

LACK, Mr Steven William, Manager, Planning and Evaluation, Grains Research and Development Corporation

LOGAN, Mr Vincent Paul, Manager, Business and Finance, Grains Research and Development Corporation

CHAIRMAN—I welcome representatives of the Grains Research and Development Corporation. We appreciate the report and discussion paper that you gave us, and thank you for coming today. Would you by any chance have an opening statement that you would like to make?

Mr Lack—Yes, thank you. But could I first say thank you for the opportunity to make a contribution to this review. I thought I would take five minutes to put the GRDC into perspective for you, then provide a very brief overview of the impact of the CAC legislation on the corporation and then respond to any questions that you may have.

The GRDC is a statutory authority. Its enabling legislation is the Primary Industries and Energy Research and Development Act 1989. The associated accountability legislation is the CAC Act 1997. The corporation is one of 14 similar bodies in the Agriculture, Fisheries and Forestry portfolio. The unique feature of those bodies is a dual accountability arrangement to the Commonwealth parliament and the grains industry. The accountability arrangements to parliament come from the board selection provisions, our planning requirements in terms of providing five-year plans and annual operational plans—with these having to be approved by the minister—and our reporting requirements through our annual reports. Accountability to the grains industry comes from their participation in nominating board directors. We have an obligation to consult with the representative organisation of the industry, the Grains Council of Australia, which provides recommendations to the minister on an appropriate levy rate.

The basis for our income is a levy on grain growers. At the moment that is one per cent net farm gate value of most of our 25 grains. That is currently matched dollar for dollar—up to 0.5 per cent of GDP—by the Commonwealth government. The one per cent levy on grain crops translates into something like 0.7 per cent of GDP, which effectively means that our support is 60 per cent from the grains industry and 40 per cent from the Commonwealth government. That is just to give you some perspective as to where the GRDC sits in the scheme of things.

In terms of a very brief overview of how the CAC Act has impacted on the corporation, there are four areas that I think we could provide a summary of: the accountability arrangements, our reporting performance—how we go about reporting performance—the linkages between our legislation and how we report performance, and a checklist that is provided through the report of operations. Essentially, the accountability arrangements that we had prior to the CAC Act have been something that we have depended upon over last seven years to demonstrate our accountability. The CAC Act has, if anything, reinforced that enabling legislation. It has not particularly added anything to our obligations, except for the duty of care requirements that are now required of directors. Certainly, our corporate governance overview, corporate governance framework, control structures, management environment and risk management processes have not really changed under the CAC model.

What has changed is our reporting performance, how we report our performance through our annual report, the framework for outputs and outcomes, the use of performance indicators and having to have a greater ability to report on the effectiveness and efficiency of our principal outputs, which in our case are our programs—that has certainly been a challenge for us and something that we have had to get on top of. The CAC legislation has particularly reminded us of the links between our enabling legislation, planning documentation, strategies and particular outputs. Finally, we have found that the report of operations checklist has been very useful in putting together our annual report for the previous financial year.

We have raised some questions for clarification in our submission dealing with a definition of 'significant events', compliance with general policies of government, investment powers and a definition of 'outcomes' in the report of operation. You may want to query us further on any of those aspects of our submission.

CHAIRMAN—Thank you very much for that. In your submission you said, with respect to investment powers, that GBEs and statutory marketing authorities have more flexibility than you do. You say that you would like the same flexibility. Have you discussed this issue with DOFA or your department—or with anybody?

Mr Lack—Early on in the arrangements, we were allowed to provide input to DOFA in terms of the particular arrangements in the report of operations. I am unsure as to what input we had into the CAC Act itself. I do not think we had a great deal of input into the legislation. Certainly, as we were working through the report of operations, we were provided with ample opportunity to liaise with DOFA and the department. For the CAC Act itself, we did not participate in those discussions, as far as I understand.

CHAIRMAN—What did they say to you when you said that you would like to be able to invest your money wherever you would get the best return? Did they just say, 'Get lost! We do not think that you are mature individuals'?

Mr Logan—Where we came into this process was when we were looking to diversify our investment strategy. We had a review done of the corporation's approach by Ernst and Young. That is when we had the opportunity to go back to legislation and talk to Treasury about it. At that time I suppose the discussions that we had had with Treasury to use or not use particular instruments was on the basis of saying what we would like to do in the first instance, and they would give us approval position by position. That is really what the limit of our discussion has been with Treasury on that.

CHAIRMAN—So you have gotten dispensation?

Mr Logan—On very narrow parts. Effectively, the part of the legislation which does cover us, which is section 18, basically limits us at this point in time to obviously investing in money in the bank, the deposits with the bank, securities with the Commonwealth, state or territory, securities guaranteed by the Commonwealth, state or territory, or any other manner approved by the Treasurer.

Our discussions thus far with Treasury have been to be able to put in place individually managed funds managed by a separate fund manager who is able to invest in those limited number of instruments. That is a fairly narrow investment strategy at this point in time. I would think that if your question is 'Have we asked if we can go further than that to the full range of investments that is appropriate to us?' no, we have not made a submission to the Treasury on that basis.

Mr COX—How much do you have to invest? Would it be tens of millions?

Mr Logan—In our particular case, certainly at the end of last year, the reserves of the GRDC were in the order of $128 million. So it is a considerable investment opportunity.

Mr COX—How did you manage to accumulate that amount?

Mr Lack—It may be worth while just to provide a bit of an overview of the GRDC's operating environment. From my opening discussions, you would have picked up that we rely in the first instance on a levy collected at the farm gate by growers. That levy is a one per cent levy ad valorem on the price of a tonne of wheat mostly That fluctuates according to world prices. So in any particular year we can expect fluctuations from $240 a tonne of wheat down to this year probably $175 a tonne. So we need to have a risk management policy to account for those fluctuations in our income.

We also have substantial contracts out to the year 2005. We would have something like $130 million worth of forward contracts. The rationale for that approach is to provide some stability in the research community so that, if we sign a contract with them, they have some understanding that we can participate with them in a partnership arrangement for some time.

Senator GIBSON—What is your average annual income?

Mr Lack—Average annual income would be between $70 million and $80 million, including matching levies.

Mr Logan—Our levy income since 1995-96 until this year has ranged between $25 million and $52 million. So there is quite a range of fluctuation in that regard. In terms of our annual expenditure, the budget for this year is approximately $100 million. What that suggests is that over time those reserves will run down, through the simple fact that our expenditure in the short term is slightly in excess of our income. That is the policy that the board has put in place to deal with that. That has certainly opened up the opportunities within our research portfolio to make further investments on behalf of the grains industry.

In recent years the board has thought long and hard about what our level of reserves should be, given that we are unable to borrow under the act. A report that was done for us last year by Allen Consulting suggested that somewhere between 50 per cent and 75 per cent of our annual expenditure should be the level of reserves that the corporation holds. That is the framework within which we operating.

CHAIRMAN—Did they also make recommendations about investment strategy?

Mr Logan—No, they did not. That was not part of their brief. As I mentioned previously, we had Ernst and Young look at the range of opportunities for us, because it is open to all of us—and any of us at this table I am sure—to recommend a range of investments that we could actually make, but as to the process of being able to manage that, being a relatively small organisation of 35 people, we do not necessarily have those investments and Treasury skills in-house. So the process has been to identify and outsource that activity, and that is why Ernst and Young were asked to identify what the processes were to enable us to manage that. That is what we have worked through in the last couple of years.

CHAIRMAN—Maybe we are being sidetracked a little on the inquiry, but how long have you had reserves of between $50 million and $100-plus million? Is it years?

Mr Lack—Four or five years.

Mr Logan—Yes, that is correct.

CHAIRMAN—And your board has not considered it a maximum priority or an essential priority to manage those funds to get the maximum return?

Mr COX—They have not been able to, have they? But that is not really the job of the Grains Council.

Mr Lack—Maybe it is appropriate for Mr Logan to list where we have got the funds.

Mr Logan—If the chairman wants to hear it, I am happy to do that. To answer your question about whether or not it has been something on the board's mind, yes, it has. Mr Lack pointed out before that our income can fluctuate wildly, depending on what the rural season is like. We have a large forward commitment. Clearly, the board is concerned that we make sure that whatever investment policy we have is fairly conservative to ensure that those reserves are there for the purposes for which they have been raised.

In terms of our ability to do that, we have felt that we have been constrained by legislation as to what we can do. Hence the point in our submission. The board could put forward a strategy where we constantly make that submission to Treasury to change it but, in terms of the range of responsibilities and issues that the board has in front of it, that has not happened as yet.

Senator GIBSON—If my memory serves me correctly, either your board or one of the primary industry groups appeared before this committee when we were looking at the CAC bills some years ago and made a plea not for special legislation but that they should just simply rely on the Corporations Law, plus your primary industries act under which you were set up. I am wondering what your view is now, because we are conducting another inquiry into government business enterprises parallel to this one. Several of the GBEs and others in evidence before us have said that the Corporations Law is what they should be operating under and not other statutes. Does your board have a view?

Mr Lack—Our board has not progressed a view on that matter. That matter would probably need to be discussed between our board and the Grains Council of Australia in the first instance to clarify whether the industry had a view as to where the corporation might be heading in future. For instance, it may well have been a horticultural R&D corporation.

Senator GIBSON—I cannot remember.

Mr Lack—They have recently put forward a proposal to the government to in fact operate a horticultural body under Corporations Law dealing with the research and marketing aspects of that industry.

Senator GIBSON—If it applies to one, shouldn't it apply to all the R&D corporations? Back in my past I was a director of an R&D corporation.

Mr Lack—It is certainly an option. Certainly, some of the issues to do with the report of operations through the CAC Act would become a lot easier under Corporations Law for us. We would not necessarily have to follow the explicit directions under the report of operations. We could stick more to the broader strategic guidelines in the Corporations Law.

Mr COX—What sort of accountability mechanisms do you have to the grains industry? Is there a different process of reporting than there is to the government, or does the one system of reporting deal with both interest groups?

Mr Lack—It is different, but it does overlap. In terms of the board itself, the industry has input into the nomination of directors. Our board numbers nine, and six of those members are nominated by the Grains Council of Australia. Based on those nominations, the minister makes a decision on whom to appoint to the board. The chairperson is a ministerial decision. There is a government director who is nominated through the department, and there is a CEO, or managing director, who is there at the discretion of the board. So they have input at the board selection level. When we are preparing our five-year plan, which has to be approved by the minister, we have to formally consult with the Grains Council of Australia. In terms of the interoperational plan, we must provide them with a copy of that documentation. Each year the chairman of the GRDC must provide a report to the Grains Council of Australia on our performance.

Mr COX—Is that different to the annual report?

Mr Lack—It is a presentation to the industry, but it is based on the annual report that we provide to government. Finally, based on that annual report and the industry's perception of our performance, they will make a suggestion to the minister as to the levy rate. So each year following the industry's annual general meeting there is correspondence to the minister suggesting the levy rate—for instance, last year that the levy rate for wheat remain at one per cent.

Mr COX—How often does it go up and down?

Mr Lack—The last big change was when they changed from a specific rate to an ad valorem rate, which was some time ago. The levy rate for wheat has certainly been

consistent since the GRDC's inception. Some of the smaller commodities—maize and sorghum—moved from 0.3 per cent to 0.7 per cent recently.

CHAIRMAN—When talking about reporting you said that the finance minister's outcomes are defined in terms involving the impact on the Australian community but that research and development corporations are required by enabling legislation to serve their industries. You said that an amendment to the FMO, which accommodated the difference, apparently was agreed to originally by DOFA when the FMOs were last reviewed but the amendment did not appear in the final document. What kinds of problems does that cause you?

Mr Lack—Since we made that submission, we have in fact worked out a way of dealing with that issue. In progressing our current annual report for 1998-99 we have reported against both. We have reported against outcomes for the community and we have reported against outcomes for the grains industry. The particular point we were pursuing is that there is a slight difference between the enabling legislation—the PIERD act—which says:

The objects of this Act are to make provision for the funding and administration of research and development relating to primary industries—

the grains industry in our case—

with a view to:

(a) increasing the economic, environmental or social benefits to members of—

in our case the grains industry—

. . . and to the community in general by improving the production, processing, storage, transport or marketing of the products of primary industries . . .

So the very first object in our enabling legislation clearly says that we focus on improving the returns to the industry and that will in turn flow on to the community, whereas the strict definition of outcomes under the CAC Act is more in tune with something you might use for departments when they are looking at an impact on the community at large. We have handled that in our reporting by doing it against both, which in some ways actually answers the objects in the enabling legislation—both reporting against the impact on the grain community and its flow-on effects or benefits to the community at large.

The other issue when thinking about outcomes for the community for an organisation such as GRDC is an issue to do with attribution. When you get to that level of aggregation, specifically targeting our contribution could be quite difficult. If we were working on an area, say, in the environment, it would be very difficult for us to say that the GRDC was solely responsible for whatever returns may accrue to the community when other agencies at state and Commonwealth level would also be making a contribution. So there is an issue to do with attribution and how we might in the future focus better on just targeting what our particular contribution to the community may have been.

CHAIRMAN—You argue that section 28 of the CAC Act allows the minister to notify directors of a Commonwealth authority of the general policies the government should apply to the authority. The Grains Research and Development Council suggest at exhibit 1 that the provisions are superfluous as they are covered elsewhere. Could you expand on that?

Mr Lack—I think the intent may have been well-meaning. The particular drafting in the CAC Act makes it a little bit convoluted in that the authority is not obliged to act unless and until the minister has consulted the directors on the appropriateness of applying the policy and has provided them with written notification that the policy is in fact to apply to them. We were just trying to say that, in our particular case, in the enabling legislation, section 143 'powers of direction', provides an opportunity for very specific targeting of what the government might feel is a particular policy they want us to follow within our functions and powers. We were also saying that there are other arrangements in place whereby we do keep in touch with government policies. There is, as I mentioned previously, a government director on our board. While the board is not chosen for representational reasons, that particular person obviously comes with expertise in understanding government policy. And we have regular contact through the department in terms of them providing us with information on what government policies are.

As well as being informed of what government policy is, we probably also need to be informed when government policy does not apply anymore, and that is probably the more difficult case. For instance, there is an old piece of correspondence from, I think, the then Senator Collins saying that bodies should report on energy used in Commonwealth buildings. That policy is now probably eight to 10 years old. It has never been withdrawn. Do we need to continue to report on that policy? Is it still a government policy? So there are some issues there to do with: if you promulgate policies, does anybody ever say it is no longer a policy and you can stop reporting against them?

CHAIRMAN—When you ask that question, who do you ask it through?

Mr Lack—That is a good question. One of the things that we would like to point out is that, in general, we are pleased with the format of the CAC Act. In particular, the report of operations gives us scope to improve how we report performance. We would like to see that report of operation becoming the fundamental plank on how we are judged, rather than trying to report against quite a lot of other small one-off pieces of correspondence that we find difficult to track—and particularly difficult to track when no-one tells us that they no longer apply.

Mr COX—Have you checked to see whether that one no longer applies?

Mr Lack—Every now and again I make phone calls to people in the department or other people, and the answer is, 'The letter is still relevant; it was signed by a minister and it is in our filing system and it is on the books.' But is it still something that we need to report against?

CHAIRMAN—Do you report on that in your annual report?

Mr Lack—Until this year we have. This year we have left it out, and we will wait on our friends in the department to make a judgment as to whether or not we should put it back in next year.

CHAIRMAN—They might have you tested.

Mr COX—It might be a critical element of the government's greenhouse strategy.

Mr Lack—It may well be, but it would be nice to know if it still is.

CHAIRMAN—Have you checked if other departments report on their energy use in their buildings?

Mr Lack—I flick through other corporations' annual reports and we obviously feed off each other in terms of what is important and what is not. Until recently most corporations have had that paragraph in their annual report.

CHAIRMAN—Fascinating. Obviously you would need a self-destruct clause.

Ms GILLARD—There is a reference in the material to a possible conflict with the government directors' role. Can you explain that?

Mr Lack—In our submission?

Ms GILLARD—Sorry, I might be looking at the other one. You have got government directors on your board?

Mr Lack—That is right.

Ms GILLARD—And you have not been advised of any conflict of interest issues?

Mr Lack—It may be a question you can follow up with the department representatives who follow on from me. But certainly it is clear that a government director, like any other director when he becomes part of our board or any other, has to take on responsibility for his role as representing that body. Having said that, he obviously is there for his expertise in government processes and policy and he should inject those into the meeting based on his understanding of those procedures. I think that has worked relatively well in the GRDC's seven years.

CHAIRMAN—If I understand correctly, you have nine directors and 35 employees?

Mr Lack—That is correct.

CHAIRMAN—Does the council itself do any research or does it contract all of it out?

Mr Lack—For all intents and purposes we contract it all out. So, in the language of the departments, we outsource all our work except for admin and program support.

CHAIRMAN—What do the 35 people do—without being rude, and even if I am?

Mr Lack—That is fine. I did not dwell too much in my introduction on what the GRDC looks like because I did not want to take up too much of your time.

CHAIRMAN—I am just fascinated.

Mr Lack—You need to know just a little better about Australian agriculture and how it is supported. Under the Constitution the states are responsible, basically, for research and development activities. CSIRO has a responsibility from the Commonwealth's perspective, and the universities have a role as well. They are all research providers. So, mostly from consolidated revenue, they fund R&D for the Australian taxpayer. The R&D corporation model has been around for quite some time—much longer than the GRDC. There are earlier councils and earlier models going back as far as the 1950s.

The initial idea was to put industry focus on what was essentially a science push provided by the scientific community. Our people try to link together industry views on where research should be going, so we have quite strong networks through GCA, the Grains Council of Australia, in terms of the broader strategic view of where the industry should be going. But we also have quite strong contacts at grassroots levels. We go right down to local communities and grower groups in terms of what their priorities may well be. For instance, growers at Moree might have particular priorities for the work that they do. We also try to weld that together with our knowledge of what government priorities are. So those 35 people try to match government priorities and industry priorities and pursue strategies that the GRDC board has put in place to deliver outcomes for those two particular stakeholders—government and the industry.

CHAIRMAN—Last year what was your income from investment?

Mr Lack—From the dollars we had invested from our reserves?

CHAIRMAN—Yes.

Mr Logan—Just under $7 million.

CHAIRMAN—I assume you do not put it in a hole in the ground?

Mr Logan—No, the investment strategy we follow, effectively, because our income fluctuates throughout the year, is to invest approximately two-thirds of the money into two individually managed funds which we set up with BT Funds Management and UBS Brinson. Basically, those funds invest in a range of interest rate products—in other words, state and government bonds, bank NCDs and that sort of thing—in what is called a mid-bond fund, which has effectively got a duration somewhere between nought and five years.

The purpose of that is that that should typically give a result 50 to 60 points better than the cash rate. So in today's environment we should be getting somewhere around 5.5 or 5.6 per cent on that money, as against the cash rate, which is at the moment about 4.8. That is the range of difference we are looking for from using that type of fund. The balance of the

money we invest ourselves, typically into things like NCDs. They can range from 30 days to a year, but once again it depends on the interest rate view that we take at the time as to whether we are going short or long. So the range of instruments we would have in the portfolio we manage is ranging at the moment from 30 days up to a year.

CHAIRMAN—No 24-hour call money?

Mr Logan—BT has a cash management account which we use for the short-term funds, but we would maintain very little here in our actual cheque account. Basically all funds not required to meet current expenditure are placed out at better rates.

CHAIRMAN—That is what I wanted to know. As there are no further questions, thank you very much for coming to talk to us.

[2.38 p.m.]

CATTANACH, Mr Gavan James, Director, Rural R&D and Portfolio Governance Section, Department of Agriculture, Fisheries and Forestry

DOLAN, Mr Martin Nicholas, Chief Financial Officer, Department of Agriculture, Fisheries and Forestry

GREVILLE, Ms Virginia, Assistant Secretary, Biotechnology and R&D Policy Branch, Department of Agriculture, Fisheries and Forestry

CHAIRMAN—Welcome. Is there a brief opening statement you would like to make?

Ms Greville—No, Mr Chairman. We provided, as you would have seen, a very brief submission, essentially on the basis that we did not have a lot of any interest to you to say but also because we recognise that most of the points that we suspect you are interested in you would have obtained either from submissions or from evidence from the portfolio bodies within our portfolio. So we have nothing specific to add.

CHAIRMAN—From what?

Ms Greville—From the statutory bodies within our portfolio, like the GRDC, whom you just spoke to.

CHAIRMAN—That is not entirely true. We want to know what you think of the CAC Act and the FMA Act and how it affects you and your department. One of the things that our secretary would like to know is: do you have a rough idea of how many bodies?

Ms Greville—I was hoping you would not ask that question. Have you counted them, Gavan?

Mr Cattanach—No, I have not; sorry.

Ms Greville—I have a list here, Mr Chairman. If you could bear with me, I will briefly count it for you.

Mr Dolan—My recollection is about 60, but I am sure Ms Greville would prefer to count them.

Ms Greville—There are 20 or so bodies that are listed under the CAC Act as CAC bodies. But within the portfolio we do have more statutory bodies than that.

CHAIRMAN—What do they report under?

Ms Greville—They have, as a general rule, their own enabling legislation.

Senator GIBSON—And FMA, too, would they not?

Mr Dolan—No. There is only the department under the FMA.

CHAIRMAN—They handle public money?

Mr SOMLYAY—Mr Chairman, can we get examples of those that are under the CAC Act and those that are not?

Ms Greville—Under the CAC Act come things like the statutory marketing authorities and the research and development corporations, some of which have already made submissions to you. Under the department's portfolio, there are a range of other bodies that are by definition statutory bodies, like the Rural Adjustment Scheme Advisory Committee and the Plant Breeders Rights Committee and those sorts of organisations which are not CAC bodies but are statutory.

Mr SOMLYAY—Do they handle money?

Ms Greville—I cannot give you an answer about whether any of them handle any money, but instinctively my answer is that no, they do not.

Mr Dolan—Those that are not included in the number that Ms Greville told you do not handle their own money. They are normally just statutory appointments of various sorts. The selection committees that are associated with a range of these portfolio bodies are statutory bodies in themselves, but are only constituted for the purpose of selecting boards of directors or CEOs of the GRDC or similar corporations.

Mr SOMLYAY—They are funded under your departmental appropriations?

Ms Greville—In fact, those selection committees that Mr Dolan just referred to are constituted under the PIERD Act for the purposes of undergoing selection processes for research and development corporations in that instance. They are actually funded from the research and development corporation.

CHAIRMAN—Is the Grains Research and Development Corporation one of the largest?

Ms Greville—Yes, the largest of the research and development corporations.

CHAIRMAN—Do the other boards and authorities handle much money?

Ms Greville—I do not know if I can make a generalisation about that. Some of the organisations, like the Australian Wool Research and Promotion Organisation, are bigger organisations. Some are much smaller. I do not have the details of their budgets at my fingertips, I am afraid, but I can provide them to you if you are interested.

CHAIRMAN—But it is a lot of money?

Ms Greville—It varies. Part of the problem we have with our statutory corporations is that it is difficult to generalise, because they range from the very small to—in the case of the GRDC—the very big.

CHAIRMAN—You were here while we talked to the grains research people. They did not seem to have any real, significant problem at all with the CAC Act. What have you heard from the rest of your authorities and boards?

Ms Greville—I think it is fair to say that the process of the development and implementation of the CAC Act was a very busy time for the department and the portfolio bodies in trying to ascertain what the changes meant and what the responsibilities and focus should be. Most of the organisations are very comfortable with the principal act. They can understand the logic of it being along the same lines as Corporations Law. To the extent that there have been difficulties—and I use that word advisedly in the sense that they have not protested but they have had more difficulty—they have been in terms of the finance minister's orders and the requirement to alter their reporting mechanisms and to restructure their planning and other accountability documents in a way that follows the logic of those. For some organisations more than others, that has been a difficult process. I have to say it is a sort of incremental process that some of them have come to terms with very quickly and others are having greater difficulty rearranging their processes so that they can report in that way.

CHAIRMAN—Part of that is culture, is it not?

Ms Greville—I think part of it is culture and part of it is to do with the way that they do their business. Quite a lot of these organisations have quite entrenched processes in how they interact with their industry stakeholders. In order to fulfil their obligations to their government stakeholders in terms of how they report, they have had to rejig the other arrangements. That has either taken time or involved some sort of cultural change.

CHAIRMAN—Within the department itself, how do you see that we as representatives of the parliament could ask CEOs—department secretaries—to report on performance beyond the financial accountability which is already established in reporting format and accrual budgeting term outcomes and all that stuff? The kind of thing I am talking about is that much of all of this has been set up to more or less try and replicate the way that the private sector operates, notwithstanding that you are not the private sector, you are a government department, and there are some things that the community expect of you, ministers expect of you and we, the parliament, expect of you that would not be expected of the private sector. How would you think we could best go about getting that kind of performance information from your department CEO? It might relate to the environment in terms of your department, it might relate to purchasing policy, whether your outcomes comply with what this committee has said it wants to see and so on and so forth. How do you think we might get there?

Mr Dolan—My expectation is that our departmental annual report would be the principal vehicle for that, for performance information in particular. The relationship between that and our portfolio budget statements is—certainly under the current model—what is meant to be the key relationship. I would have to say that is still finding its way forward under the new resource management framework that the government has developed. But that is the key relationship, if we get our departmental performance measures properly specified in our budget documentation and then reported on an annual basis. There is an appropriate relationship. Really the guidelines on the annual report and therefore the things that are

expected to be specified in those portfolio budget statements are the key elements of planning and accountability for documentation.

I am not convinced. I will have to see the next set of annual report guidelines. I do not think the current ones necessarily entirely pick that up. We try to put considerable effort into getting quite specific performance information in our portfolio budget statements and we hope to be able to report against that for the 1999-2000 year, but we are in a transition at the moment with our current annual report.

CHAIRMAN—You just heard Mr Lack say that they are still, they think, in a catch-22 situation with a lot of requirements from Senator Collins from years ago that they needed to report once a year on their energy consumption in their buildings. This committee has participated in wiping out over 100 requirements of miscellaneous bits and pieces that over time got built up that departments were required to report on, which just costs money. It is Commonwealth money. It is your money, my money, everybody's money. We would not want to get back to that situation again, would we?

Mr Dolan—I would hope not. We are yet to see the clear benefits of a move from a focus on accounting for inputs, which the old annual reports arrangements had, to more of a focus on departmental outputs. The other element is to get back to the extent to which we are a business or businesslike. We have not yet seen the benefits of sitting down and taking a proper analytical look at annual financial statements and the financial position of departments. The focus really was on cash in the past, although we did produce our annual accrual statements. That is one of the key disciplines that will be on us in the future. How do we account for our overall use of resources? To what end are those directed and have we moved towards that end appropriately?

CHAIRMAN—You know that private sector companies in their annual reports report on the wonderful things they are doing to protect the environment, how they interact with the community, awareness campaigns they are running. They report on all kinds of things that will make them appear favourably to their shareholders. It is not just numbers.

Mr Dolan—No.

CHAIRMAN—We rarely see an annual report that is numbers unless it is a penny stock.

Mr Dolan—I quite agree with you. Equally, our annual report is not just focused on the numbers, even in its current form. There is a range of performance information in that. It has been a little too focused in the past, I would say, although we have been improving, on just a listing of what we have done rather than a clearer link towards the overall objectives the government has set for the department and our achievement of them. The transition we are moving towards is how what we do relates to what the government has set in terms of achievements for us and how we allocate our resources to achieve that. We are bringing together, but it is not an easy task.

CHAIRMAN—One of the things that has been said to us more than once over the last two days is that as we have devolved responsibilities to individual departments, getting rid of the centralised command model, perhaps we have overshot a bit and killed off some of the

good things that happened across portfolios for the good of all departments or perhaps some of the smaller agencies. Agencies have cited things like common insurance and banking. I have cited things like common use contracts for purchasing. We were told about that by industry when we did that inquiry. Do you have a view about those issues both for the department and your agencies?

Mr Dolan—The pendulum may have swung a little too far towards independent action of agencies. Procurement is probably one example. The question is whether a centralised and centrally controlled model of gaining advantage from the government's purchasing capacity is as effective as a range of agencies seeing common purpose, working together and, therefore, ensuring that their needs, as well as the broader Commonwealth needs, are met. That is how the pendulum will start swinging back. It will be more by a collaborative model facilitated by central agencies than an assumption by a centralised procurement department effectively that these are the right sorts of contracts that we want to negotiate on behalf of the whole of the Commonwealth, which often did not meet individual departmental needs.

CHAIRMAN—You are not competing with any other departments, are you?

Mr Dolan—It could be argued if you looked at the purchaser services that we are competing in the policy market at least. It is not the competitive model that applies in the private sector, no.

Mr COX—Your minister has the power to provide the statutory marketing authorities with guarantees without reference to the Treasurer. Do you provide advice to him on that?

Mr Dolan—The department certainly provides advice. I am trying to think of a circumstance where we do not refer it to the Treasurer. I have not checked all the enabling legislation.

Ms Greville—I have to confess that I cannot think of it either.

Mr COX—One of the submissions we received in the corporate governance inquiry stated that as a fact. I would like you to check and see whether it is the case. If it is the case, it is not a situation that I am personally particularly comfortable with. If you are the chief financial officer and you are not the person who gives the minister advice on that, I would be very interested to know who is.

Mr Dolan—The way it works is that, in the cases where these sorts of guarantees are proposed, the policy area of the department that has accountability for that particular industry sector is the focus of advice to the minister. Our input is called on for matters of financial probity and appropriateness. It is the way that the information is collated and funnelled to the minister rather than anything else. The position is that I assist rather than directly offer the advice.

Mr Cattanach—If a statutory marketing authority does the wrong thing, then the consequences are prone, as they have with wool, to go on for a very long time and be worn by the industry. Putting all other accountability arrangements aside, by the time those things have washed through the system everybody who is involved in what turns out to be an

incorrect decision will be gone. The minister will have come and gone. Governments will have come and gone. Officials will have come and gone. Quite a number of primary producers will have come and gone, many of them as a result of it.

Ms Greville—I think we will have to take the detail of that question on notice. I apologise for the fact that we do not have the answer for you. As Martin said, across the range of statutory bodies that we have a relationship with, the day-to-day relationship rests with the line area with expertise. In the case of the Grains Council, for example, it is the grains area of the department. My area has a general responsibility across corporate governance and Martin is the chief financial officer. We will take that question on notice and get a written answer for you.

Mr COX—Could you include whether your department has any input into the decision about national interest cover for EFIC and any orderly marketing arrangements that involve price setting, price averaging and things like that.

Senator GIBSON—In your submission you raise the matter of potential conflict of interest for the government director. By way of a bit of background, we are doing a parallel inquiry with regard to governance of GBEs. We have had several submissions suggesting that with regard to the potential conflict of interest in the shareholding of GBEs by the government—those examples where there are two ministers as shareholders, one the portfolio minister and the other the Minister for Finance and Administration—it really would be better to get away from the portfolio minister being a shareholder and simply leave the shareholding with the Minister for Finance and Administration which does happen with several GBEs of the Commonwealth government. Therefore, there is not any perceived conflict of interest as the regulator also being a shareholder and being responsible for the performance of the entity.

That is the big picture thing from the fairly large GBEs down to your organisations. I can see from your submission that obviously that has been a matter of concern within the department. I see the advantage of having someone from the department being involved with each of the bodies, but they do not really need to be a director, do they, as long as a departmental officer was there attending the board as a source of advice and communication each way?

Ms Greville—If that is a question, that is a model that could be applied. The one thing that our submission also made clear was that we see great benefit—and GRDC confirmed that they see benefit from their perspective—in having a government nominee as a director with equal responsibilities and equal rights on the board. It is not necessary, under any of the acts, for the director to be from our department—although, from the department's perspective, that is very useful as well in terms of the cross-fertilisation of subject matter as well as general government policy and general governance arrangements. To answer your question, it is probably not necessary, but our statutory bodies generally—our CAC bodies—and our department feel that there are benefits in having government directors there as equal members around the table. You are right: there is a conflict. It is fair to say, though, that there may well be a conflict of interest for any director who is on a board.

Senator GIBSON—That is different. We are talking about the regulator versus the deal.

Ms Greville—I guess you are. Our perspective is that the conflict of interest for government directors is not the regulator in that they not representing in that sense. The conflict of interest is the kind of statutory conflict of interest that you have when you have an obligation under the CAC Act to the body and its best interests and an obligation under the Public Service Act to the Public Service, the minister and their best interests and the fact that sometimes the two are not necessarily the same. That is what we mean when we say a conflict of interest, and in our view it is not resolved in the CAC Act, notwithstanding the attempts in section 23(2) to make it clear that there are different improper uses of information for a public servant from those for a non-public servant.

I should also say, though, that while it is an issue and while government directors—we have a number of them in the department—take their responsibilities very seriously and often ponder the potential conflict of interest that they may have, it is something that is managed very well, in my view, within the portfolio through a sensible application of general principles, through consultation with the chair and, in practice, on the board. It has not been to date—to my knowledge anyway—a serious problem, but government directors feel they often have to draw to the attention of their board, for example, that they may be in a position where that information may be on the table. I do not know whether I answered your question.

Senator GIBSON—I am just raising the matter.

Ms GILLARD—My question is on the same topic. What prompted you to get legal advice from the Australian Government Solicitor about that conflict of interest question? Was there a particular incident?

Ms Greville—It was not an incident. It was merely a reading of the CAC Act and an attempt amongst ourselves, as government directors, to determine what the implications of the new legislation were compared with the situation that existed before the CAC Act. The legislation makes an overt attempt, in my view, to clarify the situation for public servants. Section 23(2) says that no use by a public servant of information that he or she has gained as a director in the normal course of their duties is by definition improper. Nothing I do as a public servant with information that I have as a result of being a government director is improper. So that appears to attempt to resolve some of the issues that government directors may otherwise have. Section 25 says something like, 'Nothing said before detracts from the fact that a director's obligation is to the best interest of their corporation.' In a sense, it is giving with one hand and taking away with the other. Government directors within our portfolio have all read the act and were debating what this meant. Had it got rid of their additional conflict of interest or had it not? So we sought advice from the Australian Government Solicitor, who suggested that there was an ambiguity and that it was not clear.

Senator GIBSON—When a senior officer is appointed on a board, do they get the pay, the extra directors fees?

Ms Greville—Do you mean a government director?

Senator GIBSON—Yes, a government director.

Ms Greville—No, unfortunately!

Mr COX—It's a good idea, though!

Mr Dolan—If it were to happen, the department would no doubt see it as a charge for the use of the officer's time!

Mr COX—Of course!

CHAIRMAN—Have you seen the submissions of the Australian Fisheries Management Authority?

Ms Greville—No, I have not.

CHAIRMAN—They were critical of the support provided by DOFA and you. They say the Australian Fisheries Management Authority's difficulties were:

. . . compounded by a seeming lack of practical understanding of the way in which the new framework is supposed to operate.

They added:

AFMA has sought assistance from Agriculture, Fisheries and Forestry Australia but, again, it has been difficult to apply the theoretical advice given when actually preparing the relevant documents. Undoubtedly, there would be considerable benefit in the responsible agencies taking a more hands-on approach with, for example, experts from DOFA and AFFA coming and working with agencies . . .

Ms Greville—I have not seen their submission, but I was aware that they had made a comment among those lines. I think there are several things you could say in response to that.

CHAIRMAN—Is that fair, or are they being a bit precious?

Ms Greville—I think they are being a bit precious, although I do understand that for organisations, including AFMA, it is very difficult to take a new piece of legislation and the finance minister's orders and apply them to processes that have been going on for several years. Departments have had similar problems in the way that we have had to do it. We believe we have provided very concrete advice constrained only by the fact that we have a whole range of bodies with a whole range of modus operandi and responsibilities, so our capacity—even if we had somehow miraculously obtained the expertise overnight—to tailor that advice to every single organisation would be seriously limited.

Just as an example, we have done a number of things. We conducted an annual reporting workshop that was attended by representatives from all of our statutory bodies where we gathered together experts in the field, including the Department of Finance and Administration. We provided legal advice, and we had experts on annual reporting to try to pull together for the statutory bodies what the report of operations actually means in terms of their own reporting. We provide advice and input into both their planning documents and their draft annual reports to assist them to give an opinion, if you like, on whether they have

complied with what is required of them. We also provide monthly newsletters both to statutory authorities and to the government directors to deal with issues as they arise, including issues to do with the CAC Act. So we have a systematic approach to helping them make the change. What we do not do is hold their hand in the sense that the boards have the responsibility to produce those documents under the act and to be responsible for them. It is a fine line. We provide as much support and information as we can, bearing also in mind that we have had to develop that expertise on the run. It did not come with the legislation.

CHAIRMAN—This is a brave new devolved world, isn't it?

Mr COX—Over the last couple of days we have heard from a lot of organisations that they have been dissatisfied because they have not had advice available to them from the department of finance about financial management and accounting. Are your subentities coming to you for that advice?

Mr Dolan—Not generally on accounting issues.

CHAIRMAN—Is it advice or instruction? They were saying, 'We all want to be told what to do.'

Mr COX—It is a bit of both.

CHAIRMAN—I would have thought it is more telling than advising.

Mr COX—They might be more comfortable being told because then they would know where they were.

Ms Greville—We have made it very clear to our statutory bodies what their responsibilities are and where responsibilities lie within the Commonwealth. We have, to the greatest extent possible, adopted a whole of Commonwealth approach in dealing with them. When they have come to us on matters that are interpretation or expertise, we have attempted to assist them and we have checked with DOFA if that is the appropriate place to check with. We have put together workshops and opportunities for them to get together with DOFA if that is the most appropriate thing to do under the circumstances. We have facilitated that. We have also been a conduit. We have also encouraged DOFA to include us in the loop when they correspond with portfolio bodies so that we know what is going both ways—so the one hand knows what the other is doing.

Mr COX—So you have had more with DOFA than maybe some of the entities that are within your portfolio have?

Ms Greville—I do not have a personal criticism of DOFA at all. I think that, to the extent that we have appealed to them for specific help for our portfolio, they have been very cooperative. They have given up considerable amounts of time to come to workshops and sessions that we have run and have provided as much advice as they can. As I said before, there is that line about whose responsibility it becomes. In a sense some of the portfolio bodies are having greater trouble than others in grasping the responsibility that is theirs, taking the advice and working with it.

CHAIRMAN—Does DOFA charge you for the time?

Ms Greville—No, not at all. I certainly have not been responsible for paying them.

CHAIRMAN—A-G's charges.

Mr Dolan—Could I clarify something. There seem to have been several sets of issues—the CAC Act and its application and the general requirements for whole of government reporting that relate to both the Charter of Budget Honesty and to two sets of financial legislation. But a lot of the impact on us has actually been from the application of the outcomes-outputs aspects of the government's resource management framework. That seems to be where a lot of the difficulty has arisen. It is a fairly generic model and, given the diversity of both the activities and the governance structures of our statutory bodies and how their funding is obtained and used, trying to fit them all into that framework has been a somewhat difficult task.

General accounting has been handled, by and large, reasonably well. I think the transition from annual accrual accounts to doing that as an actual, rather than as a retrospective, action has been reasonably smooth. But the issue of how this outputs-outcomes view of the world applies outside departments of state seems to have caused a fair few problems.

CHAIRMAN—And nobody can do it for you.

Ms Greville—That is the point we have tried to make.

CHAIRMAN—Otherwise your operation gets the pip.

Ms Greville—While we can provide and have provided generic advice about how to construct performance information and what the outcomes might look like, it is not actually a job that can be done in a generic sense; it has to be done in the particular.

CHAIRMAN—Have you had any trouble with your bodies reporting on time?

Ms Greville—The annual reporting deadline for this year is not up yet, so we cannot answer that one about annual reporting deadlines. But we have various milestones through the year when operational plans have to be approved. This year we had a requirement for corporate plans to be updated and my recollection is that generally our bodies accord with those milestones.

Mr Dolan—The particular difficulty would be in financial reporting for those agencies that are considered material for the whole of government accounts, which I think are GRDC and the Australia Wool Research and Promotion Organisation. I believe that, like a number of departments and agencies, meeting the reporting by the 14th of the month has been something of a struggle, as it has been for us.

CHAIRMAN—You were here when the Grains Research and Development Council representatives were talking to us. Did they have a point in asking for greater flexibility in the investment of their reserve funds?

Ms Greville—They do have a point. Whether or not the department or the government has a policy about it or whether they agree with the point is a different matter.

CHAIRMAN—Do you support them?

Ms Greville—I think there is definitely a case to be made that those reserves have been gathered from a compulsory tax applied to growers. Therefore, from GRDC's point of view, I can understand the case that says that, as long as industry is comfortable with different arrangements in terms of investment, that then should at least be considered. But I guess it comes back to the difficulty of making rules that apply for bodies across a whole spectrum. GRDC is a different kettle of fish from an awful lot of the other bodies that fall under that particular provision of the CAC Act that one might not wish to apply that same level of flexibility to.

Mr Dolan—The general rules that are in place for appropriate investment are conservative, as you would expect from the government.

CHAIRMAN—I would be quite surprised if it was other than that.

Mr Dolan—But for bodies that are working in a more commercial market, some more capacity to analyse their own risk environment and to make appropriate investment decisions would probably be a good thing.

CHAIRMAN—You can imagine the fallout if a big investment went bad.

Mr Dolan—Indeed.

CHAIRMAN—Examination of that risk strategy would be—whew!

Mr COX—Look at it: they made $7 million in income last year from the investment of their reserves. The margin that they could safely build on that is not going to be a huge amount of money. If they were going to look at it as a major cash cow and take some severe risks, then they would be running a fairly perilous situation.

CHAIRMAN—Sure. I do not refute that.

Ms Greville—But GRDC's point would be that the moneys in their reserve were growers' money and, as long as industry is comfortable with the board's risk management strategies and investment strategies, from their perspective that would be a sound basis.

Mr COX—The poor old grower, though, struggling to make a dollar out on the Ayr Peninsula is not going to be all that rapt if one per cent of his meagre income is going into research and then being lost because we have a Treasury operation at GRDC that happens to go wrong.

Ms Greville—Sure.

CHAIRMAN—Thank you very much for the submission, and thank you for coming to talk to us.

[3.23 p.m.]

NARRACOTT, Ms Michelle Elaine, Manager, Legal Affairs, Commonwealth Scientific and Industrial Research Organisation

CHAIRMAN—I now welcome the representative from the CSIRO to today's hearing. Do you have a brief opening statement that you would like to make?

Ms Narracott—Yes, a very brief one.

CHAIRMAN—Go for it.

Ms Narracott—CSIRO welcomes the opportunity to appear before the committee. We have taken a very active interest in the introduction of corporate governance over the past six to seven years into the Commonwealth. We were actively involved in the bill and appeared before the committee some five years ago. Our main concerns fall into three categories, and these are legal technical issues that we did want to raise with the committee because we thought there was an opportunity for the legislation to be amended in three areas.

The first relates to the definition of 'officer' under the act and the breadth that has been given to that definition. We believe that the breadth of it has the potential to impact on CSIRO's extensive industry consultation processes. We have something like 200-odd people from industry and the community who are assisting the organisation with our strategic research direction. We have found as a result of Attorney-General's advice that those people are now covered by the CAC Act. Something like 250 to 300 of our own line managers, also because of a wide interpretation of the act, are finding themselves subject to the legislation. Our argument would be that under the explanatory memorandum definition in fact something lesser was anticipated by parliament.

The second area relates to the matter of indemnifying staff in the Commonwealth, and particularly in CSIRO, and we would ask the committee to look at ways of clarifying to what extent CSIRO officers, as opposed to just CAC officers under the act, will be indemnified. There appears to be an opening for the CAC Act to clarify indemnification of officers, whether they be CAC officers or not. At present there is no Commonwealth statute that applies to indemnification of staff. If you compare that to the states, we find that at least three states have put into effect indemnification of staff.

We are left with the situation where we have the haves, who are indemnified, the CAC officers, and the have-nots, who are the CSIRO officers. The only way that we can arrange indemnification is through our employment conditions and there is still a question mark there about the application of state laws where we have staff in those states.

The last area relates to section 23 and the special exemption that the act has given to public servants who are called to be directors of statutory authorities. We find that CSIRO staff, and obviously our very senior staff, on occasions are appointed by the minister to sit on related authorities. Through some anomaly, if our people were from DISR, our portfolio department, they would have a special exemption in relation to the use of information that they obtained from being on that authority or company. Unfortunately, our own staff are not

given that same protection. Our understanding of how the protection actually developed is that it was so that the portfolio department would be able to glean information to assist with policy development. Our staff have equal opportunity to contribute to departmental policy development as a departmental officer. So we would be asking for the extension of the exemption.

CHAIRMAN—You make four recommendations to us in respect of issues you have just raised. To what extent have you already explored these issues with Commonwealth authorities? For instance, in No. 1 you recommend that the definition of 'officer' be reviewed based on advice from A-G's to narrow the definition. Where have you got to with this?

Ms Narracott—It is a fairly new issue for us. Probably three or four months ago we looked at the application of the CAC Act to our sector advisory committees and, in doing that, we felt, given that there was such a large number who might be covered, we really should seek legal advice. If we were to just take the basic position that all of our industry advisers are covered by the CAC Act, that has quite significant insurance and indemnification implications for the organisation.

The organisation has decided to insure CAC officers and that involves through ComCover—the government's insurance arrangement—undertaking full disclosure of the industry adviser's details and also meeting a fairly sizeable premium for the organisation on directors' insurance. We are yet to bring all of this information to ComCover's attention, which of course is critical for our insurance declaration and disclosure obligations. We sought the legal advice. We have got that now. I did want to offer it up to the committee, if that was something that would assist the committee.

We have gone to the Attorney-General's Office of General Counsel to get their clarification and they have come back with a very expanded definition which differs from the explanatory memorandum. That is how far we have gone, and in the light of that definition we feel that our only solid legal position is to be indemnifying and insuring those directors as advisers and tell them exactly what their obligations are.

CHAIRMAN—Wouldn't this be a common problem across like agencies—for instance, the ABC—or does it not bother them since they have a separate act?

Ms Narracott—I must admit we have not consulted with other agencies about it. We have had some consultation on CAC issues with agencies within our portfolio, AIMS in particular. That is why we raised it. We felt this must be a common problem and that if submissions were being made by other agencies which we did not at that time have access to then this might only reinforce those submissions.

CHAIRMAN—You said:

It is recommended that the Attorney-General provide advice on the uncertainty which has resulted from the introduction of special indemnification provisions for some classes of Commonwealth officers . . .

Why haven't you already done it?

Ms Narracott—Why haven't we sought—

CHAIRMAN—You have recommended that A-G's advice be sought on an uncertainty. Why haven't you already done it?

Ms Narracott—Because of the costs involved in getting legal advice, we have to really tailor the questions that we ask of Attorney-General's and of the Australian Government Solicitor. We have to make sure that they are relevant to the organisation and are very specific so we do not end up with hundreds of thousands of dollars in legal costs. So what we have done here is look at the indemnification. This flows out of the definition of 'officer'. What CSIRO wanted to do was make sure that all classes of its staff were indemnified, whether they were CAC officers or general staff. We believe that the organisation should be indemnifying staff in the event that they are sued as a result of their duties. We sought advice on the wording of that indemnification, so for us we have something quite specific. But once again the obtaining of that advice brought up a more general anomaly, and we did not just want to keep that anomaly and that knowledge to ourselves; we wanted to share it in the hope that a broader Commonwealth initiative might be taken to improve the legislation.

CHAIRMAN—You do not want us to pay for it?

Ms Narracott—I do not know whether Attorney-General's would charge you.

CHAIRMAN—In recommendation 3 you said:

It is recommended that the exemption provided to 'public servants' in Section 23(2) of the CAC Act be extended so as to afford the same degree of protection to officers of statutory authorities serving on Commonwealth statutory boards as that given to departmental officers serving on statutory boards.

Ms Narracott—CSIRO staff are not public servants and we think it is a mere technical hitch that the wording of the exemption means that CSIRO staff are not covered when they go onto Commonwealth statutory boards. It is not just CSIRO offices, it would be more generally CAC body officers, and we want that extended to ensure that they get the same degree of protection.

Mr SOMLYAY—Is there widespread concern in CSIRO about this?

Ms Narracott—Because we have only a few officers who are called onto bodies like ANSTO, no, but for the individuals it is quite an issue. Not a lot of our staff are called onto bodies, but in advising the individual on their obligations it becomes a very important issue. There is widespread concern about the extent of the definition of 'officer'. We are at the phase of wanting to educate our staff about what it means to be a CAC officer, and step 1 is to know who the CAC officers are. If you cast the net broadly, as we feel we have been required to, it is obviously extending our whole training process and extending the amount of money we have got to spend on training.

Mr COX—What is the exposure of the members of the public that are on your boards that give guidance on research direction and things like that?

Ms Narracott—The Office of General Counsel have advised that they are CAC officers. In real terms, what is the likelihood that they would be sued? I guess the ones we are most concerned about are those involved with our high risk areas such as ANAHL, the Australian National Animal Health Laboratory, in Geelong. Genetic diseases are kept in quarantine there. Concern about escape of those viruses has been an issue for a long time now—probably 10 or 12 years—and that is one of our high risk areas. The rabbit calicivirus issue is a related one there. It is mainly our high risk ones that we are concerned about.

Mr COX—Do you routinely tell them about it when they are going on the board? Do you say, 'This is the legal advice that we have got'?

Ms Narracott—Yes—the CSIRO board members as well. The one thing that the organisation made a decision to do five years ago when it was clear that corporate governance was going to be introduced into the Commonwealth was to make sure that our directors knew their position. We very quickly found that directors wanted to know, and they were demanding knowledge of their position. So we have a corporate governance check list that we introduced just over a year ago with the introduction of the CAC Act where they go through and do an analysis of just what CSIRO's corporate governance health is. They go through that governance check list, and it helps them work it out. They can actually make their own independent assessment of their potential liability, and it outlines their insurance coverage and indemnification as well.

Mr COX—Do you get any who refuse to serve after they have done that?

Ms Narracott—No, and that for us has always been whether this is an academic issue or not. What they want to know is: how are you going to minimise my liability? What is being done about that? They do not decline to serve, but they ask for very clear guidance. They want to know precisely what the organisation is doing from a systems point of view to ensure that their liability is minimised through good corporate governance systems. That is the initiative or the impetus for them to be focusing on the organisation. Our general feeling and approach to the CAC Act is that it really has confirmed for the organisation the value of corporate governance, of accountability arrangements in the Commonwealth—something that the organisation was working towards but the CAC Act really put into effect. We now have very clear obligations. So, from that point of view, we think it is a positive step, and we feel there is even more from a corporate governance perspective that could be done. I was wondering if I might have a few moments to make some additional comments on our submission.

Mr COX—Yes.

Ms Narracott—There is one area in particular that the organisation would like to see the CAC Act expand into, that is, a move away from the notion that corporate governance is about financial management primarily. When we look at the act, the orders under the act arise out of financial management accountability obligations. We believe corporate governance, as it now is in the public-private sector—and expanding in the public sector overseas—is something far more than financial management and accountability. What we would like to see is the use of the CAC Act as a vehicle for coordination of all annual reporting obligations of Commonwealth agencies.

CSIRO has a plethora of reporting obligations that we have to meet each year. They come from a number of different departments. There is no coordination of those reporting obligations and they are certainly not brought under the CAC Act in the annual reporting obligations. I can name five that I can think of. There is the obligation to report under the Commonwealth fraud policy to the Commonwealth Law Enforcement Board, which is done annually. We have an obligation to report under the Privacy Act on personal information held by the organisation. We have freedom of information reporting obligations which are both quarterly and annual. In addition to that is reporting on occupational health and safety obligations.

CHAIRMAN—Yes, but everybody has those.

Ms Narracott—That is right. We have got this whole range of them.

CHAIRMAN—Isn't everybody stuck with those?

Mr COX—With regard to energy consumption, do you have a letter from Bob Collins that is eight years old?

Ms Narracott—I did want to get onto environmental management. What we are bringing forward to the committee is that, if the CAC Act has already started to bring together the annual reporting obligations and responsibilities of CAC bodies, there is an opportunity for all annual reporting obligations of CAC bodies to be coordinated in a way so that there are similar deadlines. There is a synergy in having annual reporting all in one place. At the moment we do not have that.

CHAIRMAN—I thought your annual report had to be in by 9 October, full stop.

Ms Narracott—It is true, we have the annual report. But in addition to that there are all of these other annual reporting obligations that go off to different agencies that never get into the annual report. You have got the annual report and then you have got the annual reporting. From our perspective there is an opportunity there to get the synergy of annual reporting down pat.

Mr COX—It would be a way of settling what are current reporting requirements if they were all gathered together in one place.

Ms Narracott—The one that does not even exist at the moment and that the organisation is particularly interested in is agency reporting of environmental management initiatives. About three years ago the Australian National Audit Office criticised heavily all Commonwealth agencies' management of contaminated land. Our agency has a reputation for environmental research. We have to match the management of environmental issues in the organisation to our environmental research reputation, so we have put in place an ISO 14,000 style management system.

We noticed last year, when we were putting this in place, that there were no annual reporting obligations that were laid down for us. On 1 July last year we found that companies were given the obligation under the Corporations Law. So there was an

introduction of environmental management reporting obligations on a range of company categories. I guess our recommendation is that, given the other annual reporting obligations we referred to, if we are going to keep alignment with Corporations Law bodies then CAC bodies should similarly have environmental management obligations.

CHAIRMAN—You raise a big point, one that we have discussed with everybody who has come before the committee and one that relates to the annual report or some other mechanism. The intent of all this deregulation is to make departments and bodies more independently responsible for their own activities and their own outcomes from the money they either raise or take out of budget. It is to make them more responsible rather than have the centralised command model. You have to make your own decisions and move out of house.

One of the things that we have an interest in, because we represent the parliament, is how would we best come to departments and to agencies like yours and say, 'There are a range of things that we would like to know from you on at least an annual basis or maybe a semiannual basis that do not relate to financial outcomes at all.' They might relate to environmental management issues or they might relate to purchasing policy and outcomes from purchasing. While you have no requirement to respond to DOFA's Commonwealth procurement guidelines, nonetheless we might suggest that, because there is so much public money involved, your purchasing outcomes will have some influence on the size of small business and Australian industry development and those sorts of things.

How do you see that we might recommend that these sorts of things get into annual reports or some other reporting mechanism to assure parliament? There is a range of other issues that parliament is interested in from public bodies. None of you are private sector. You are not competing with anybody. You are not really on an open and competitive basis. How do we ensure that these other outputs from public sector bodies get explained and reported?

Ms Narracott—I think the model that we have got provides us with the opportunity to build in those additional annual reporting obligations. To me it is a matter of, firstly, analysing those issues that parliament really wants to know about, and that is where I guess my comments about the fact that outside the current annual reporting obligations we have this range of things that need to be brought in together in addition to those that already exist. There is a number that are not even in existence at the moment, and they will only result from policy development—for example, you would expect that it may be only a year away that environmental management through Environment Australia will come in.

I actually think it is the coordination. There needs to be one agency that is responsible for the coordination of the governance issues for agencies like ourselves—that could be DOFA; that could be the Department of the Prime Minister and Cabinet—one agency that directs agencies like ours to provide that. CSIRO has absolutely no problem with being part of that whole process, because if the organisation is doing its job and our directors are doing the right thing then we will have in place governance systems that very quickly give you that information.

I guess we would see some form of Commonwealth reference group as a way of establishing which annual reporting issues need to be brought together. The representatives of each department and agency that has current annual reporting obligations could come together. Similarly, there will be areas that are still being developed at the moment—and will always be developing—where we will need to be keeping an eye on what reporting should come through from agencies.

CHAIRMAN—It is true that a number of agencies—or departments even—have suggested to us that they are so small, or even not so small, that perhaps devolution has gone a bit far and overshot the mark a bit in a desire for each agency be responsible for its own affairs and its chief executive officer be the individual who accepts that responsibility and that, in doing that, we have lost some of the synergy of non-competing agencies where some things—like Commonwealth purchasing agreements across Canberra based departments—might have saved some money. I refer to that common reporting requirement one. You just raised freedom of information—

Ms Narracott—Privacy is an issue.

CHAIRMAN—and all of that reporting stuff.

Ms Narracott—I think there is an opportunity there, if we can only work out a way to grasp it.

CHAIRMAN—We will cogitate on these issues.

Ms Narracott—I have one final issue that we did not raise in our original submission. It occurred to us that this may be a good opportunity to air it. Currently, CSIRO is one of about 36 of the 90 CAC agencies that have contract approval requirements. So, whenever we enter into a contract for $1 million or more or we want to receive $1 million or more, we obtain ministerial approval for that. Last year, we obtained policy approval and have had subsequent legislative bids in to have our act changed so that the minister will no longer approve our contracts but, consistent with the CAC Act, we will report under sections 15 and 16 any matters that are critical for him to be aware of and any significant events—any matters, basically.

Mr COX—Is that in the nature of reporting every contract over $1 million or is it to report just things that you think he ought to know?

Ms Narracott—Currently, we have to get full approval, so a full approval document goes up. Our recommendation and our legislative bid is to actually require reporting of over $5 million items but to still report to the minister any issues that we consider are sensitive.

Mr COX—What is the definition of ‘sensitive’?

Ms Narracott—Exactly. It is a judgment call, but anything that has the potential to the impact on the minister in parliament, the potential to impact on the agency or on the public assessment of the organisation, all of those types of issues. There are significant items listed in the CAC Act, like any major joint ventures. There is a range of them that we have been

reporting anyway, just by custom, but now we have the requirement to do that under the CAC Act. We will report things to the minister that seem to be of no monetary value if there is potential there for the matter to be a media issue—for example, any site contamination, any issues about closure of sites, that type of thing. It is very broad.

Mr COX—I raised the contract thing with the Secretary to the Department of Finance and Administration yesterday who did not think it was an issue. But, from my perspective, it is highly advantageous to change it to a reporting requirement, rather than an approval, not because of any political sensitivities but because of the way management of government authorities can pass the buck for their dubious decisions on to the minister.

Ms Narracott—We have not looked at it that way, but we would not, would we? We estimate something like 750 contracts over $1 million potentially going to the minister each year.

CHAIRMAN—Does he ever knock one back?

Ms Narracott—He may query issues, so they are certainly read. Signing off is a very—

CHAIRMAN—750 contracts over $1 million every year?

Ms Narracott—It varies, but yes.

Ms GILLARD—That is two a day.

Senator GIBSON—That is three per working day.

CHAIRMAN—What a lot of paper.

Ms Narracott—It is.

CHAIRMAN—What is your budget?

Ms Narracott—Don't ask me that question. I am the wrong person. Can I take that on notice?

CHAIRMAN—You knew there were 750 contracts, didn't you?

Mr COX—I think it is in the order of $600 million.

CHAIRMAN—It has to be more than that.

Mr COX—It must be more than that.

CHAIRMAN—Hang on, that is budget funded, but their total—

Ms Narracott—These may be for income or they may be for expenditure—for example, for the sale or purchase of property; anything that is of value over $1 million.

Mr COX—And capital items.

Senator GIBSON—The appropriation is about $600 million a year.

Ms GILLARD—It is not $1 million in one year; it is just that the total contract value is more than $1 million.

Ms Narracott—That is right. It might be over five years.

Senator GIBSON—Thirty per cent of their income is private.

CHAIRMAN—Only 30 per cent is private?

Senator GIBSON—They are currently pushing for 33; it is currently 30.

CHAIRMAN—So what we are talking about is—

Senator GIBSON—$900 million.

CHAIRMAN—close enough to a $1 billion operation.

Ms Narracott—When we say $1 million or more, it may well be that the value of any indemnities in the agreement is $1 million. So we may never see $1 million or pay out $1 million. But, once again, the interpretation we have got from A-G's is that we need to include the value of indemnities.

Senator GIBSON—That is just crazy.

Ms Narracott—Yes.

Ms GILLARD—And it can be over more than one year, so it might actually be comparatively small.

CHAIRMAN—Perhaps $500,000 or $750,000.

Ms GILLARD—That is what I am saying. It seems even more ridiculous to be sending it up to the minister if it is a million over five years.

CHAIRMAN—But still 750 times a year a piece of paper.

Ms GILLARD—I am agreeing with you. I am saying it is ridiculous.

CHAIRMAN—If some portion of a five-year contract—

Ms GILLARD—Yes, $200,000.

CHAIRMAN—We will let you sort that one out.

Ms Narracott—I should say that at the moment we have got the bids in to have it changed. If as a result of the committee there is a general decision to remove contract approval processes then obviously we would benefit. Our bid continues to be clogged because it really is not seen as a priority for parliament, which is understandable. We have had it there now for a year and a half and we are getting no closer to legislative change because it is category C status. We really do not know when that is going to go through. It may be in two years.

CHAIRMAN—What department?

Ms Narracott—DISR—Industry, Science and Resources. That is our portfolio.

CHAIRMAN—That is who you are negotiating with, not with DOFA, to get rid of the approval.

Ms Narracott—Yes. All the policy approval is through; it is just getting the priority on the legislation.

CHAIRMAN—So it is through the portfolio minister.

Mr COX—It is a general issue, though, that we could address.

CHAIRMAN—I accept that, but with some of the less mature statutory authorities it might not be appropriate to give blanket approval as well.

Ms Narracott—I think that is a good point.

CHAIRMAN—CSIRO has been hanging around for a long while. As there are no further questions, thank you very much for coming and for your submission and your advice.

[4.02 p.m.]

JACKSON, Mr Neville, Director, Accounting and Governance Framework, 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—I welcome once again the representatives of the Department of Finance and Administration. Would you like to make an opening statement?

Dr Wright—With your permission, Mr Chairman, I would like to make a short statement to clarify a couple of issues that were raised when we appeared before you yesterday in relation to the CLERP amendments to the CAC Act.

CHAIRMAN—Okay.

Dr Wright—During DOFA's appearance before the committee yesterday in relation to the amendments to the CAC Act contained in the Corporate Law Economic Reform Program Bill 1998, by way of background we made clear that the provisions of the CAC Act relating to the duties of directors of Commonwealth authorities and the penalty regime are currently aligned with the provisions of the Corporations Law relating to directors of companies.

The CLERP Bill will, amongst other things, substantially amend the provisions of the Corporations Law relating to the duties of directors of companies. Accordingly, consistent with government policy for alignment, equivalent amendments are to be made to the CAC Act. The amendments to CAC are contained in schedule 5 to the CLERP Bill, and entail the repeal and replacement of division 4 entitled 'Conduct of Officers', part 3 of CAC and the penalty regime contained in schedule 2 to CAC. The basic purpose of these amendments is to make it easier for directors to know what is expected of them and to enhance corporate decision making by removing legal uncertainties arising from potential liabilities of directors for their actions.

The amendments are basically directed at four areas: the provision of a statutory business judgment rule, reliance by directors on expert advice, conflicts of interest and improper use of position or information by employees. To clarify two of those points, the draft provisions introduce a statutory business judgment rule in relation to the duty of care and diligence. The aim is to provide directors with greater certainty by expressly acknowledging that they should not be liable for decisions made in good faith and with due care, thereby encouraging them to take advantage of business opportunities.

To reflect modern business practices, the draft provisions also address the uncertainty that has existed in the corporate arena generally in relation to the extent to which it is permissible for directors to rely on advice and information provided by others. Uncertainty in

this regard can have implications for corporate governance practices, such as the establishment of appropriate decision making processes and board committee systems. I hope that clarifies somewhat a couple of the points that were raised yesterday in terms of what changes were being made to directors' responsibilities.

CHAIRMAN—In making those changes, are you doing anything about the definition of 'officer'?

Dr Wright—No.

CHAIRMAN—We have just had discussions with CSIRO, which has very fresh legal advice that the definition of 'officer' places a lot of their outside people at real risk. I would suggest that you read their submission.

Dr Wright—Certainly, we will do that.

CHAIRMAN—It is a technical legal issue.

Dr Wright—If CSIRO provides us with that advice, we will certainly have a look at it.

CHAIRMAN—It is in the submission to us, which I am sure you have or, if not, you can certainly get off the Internet.

Dr Wright—A number of submissions came in very late. We have been through I think 22 of them.

CHAIRMAN—The Australian Taxation Office recommended that the existing legislative framework be expanded to incorporate provisions for a consultative arrangement to exist between DOFA and parties affected by the exercise of powers provided to DOFA under the FMA Act. The consultation does not need to imply a need to find agreement, only a necessity to understand the unintended issues which are likely to arise as a result of the exercise of the power. Have you considered that?

Dr Wright—Could you possibly refer me to the page?

CHAIRMAN—Yes, sure. ATO submission page 3 at the bottom.

Dr Wright—I am advised that we have had an initial look at that proposal by the ATO. We believe that aspect can be covered administratively and that legislation is not necessary. Clearly we would need to firm up on that, but that is our initial look.

CHAIRMAN—You are aware that one of the questions we are continuing to ask is how a parliament lets agencies know the kind of thing it would like reported in addition to the financial reports that are mandated for annual reports. One suggestion that we received today was that, instead of going the annual report route and us or some other parliamentary group setting out a list of things we would like to see reported, every six months we might put a question on notice to every department across a range of issues. How does that appeal to you?

Dr Wright—I think it depends on what you are seeking to achieve. My understanding of the implementation of the new outputs-outcomes framework under the accrual budget is that it gives enhanced access to information that parliament seeks to look at. I understand that considerable consultation had taken place in developing that framework and in talking to a range of committees. I think putting an additional overhead on agencies would be less than preferable. It depends on what the questions were. I wonder whether the reporting through the PBSs against specific outputs could not be addressed through looking at the outputs and outcomes framework and whether the questions could not be effectively covered through current processes rather than imposing an additional overhead.

CHAIRMAN—A number of agencies have suggested that in devolving responsibility to individual agencies perhaps we have overshot a bit and have gone a bit too far. They have said some commonality would be both cost effective and helpful—for instance, with things like banking and insurance. You would be well aware that some agencies think some common use purchasing contracts were quite valuable and saved Commonwealth money. That advice has been replicated over and over again both yesterday and today.

The CSIRO just said that it would be desirable from their viewpoint to have one agency, either DOFA or PM&C, to coordinate reporting requirements. There seems to be some feeling not of wanting to go back to the past or of reversing the culture change again but perhaps of an agency taking more of a coordinating role than is currently the case. Has that upset you?

Dr Wright—I am not sure what there is to be upset about. I understand your question goes to two things. One is whether responsibility has been devolved too far. I am not sure whether you are talking about 'too far' or 'too soon'.

CHAIRMAN—No, 'too far'. It is actually costing people money. I can explain. Some of the smaller agencies have said they are too small to have to do the research, and they cannot get effective insurance rates, for instance. They are spending more money and they have spent resource man hours in order to try to achieve things that were before achieved across a whole-of-government approach.

Dr Wright—One of the areas you raised was that of devolved banking. With the new regime that is being introduced, and is being introduced in a staged way, agencies, except for DOFA, are still with the Reserve Bank. There is a transition period which allows agencies plenty of time to go to the market and select a banker of choice. In conjunction with the introduction of a banker of choice, the Commonwealth has introduced an incentive regime for cash management, and this will assist agencies and government to better manage their finances. So, whilst there may be a perception that it is an onerous imposition, there will be efficiency and effectiveness gains for the Commonwealth overall and much better financial management. It is swings and roundabouts.

In relation to coordination of reporting requirements, I am not certain what particular aspects CSIRO have raised. Certainly DOFA has worked and will continue to work very, very closely with PM&C on the reporting requirements under annual reporting for—

CHAIRMAN—I was not talking about annual reports. I do not mean to interrupt, but there is no sense in talking if you do not understand what I am talking about. They were talking about separate reports required under the Freedom of Information Act.

Mr COX—Such as fraud.

CHAIRMAN—Do you remember any more?

Senator GIBSON—Occupational health and safety.

CHAIRMAN—She mentioned five.

Senator GIBSON—Yes, there were five separate annual reporting requirements apart from the annual report. The point was why not put all those together.

CHAIRMAN—She went on to say that the Corporations Law now requires private sector companies to report on environmental issues but that Commonwealth agencies are not so required.

Mr COX—We had one other bit of evidence in the last two days about a letter from a minister who had been around for about eight years about reporting energy conservation or energy consumption patterns.

CHAIRMAN—That was from Bob Collins.

Dr Wright—Thank you for clarifying the nature of the question.

CHAIRMAN—I did not mean to cut you off, but you were heading down the wrong path.

Dr Wright—Because I have not heard the issues that they raise, I am not sure what they are seeking to achieve or what they perceive are the weaknesses or inadequacies of their perceived lack of coordination.

Senator GIBSON—Their request was that requirements for annual reporting ought to all be in the CAC Act, basically.

Dr Wright—I am advised that this is an area that PM&C is looking at. Therefore, it is probably more appropriate that that is targeted directly at them. I cannot provide further comment at the moment.

Mr COX—I asked the secretary yesterday for some clarification about why the budget papers this year did not contain some of the information that has been in them in past years, and he could not think of anything that was not in them this year that has been in them in past years. The two that I have tracked down so far are the lack of forward estimates by program and the lack of historical data on an accruals basis further back than one year. I think DOFA originally in briefing some members of the opposition suggested that the accruals information could and would stretch back further than that. If somebody has the

time to go through and do a comparison table by table and an appropriate outlay statement, I would appreciate that. If there is anything else that I have missed, I would not mind that being drawn to our attention as well.

Dr Wright—I will certainly pass on those two bits of information to Dr Boxall.

Mr COX—I want the breakdown—I asked him for it yesterday—of experience within the department of SES officers for the time periods that I suggested as well.

Dr Wright—I understood that yesterday it was considered not to be germane to the consideration of this committee. That is what the chairman indicated.

Mr COX—I will put it on notice as a question to the minister.

CHAIRMAN—That is better.

Mr COX—I will put it in some more detail.

CHAIRMAN—The possibility has been raised with us that act of grace payments might not be transparent to parliament during the estimates process and may not conform to section 33 of the FMA act.

Dr Wright—I believe the issue that you are raising is the generic nature of outcomes based appropriations. Outcome based appropriations are intended to permit the expenditure of moneys consistent with stated broad purposes. They are not in themselves an authorisation to expend money. That is done subsequently through officers that have appropriate delegation. The expenditure of the money is always appropriately authorised by the officers concerned. The move to general outcome based appropriations is designed to give flexibility and to move away from a contained jam jar approach to accounting. Certainly payments against act of grace is compliant with section 33 of the FMA act under the new system.

Mr COX—But it is not transparent. That is the point.

Dr Wright—It is transparent in terms of expenditure when expenditure is approved.

Mr COX—But it is not transparent to the parliament.

Dr Wright—The expenditure or the appropriation is not transparent. Could you clarify that?

Mr COX—The expenditure as it is recorded in the budget papers in the subsequent budget.

Dr Wright—Clearly, that information can be obtained by parliament through processes such as Senate estimates. Disaggregation can be made available on request.

Mr COX—So the general policy of the finance department is to not publish the information in a form that is accessible. You just leave it to the random processes of the Senate estimates committees to see what questions people ask and whether it is provided?

Dr Wright—As I have stated just now, the intent of the reforms—moving to accruals and an outcomes-outputs basis—is to provide both better flexibility and better accountability and more information to parliament across a range of areas. You have expressed an alternative view. Certainly there was, as I mentioned earlier, considerable consultation in the approach before it was implemented with committees such as this one. I do not think I can pass further comment. I can make one further comment. We report on act of grace in our annual reports. Again, part of the reforms is to implement a suite of accountability documents that go from the appropriation bills to the budget papers, from the PPS to annual reports. We have end to end reporting.

Mr COX—So they are in the finance department's annual report, or are they in every agency's annual report?

Dr Wright—They are in our annual report.

Mr COX—They are broken down by agency?

Dr Wright—No. It just shows the total amount that we pay out in act of grace and the number of act of grace payments. Our minister is responsible for the approval.

Mr COX—He is responsible for approving them. But I thought the appropriations came from the department that was responsible for them.

Dr Wright—No. It actually comes under outcome two for DOFA.

CHAIRMAN—I do not know whether you have read the submission of the parliamentary departments.

Dr Wright—Yes.

CHAIRMAN—Do you have any comments?

Dr Wright—Not at this stage. They have raised an issue of an apparent conflict in the responsibility. We will look at that as part of our review. I cannot pass any further comment. I understand that they have obtained some legal advice. We would need to seek our own legal advice.

CHAIRMAN—This inquiry is going to get awfully expensive with people seeking legal advice. It is all over the place.

Dr Wright—We can send you the bill.

CHAIRMAN—The ATO has suggested that the evolution towards three-year resource agreements would remove the need for routine section 31 annual reviews and that section 31

should operate only in exceptional circumstances. Do you have a view on that? It is on page 4 of its submission at the bottom.

Dr Wright—It seems to be an issue that is specific to the ATO. It seems to be more an administrative issue rather than an issue of legislation. We will look into it.

CHAIRMAN—The ABC said that section 26(1)(b) prevents the ABC indemnifying officers in circumstances where they have acted with a lack of good faith. This is in respect of defamation suits. Under some defamation legislation, a lack of good faith means that defence has not been made out and, therefore, the individual would be liable. They mention Queensland.

Ms GILLARD—And New South Wales. Defamation law varies from state to state.

CHAIRMAN—They also got legal advice. Everybody is getting legal advice.

Ms GILLARD—It was not the only criticism of the section 26 indemnity either. There is an issue about whether or not it appropriately covers an employee who negligently affects another person. The employer is vicariously liable, but then there seems to be different state based regimes about how that liability passes up the chain.

Dr Wright—The insurance and indemnity provisions of the CAC Act that apply to directors and officers of the Commonwealth authorities are identical to those provisions in the Corporations Law. So it is a mirror. Given that it is government policy to parallel the two, we would not see that there is a need for change at this stage.

Ms GILLARD—From the ABC's point of view, not many corporations are broadcasters. Your exposure under defamation is obviously greater if you are a broadcaster. If you are just running BHP, unless you rush out and defame someone, you are very unlikely to get involved in a defamation action, though that probably does occur from time to time. For the ABC and SBS, you are going to get sued as the publisher of the defamation. There is a bigger exposure.

Senator GIBSON—All the other media companies would be in the same boat, though.

Dr Wright—As I said, it does parallel the Corporations Law. If the ABC perceives a particular issue, as we discussed yesterday, that is probably an area where they have to look at risk management strategies.

CHAIRMAN—Would you have a look at their legal advices, which are contained in their submission? You have a copy of it.

Ms GILLARD—The problem might be the use of the term 'officer' in here. The Corporations Law indemnities are probably about directors or officers of the company, not employees. Because in Public Service lexicon we talk about employees who are genuinely employees being officers, it might be that this limitation to indemnity is spread further than it should. Does that make sense?

Dr Wright—Again, I can only say that it is identical to the Corporations Law. The issue you are suggesting is that special circumstances be made for the ABC, which is somewhere between the FMA and Corporations Law.

CHAIRMAN—This is the point the CSIRO brought up. They got legal advice too. They said that the definition of 'officer' is causing them problems. The definition of 'officer' under the act says:

officer, in relation to a Commonwealth authority, means:

(a) a director of the authority; or

(b) any other person who is concerned in, or takes part in, the management of the authority.

Dr Wright—Which is identical to the Corporations Law.

CHAIRMAN—For every bit of legal advice you get, you can get some going the other way.

Ms GILLARD—They have actually misread 'officer' to be down to the employee level. In that definition, it is not.

CHAIRMAN—In the management of the authority.

Ms GILLARD—That makes sense.

CHAIRMAN—We will look at it. We will privately talk about that before we put our report out. Sections 18 and 19 of the CAC Act refer to the investment of surplus money. We had an individual from the Grains Research and Development Corporation suggesting that all R&D corporations presently covered by section 18 should be allowed greater flexibility in investing surplus money; that is, they should be allowed to invest consistent with sound commercial practice rather than have to go to a limited number of investment opportunities allowed by the trader. It involves a lot of money. Their reserves are over $100 million, which is an awful lot of money. They said that this is an issue that they had been keen to know about. It is nothing new. It has been hanging around. It was raised with you on 12 April 1999.

Dr Wright—It is something that we are looking at. We are not in a position to comment any further at this stage.

Mr COX—We have had a fair bit of evidence from smaller agencies about their doubts about the decentralisation of some arrangements, including banking.

Dr Wright—We covered that earlier.

Mr COX—What is it costing the Commonwealth in terms of bank spending?

Mr Jackson—The costs to the Commonwealth overall in terms of FMA agencies are still a matter for the market to determine. As Dr Wright mentioned, only one agency so far,

which is DOFA, is with an alternative banker. That is not something we will know until the market testing processes across the FMA agencies have been worked through.

Mr COX—Are you able now to give an indication of how much money is being paid to the alternative banker by DOFA relative to the fees that you were paying to the Reserve Bank before?

Dr Wright—I do not think we could give that information at the moment. It is not costing the Commonwealth or DOFA more than the Reserve Bank.

Mr COX—When it goes to the Reserve Bank, it is going to a Commonwealth agency.

Dr Wright—The issue of financial management is about efficiency and effectiveness. We are aiming to achieve an efficient and effective use of money overall for the Commonwealth.

Mr COX—I do not think that really answers the question.

CHAIRMAN—Could you supply us with a summary of that?

Dr Wright—We were not able to draw it together today. Hopefully, we will have it by the end of the week for you.

CHAIRMAN—Thank you. We appreciate that. There being nothing further, is it the wish of the committee that the additional submission by Mr Maurice Kennedy dated 14 September 1999 be accepted as evidence and authorised for publication? There being no objection, it is so ordered. I declare this public hearing closed. 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 4.39 p.m.