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Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Auditor-General Act 1997

MONDAY, 19 OCTOBER 2009

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JOINT STATUTORY
COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT
Monday, 19 October 2009

Members: Ms Grierson (*Chair*), Mr Georgiou (*Deputy Chair*), Senators Barnett, Mark Bishop, Bushby, Feeney and Lundy and Mr Adams, Mr Bevis, Mrs Bronwyn Bishop, Mr Bradbury, Mr Briggs, Ms King, Mr Neumann and Mr Robert

Members in attendance: Senator Feeney and Ms Grierson, Mr Georgiou and Mr Neumann

Terms of reference for the inquiry:

To inquire into and report on:

Whether the provisions of the Auditor-General Act 1997 remain adequate in the modern public sector environment, including but not limited to:

- whether the Act's focus on the Auditor-General's traditional assurance audit and performance audit roles gives the ANAO sufficient legislative backing for newer functions, for example the Defence "Major Projects Report" and, from July 2008, the Auditor-General's reviews of government advertising to give the public confidence that campaigns are legitimately authorised, properly targeted and non political;
- any amendments necessary to clarify the ANAO's rights and obligations in relation to conducting audits and reviews;
- whether there should be changes to the categories of agencies that the Auditor-General audits, in particular section 16 of the Act which limits the Auditor-General's capacity to audit Government Business Enterprises (GBEs);
- any proposed amendments to the Act which would strengthen the audit independence of the ANAO and the Auditor-General's capacity to fulfil his role as an Independent Officer of the Parliament; and
- the Auditor-General's capacity to examine the financial and performance outcomes from Commonwealth investments in the private sector and Commonwealth grants made to State and local governments.

The inquiry shall have regard to the recommendations made by the Committee in its August 2001 Report 386: Review of the Auditor-General Act 1997 and the consequent amendments to the Act made by the Auditor-General Amendment Act 2009.

WITNESSES

CAHILL, Mr Matt, Group Executive Director, Australian National Audit Office..... 1
CHAPMAN, Mr Steve, Deputy Auditor-General, Australian National Audit Office..... 1
COLEMAN, Mr Russell, Principal Auditor, Australian National Audit Office 1
McPHEE, Mr Ian, Auditor-General, Australian National Audit Office..... 1

Committee met at 9.17 am

CAHILL, Mr Matt, Group Executive Director, Australian National Audit Office

CHAPMAN, Mr Steve, Deputy Auditor-General, Australian National Audit Office

COLEMAN, Mr Russell, Principal Auditor, Australian National Audit Office

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

CHAIR (Ms Grierson)—I declare open this meeting. I thank everyone here for attending. This is the third public hearing of the committee's inquiry into the Auditor-General Act 1997. Today the committee will again hear from the Auditor-General and other representatives of the Australian National Audit Office. On behalf of the committee, I thank the witnesses who will give evidence today. Would you like to make a brief opening statement? Mr McPhee, as we have just received this short supplementary submission, perhaps you would particularly like to speak to that.

Mr McPhee—Thank you, Chair. Yes, we provided a letter to the committee late last week concerning the application of legal professional privilege. The committee had previously asked us were there circumstances where in recent audits agencies had claimed legal professional privilege. The letter refers to several audits—two defence ones, where professional privilege was claimed around contractual matters, where the department had sought legal advice and, understandably, were a bit anxious about how we might deal with that. The last one was in relation to the parliamentary entitlements audit, where the Department of Finance and Deregulation drew matters of legal professional privilege to our attention as they passed across legal advice that they had received in respect of these matters.

CHAIR—Does their legal privilege advice always come from AGS or can it come from anywhere?

Mr McPhee—It can come from any lawyers on departmental panels. In some cases, it can be the department's own legal cell, if you like, or legal people. Sometimes it is a fairly standard response, where they draw attention to professional privilege as a matter of course.

CHAIR—But you do not have a standard response to that?

Mr McPhee—We have a fairly standard response. I guess the good thing about what we are saying in this letter is while in each of the three cases the matter was raised, in each case we managed to work the issue through with the agency and get a satisfactory resolution in respect of the matters. For instance, in the Defence case, where they were concerned particularly with commercial arrangements, we were happy to modify the final version of the report so that it did not unduly go into great detail on the matter. It was not central to the points we were seeking to make in the report. We were able to manage that quite effectively. In the Finance one, I think Finance's approach was pretty much each time they pass across legal advice probably to anyone; they seem to have a fairly standard practice to draw attention to the privilege issue.

CHAIR—Did you want to make any further statement?

Mr McPhee—No. Thank you, Chair.

Mr GEORGIU—I want to acknowledge a mistake made on my part at the meeting of 16 September when I was asking the Auditor-General about his compliance with the legislation. It was about the publication of comments. I said, ‘Absolutely. I will give you the instances.’ Could I reverse that? Could you provide us with the information where you have not published a response to an audit report?

Mr McPhee—Mr Georgiou, I think I said in my comments to you at the time that I was not aware of any, to be frank.

Mr GEORGIU—Can you do a search, please?

Mr McPhee—I am happy to do a search if you can give me a steer at some stage.

Mr GEORGIU—Can you do a search of your records of responses to the Auditor-General which are required under the legislation to be published in full which you have not complied with?

Mr McPhee—Well, Mr Georgiou, our practices are to abide by our legislation. Our procedures require that.

Mr GEORGIU—That is fine; I am saying, ‘Will you please do a search of responses to audit reports that you have not published in full?’ Is that too complex?

Mr McPhee—I am happy to do it. I am just saying it is a needle in a haystack. Can you give me a steer? I would be most concerned if we have not done the right thing.

Mr GEORGIU—I would do a self-audit.

Mr McPhee—Okay. We will do that.

CHAIR—When you circulate your draft reports to the key stakeholders in those, you do then make changes at times, do you not?

Mr McPhee—Yes, we do. Often if we do that and someone has—

CHAIR—But you are acknowledging that, Deputy Chair, are you? You are looking for something different?

Mr GEORGIU—I am looking for instances in which the relevant provisions of the act have not been complied with. I am perfectly happy to be told that there may be none. But I want that assurance. I do not want it bounced back, ‘Oh, tell me one.’ No. I do not think that is an appropriate response. There was a protracted discussion in this committee when we made recommendations on the Audit Act. One of those recommendations related to the publication of responses to audit reports by people who are entitled to see them. The view was taken, because I have refreshed my memory, at that time that it was important that Audit publish those because it gave the committee a different perspective or a context that it may not be in the Auditor-

General's interests to focus on. So a recommendation was made and that recommendation was duly translated into legislation. I would like the Auditor-General to come back to us with formal advice about whether there have been any breaches of that legislative requirement.

CHAIR—Are you putting a timeframe on that?

Mr GEORGIU—I do not know how long it will take the Auditor-General to respond.

Mr McPhee—Well, we will—

CHAIR—Well, I was going to suggest that it be in the time of Mr McPhee.

Mr GEORGIU—Fine. In your time, not a problem.

Mr McPhee—Since the legislation has taken effect—

CHAIR—We agree on that.

Mr Coleman—The legislation only took effect in February this year. We have had administrative arrangements, as you would know, in place for four or five years to do it. But the legislation—

Mr GEORGIU—What do you mean, 'it only came through in the last couple of years'? What is the last couple of years? Let us take the last couple of years.

CHAIR—That statement is a fair comment.

Mr Chapman—There was a five-year administrative process prior to February this year.

CHAIR—So the act only had full powers in February this year, but you were working to that act up until then?

Mr McPhee—That is correct.

CHAIR—And you did not have a lot of discretion, I imagine.

Mr GEORGIU—And I would like any breaches since the act was brought in to be noted, if there were any breaches.

CHAIR—Are there ever times with security related audits where there is confidential information that is never shared? Do you audit the security bodies?

Mr McPhee—We are not precluded from looking at it, Chair. Again, we would be sensitive about that and generally draft around any sensitivities around that. There is a prohibition in the act in section 37, which we touched on last time, which covers a range of things which the Auditor-General is not to report on. In fact, it is an attachment to the letter that I have provided

to you. One of them is that it would prejudice the security, defence or international relations of the Commonwealth.

CHAIR—But you are saying that does not happen very often? Do you just steer clear of them?

Mr Cahill—No. As a minor example, with the recent Senate performance audit, audit No. 11, we included ASIO and another security agency. While they were not required to conform to the obligations to publish their arrangements on the Internet, we wanted to look at better practices and how they manage their contracts in there. We reported it in there. As a minor editorial, in agreement with the agency, in some of their correspondence, in response they had named some of their own officers. So we obviously checked that clearly and removed their names and said, ‘Are you comfortable that we do not want to make any reference there?’ So there are those sorts of judgement calls that we make. But we deliberately did that in response to a request from, I think, one of the committees of the House. We are also conscious about opportunities to touch on those agencies.

CHAIR—I think the public would expect that too. I will move to our main task, which is revising this Audit Act to make sure it satisfies you, me and the Australian public.

Mr GEORGIU—I thought we had actually started on that main task, Chair.

CHAIR—We have started, but I am happy to move on. I note, Auditor-General, an article in the *Financial Review* on Friday regarding your desire for change. Do you want to elaborate on that?

Mr McPhee—Well, I was as surprised as you to read that, Chair. As you are probably aware, I have little contact with the press.

CHAIR—Yes, I do know that.

Mr McPhee—This is obviously based on the evidence—

CHAIR—Our hearings, yes.

Mr McPhee—before the committee, which I thought was a nice thing to see.

CHAIR—So it sits comfortably with you in terms of a representation of the discussions that were already underway?

Mr McPhee—I think so, yes.

CHAIR—Let us go to one of those matters. It is your clarification of the audit role for part government owned enterprises such as the National Broadband Network Company. Have you had any dealings with the government in this preliminary stage, or would you anticipate having any dealings with the government in this preliminary stage?

Mr McPhee—We are the auditor of NBN Co. Ltd and we have done the financial statement audit for the financial year just ended. We expect, obviously, that company to grow over time. But when we raised it in our submission, you may recall that the government was at least raising the possibility of partly selling down that company at some future stage. It raised for us the issue of knowing the public interest, if you like, in the broadband network, the significant investment of taxpayers' funds, and whether the act should allow the Auditor-General, at his or her discretion, to undertake a performance audit either of NBN Co. as a wholly owned government business enterprise or as a partially owned GBE.

CHAIR—With a major shareholder being the Commonwealth?

Mr McPhee—With a major Commonwealth shareholder.

CHAIR—That is not covered at all by the act at present?

Mr McPhee—At the moment, the act does not allow me at my own discretion to undertake an audit of a GBE. It allows the committee to ask me. It allows the finance minister or the responsible minister to ask me. I may even ask you to ask me, which is a rather convoluted way of dealing with matters. I just think—

CHAIR—How far do you think the power should go?

Mr McPhee—I was just suggesting that if there is a Commonwealth controlled GBE, the Auditor-General should have the discretion to undertake a performance audit. This is one area where there is a carve-out of the act in relation to the Auditor-General's sole discretion to undertake performance audits. It was developed at the time when we probably had Qantas in the stable, the Commonwealth Bank and Telstra. The world has moved on, so I think it is time at least for the committee to think about that. It seems to me a very strong mandate for an Auditor-General if he or she has complete discretion to undertake performance audits of Commonwealth government controlled activities instead of a carve-out. This is the only significant carve-out that is in the act.

Mr GEORGIU—As I recollect, that was—

CHAIR—I am happy to hand over.

Mr GEORGIU—That was brought in in the 2006-07 amendments. In the discussions with the minister for finance, he went halfway on this one. There are lots of proposals in here for the extension of powers. Can we have an assessment of the resource implications of those proposals?

Mr McPhee—Yes. That is a good question, Deputy Chair. We were not seeking any additional resources as a direct consequence of this. Take the issue of the performance audits of GBEs. We would basically say we have resources to do upwards of 50 performance audits. We would still do our 50 performance audits. The only case where there are resource consequences we have flagged, and that was in the area of performance information. You will recall there is a discussion that comes up from time to time about whether performance information reported by departments should be subject to annual review. We did say in that case if the committee wanted

us to do anything more than we currently did, that would have resource implications. For instance, if that were to become part of, say, the annual financial statement audit, where you did both the financial statements plus the performance information as a matter of course—

Mr GEORGIU—So this is a review of the performance indicators?

Mr McPhee—Yes.

Mr GEORGIU—Whether they are correct or whether they should be changed?

Mr McPhee—That is right: complete and accurate et cetera. If that were to be a requirement, which does occur at least in, say, the jurisdiction in Western Australia, that would clearly have resource implications. Otherwise—I am looking at my colleagues here—I do not think there are any others where they create direct resource consequences for the office.

Mr Coleman—I guess it depends if you are talking about the broad issue of following the money. One of the proposals we have put in here is about the ability in some circumstances to be able to audit recipients. I guess it would depend on how many of those were done and the extent of them. It could have—

Mr GEORGIU—Yes. But you have just upped the ante.

Mr Coleman—It could have some resource implications as well.

Mr GEORGIU—You have just upped the ante. You have gone from a fairly straightforward statement from the Auditor-General saying that there is one element with resource implications, which relates to performance indicators, and now we are going on to flow-on effects. Could we get some formal advice or an additional submission on resource implications that directly address that thing squarely? I would be concerned if we were put on a ratchet. I have no problem with giving you additional resources, as you know. But I would like to know what the implications are. Some of them seem to me, at least, to dip the toe in and then make a full dive. We need to know.

Mr NEUMANN—You referred to related entities, such as in Tasmania and Western Australia. Is that what you are referring to? You were commenting in terms of the extra producers and the extra resourcing? It is contractors engaging in the delivery of government services. Is that what you are talking about?

Mr McPhee—When I mentioned Western Australia, I was mentioning that the Auditor-General in Western Australia has the mandate to audit performance information on an annual basis. I was saying that if that were to occur, that would have direct resource consequences. But in many of the other matters—we will have a look at it because it is a very reasonable question—we already do have a level of engagement. For instance, when we did the audit of AusLink, we went and talked to the roads and traffic authorities in the states. They were happy to make available particular records to us et cetera. So we do a level of that—follow the money type activity—already. It is just a question of Mr Georgiou's point: if it were to be mandated, does it have significant resource implications? We will have a look at that. All I am saying is that we do a level of that sort of activity already.

Mr NEUMANN—Yes, I know. I was asking a question about whether they had contractors.

Mr McPhee—We do look at contractor records very occasionally, particularly in the major defence audits.

CHAIR—Mr McPhee, when you are doing government business enterprises or the NBN, you would be working with their private auditors, would you not? They would have a private audit company as well?

Mr McPhee—No. We are the auditor.

CHAIR—For the NBN you are.

Mr McPhee—The thing is if it is controlled by the Commonwealth, we are the auditor. So it would only be if the Commonwealth had a minority holding in a company—

CHAIR—And that is when it would change. They would have to have their private audit.

Mr McPhee—It is pretty rare that they would have that.

CHAIR—And what about government business enterprises? Are they the same?

Mr McPhee—Same, yes.

CHAIR—So there has not been an instance where you have had to work with private auditors on audit reports, inquiries or investigations?

Mr McPhee—There are two parts to that question. We sometimes use private firms ourselves as contractors to us. We oversight the management of it, but they are really working to us. In some cases, we do take assurance from private sector auditors. For instance, the Future Fund invests through major investment activities outside Australia. Those activities have their own auditors, who report to us on the internal controls within the investment bodies. But, by and large, if it is Commonwealth controlled, we have the mandate to undertake the audit and get the access.

CHAIR—Post the selldown of government shares in the NBN, or ownership in the NBN, you would be working in concert with a private audit firm. Is that right?

Mr McPhee—Not necessarily. If the Commonwealth still held control—for instance, the Commonwealth only sold down 49 per cent of an NBN and the Commonwealth retained control—we would still be the auditor.

CHAIR—What if they sold more than 50 per cent?

Mr McPhee—If they sold more than 50 per cent, the company itself would determine the auditor, and that would be a private sector auditor.

CHAIR—Do you have a comment or opinion on the standard of private audit in this country at the moment?

Mr McPhee—We all work to the same auditing standards.

CHAIR—I will go back to the time when the Deputy Chair and I were both on the audit of the private audit function as a result of HIH and Enron and all those collapses.

Mr McPhee—Yes. A lot of work has been done on the auditing standards since those times. There is a new raft of auditing standards about to come in place to strengthen the auditing standards. But, no, we both work to the same standards.

CHAIR—Are members happy to move on to—

Senator FEENEY—I want to ask a final question on this point. When, for example, an entity is being privately audited—the government’s stake in it is less than 49 per cent—do you in any way look at those private audits? Who audits the audits?

Mr McPhee—No. We would not. I have to say—and I stand corrected here—it is pretty rare for the Commonwealth to have a minority interest in a company.

CHAIR—It has been thus far.

Mr Coleman—I think at the time it had a minority share in Telstra as Telstra was being sold off. But that is the only recent example, I think. But it was a transitional arrangement.

Mr McPhee—Mr Chapman just mentioned Snowy Mountains hydro. But that is New South Wales, Victoria and the Commonwealth government.

Senator FEENEY—New South Wales as well.

Mr McPhee—Yes. So there are three governments. My response was whether we were in minority holding, with the private sector holding the majority holding. I could not think of any of them. But there can be governmental bodies, where the Commonwealth does not have a majority share, such as the Snowy Mountains Hydro-electric Authority.

CHAIR—I will go to those cross-jurisdictional issues. You have commenced the BER audit?

Mr McPhee—Commenced the BER audit.

CHAIR—Is it already alerting you to possible areas of change required in the act to do these cross-jurisdictional audits?

Mr McPhee—We are getting pretty good cooperation, as far as I am aware, Chair.

Mr Cahill—Not at this stage. The BER was in its construct. When they set it up under that national partnership agreement, they put in place bilateral agreements, which clearly recognised

that reasonable access be given to the Ombudsman, Commonwealth Auditor-General and such. That is not necessarily the case with all national partnership agreements, but in this instance it was the case.

CHAIR—But this one had expressed a specific requirement, so that is good. So in your original submission to us, you did say that there were a number of options to enhance external accountability arrangements. It was page 6 of your original submission and our page 24. You gave three options for expanding your oversight of Commonwealth funding provided to the states. Could you give a view on those options—the disadvantages and advantages of those approaches and whether you have consulted any other parties on these three options?

Mr McPhee—Yes, Chair. Just drawing on what Matt Cahill was saying, many of the Commonwealth agreements now do provide for access for the Auditor-General.

CHAIR—But you do not have a specific power?

Mr McPhee—So it is dependent on the government of the day agreeing to do that. It is also variable. The way the clauses are presented in these agreements can be variable. We just believe that in this day and age, given that the Commonwealth will be working more and more with the states and other bodies, a standard approach would be beneficial. Hence, we have put forward the four or so options on our page 6, paragraph 34. I guess the strongest one would be for the Auditor-General to be able to conduct an audit to assess the performance of bodies.

CHAIR—That would be an absolute power.

Mr McPhee—That would be an absolute power. We understand there is no legal reason why that power could not work, so it is a matter of judgement as to the appropriate approach. The second one is a slightly softer one but would achieve the same result—to require that as a matter of policy any new legislation dealing with agreements et cetera have the access and audit powers included.

CHAIR—Does this cover off on contractors?

Mr McPhee—No. We are saying that is a slightly separate issue. We pick that up in—

CHAIR—The performance of bodies that receive Commonwealth funding?

Mr McPhee—Yes.

CHAIR—When they are delivering government policy and implementing it basically through funds given?

Mr McPhee—Through funds given.

CHAIR—At this stage, do you have access to their annual reports?

Mr McPhee—We have access to their annual reports. If the agreements provide, as Matt was saying, we would have access to these bodies. For instance—

CHAIR—Have you ever asked for more access when you have found things not to be as optimum as you would like?

Mr McPhee—We have always had good cooperation. I do not recall any refusal of access in this area. But mainly because the Commonwealth agreement with the state has had a relevant clause in, it has given us sufficient access.

CHAIR—There has been a trend towards making these contracts national contracts in many cases.

Mr McPhee—Yes.

CHAIR—They are significant and they are lobbied hard for.

Mr McPhee—Yes.

CHAIR—A lot of advocacy happens here in this House. There are a lot of slick publications and all sorts of things. You do, as a member of parliament, wonder where our money is going sometimes—whether it is going to the direct implementation of services or the implementation of policy as government desired or whether it goes into other things. You do sometimes think there should be closer audits of these. Does the level of audit you give at the moment give assurance that that money was well directed?

Mr McPhee—You raise a key point. At the moment, the focus tends to be on the Commonwealth's administration of the arrangements. Under these proposals, this would allow us to make comment about the state or other jurisdictional performance in the use of Commonwealth funds as well. At the moment, that is beyond what we are able to do under our legislation. If there is an issue, we tend to say, 'How could the Commonwealth have better managed that?' rather than 'This particular jurisdiction hasn't done a good job.'

Senator FEENEY—That could see a flowering of your agency, could it not? I just wonder how much work one might end up finding if you go down that path.

Mr Cahill—An interesting construct in some of these audits is that, in trying to form an opinion on how well the Commonwealth department is performing, you are actually looking at how the various states and territories are using that money. You are then only able to form an opinion about the Commonwealth when you have an insight whether or not various jurisdictions are cost effectively using that Commonwealth resource.

Senator FEENEY—Certainly I am guilty of this. We often take the view that you, we and us are the noble investigators here rooting out evil wherever it is found. But I notice at point 33 of your submission on your page 6 you say at the end:

...by reducing Commonwealth prescriptions on service delivery by the states and territories, providing them with increased flexibility in the way they deliver services to the Australian people.

My reading of that is that, in fact, certainly in some cases, we—that is to say, the Commonwealth—is the instigator of certain rigidities or regulatory inflexibilities which actually damage service delivery by the states.

Mr GEORGIOU—Senator!

Senator FEENEY—Of course, you and I are privileged to come from Victoria, perhaps the best governed state of them all.

Mr GEORGIOU—What years?

Senator FEENEY—I was interested in hearing you expand on that. What are the rigidities that may come from the Commonwealth end, if I have read you right?

Mr McPhee—I think the basic point here is that under the current approach to federalism, there is expected to be less focus on prescription by the Commonwealth because the states have always argued the point that you have made—'Just allow us to put in place the best arrangements we can to deliver the outcome that you and we are both seeking.' So the whole approach going forward is for the Commonwealth to be less descriptive but to be focused on particular key performance information which will assess outcomes. Eventually there will be a comparison of performance.

Senator FEENEY—So the quid pro quo is a level of reporting which you will deliver?

Mr McPhee—Yes. It puts even greater emphasis on the performance information that the states themselves generate to show their performance with the Commonwealth funding and some of their own funding. So I think going forward under these new regimes, performance information is going to be even more important than ever. At the moment, there is a question about who is going to provide the reporting about the credibility of the performance information put together by the states. At the moment, we are—

CHAIR—I will give an example and ask what your powers already are with it. The federal government gave particular funds to all the states to reduce elective surgery waiting lists. That is a specific targeted program. What is your power to go in and see if that money did have any impact on elective surgery waiting lists?

Mr McPhee—Well, I think it is an area where in the past we have relied on the performance information report by the states. We have access to the information, but we do not do audits of that information. So that is what we use.

CHAIR—Is that satisfactory?

Mr McPhee—Well, I think in some cases desirably you may wish to have a look at the integrity of the performance information itself.

CHAIR—And you do not have power to do that under the act currently?

Mr McPhee—I think at the moment we would be constrained.

Mr Cahill—And, similarly, that would be through a national partnership agreement. It is up to whether or not there are bilaterals under that national partnership agreement and whether executive government has made a choice to put in place provision. Then you would recognise in that construct access to the Auditor-General.

Mr GEORGIU—I want to make it tangible, in my mind at least. So that means that if you get this power, you can go in and audit the Victorian department of education?

Mr McPhee—As it relates to the Commonwealth funding.

CHAIR—To a specific program.

Mr McPhee—To a specific program.

Mr GEORGIU—I do take your point that everything is related to everything else is related to everything else is related to everything else. Is this not what you have got at the moment where you view it through the eyes of Commonwealth responsibilities? It is an arbitrary bound, but is it an unreasonable one? What you are saying is we take the Commonwealth perspective. How well have we done in delivering—

Mr Cahill—Or how effectively that is being spent, yes.

Mr GEORGIU—How effectively is it being spent? The response is that, in part, insofar as the data is not adequate to the purposes of monitoring, the Commonwealth should ensure that it gets adequate data through the agreements. But it does seem to be a fairly substantial step to say, ‘We ought to be able to go in and audit the instrumentalities of’—dare I use the words—‘sovereign states,’ because they tell you to get stuffed. I would.

Mr McPhee—I think there are two issues, Mr Georgiou. One is access. Traditionally the agreements have provided us with access. I think what we are saying is that as a minimum probably you would want the Auditor-General to have access to the information that is related to the Commonwealth funding so you could ask the states for the performance information relating to elective surgery et cetera. It seems to me that that is certainly not too controversial. The next step, though, is should the Auditor-General have the ability to audit the integrity of that information that is put forward? That is more controversial.

CHAIR—And under what circumstances would you question the integrity?

Mr McPhee—And under what circumstances. I guess I am saying it is like many of our powers; we use them rarely but sometimes actually it might be important.

Mr Coleman—I think an important element of the discussion is the context in which the submission is suggesting we might go down this path. It says it could only be exercised in circumstances where the performance of the body is significant in the context of an audit of a Commonwealth body. So it is not just open slather, if you like, where you go in and audit at any particular time. When we are doing an audit of a Commonwealth organisation and the performance of another jurisdiction is central to that, the submission is suggesting that—

CHAIR—I think we probably have agreement around the fact that if it is a major Commonwealth expenditure to the states to deliver a program, you would at least have access to the reporting on that from each state. But the issue is—

Mr GEORGIU—That needs consensus. I would like to have that spelt out. It is not necessary.

CHAIR—I am happy for you to elaborate further on that, if you like. I would have thought the Commonwealth would at least expect a report back from its states on how that money was spent and that that be audited by the state auditor.

Mr McPhee—Chair, I will just reinforce that point. Many of the Commonwealth agreements already have that in place in different shapes and forms. But fundamentally that is it.

CHAIR—But the difficulty for us is if you question the integrity of the information or the information generally across the nation, across all states, you may find a trend that shows major loss. I am just talking about the fact that it did not work or maybe it just did not reach its target or it did not bring about the outcomes. I am not talking about questionable behaviour or a misuse of funds or whatever, just the fact that it is not achieving it. It may be bureaucratic or the way it was done. What happens then? Do you just give that information back to them to deal with them?

Mr McPhee—I think in those cases you would. If you did not have the powers to do the work yourself, you would refer it to, in some way, the state.

CHAIR—What would the triggers be if you thought the Auditor-General should have more access to the information?

Mr McPhee—I think—this is hypothetical—if there were suggestions that the performance information being reported by a jurisdiction was questionable and yet—

CHAIR—Rubbery figures, dodgy figures.

Mr McPhee—Just it was presenting a better picture than the reality.

Mr Cahill—Sometimes the examples are when you have jurisdictions where the performance is diametrically apart and they are dealing with the same issues. One might be reporting 100 per cent performance and one saying 60 per cent performance. You start to think, ‘Wait a second. I need to understand that difference.’ As you unpick that difference, you start to understand whether it is a data issue or there is a performance issue. So it is the ability to track that down.

Senator FEENEY—But these issues have often been quite controversial, not that you guys are alien to controversy. But certainly in state jurisdictions there are regular debates between government and opposition about the veracity of data in health and education. You will find yourselves wandering into—

Mr McPhee—Accepted. Equally, Senator, from an audit point of view, the only point I would make to you is that there are audit risks in accepting what I would call key information at face value.

Senator FEENEY—Sure.

Mr McPhee—Take the case of a number of jurisdictions reporting performance information. We knew either through press reports or advice that there were some questions about the quality of the performance information by one jurisdiction. But under a model where we have access, we would just report that and say, ‘That’s the story and that’s a given’, basically. Under the other approach, where we did have some capacity to audit the information if we thought it was critical to the audit as per our submission, the committee would expect us to get a handle on whether that was reasonably sound information or whether there were some serious issues against it. So it can influence audit conclusions. One thing auditors are expected to do is if the auditor is relying on a critical set of information, you cannot just say, ‘That is what they told me’, or whatever. You are expected to do a bit of homework to see whether that is the situation or not. So under the access model, we could use the information and report, ‘This is what the states told us.’ Under the audit approach, the responsibility would be with the office, if it were important enough, to do enough work to get comfortable around the integrity of the information.

Mr GEORGIU—But that really is trampling on the states. I am not for states right, I am afraid, but that really is going into the institutions of autonomous states that have their own auditors.

CHAIR—But they are not autonomous financially.

Mr GEORGIU—No. Of course they are not. Nobody is autonomous financially. But what I am saying is that really is intruding into the guts of autonomous—

Senator FEENEY—A state Auditor-General.

Mr McPhee—That is the debate, Mr Georgiou. I fully understand that perspective. I am just trying to draw for you an understanding of the consequences. If the committee were to say, ‘Well, we’re concerned not to provide the audit powers, but access is sufficient’, you would be happy that an Auditor-General would present you with information based on states’ performance, which is becoming a more important part of the framework, based on key performance information which have been presented but without much understanding of what is behind those numbers.

CHAIR—That is the problem. The Ombudsman and Public Administration Australia submissions suggested that complementary arrangements and cooperative arrangements were the best way to go. I assume you would agree with that. I guess the hard thing for this committee is to say, ‘What is the trigger? Where do we set the bar for increasing your access and your intervention?’ What triggers that? When are those powers justified to trample over state autonomy?

Mr McPhee—Yes. We get on well with the state Auditor-Generals. There is no question about that. But the problem is one of priorities. Just because I happen to want some information done

around hospital elective surgery in the month of August or September, thank you very much, because that is when my audit is progressing, they say, 'I'm sorry. We're doing other stuff.' That is the problem; it is just getting the alignment of priorities. That is the problem.

CHAIR—So you could strengthen your power just to get that access?

Mr McPhee—Yes. I understand fully the arguments and particularly the points Mr Georgiou is making. It may be that the committee would come to a position around, 'Well, let's provide the uniform access authority. That's less controversial. It is in many existing agreements at the moment.' And we could ask the Auditor-General over time to monitor whether that is sufficient or whether the audit powers would be a desirable thing. It is an important question. You are saying, 'Softly, softly', and I think that is the right approach.

CHAIR—But I am very mindful as a member of parliament, as we all are, who has representations all the time from the public. Their concerns are that the money does not flow to them through a state delivered service in the way they want it. It is very hard for us because we have to say sorry. We can refer that on to a state member for their consideration or whatever. But we do get that feedback that the public satisfaction with the flow-through of that money and the delivery of the service, by its nature or performance, is not matching the expectations. Whether that matches government expectations is probably more important for us to consider. When it does not match government expectation in terms of the delivery, there may be a case that the government directs you to go in and find out why. I am wondering whether you have those powers to do that.

Mr NEUMANN—While you are on that topic, are you taking any legal advice in relation to the constitutionality of an expansion of those powers?

Mr McPhee—Yes, we have on those. I understand there are no constraints.

Mr GEORGIU—What sort of input do you have in the negotiation of reporting and accountability relationships when they are being negotiated? What sort of input does the Auditor-General have into those?

Mr McPhee—Pretty limited. Occasionally we may be asked but, more often than not, the clauses tend to be the same. They are developed as part of the Commonwealth-state relationship.

Mr GEORGIU—Is that another way of getting at it or improving the situation? I have to say that on the surface I just think this is an invitation to open war. You know, you can go in there and audit somebody else. But I think that from your perspective, if we look at it from the eyes of the Commonwealth, if there is some way that you could think about improving the quality or the monitoring mechanisms built into the agreements, whatever happens, that would be of some help.

Mr McPhee—Yes. I agree with that.

Mr Chapman—I think, though, there are two issues we are pointing to. One is that access to information and having a more coordinated or greater relationship with Finance or Treasury might be instrumental in coming to those agreements. That may assist, if that is the point you are

making. I think the next question, though, is: would you wish that information to be validated through audit?

Mr GEORGIU—I really am across the distinction.

Mr Chapman—If you are comfortable that the access is satisfactory to the department—

CHAIR—I do not think we are even considering an open war between the states and us because I think we are seeing COAG meetings happening on a regular basis now. I am just not aware if these issues have been raised by the minister regarding audit functions of cooperative audits at COAG meetings. Are you aware of that? Can you seek out that information?

Mr Cahill—Often any provision that we have seen in terms of the access to the Auditor-General has been in the agreements that are done at the next level down, not the ones that have dealt with national partnership agreements. Another point I will make is that generally there are categories. There is health, education and indigenous. There are differences between the departments' approaches to how they do that.

CHAIR—We might explore that further. I do not quite understand this. In its submission, the Australian Council of Auditors-General suggest that consideration should be given to revised auditing arrangements in circumstances where the Commonwealth is acting as guarantor for financial institutions or a state or territory government. What are the examples of that and what is your view on that?

Mr GEORGIU—Banks. Even I got that.

CHAIR—You got that one.

Mr McPhee—Yes. I think that is the only one that—

CHAIR—The Deputy Chair suggests the banking guarantee.

Mr McPhee—I think that is probably the one. That is an issue if the Commonwealth is guaranteeing any outside bodies what sort of role the Auditor-General has. I am being a bit cautious myself here. Clearly, the Commonwealth is relying on its prudential arrangements. I think even I am being cautious in that space. But I think all we would say in those circumstances is that the Commonwealth needs to have some assurance itself. It is generally getting its assurance through the regulatory arrangements like the APRAs.

Mr GEORGIU—Were you at the Mexico congress of the supreme audit institutions meeting?

Mr McPhee—I was.

Mr GEORGIU—It is catching.

CHAIR—I will have to find out more about that. At this stage, there are a lot of questions over those sorts of auditing arrangements.

Mr McPhee—They are further out than the point that was made by Mr Georgiou.

CHAIR—Have you ever audited a regulatory authority?

Mr McPhee—Yes. We audit the APRA's and ASICs and aspects—

CHAIR—RBA?

Mr McPhee—We do the financial statement audit of the RBA. We have never done the—

Mr GEORGIU—In other words, no.

Mr McPhee—We have never done a performance audit of the supervisory role.

Mr GEORGIU—There seems to be a good case if there is none.

CHAIR—If your submission, you submit that the Auditor-General's mandate could be extended so as to permit performance audits of external parties involving the delivery of government programs or activities. Similarly, you submit that the Auditor-General's functions could permit him to audit a contractor's performance of their contractual obligations. Do you think extending the Auditor-General's mandate in this way may diminish the agency's obligation to manage contracts appropriately?

Mr McPhee—A very good question. I think DMO provided a submission in this area as well suggesting that we should be able to have a stronger look at contractors. I will present the DMO view as best I can. We do audits of the major defence acquisitions, commonly. We can be critical of DMO and its performance. They in turn would say, 'But we are relying on the contractor to meet their performance standards under the contract as well. If they do not do that, you should be saying a bit more about the contractor's performance.' I have accepted that to some extent. So we spend a bit more time reporting flatly on whether the contractor has delivered against schedule. But we have really not gone seriously into auditing their performance against their contractual obligations. So it is the same sort of issue.

CHAIR—Do you think agencies are dealing more precisely and in a more demanding way with their contractors?

Mr McPhee—They have strengthened contractual arrangements over time; there is no question. They have got better at the way they make payments under contracts. You will recall, particularly in the defence area, how Defence traditionally and historically put a lot of money out in advance and then had little leverage as the contract changed in that respect. So I think they are getting better. But it is still a serious issue. The rhetoric is very much around the Public Service and contractors working in partnership to deliver a particular project or a particular outcome. Contractual arrangements support that. When there are circumstances where the contractor does not deliver, it is a serious issue for the department in the first place. When we are auditing it—

CHAIR—We are talking about millions of dollar contracts.

Mr McPhee—Absolutely.

CHAIR—Would you want that power?

Mr McPhee—Again, in the rare case where it is important, we think we should be able to look at the contractor's records to understand what has occurred. After all, it is Commonwealth moneys and it is for a Commonwealth purpose. It is not unlike the earlier issue that we had a discussion about, but it is probably more accepted that this is less controversial than the earlier example.

CHAIR—I guess it has to also be seen as a responsibility by the government to be involved in capacity building amongst its contractors and entrepreneurs. We often have limited numbers of those available to us. So I do not think it has to be seen as a negative at all times. It is certainly a way of improving performance and improving sometimes the whole industry's performance.

Mr GEORGIU—I want to follow on from that. Take this as being genuine, as distinct from being arch. One thing that worries me about where things are moving is that there is an ever-increasing involvement by the Auditor-General in the day-to-day running of a face of agencies. That does worry me.

Mr McPhee—Ever increasing?

Mr GEORGIU—Involvement.

Mr McPhee—I would have said almost the reverse of that, to be honest.

Mr GEORGIU—I would be interested in that perspective. I was reading the supreme whatever's Mexican statement. That seems to me one of the really basic guiding principles. The more the Auditor is involved in an ongoing basis—take Defence; we will leave the other thing aside—the more I get concerned about the loss of detachment of audit and the threat to the objectivity of audit. Inevitably, real people being real people, the more you are involved, the less you can stand off and the more your inputs in the past become implications or involve you in the performance that you are supposed to be evaluating. I just flag that. I do not have an answer. The more that we have these discussions about, 'Let's go in and unpick the contractor', which at one level I agree with but at the other level I am quite happy in saying that so long as a contractor's failure is subject to appropriate contractual sanctions and the management of the contract on the part of the Commonwealth has been effective—in a lot of cases, it is not—going further and further into the guts of things, let me put it modestly, poses some real dilemmas.

Mr McPhee—I do understand that. Equally, I think my position is that the nature of public administration has changed substantially, even since the act was first put together.

CHAIR—The money involved now has changed.

Mr GEORGIU—When you say the money is involved, money has always been huge in real terms.

CHAIR—That is probably true.

Mr McPhee—We have the Job Network and private sector providers of services that in the past were done by the Department of Social Security, going years back. We had the Defence Supply Department, which used to build stuff.

Mr GEORGIOU—Or not.

Mr McPhee—Or not. So the proposition, I think, is the audit model has to move with the times as well. I think there are real problems. For instance—I know you are not saying this, Mr Georgiou—but if we were to stop the Auditor-General at the boundary or interface of the Commonwealth agencies and the private sector providers or the states or whatever, I think the committee and the parliament would not really be getting the quality of audit and recognising the new circumstances and the new ways of delivery. I would like to think—

Senator FEENEY—It would give rise to contractual disputes, or at least you would have to entertain the possibility.

Mr McPhee—Generally, we report on existing problems with contracts. So we shed light on some of these arrangements which have been difficult. The last one we did on the helicopters. After 10 years, no helicopters were produced and the contract was cancelled. We could do most of that work within the defence department anyway through looking at the records that they have. But the world is just moving on a little. I think you are quite right to be cautious about this, but equally you have to be willing to allow the Auditor-General to observe how the total arrangement is working, including partnership arrangements with states and with contractors. The question is just where the balance is.

CHAIR—I think that the role of the audit office has changed. At the moment, you are undertaking the Future Fund audit. Is that underway?

Mr McPhee—We have got one programmed.

CHAIR—You have not started that?

Mr McPhee—We do the financial statement audit of the Future Fund.

CHAIR—I would think the BER and the Future Fund would be ones that you might give us feedback on throughout those audits if this inquiry is still underway because I think they are a learning experience for all of us. I am also thinking that this committee and your office and yourself, Auditor-General, are the buffer for corruption. Look at the audit of the defence major projects. That has been a wonderful development in terms of a big area of government spending. Historically in other countries we have seen major issues of corruption or suggestions of corruption. I think by being proactive in this country we have always been able to be at the forefront of heading off any of those sorts of behaviours. What are the advantages and disadvantages of mandating that a major projects report be done each year and of your involvement? Does that need to be in the act?

Mr McPhee—I think it would be a positive matter to be in the act. At the moment, it is done through good cooperation and there is no question about that. The government has been

supportive. But it may be that different governments have different views about that going forward, so it is probably a helpful thing.

CHAIR—But under the grounds that it is a major proportion of the federal budget, I would agree with you on that. You currently get paid audit fees for financial statement audits?

Mr McPhee—Yes, we do.

CHAIR—Can you explain that process to us?

Mr McPhee—We charge financial statement fees for audits under the CAC Act, the Commonwealth Authorities and Companies Act. So there is no question about that. For instance, bodies like Australia Post—

CHAIR—So that is paid as an automatic thing out of their annual budget?

Mr McPhee—Yes. Correct.

CHAIR—Do you get it all at the one time? Where does it go? Does it go to the department of finance?

Mr McPhee—Yes. It goes to the budget. We do not get it because our model is based on the parliamentary appropriations of the office. So any fees we receive go straight back to consolidated revenue.

CHAIR—Can you put a figure on that? Do you know how much they charge?

Mr McPhee—I had better take it on notice. I could not hazard a guess.

Mr Chapman—It would be \$10 million to \$13 million, or something of that order. Telstra was \$5 million of that.

Mr GEORGIU—Leaving aside your monopoly position, is that comparable with the fees that would be charged by a commercial firm?

Mr McPhee—Yes, it is. I will explain it very briefly. We have taken the view that for some of the GBEs we audit at financial statement level, we need industry specialist knowledge. For instance, in a future fund, you need a fairly good understanding of the financial arrangements. So we use a firm. Basically the fee is their fees plus our management fee over the top of it, which is reasonably limited.

CHAIR—So in the case of statutory authorities and other bodies that fall outside the CAC Act, do you think that they should be liable? You refer to them. What is their situation regarding paying fees for their financial statement audits?

Mr McPhee—We refer to a few bodies in our submission where it has been unclear about whether they should be charged fees or not. It is mainly the two superannuation funds, the High

Court et cetera, which used to pay fees. But when the CAC Act came in, because they were not directly CAC bodies, they stopped paying fees. There are a few of those unusual bodies.

CHAIR—Should it be uniform?

Mr McPhee—We have never charged—not for a long time anyway—departments. We tell departments the cost of the audit and they report it in their financial statements, but it is just a notional figure.

CHAIR—They do not actually pay it?

Mr McPhee—They do not actually pay it.

CHAIR—It is a tool to assess your work almost?

Mr McPhee—It is for completeness, basically.

Mr GEORGIU—Can you give us an indication of how much?

Mr McPhee—Yes.

Mr GEORGIU—It would be interesting.

Mr Chapman—Not to take away your excitement for the numbers, basically, we allocate our full costs of performing that aspect of our audit activity to our client. So there is no profit margin in it. It is a cost allocation model. I think we spend around \$30 million a year, fully absorbed, on financial statement auditing. That money would be notionally recovered across the Commonwealth.

Mr GEORGIU—That gives me some tangible notion. It is probably an understatement of what it is worth. I am just interested.

CHAIR—In your submission, Auditor-General, you also suggest that broad reference to the authority to do anything incidental or conducive to the Auditor-General's audit responsibilities should be included in the act. In practice, how will this differ from the current function covered by section 23 of the act relating to the provision or advice or information set out below:

The Auditor-General may provide advice or information to a person or body relating to the Auditor-General's responsibilities if in the Auditor-General's opinion it is in the Commonwealth's interests to provide that information or advice.

Mr McPhee—I think this was just a matter of tidying up. I will ask Mr Coleman if he might help me on this.

Mr Coleman—Section 23 could be seen as being a little restrictive. It talks about providing information on our functions.

CHAIR—That is fairly loose.

Mr Coleman—It is not altogether clear, I suppose, what that is intended to mean. So, having a look at some other state legislation in preparation for this inquiry, we found that there were other examples in a couple of other state Auditor-General acts.

Senator FEENEY—Western Australia?

Mr Coleman—Western Australia, I think, and the ACT we just thought had some better descriptions of some of these things. It occasionally comes up as to whether we can do things or not do things. It is more a clarification which just puts the matter beyond doubt.

Mr GEORGIU—Just for the sake of completeness, is there anywhere in the submission where you ask for a contraction of the powers and role of the Auditor-General?

Mr McPhee—I do not think so.

CHAIR—It is a new world.

Mr NEUMANN—I read somewhere a suggestion by the Australasian Council of Auditors-General about expanding your powers to access cabinet documents. What is your view on that?

Mr McPhee—We are able to access cabinet documents already.

Mr NEUMANN—What are they saying?

CHAIR—They explicitly contain provision.

Mr NEUMANN—Do you want a statutory obligation? In expanding your power and your empire, do you want a specific power specified in there?

Mr McPhee—It is understood. The cabinet issue is understood. The reason we raise the privilege issue is that it sometimes comes up where people believe maybe there is an issue there. We do not believe there is, but we would like clarification only to stop the time it takes to resolve some of these matters. But, on cabinet papers, everyone within the system understands we do have access to them.

Mr NEUMANN—That is why I am mystified about it.

CHAIR—You did not put up that you needed that mandated in the act, did you?

Mr McPhee—No.

Mr NEUMANN—They suggested that you have some specific power to do it.

Mr Coleman—It may reflect the circumstances of particular states and the experiences of particular states in this area.

Mr NEUMANN—And the culture of Queensland in relation to that.

Senator FEENEY—In Western Australia it is all good.

Mr GEORGIU—What authorities have commensurate powers with the ones that you currently have vis-a-vis cabinet papers?

Mr McPhee—Do you mean state authorities?

Mr GEORGIU—No, in the Commonwealth. I am trying to think of things like the Inspector-General. That is ignorance. I am trying to think of comparable bodies. That is a fairly distinctive power that you have.

Mr Coleman—Although some of those bodies you mention, from memory—we would have to confirm this—have quite broad access powers as well. From memory, they do not cut out things like cabinet documents. So some of those bodies do have quite broad access powers in the context of their own responsibilities, obviously.

Mr GEORGIU—If you throw in the reporting freedom that the Auditor-General has, I cannot think of anybody apart from perhaps the Ombudsman who has that degree of saying what you like when you like.

Mr Coleman—Although again, as the Auditor-General has mentioned, we have that section 37, which obviously does limit to some extent the extent to which we can report on certain things.

Mr GEORGIU—Section 37 is security.

Mr McPhee—You cannot disclose decisions of the cabinet. It is 37. So it is mainly to inform us. The other thing is we are very conscious of the fact that we do not have a role in commenting on the merits of government policy.

Mr Cahill—It is an area where we often go back to get the original construct for a program and then see how that has translated into implementation. So it is an important aspect of any audit for us.

CHAIR—That alignment stays right through.

Mr Cahill—Yes.

Mr GEORGIU—Can you just elaborate? You cannot report on cabinet decisions or disclose?

Mr McPhee—We have attached section 37. Section 37(2)(b) states:

...it would involve the disclosure of deliberations or decisions of the cabinet or of a committee of the cabinet.

Mr Coleman—Again, the overriding test, as we discussed previously, is that it is a public interest test.

Mr GEORGIU—Take me through it again. You cannot disclose?

Mr Coleman—Decisions or deliberations of cabinet or a cabinet committee.

Mr GEORGIU—What does that mean?

Mr McPhee—For completeness, because Mr Coleman has raised a valid point:

The Auditor-General must not include particular information in a public report if the Auditor-General is of the opinion that the disclosure of the information would be contrary to the public interest for any of the reasons set out below.

One of the reasons set out below is it would involve the disclosure of deliberations or decisions of the cabinet or of a committee of the cabinet.

Mr GEORGIU—So you are actually prevented from that because the definition of your considerations does disclose a deliberate—

Mr McPhee—If in my view that would be contrary to the public interest because of a disclosure.

Mr GEORGIU—Yes, because of that disclosure. How does that work, then?

Mr McPhee—The good thing about cabinet decisions is often they become public decisions at some stage. Once it is public, it is not an issue. It is just any decision that the government took that was not public.

Senator FEENEY—If it is in the public domain—

Mr McPhee—If it is in the public domain, it is not an issue. As you know, after many cabinet meetings there are press releases et cetera about programs.

Mr GEORGIU—So it is the still confidential deliberations or decisions of cabinet?

Mr McPhee—Yes.

Mr GEORGIU—Thanks for that. That answers my questions.

CHAIR—The recommendation of this committee's report 386, *Review of the Auditor-General Act*, tabled in August 2001 suggested that the Privileges Committee of both the Senate and the House of Representatives examine whether the ANAO draft reports and extracts of reports attract parliamentary privilege. If they do not, should they? To date, this recommendation has not been taken up by either committee. Do you believe there is a need to address this issue further?

Mr McPhee—This issue comes up every few years. Mr Coleman is my resident expert on it. I might ask him.

CHAIR—It is one that you lay awake at night about?

Mr Coleman—It does come up, as the Auditor-General said, from time to time in the context of discovery motions that we are subject to through the courts. There are often issues in relation to that as to whether that information subject to a discovery motion could be subject to parliamentary privilege. Some years ago, we did get advice from the then Solicitor-General. He at the time concluded that the relevant provisions of the relevant act—I forget the name of it now—should be read widely. Therefore, not only our reports but also effectively our working papers were subject to parliamentary privilege. I think he also concluded that it was not beyond doubt. The courts generally do not rule on this matter.

CHAIR—So in the entitlements report audit, where you circulated a draft report and it was published in the media, what was the status of that? Privilege does not attach to it or privacy? You ask for confidentiality, but there is no legal power backing that up?

Mr McPhee—There is. There are penalties for people who do not adhere to the confidentiality requirements of it.

Mr Coleman—People who get extracts or copies of our reports are subject to the confidentiality requirements in the act. So there are penalties attached to that.

CHAIR—When you circulate those, do you put that reminder in every time?

Mr Coleman—Yes. We do.

Mr GEORGIU—And you tell them that their comments will be published in full? I am not joking.

Mr Coleman—We do that.

CHAIR—Your submission also suggests that, consistent with developments in the profession, the act should be amended to require the Auditor-General to set auditing and assurance standards. What are the developments in the profession that you are referring to? How would this be put into effect?

Mr GEORGIU—Tell us there are no resource implications.

Mr McPhee—The profession develops both auditing and assurance standards.

CHAIR—You are represented on that sort of body?

Mr McPhee—I have been in the past. I am currently on the Accounting Standards Board, not the auditing one. But I have been involved in the Auditing and Assurance Standards Board. I will give you a simple analogy. In the past in Australia, the board that set the auditing standards was called the Australian Auditing Standards Board. It is now called the Australian Auditing and

Assurance Standards Board because it issues standards for both audits and other assurance engagements. All we are suggesting here is a minor technical point that, consistent with the profession, which now produces auditing and assurance standards, the current act requires that I produce Australian national auditing standards. We are just suggesting that we move that to use the same terminology that the profession both nationally and globally uses, which is auditing and assurance.

CHAIR—We have had some debate around assurance standards, have we not?

Mr McPhee—In a specific context. But this is the general context. This is not controversial at this level.

CHAIR—On a technical matter, with regard to paragraph 20 of your submission, can you clarify what you are trying to achieve by amending subsection 21(1)(c) in line with recent changes in the Commonwealth Authorities and Companies Act? For the committee, it is in your papers on page 22. I think it is page 4 of your submission at point 20.

Mr Coleman—Again, this is a slightly technical issue. As we have tried to explain, since the act came in, there has been a definition of control. It is really just trying to clarify and, if you like, for the legislation not to rely on the definition of control because that will change over time. So we are suggesting, as we said, an amendment there which would just clarify that the Auditor-General is able to audit a subsidiary of a Commonwealth company, essentially.

Mr McPhee—If I understand this broadly, we were talking earlier about the Auditor-General's mandate. It has always been understood that the Auditor-General should audit any Commonwealth controlled entity, and that includes Commonwealth controlled companies. In some cases, those companies have subsidiaries as well. It is just to make it very clear that it is not only the parent account but the subsidiary as well.

CHAIR—That is very straightforward.

Mr McPhee—It is a straightforward amendment.

CHAIR—The submission from the Institute of Public Administration of Australia suggests that the act could be clarified so as to indicate whether ministers and their staff are considered persons who can be directed by the Auditor-General to provide information, give evidence and produce documents. Do you have a view on this? Does that need more specificity?

Mr GEORGIU—What is the current situation? Go there first.

Mr McPhee—I will take advice from my colleagues. My understanding is that we are quite clear about the powers already under the act. Chair.

CHAIR—It applies to everyone?

Mr McPhee—It applies to everyone.

CHAIR—Does it need any—

Mr Coleman—We do not believe so. The Acts Interpretation Act clarifies the definition of persons. From memory, it is very broad. Generally, again, my understanding is that the Acts Interpretation Act is the relevant act you go to, which expands on things like the wording of persons and bodies and those sorts of things. It is not usually put into specific individual pieces of legislation. The master legislation is the Acts Interpretation Act. We believe it is covered sufficiently in that act.

CHAIR—It has never been an issue.

Mr GEORGIU—What if the Acts Interpretation Act did not apply? I know it is a general question.

Mr Coleman—Therefore, it might be an issue.

Mr Chapman—Our act is that the Auditor-General may direct a person to do all the following. So we are really talking about what a person is.

Mr GEORGIU—In this case, the Acts Interpretation Act is important because it defines persons?

Mr Coleman—That is correct. But that is generally, as I understand it, the way Commonwealth legislation operates.

CHAIR—So there is no other legislation—not your legislation—that gives any protection to anybody from giving evidence?

Mr McPhee—I recall in one of the recent audits we did that Mrs Bishop asked us about whether we could interview particular ministers and the ministers' staff. We did get advice. The answer was quite clear on that. So I do not believe it is an issue.

CHAIR—In your supplementary submission, you suggested that subsections 19(4) and (5) require amendment. More specifically, final report comments from recipients of an extract of a proposed report—that is, recipients who are not Australian government entities—should be included only at the discretion of the Auditor-General. I note that the recommendation you refer to did not include reference to extracts of reports. So where did the reference to extracts in this amendment originate? Why was it included?

Mr McPhee—I am not sure where it came from, but it was certainly in the drafting of the amendment following on.

CHAIR—So what does happen with final report comments? You send out the draft or the extract, and they send you back their comments. You do not have to include them in the report? You can include them in the report in what happens generally?

Mr Coleman—In relation to comments on extracts, the act currently requires us to include those comments in the audit report.

CHAIR—It does?

Mr Coleman—It does.

CHAIR—So you have to publish them in full?

Mr Coleman—That is correct.

Mr GEORGIU—Can we underscore that?

Mr Chapman—The background to this issue was in respect of comments. There is an issue of natural justice in respect of the auditee and there is an issue of natural justice in respect of someone who may be named in the report. The thinking behind our comments here is that the auditee, under the natural justice provisions, should clearly have comments included in the report. I think that is consistent—

CHAIR—With the current act.

Mr Chapman—With 386. The issue that has come up is where through natural justice reasons we sought to clarify with someone who is not an auditee—it might be a contractor in a defence audit—whether we should be required to put those comments in the report. Certainly we will take them into account in finalising the report, but the question becomes whether there is value in having comments from someone who is not an auditee included there.

CHAIR—A very minor player.

Mr GEORGIU—It could be a very major player too.

Mr Chapman—It could be a major player. Our report needs to be fully complete, so we would have full regard to those comments. But our experience has been that some of the non-auditees, particularly private sector individuals, often do not understand this element of bureaucratic process that is part of what goes on. There are complications in how this matter surfaces.

Mr GEORGIU—There was a substantial response on the Seasprite from one of the contractors?

Mr Coleman—That is correct.

CHAIR—Do you want some discretion there or not?

Mr Chapman—We would like discretion so that for non-auditees the Auditor-General has discretion to identify relevance in including the extract in the report. Certainly we would be taking account of the comments.

Mr GEORGIU—Could you define non-auditees?

Mr Chapman—Non-auditees would be a supplier. For instance, we might be doing an audit of a government department which contracts out their IT supplier. We might be making some commentary in the report that reflects on the level of the IT performance. Therefore, we would

provide those paragraphs in the report as the extract to that IT company. For natural justice reasons, I understand that we may name them in the report. When the response comes back, do we need to have regard to it? In many, many cases, it is not directly relevant to the audit as such. If they wanted to give us a very long report about all the problems about government administration and the political local member, do we want to include that in the report for purposes? It is that sort of issue that we are dealing with.

Mr McPhee—The information I worry about is where the respondent gets off the track, basically. I would be happy to put in comments if they are sufficiently concise and to the point. Sometimes they do carry on, as Mr Chapman was saying, about many other things. It sometimes can raise the issue—

CHAIR—They raise things that probably should not be in the public domain.

Mr McPhee—And/or we have not covered it in the report. So it raises some timing issues too. If a contractor or some other party raised a question which may be relevant to public administration but not directly relevant to the audit objectives, it in itself can raise natural justice issues. Do we then have to go back to the department and say, ‘Contractor X has said this. It is not central to the audit?’ To publish that alone would create problems. So you get into a ping-pong game of getting responses back to that. Then do you have to share that comment with the person who provided the first comment?

CHAIR—Are there any guidelines for comments?

Mr McPhee—We do endeavour to.

CHAIR—Human behaviour is such that they often interpret them in the way they want to.

Mr McPhee—Mr Georgiou raised the issue of the Seasprite audit, where we got a fairly long response from the contractor. We endeavoured to cover off some of the points with cross-references and footnotes—

CHAIR—It was a whole new audit to go through.

Mr McPhee—But it is almost like it is a separate exercise. I am all for picking up the central comments.

Mr GEORGIU—Sometimes the audit can be very self-serving in its editing. That is why the provision was brought in. Sometimes the audit can be very self-serving in its editing.

Mr McPhee—But that is why we included the full responses from agencies ahead of the legislation, Mr Georgiou. We accepted the committee’s point. This is not that issue. This is a separate issue dealing with where we provide people with extracts of the report.

Mr GEORGIU—The reality is that it initially came up with respect to the treatment of departments’ responses in a fairly cursory way by audit. They edited the core of it. It is like having three bites of the cherry, not just two. Apropos of that, can the committee also have the internal guidelines relating to the publication of the responses, please?

Mr Cahill—We can arrange that.

CHAIR—I have no further questions. Thank you very much. I was pleased to see an article in the *Financial Review* at the weekend where the NBN said beware the Auditor-General, basically, if they tried a few things on. It is nice to know you have that status out there in the community. On behalf of the committee, I thank the witnesses for giving evidence today. I do not think we have any additional questions at this stage. Hopefully, that should not be an issue. I declare the public hearing closed.

Resolved (on motion by **Senator Feeney**):

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

Committee adjourned at 10.48 am