



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Reference: Auditor-General Act 1997**

MONDAY, 8 FEBRUARY 2010

CANBERRA

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**JOINT STATUTORY  
COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

**Monday, 8 February 2010**

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

**Members in attendance:** Mr Adams, Mrs B. Bishop, Mr Bradbury, Mr Briggs, Mr Georgiou, Ms Grierson, Ms Ley 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, Performance Audit Services Group, Australian National Audit Office..... 1**

**CHAPMAN, Mr Steve, Deputy Auditor-General, Australian National Audit Office..... 1**

**COLEMAN, Mr Russell, Senior Director, Australian National Audit Office..... 1**

**McPHEE, Mr Ian, Auditor-General, Australian National Audit Office..... 1**

**POPE, Dr Andrew, Group Executive Director, Australian National Audit Office..... 1**



**Committee met at 9.34 am**

**CAHILL, Mr Matt, Group Executive Director, Performance Audit Services Group, Australian National Audit Office**

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

**COLEMAN, Mr Russell, Senior Director, Australian National Audit Office**

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

**POPE, Dr Andrew, Group Executive Director, Australian National Audit Office**

**CHAIR (Ms Grierson)**—Welcome. I declare open this fourth public hearing of the Joint Committee of Public Accounts and Audit for its inquiry into the Auditor-General Act 1997. In our current review of the act we have held three public hearings and heard from a number of witnesses, including representatives from the Australasian Council of Auditors-General and the Institute of Public Administration Australia. The public hearings held so far have reaffirmed how important it is that the legislation underpinning the Auditor-General's role in scrutinising the administration of public sector agencies is as current and as clear as possible. Today we will hear again from representatives of the ANAO, including the Auditor-General. I draw the attention of witnesses to the guidance on the conduct of public hearings that is available at the table. Do you have an opening statement, Mr McPhee?

**Mr McPhee**—Not this morning, Chair, but I would like to mention that Dr Andrew Pope has joined us. He is the former head of the Office of Evaluation and Audit in the Department of Finance and Deregulation. With the recent changes, Andrew has joined us as a group executive director in the Performance Audit Group.

**CHAIR**—That will be very helpful, and welcome, Dr Pope. We have been tracking that fairly closely and we hope it is a good outcome for everyone. Going to questions, on page 67 of your submission you outline a number of options to enhance external accountability arrangements. None of those options canvasses the possibility of the Auditor-General being given authority to audit the performance of bodies that receive Commonwealth funding if a minister or the JCPAA formally request such an audit. Additionally, the Auditor-General could ask a minister or the JCPAA to make such a request. Could you just outline any advantages or disadvantages of adopting that approach or whether that is necessary at all?

**Mr McPhee**—Currently, as you would be aware, I may be requested by ministers, by the committee or by other committees of the parliament to undertake audits and I do give those due consideration. In the normal course I would not think it was necessary—

**CHAIR**—So there is no need to formalise that?

**Mr McPhee**—I would not think it was necessary to formalise it, but I will qualify that in relation to this new area of powers that we have raised in our submission. The same sort of provision, as you would be aware, does currently relate to our audit of GBEs where the committee or the minister may ask me to undertake audits of GBEs and alternatively I may ask

the committee to ask me—which seems a rather roundabout way of doing things and I wonder whether that convoluted approach is particularly necessary.

**Mr GEORGIU**—Has it been a problem?

**Mr McPhee**—No.

**CHAIR**—And it has not precluded you from doing anything or following up on things?

**Mr McPhee**—I raised separately in our submission that I think the ability to audit GBEs should be at the discretion of the Auditor-General, full stop. I think the circumstances have changed from the days when that provision was put in place. I think if you accept the principle that the Auditor-General's mandate should be with respect to all Commonwealth controlled entities then I do not really see the arguments today for carving out government business enterprises.

**CHAIR**—And do—sorry, were you going to continue?

**Mr McPhee**—No, I was going to go back to your original question but if you would like to stay with the GBEs please do.

**CHAIR**—No, I am just wondering whether there is enough scope for public interest. Do you feel that, over your 50 performance reviews, you consider public interest as well as reviewing the functions of government and outcomes?

**Mr McPhee**—I believe we do, and it is always open to members of the community and members of parliament to write to us and we do take that into account.

**CHAIR**—Do you get much correspondence from the general public?

**Mr McPhee**—Not a lot, but we would probably get six, eight to 10 letters a year on various issues, and probably more from members of parliament about what they would like to see us do. As you know, we have quite an open planning process where we consult with this committee and this committee consults with the rest of the committees of the parliament. We also consult with Commonwealth departments, and so we, I think quite unusually, have a very open planning approach and we are always interested in the views of people as to what we should be doing. Clearly at the end of the day the act provides that the Auditor-General is the decision maker when it comes to determining the program. But I think it is quite good.

On the issue of the cross-jurisdictional areas, in our submission we have raised a couple of things. Firstly, our act has served us very well now for 13 years and has had us in good shape. So nothing we have raised in the submission is at the sharp end of concern to me. That is the first point I would like to make. The second point, which I have made previously in front of the committee, is that we do need to be thinking of the next 10 years as part of this inquiry because these opportunities do not come around every day. I think it is timely to think about the powers that an auditor-general will need going forward. We were very conscious of the committee's interest in the Commonwealth-state arrangements, the developments that are occurring there, and the obligations on the states to be partners but also to work towards achieving particular



outcomes using the funds that the Commonwealth provides. So, as you are aware, we raised in our submission a number of options for providing the Auditor-General with authority to undertake audits of some of these areas where the Commonwealth is funding.

At the previous hearing, I think there was some useful discussion around just where the balance should lie. It may be that, if the committee thought they would like to see a little bit more control in this case, that you could provide that the Auditor-General may undertake these audits at the request of the committee, or a minister or whatever. That would be a sort of mid-point, halfway house. My personal view is that over time it is likely that the arrangements would be very similar to the GBEs—either nothing would happen or the committee would get comfortable and possibly allow the Auditor-General his or her own decision about those sorts of matters. But there is a range of options and I am very open to discussion about them.

**CHAIR**—And the option that you are acting on at the moment is the one where it is expressly written in by the government that you have access to a cross-jurisdictional program like Building the Education Revolution.

**Mr McPhee**—Under various agreements currently there are clauses that provide us with access.

**CHAIR**—And you are doing that audit at the moment. You have found no problems or issues regarding cross-jurisdictional access?

**Mr McPhee**—In fact we have had good cooperation from the state jurisdictions we need to talk to in getting access to the information.

**CHAIR**—Thank you. Regarding the transfer of the Office of Evaluation and Audit, we understand from your supplementary submissions that the responsibilities of the Office of Evaluation and Audit have been transferred from the Department of Finance and Deregulation to the ANAO and organisational arrangements have now been made in relation to that transfer. Are there any difficulties and challenges that have arisen as a result of that? Everyone will see a win-win of course. Do you anticipate any additional resourcing issues as a result of this transfer?

**Mr McPhee**—The transfer has gone very well. Andrew and his staff have settled in quite well. I will let Andrew speak about it, but from my point of view it has gone well. The timing has been very good because we are moving into our planning period now so this provides us with the opportunity to consider the integration of Andrew's former program with our work and how we will move forward. We will provide that information to the committee as well so that it does provide an opportunity for you to have a look at how we intend to advance. But from my point of view it has gone quite well.

**Dr Pope**—Certainly, that has been the case from my perspective as well. It all went very smoothly, including over the Christmas period, but perhaps there is an indication of the integration in that we have managed to get audits that we had in progress prior to the transfer up and running again under the Auditor-General Act within a very short space of time. So there has been very little slippage in terms of the planned program and we look to start few more over the rest of this financial year.

**CHAIR**—You do not feel that the value of your previous work will be lost then through being absorbed into the Audit Office generally?

**Dr Pope**—No, I do not think so. The Audit Office has a higher profile than we previously enjoyed as a very small organisational unit in a large department, and a lot of the work is very similar. So we have had primarily a concentration ourselves on performance audit over the last four or five years that is essentially mirrored under the new arrangements, so I think on balance that is not an issue.

**CHAIR**—Thank you, Dr Pope.

**Mr GEORGIU**—What sort of resource implications have there been and how much have you been enhanced?

**Mr McPhee**—On a full year basis we receive \$4 million per annum. Finance took a slice off the top to return to the budget, but these are difficult times and so we believe we can manage the program within the resources we have been given. We have got Andrew's group set up as a separate working unit within the office and we will continue to provide the Indigenous focus to the program.

**Mr GEORGIU**—Just going laterally, how do you feel about the issue of advertising the Auditor-General's position?

**Mr McPhee**—I have not thought too much about it.

**Mr GEORGIU**—Give us a snap response then. How unusual is it that the position is not advertised?

**Mr McPhee**—I have not followed this debate. There is the same issue around the positions of secretaries and a range of other statutory positions. These are matters for the government but, having said that, it would not concern me at all if there was a very open field provided for the government's and the committee's consideration for a candidate for Auditor-General, but these are matters that, as you know, the government has decided traditionally.

**Mr GEORGIU**—That is right, ultimately everything is a matter for government. To take you to the assurance audits, you think that it would be appropriate to specifically mention those in the act?

**Mr McPhee**—Yes, we raised that in the submission.

**Mr GEORGIU**—Can you tell us about that? Can I just point you where I am interested in starting? You operate under section 20 of your act.

**Mr McPhee**—Correct.

**Mr GEORGIU**—That gives you mandate to do assurance audits of the sort that you are doing?

**Mr McPhee**—Correct.

**Mr GEORGIU**—Have you got legal advice to that effect?

**Mr McPhee**—I do not think we have specific advice on that, but I will ask Mr Coleman.

**Mr Coleman**—I think we engaged AGS or another law firm from time to time in relation to certainly setting up of the advertising work and the arrangements put in place for that. I think so in relation to the major projects but I cannot categorically say that we did. I think we have had legal advice generally about the operation of section 20, and we do not believe there is a legal issue around the conduct of those issues.

**Mr McPhee**—If I could add to that, Mr Georgiou, section 20(1) says that the Auditor-General may enter into an arrangement with any person or body to audit financial statements of the person or body, to conduct a performance audit, and (c) to provide services to the person or body that are of a kind commonly performed by auditors. Certainly assurance review engagements are of that kind, so I do not think there is much controversy.

**Mr GEORGIU**—There is no legal issue?

**Mr McPhee**—No.

**Mr GEORGIU**—It is a non-problematic area.

**Mr McPhee**—I believe so. The reason we raised it is that the significant issue is that it requires agreements, including on access et cetera, with the other party. As you would be aware, in our normal audit function we have quite powerful access powers to obtain information. Under the audit by agreement, we are reliant on the other party agreeing to access arrangements for us. So in my mind that is the big distinction.

**Mr GEORGIU**—And how is this agreement embodied?

**Mr McPhee**—It is embodied in an exchange of correspondence between me and the head of the agencies concerned. So in respect of the work we do at DMO on the major projects I have an exchange with Dr Steve Gumley; in respect of advertising I write to the heads of the agencies responsible for implementing government advertising programs and say ‘This is the way we would like to proceed’ and they write back and say that that is fine.

**CHAIR**—So there is no final memorandum of understanding to cover them generally?

**Mr McPhee**—It is case by case but, having said that, they all look similar because we seek to cover off not only the work but the access and any other considerations involved.

**Mr GEORGIU**—Could we have a look at the instrument?

**Mr McPhee**—Yes, of course.

**Mr NEUMANN**—Mr McPhee, in your letter of 22 January 2010, you said that four audits were in progress with the transfer of OEA to the ANAO. Can we get details—probably from you, Dr Pope—as to the nature of those four audits and when they are likely to be completed. There is reference also to audits of Indigenous programs being addressed in 2010-11. What do you envisage there? So there are three questions: nature, when they are likely to be completed and what you expect in the future.

**Dr Pope**—They are all performance audits, Senator. The four audits under way at the moment include an audit of the government business managers in the Northern Territory—that is in the FaHCSIA portfolio as part of a Northern Territory Emergency Response measure. From memory, that should be completing about September-October this year. We have an audit on a similar time frame in DEEWR regarding multifunctional Aboriginal children services and creches, and then there are another two in FaHCSIA around housing that involve some very small programs. One is called Fixing Houses for Better Health, which should be finished in July, and the other is the Army Aboriginal Community Assistance Program, which should be finished a little later in August-September.

Perhaps I should step back into our previous work program a little bit. We had a three-year program and legislation—the Aboriginal and Torres Strait Islander Act—allowed us to set out various themes over that three-year period. We chose to base that last year around the current building blocks. There were seven areas there including healthy homes, housing, education and schooling and so on—and so we started to lay out a theme of audits along those lines. So that takes me into where we are planning to go and we are now obviously in discussions internally around how that picks up. But my intention is certainly to concentrate on schooling and education and early childhood and secondary schooling, because those are, I think, key areas in the COAG framework if you are seeking to close the gap. We also intend to continue a focus on housing as the two main areas and then over time health comes back into the picture. So we are trying to get a good swing around those seven key building blocks because they are quite a useful foundation for development of focus.

**Mr NEUMANN**—Mr McPhee, if you are already doing performance audits there, can you explain what you said in the last paragraph on the first page where you say: ‘In the context of the 2010-11 program we will review our approach to the audit of Indigenous programs, including options to incorporate an Indigenous focus into other performance audit activities where appropriate’. What do you mean by ‘other’ if you are already doing them?

**Mr McPhee**—Because, before we had the OEA, we used to look at Indigenous elements within our normal performance audit program—we have a branch that focuses on FaHCSIA and a range of other agencies. Our planning process provides us with the opportunity to see what Andrew’s former plan had, what we were doing, and just make sure that they are integrated and that they are complementary. It may be that some of the issues that Andrew had in mind in his earlier program could be incorporated into work we had in mind in our own program and vice-versa, so we will work that through as part of our planning process.

**Mr Cahill**—As an example to help, Mr Neumann, on our program at the moment is mental health. Dr Pope has suicide prevention in Indigenous populations and we are looking at a way—because it is a mainstream big area—that we can leverage the expertise to be able to cover the

big topic but also to do a specific focus and a chapter on that issue. It gives us some economies of scale too.

**Mr NEUMANN**—In your submission of 30 November last year, you talked about an additional \$2 million for performance audits. Do you think you need to review that in the context of the Indigenous focus you are talking about now?

**Mr McPhee**—I think that was a slightly different issue. That was the focus on performance information and that is quite a separate area. As our submission endeavoured to be clear about, there is a range of ways we could look at performance information above and beyond what we currently do. Part of it for instance, as happens in Western Australia, is that the Auditor-General does a review of the performance information at the same time as he does the financial statement audit work. So he treats that data as other systems producing information and provides an opinion in respect of that information. That is the heavy duty option and there is a range of other options. That is a much more generic proposal than the Indigenous focus.

**CHAIR**—Just to leave that area for a moment, are there particular challenges in Indigenous audits for performance indicators or performance measures? Are they any different? Would there be harmony between the way those are approached by the ANAO and the former Office of Evaluation and Audit?

**Dr Pope**—I am not sure I can completely answer the question about whether they are the same or different because I have really not had the chance to look at performance indicators in other areas other than the Indigenous side. The structure of Indigenous programs has got some unique features—there are some very old programs there that have been around a very long time, and the extent to which performance information has evolved over that time varies across programs and departments. Certainly, you can say there is a very strong focus on it now, but when we audit programs that have been set up a while ago and we are perhaps looking a little back in time, the performance information that is available then is not necessarily complete in terms of coming to a good view on how things are progressing.

One of the issues that is reasonably common across a lot of things is a lack of a baseline set of data. Particularly the further back you go into programs you are not sure what the situation was at the time, and so it is very hard now to look at current performance information and then determine what the impact has been. There are also a lot of very small programs in the Indigenous space, and so there is a question about the economy of establishing a large performance framework around those ones—whether it really makes a lot of sense—so sometimes the information is not there for perhaps a quite good reason in terms of the size of the program. It is also complicated by the fact that Indigenous programs are delivered across almost every agency in some respect. Obviously, there are some key ones, FaHCSIA, DEEWR and Health, but almost everybody has got a go at some of it, so matching it together is quite difficult.

**CHAIR**—Mr McPhee, would you to comment on that?

**Mr McPhee**—I suspect the challenges are probably a little greater in the Indigenous area but they are not unique. The reason we have raised this matter in our submission is that in talking to state auditors generally in particular, and the Auditor-General in New Zealand, they do believe that by providing an audit focus to performance information does result in an increase in the

quality and the integrity of the information presented. But it comes at a cost is what we are saying, and we can continue to look at performance information as appropriate in the audits we do and we will continue to do that. But if the committee, the parliament, want a greater focus on this then we would need to be reasonably resourced for it.

**CHAIR**—I will come back to that.

**Mr ADAMS**—It is the issue in our report to have a look at your processes in reference (e):

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.

I am interested in the money doing what it is voted to do through the parliament and whether it gets to the process, so the performance audits, and how many divvies are taken out of this money before it gets to the delivery stage of actually building a house as we were talking here with what Dr Pope was saying. I think all governments from the Commonwealth level have been frustrated over the years because of that. It is probably more of a structure of how things are delivered that maybe we should be focusing on and whether we could get some ideas of how to improve that would be of benefit. If you could comment on that, I would appreciate it.

**Mr McPhee**—I think many commentators have made the point that they do become concerned with the level of overlap between jurisdictions in delivery of programs. At the moment though, our mandate is very much focused on the audit of Commonwealth entities, so that is our focus. The reason we raised that other issue about whether we should have the capacity to look at state performance et cetera would allow us, subject to whatever the provision was, the ability to look at the delivery by the state governments of their obligations under the various agreements. We are constrained at the moment to look at state performance or the performance of grantees under our act, so it is a central issue. As I say, with the way the world is moving I think it would be sound to include something in the legislation with whatever constraints or caveats the committee thought was appropriate just to acknowledge that this new territory. We do not want any rash outcomes here, but I think we need to set the act up for the next 10 years.

**Mr ADAMS**—It is not looking at blaming people, but finding structures where if we are inefficient as a nation where we deliver that money, whether it is indigenous housing or mental health on the ground stuff, that we get it out there in the most efficient way.

**Mr McPhee**—Absolutely. I have to say that governments over many years have been trying to get performance information by the states so that there is greater benchmarking and so that it is apparent that some states are performing better than others and to allow them to learn from each other. I would not want to suggest that this audit provision is the only way that it can happen. It requires a range of responses, and government is obviously alert to that, but the audit avenue would be an additional way of putting pressure on performance over time.

**Mr ADAMS**—Thank you.

**Mr GEORGIU**—I have been looking over the documentation regarding the application of FOI to the Auditor-General where you mount a very long case against doing that and if I could ask what this statement means:

The Auditor-General is an independent Officer of the Parliament, performs no executive functions, and makes no decisions or recommendations that directly affect members of the public.

What does that last bit mean—‘makes no decisions or recommendations that directly affect members of the public’?

**Mr McPhee**—Our recommendations are directed to the Commonwealth agencies obviously, so it is meaning that we cannot take decisions ourselves that impact directly on the public, but if agencies accept them, then clearly there is a—

**Mr GEORGIU**—What about recommendations?

**Mr McPhee**—Recommendations are the same, for any action to occur it relies on another party to accept our recommendations.

**Mr GEORGIU**—I am still puzzled by recommendations, it says ‘decisions or recommendations’.

**Mr McPhee**—I accept we might—

**Mr GEORGIU**—Your recommendations did affect members of the public.

**Mr McPhee**—I take your point. But I think the word ‘directly’ was intended to make the point that our recommendations have to be accepted by an agency first, and then their decision could impact on members of the public.

**CHAIR**—Auditor-General, at the hearing on 19 October we touched on briefly the government’s capacity to monitor compliance with the terms of bank guarantees, and at the time you suggested that the Commonwealth was generally getting its assurance about those things through its regulatory arrangements with APRA. Many of us sit on other committees that do look at our regulators—and there are many of them, as you know, but they are very important to us. Are there areas that you steer away from because of the actions of regulators or does it not make any impact on how you set your audit program?

**Mr McPhee**—There are no areas we steer away from, but we do try to have regard to significant known weaknesses, identified weaknesses and possible weaknesses, and I guess to date our regulatory regime in the broad has held up fairly well as people here know. If, however, a committee was to say, ‘We are concerned about a regulatory regime relating to the giving of guarantees on deposits,’ or whatever, then it would be open for us to have a look at that and the effectiveness of the regime.

**CHAIR**—They have been rather major areas in recent times—ASIC and APRA, et cetera?

**Mr McPhee**—Yes.

**Mr GEORGIU**—In your letter of 11 August 2009 and for the committee’s purposes it is at page 41, you say:

The need to maintain the confidentiality of information is reinforced by section 36(1) of the Act that prohibits the disclosure of information obtained in the course of performing an Auditor-General function.

I have looked at that section. It is a very specific section about information not to be included in public reports, which is section 37, I think.

**Mr McPhee**—Correct, yes.

**Mr GEORGIU**—This goes to prejudice security, disclose deliberations of the cabinet, prejudice relations, unfairly prejudice or ‘any other reason to form the basis of a complaint by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed’. That is very much narrower than I expected from reading your letter. It is very specific and very closely bound; it does not go to confidentiality; and it does not go to secrecy—it goes to particular things not be included in reports which are of a very precise nature.

**Mr McPhee**—I think the way the letter was set up, Mr Georgiou, was we were saying there was a range of reasons of which that is a consideration. There are other reasons though that we did put forward about not making executive decisions within the office, other than in relation to our own performance, and the fact that state auditors-generals are exempt from FOI arrangements as well. There is a range of reasonably sound reasons why the office is exempt. It seems to be entirely consistent with the way other audit offices are treated under FOI. We were just putting a range of factors together to say, ‘We believe that should be the way it should stay.’

**Mr GEORGIU**—On the point of not making executive decisions, can I draw your attention to the Institute of Public Administration’s submission regarding advertising that says:

We are concerned that he is being drawn into the executive decision-making process which he is asked to audit on behalf of the legislature.

Can I have a response to that please?

**Mr McPhee**—As you know, I do not accept that at all and I have told the Institute of Public Administration that as well.

**Mr GEORGIU**—Could you develop that please—sorry, you do not accept it, but why?

**Mr McPhee**—I am more than happy to. The responsibility of agency heads under the advertising guidelines is to provide a certificate that the proposed campaign accords with the requirements of the guidelines. They provide the certificate. They tick off against a range of guidelines, as you are aware; they support those guidelines with evidence; and our role is to review their certificate and the level of support provided to see whether anything that comes to our attention suggests they are not in accordance with the guidelines. That is an audit or a review function. It is not an executive decision function. As you know, there were proposals around in the past for the Auditor-General to approve the advertising campaigns proceeding. I would not agree with that because that would be an executive function; that is, approving—saying yes/no—



is an executive function but providing a review opinion that says, 'In my view the guidelines have or have not been accorded with'—

**Mr GEORGIU**—It is not a decision.

**Mr McPhee**—It is an opinion of mine and my report goes to the minister. The decision rests with the minister, not with me. It is similar to the situation I was outlining earlier about recommendations. I think we make very cogent recommendations but it is up to the agencies to say, 'Yes, we agree and we will implement those.' I do not have any power other than the power of persuasion. The same with advertising. I say or my delegates say, 'Something has come to our attention on whether you have met the guidelines or not.' Whether the government goes with that is up to them.

**Mrs BRONWYN BISHOP**—Once you get into advertising you are into the political arena. The other is the proper administrative arena. That is the essence of the problem we have.

**CHAIR**—Can I just remind members we have a full public inquiry as well.

**Mr GEORGIU**—This is pertinent.

**CHAIR**—It is pertinent, I know, but I just remind members—

**Mr GEORGIU**—Yes but this is pertinent because it goes to the issue of decision making which is central to a lot of arguments that you are making.

**Mr McPhee**—Absolutely.

**Mr GEORGIU**—My understanding was that campaigns do not go ahead if you do not certify that they comply. Maybe you could disentangle that for me—that is my misunderstanding.

**Mr McPhee**—It has been said to me by ministers that they would not proceed if I put in a negative report. Two things: first, we have not reached that situation so I do not know whether that will play out or not; and second, that is their decision. If they say they are happy to respect the opinion of the Auditor-General in making their own opinion, I say to them, 'That is terrific but you don't have to.'

**Mr GEORGIU**—There is no specification of that in the guidelines. The guidelines do not say that.

**Mr McPhee**—That is a decision for the minister. The minister can say, 'The Auditor-General is out of his tree and I am going ahead.'

**Mr GEORGIU**—So there is no specification of guidelines. I will have to go back and have a look at that.

**Mr McPhee**—There is no specification.

**CHAIR**—Can I go back to the question I asked earlier. Because these are assurance audits and they are new and we are looking at trying to cover off better assurance audits in the revision of the act, should there be—not guidelines—more formalised memorandum of understanding generally about these? We are really pleased with the major projects report in the way that has been able to be progressed without that formalised agreement and the agreements are there, as you say, in the exchange of correspondence. If we formalise them in the act do they need a mechanism or some guidance in terms of what overarching documentation should be provided?

**Mr McPhee**—I am not immediately persuaded by that, chair, only because at the moment we have the audit provisions which says the Auditor-General shall determine the audit program and there are no subsequent rules about what procedures we have in place. We do write to agencies and say, ‘We are about to do a performance audit, this is the objective,’ but that is not legislated.

If you take a review function in a similar vein, while you could go to that extent I do not think it is necessary. It depends how comfortable the committee is. We could report to the committee on our review activity more strongly, if you wanted us to. We do focus on the performance audit activity but we could have an understanding—I am not keen on written understandings but if you said to me, ‘I would like to know that,’ then we would provide it.

**CHAIR**—Yes, so the formality is not needed.

**Mr GEORGIU**—What would you provide?

**Mr McPhee**—We would give you an update. At the moment, for instance, the committee meets with us and reviews our performance audit activity. We could give you an update of the reviews we do from time to time and you could say, ‘Actually I am interested in having a look at that.’

**Mr GEORGIU**—My hearing was optimistic.

**Mr McPhee**—Yes.

**Mrs BRONWYN BISHOP**—The purpose of project audits, as I understand the purpose, is to see how well the government is carrying out the intention of its policy and whether it is effective and where the defects may occur. Is that basically a good description or do you want to add something?

**Mr McPhee**—If I could slightly vary that, Mrs Bishop. Performance audits are focused on the administrative effectiveness. Clearly if we thought there was a policy gap in a program.

**Mrs BRONWYN BISHOP**—Correct, administrative effectiveness because you remain absolutely out of the politics.

**Mr McPhee**—Yes.

**Mrs BRONWYN BISHOP**—This is where I have a major problem, as I have said before, with your being involved in political advertising because you are involved in politics. What

about if we put a position into the act that said you were not allowed as Auditor-General to be involved in political audits?

**Mr McPhee**—Mrs Bishop, the problem is if you did a breakdown of the advertising campaigns, I am not sure you would say that they are all political or any of them.

**Mrs BRONWYN BISHOP**—I have done that and I do.

**Mr McPhee**—I say to you that there are lots of advertisements around defence recruitment, health issues—you name it—and there has to be an accepted principle—

**Mrs BRONWYN BISHOP**—No, the difference is that there is a policy out there that we want to recruit so many people—there is a recruitment policy. As part of doing a project audit of that, you would see that the objective is they wanted to recruit 25,000 people, you would look at in the administration of that policy did they achieve that or did they not and where were the problems? But when you get into advertising it is something that benefits the government—no two ways about it; that is why governments do it for their benefit—and you are then involved in the political process like it or not. What I would like to do is have in the act a provision that says you may not be involved in political matters.

**Mr McPhee**—Mrs Bishop, you know that we do not line up on this one. I do not know what that provision—quite frankly, I would not know how to interpret it.

**Mrs BRONWYN BISHOP**—We would work on good wording.

**Mr McPhee**—I do not have the advertising guidelines with me today but there is a principle in there that says governments are entitled to promote the particular aspects of the programs that they have introduced. It is a principle. You might think some of them are political, but the government has the mandate to do that.

**Mrs BRONWYN BISHOP**—Let us take ETS, how can you tell me that is not political?

**Mr McPhee**—Well, we have not seen anything on the ETS.

**Mrs BRONWYN BISHOP**—Yes, we have; we have seen climate change advertising, and it is unsatisfactory.

**Mr McPhee**—I do not have the papers with me, but that was not a political thing. That was about informing—

**Mrs BRONWYN BISHOP**—I am sorry, I disagree.

**Mr McPhee**—I appreciate that.

**Mrs BRONWYN BISHOP**—It is very political. If you want to promote the aspect that this is occurring and the government has to respond to it and so on, it is very political.

**Mr GEORGIU**—Mrs Bishop and I disagree on climate change but we actually reflect one another's views on apolitical information of government policy.

**CHAIR**—When you do a DMO of the major projects report, you also do audits of individual programs. Is the scope the same for advertising? You do the overall program. Would you do any particular audit of the whole process right through or?

**Mr McPhee**—It certainly is open to us to do that, yes.

**CHAIR**—Your tick-off function or your assurance function has nothing to do with value for money or some of the other outcomes you might want to see in terms of the expenditure on advertising, whether they have achieved their target or whatever, because you cannot do that until after the program has been run.

**Mr McPhee**—We do look at the research to support the nature of the advertising campaign, so to that extent it does go to value for money.

**Mr GEORGIU**—Value for money.

**CHAIR**—But you do not do the post after the campaign has been run, do you?

**Mr McPhee**—We don't do?

**CHAIR**—The post-evaluation of the whole campaign, but you could as a separate audit program?

**Mr McPhee**—We could. We don't, but we could.

**Mrs BRONWYN BISHOP**—But let us take an example, let us take the youth allowance: you have just done an audit of the youth allowance, which is a very political issue, but your audit of that is merely to see that this is a policy they set, in the administration of that policy were they achieving the ends et cetera. However, it has not been a very successful policy for the government, so now they come along and say, 'We are going to have an advertising campaign to promote what we think is great,' that is political and that is where you get into the doodoo.

**Mr McPhee**—Sure, if they say, 'We are wonderful'—

**Mrs BRONWYN BISHOP**—It is nothing to do with you and it should not be anything to do with you.

**Mr McPhee**—Mrs Bishop, if the campaign said, 'The government has got the best ideas and haven't we done a wonderful thing,' I think we would have some issues with that, but if they are saying, 'Youth allowance, you are entitled to youth allowance if you are a student, you are this and you are that,' then that is entirely legitimate.

**Mrs BRONWYN BISHOP**—You know and I know that the message is to be out there, 'Aren't we doing a good job,' otherwise you are not going to do it.

**Mr McPhee**—The problem I have with the approach that you have is that you are happy for us to come and review government advertising programs as a performance audit 12 months, 24 months or 36 months after the event when it is all over, done, dusted, the money has been spent and the people have moved on. It is all public moneys, it is all done and yet we have an entitlement to do a performance audit then. It just does not make sense to me.

**Mrs BRONWYN BISHOP**—Yes, because it is not your role to be involved in politics and in determining whether it is good politics or bad politics. It is not your role.

**Mr GEORGIU**—There is a lot of sense in what you say, but why doesn't that logic apply equally to all performance audits?

**Mrs BRONWYN BISHOP**—Correct.

**Mr GEORGIU**—Because those programs have been on the ground for 12, 18, 36 months, and you think—which I agree—that it is appropriate and important that they should be reviewed as to their effectiveness and as to their value for money, but you do not think that you should be in there on an ongoing basis at every level of implementation. What is the difference between the two cases?

**Mr McPhee**—The difference is that government advertising has been extremely sensitive and problematic, and our report on a previous regime shows that.

**Mrs BRONWYN BISHOP**—It makes the case.

**Mr McPhee**—So here we have got a regime. It may not be perfect, but it is designed to provide much more rigour and discipline into the administration of government advertising campaigns. I happen to think it is a positive development. We have discussed it before—

**Mr GEORGIU**—What I was going to was—

**CHAIR**—You mean every government program out of every department—

**Mr GEORGIU**—You find one appropriate and the other inappropriate, and it is not as if—

**CHAIR**—I do not think we could afford an audit office that had all those functions.

**Mr GEORGIU**—No, I am not even—

**Mrs BRONWYN BISHOP**—We don't want it; it is not their job.

**Mr GEORGIU**—You make a point about problematic; I make the point that equally problematic things have been ticked off by the audit office in the past; but my larger point is that lots of government programs are problematic on an ongoing basis and we know that—lots of them under both governments, nothing distinctive about problematic advertising.

**Ms LEY**—I have a question because Mr Georgiou said something which made me think of a program that was problematic I was curious as to whether you were auditing it, Mr McPhee, and that is the government's Better Regions Program.

**Mr McPhee**—I believe we are—

**Mr GEORGIU**—A performance audit?

**Mr McPhee**—A performance audit.

**Ms LEY**—If so, when do you expect to release the results?

**Mr McPhee**—If you like, I can take that on notice and let you know that. I believe we are looking at that—probably later this year.

**Ms LEY**—Is it under way? That is what I was keen to hear.

**Mr McPhee**—Yes, I believe it is.

**Ms LEY**—When it commences, does it have an end date or can that be extended depending on resources?

**Mr McPhee**—We have a forecast date but it depends on how the audit goes, the issues arising, et cetera.

**Mrs BRONWYN BISHOP**—And the election date.

**Ms LEY**—Following on from our discussion relating to the unavoidable political nature, would it be within your scope to identify, for example, that 90 per cent of the funding under that program went to Labor-held or marginal seats or would that not be something that related to your information—

**Mr McPhee**—In the past we have done analysis by seats. It requires an understanding of the allocation of the seats and what the program is about, but we have done that analysis in the past.

**Ms LEY**—And drawn conclusions or just simply put the analysis out there?

**Mr McPhee**—We made the point that in some cases there were coalition seats doing better or worse than what you would expect, et cetera.

**Ms LEY**—Given that much of the program was concluded in 2007, are you leaving it a bit late to finish an audit late in 2010?

**Mr McPhee**—Well, it is a bit of a challenge to get them all done at the right time. We have to make decisions about the programming of our work, and the main benefits of our recommendations are that they feed into the ongoing administration of programs. That does not worry me unduly and it is not unusual that we would be a couple of years behind.

**Ms LEY**—The deputy secretary of the department of infrastructure seems—well, at best—a little bit concerned about some aspects of the relationship, if I can call it that, between yourselves and them and maybe even a little bit cranky. Have you considered the suggestions—

**CHAIR**—Do you want to give us your reference for that in our papers?

**Ms LEY**—It is page 87.

**CHAIR**—Which submission is it?

**Ms LEY**—It is the submission from the Department of Infrastructure, Transport, Regional Development and Local Government—they are all public, aren't they?

**CHAIR**—Yes, that's right.

**Ms LEY**—There seem to be some quite strong comments by the deputy secretary of that department.

**CHAIR**—Just for the information of the committee, they were invited to come and meet with us about that but they declined to do so. We just have this letter from Andrew Tongue.

**Ms LEY**—If you have had a chance to look at those comments I was interested in your reaction, particularly to the one where they essentially say that a performance audit by its nature looks backwards, elaborate a bit on the tension that creates and would we be better off looking forward and being perhaps a little bit more 'real time', I am guessing. I think that particularly applies to my comment on the better regions program.

**Mr McPhee**—The reality is that when we look at public administration we look for support, we look for evidence et cetera. Auditors get very wary about forward-looking prospectuses basically. I found this quite an unusual letter, to be honest, signed by the deputy secretary, not the secretary.

**Mr GEORGIU**—That is unfair.

**Ms LEY**—So he can be a bit freer in his—

**Mr GEORGIU**—No, that is unfair.

**CHAIR**—I would have really liked Andrew Tongue to present to us because we once did a huge public inquiry in this committee on looking forward in terms of aviation security, yet I do not think we got much response from him for several years.

**Mr McPhee**—I have to say it was a little unusual—

**Ms LEY**—You do not think you are just being a tiny bit dismissive though—it is a little unusual. A substantial proportion of the allocation of public money goes through this department. They are even saying that it is not a really collaborative approach between agencies and the ANAO.

**Mr McPhee**—Is this the department where we did the major regional partnerships?

**Ms LEY**—No, it was a different department in a different government but it would have had a relationship with this department.

**Mr McPhee**—They are probably a bit sensitive but I can't be unduly—

**Mrs BRONWYN BISHOP**—That is a bit rich, I think. He has put in a submission. I do not think you can just dismiss it out of hand.

**CHAIR**—Thank you. There are some questions that still need to be covered off. Had you finished, Ms Ley?

**Ms LEY**—How much time is taken up by advertising of auditing?

**Mr McPhee**—Advertising reviews by the audit office—I think about \$800,000 or \$900,000 a year.

**CHAIR**—What proportion of your time is that?

**Ms LEY**—Is that out of your \$4 million budget?

**Mr McPhee**—Sorry, just to be clear: the \$4 million budget was in relation to the resourcing for the Office of Evaluation and Audit. Our office budget is \$70 million or thereabouts, so it is one-seventieth in round terms of our resources.

**CHAIR**—Thank you. We covered legal professional privilege at the hearing on 16 September last year when you described how section 37 of the act allows the Attorney-General to intervene where he or she sees fit providing a body of protection with a public interest consideration in relation to sensitive information being included in public reports. Has that ever happened to your knowledge? Has the Attorney-General ever intervened in the history of the audit office? It is an interesting power.

**Mr McPhee**—I was talking to Mr Coleman about this last week, and we thought maybe in the dim distant past there may have been one occasion but certainly not in my memory.

**Mr Coleman**—Not under the new legislation—it has not happened. Under the Audit Act we think it occurred probably in the 1980s in relation to one defence related audit.

**CHAIR**—The only thing that occurred to me may have been sensitive information in war time.

**Mr McPhee**—As I previously explained, we do try to be sensitive to matters which are not central to the audit report and draft around those. By and large it works pretty well.

**CHAIR**—We have not received any submissions regarding removing that power but I just asked has it ever been invoked in any way. Thank you for that. If assurance activities were



explicitly included in the act, and this is an area that I think we have all tussled with, what type of activities could then be likely to fall under section 20 audits by arrangement?

**Mr GEORGIUO**—They already do actually.

**CHAIR**—Do they? What do you see would be some of the consequences of explicitly including assurance activities in the act? Is there a need?

**Mr McPhee**—I think there would still be a need for it because there could be a case where an entity said, ‘We want a special audit done of our financial statements at the end of March for a particular reason, would you please do an audit?’ There is no legislative provision. It is not a review. We would feel inclined to say yes, we would do that and we would come to an arrangement about that. That is an example—

**CHAIR**—Picking up on some of those comments—what about forward vision—an assurance audit could be requested by a department to do an overview of some sorts of approaches or whatever?

**Mr Coleman**—Section 20 originally in my recollection was designed not to pick up the mainstream audit review activities, it was very much designed to pick up the one-off, unusual type arrangements that exist. We do about 30 financial statement type audits under section 20 because they deal with trusts and things that are not in the mainstream of government administration.

**CHAIR**—That is part of its value?

**Mr Coleman**—That is its value, because you cannot pick up everything in the act.

**Mr McPhee**—The other example that would apply would be international work where, for instance, there was a body that may be part of a UN body that was looking for an auditor and said, ‘Would you do that?’ We would be entitled to enter into an arrangement to do that if it was consistent with what the government—

**Mr GEORGIUO**—Can I just ask: so essentially it involves another body approaching you under the existing section 20?

**Mr Coleman**—Effectively that is correct.

**Mr GEORGIUO**—No, break down the ‘effectively’ please.

**CHAIR**—Or an existing arrangement?

**Mr Coleman**—I think take off the ‘effectively’, if they wished us to do some sort of audit—

**Mr GEORGIUO**—They approach you.

**Mr Coleman**—They generally would approach us.

**Mr McPhee**—We don't go around suggesting it the other way, Mr Georgiou.

**Mr GEORGIU**—The other thing I would like to look at is the level of assurance provided in those two things—advertising and defence. They are the lowest tier or lowest bit of the standard—that is for both. Are you happy with that standard in terms of any legislative changes? Are you happy with picking whatever standard you feel like or do you think that there should be some legislative floor?

**Mr McPhee**—The profession accepts there is a need for a tiered approach to assurance provision, and I think it would be of questionable benefit to carve out review opinions from an auditor—

**Mr GEORGIU**—It is not just about advertising—

**Mr McPhee**—No, I do know that. I think the better line is to allow the auditor to apply professional standards.

**CHAIR**—Should the act be amended to require the Auditor-General to set those standards? Section 24 of the act requires the Auditor-General to set auditing standards that are to be complied with by persons performing the functions specified in that section. So consistent with that and with developments in the profession as well, should it be amended to require the Auditor-General to set auditing and assurance standards to give more clarity to them?

**Mr McPhee**—Certainly if you were to suggest that we needed an assurance provision in there, that would be appropriate, yes.

**CHAIR**—I think it would be.

**Mr Coleman**—In fact, I think our original submission might have mentioned that.

**Mr McPhee**—We did raise it, because the auditing profession has moved towards calling them auditing and assurance standards. In the old days it used to be just auditing standards.

**CHAIR**—It is just that naming change that would give you—

**Mr McPhee**—It would just update the act basically.

**CHAIR**—You have already given us lots of information about what the assurance standards mean and what the definition of them is. Does that change often within the profession?

**Mr McPhee**—The auditing standards and assurance standards have just undergone a major rewrite, but I would expect them to then settle down for five years or so. They do not change often.

**CHAIR**—It leads to consistency and predictability, right, thank you.

**Mr GEORGIU**—In relation to section 20(c) what happens in the case of advertising whatever we call them, the department comes to you and says, 'We would like you to do a

section 20(c) assurance audit on our campaign for whatever.’ Is it the way it works that the department comes to you and says, ‘We request you under section 20(c) to conduct this assurance audit?’

**Mr McPhee**—There are two levels, Mr Georgiou. Once the government decided on its guidelines which anticipated a role for my office, we then said to agencies that we need to get an understanding to allow us to do the work. So we wrote to the agencies and said, ‘This is the way we expect things to work. We want access,’ et cetera and they wrote back and said ‘that is fine’.

**Mr GEORGIU**—That is what ‘effectively’ means.

**Mr McPhee**—That is at the higher level. And then on a case-by-case basis is the department of finance, which has a schedule of when campaigns are expected to commence, and agencies know they are to contact us through the department of finance and then we organise at an officer level to get cracking.

**Mr GEORGIU**—So advertising is in fact an inversion of the normal processes of 20(c)?

**Mr McPhee**—It is an umbrella agreement, if I could put it that way, that says—

**Mr GEORGIU**—It is actually an inversion. Usually they come to you and say, ‘Will you do an assurance audit?’ and you say, ‘Yes, I will think about it. Yes, fine, I will go ahead.’ But this time you go to them and say, ‘We are going to do an assurance audit, do you agree?’

**Mr McPhee**—It is in the context of the government’s decision.

**Mr GEORGIU**—‘Effectively’ is a very important word.

**Mr BRIGGS**—As I understand it, your normal performance audit is based on standards set by the accounting body relevant and that is how you would conduct a performance audit and report on it to the parliament. So on the NBN report which you did last week which got some interest publicly, that is based on standards that you—

**Mr McPhee**—There is a standard put out by the auditing profession on performance auditing.

**Mr BRIGGS**—That is not a standard set by the government; you did not review that.

**Mr McPhee**—No, correct.

**Mr BRIGGS**—So the advertising on the other hand, you are reviewing against a condition set by in effect by the government, by the finance department who has most of the advertising campaigns that set the conditions on which you audit these programs.

**Mr McPhee**—There is a standard put out by the profession which applies generically to review engagements, which says you need an objective, criteria and the report. That is a generic standard which we apply having regard to the government’s guidelines et cetera.

**Mr BRIGGS**—You are reviewing against the guidelines that the government has set in effect.

**Mr McPhee**—Yes, correct, but I would not draw a significant distinction between the two, because the performance audit is the same. The profession's performance auditing standard is naturally a generic standard which we apply to an NBN or a defence procurement or whatever.

**Mr BRIGGS**—My point is would you prefer a system, given your role and your long-term view that you should have a role in the advertising—and I understand that—would you prefer a system where you set the guidelines which you reviewed the advertising against, rather than it being the other way around?

**Mr McPhee**—No, not at all. As you know, we provide feedback to the minister about where we think the guidelines can be improved, but that is an executive responsibility to say these are the guidelines that apply to government advertising.

**Mr BRADBURY**—I want to explore another issue and this goes to the relationship—and it is generally not a vexed issue—between this committee and the Auditor-General, but when it comes to the disclosure of information, and I know that there are a considerable number of confidentiality requirements, could you just please explain the extent to which those confidentiality provisions limit your ability to disclose material to the committee? I know the confidentiality provisions do provide an exception where you are performing an Auditor-General function. I wonder whether or not you see reporting to this committee as an Auditor-General function and to what extent are the confidentiality provisions a constraint on what you can hand over and what you cannot?

**Mr McPhee**—I guess broadly it is under the public interest umbrella that drives the considerations and, as I have said elsewhere, I have always worked to provide the committee with whatever information it wanted, but I do have to keep an eye on the integrity of the audit process itself. We have people who communicate with us openly, directly and in confidence. It is always a judgment as to how much we put in public reports and how much we provide to committees of the parliament, because I am concerned that if we go too far in that people will not be as open with us about their views on particular aspects, and that will impair the audit process. I believe as Auditor-General that I have an obligation to weigh that consideration as well. But having said that, I will work very hard to see if I can find a way through to assist the committee.

**Mr BRADBURY**—I know on the previous occasion this issue has come up in the context of emails—and I do not want to get into the specifics of that particular request because this is really about looking forward in terms of how these issues might be clarified into the future—but it seems to me that there is no logical reason why an electronic communication should be treated differently from a written communication, although on occasions I think your responses have indicated that perhaps you see there being a difference between the two. Given your comments a moment ago, I can appreciate that it is a case-by-case judgment weighing up the public interest. I wonder if you could just provide some comment on whether you have a predisposition one way or another in relation to emails as opposed to correspondence when it comes to disclosing those matters to the committee.

**Mr McPhee**—Not particularly. It is a bit hard to divorce it from the other issue that the committee has asked me to talk to them about, but I do not draw a distinction between electronic and paper because they are both communications. Where I have drawn the line in the past is I

have been happy to provide the committee with formal correspondence that we have sent to agencies about matters. I think that is going a reasonable way. The reason I do that is because my senior staff—I do not sign them all—have considered these matters and signed off these communications to secretaries of departments et cetera, so they have had a level of review activity around them and a level of authority. Similarly, in the past when particular departmental papers—and I would include emails—have been central to an issue, I have been happy to talk to the committee about that as well. I have provided legal advice to the committee. Most other agencies would not provide legal advice to a committee, most other—

**Mr GEORGIU**—That is not true—that is not correct, sorry.

**CHAIR**—There may have been an exception.

**Mr GEORGIU**—When committees ask for legal advice they get them.

**Mr McPhee**—The thing is that I am responsible and accountable for the opinions I provide and for the reports I table in the parliament, but in between a lot of audit activity goes on, and understandably I have nothing to do with it and we rely on our review process internally. It is very important for me to respond to the opinions that I provide formally in the parliament. But I am concerned about getting into what I call the working papers of the office and I am concerned that if a precedent is created, then where do you draw the line? That is my biggest concern.

**Mr GEORGIU**—Madam Chair, if I can assist the Auditor-General on this point and I am not being argumentative: can I just draw your attention to the fact that the public interest is specifically defined in your act—or exclusion of information as being about security, unfair, commercial et cetera. It is defined, it is not a—

**Mr McPhee**—That is why we have to come to an understanding, Mr Georgiou.

**Mr BRADBURY**—But isn't that only in relation to the inclusion of information in public reports?

**Mr Coleman**—That is correct, but that is in section 37.

**Mr BRADBURY**—And the relevant section here is 36.

**CHAIR**—I will just point out for the committee that we are having a full discussion on this issue on Wednesday with the Auditor-General at our private meeting. But that is fine.

**Mr BRADBURY**—With the chair's indulgence, I just want to respond to what Mr Georgiou has said. I would have thought that the matters that he has referred to relate to section 37 and the provision of these matters in public reports—I guess I was more focused on section 36 and the general principle of confidentiality, because we are not necessarily talking about what is provided in reports but information that is disclosed to the committee. Having heard what the Auditor-General has just said, I want to follow that up with a question: in view of that do you believe that there is any amendment required to the act that might clarify some of these matters?

**Mr McPhee**—It is a very significant question, and I have not given a lot of thought to it, Mr Bradbury. I am very conscious that the office and the committee always manage to work these issues through, and I remain confident at this time.

**Mr GEORGIUO**—Hopefully.

**Mr McPhee**—Exactly, but I am concerned. The issue that I am concerned about is not the current exchange on the emails, it is the general issue that there could be a case where a committee with a government majority, for instance, were pressing me for information provided in the course of any audits that we do. If the committee resolves that way and I have made the precedent of handing over papers, then basically all of the information we receive as an audit office is available to this committee. Now I do not believe that is necessarily in the best interests of the office in the long term.

**Mrs BRONWYN BISHOP**—The problem with that statement is that an email is merely a letter sent by electronic form and to regard it as anything else, if people are sloppy in what they say, then they have to wear the consequences. You already provide us with letters and an email is no different.

**Mr McPhee**—Mrs Bishop, I am not talking about the specific issues and the way they write. If you take the recent audit we did on parliamentary entitlements, which I appreciate was sensitive, if we had a majority committee view that said, ‘Mr McPhee, please hand over all of the information you have on where members of parliament are at,’ I would be in the same position I am with you today. I am saying I do not think it is a good idea and I am trying to find a way through here. I am trying to deal with the generic issue; I am not worried about this particular individual issue that has been raised. It is the principle here that we are dealing with.

**Mr GEORGIUO**—Having been a member of this committee for too many years, can I say that has not often bothered you in the past, not about individual information but where something is attested to in your report. I remember one thing about an insurance payment which was quite sensitive, both individually—and there was no problem.

**Mr BRADBURY**—If I can make an observation, and that is I think the committee should be mindful of the fact that it is one thing to call for a specific item of correspondence that may have been flagged or which becomes in contention simply because of a conclusion that is drawn in a report; it is another thing to call for all of the correspondence, email and otherwise, that has been exchanged. From my perspective, I would have thought that that is a reasonable position for the Auditor-General to arrive at. The only issue here is I wonder whether or not the act itself should provide some greater guidance in these matters that does not leave the Auditor-General in a position that might cause some real difficulty.

**Mr McPhee**—I think that is a very good suggestion, and it would be well worth exploring if there is benefit in that.

**Mr Coleman**—I think it is fair to say—picking up section 36 that you refer to that ‘in performance of the audit function,’ that we have historically regarded interacting with the committee reasonably as being part of performing that function. I think there would be little

argument about that. It is not explicitly mentioned in the act, but I think it is a reasonable and sensible interpretation to say that our interaction with the committee—

**Mr GEORGIU**—Sorry, but we have to work with the committee's act. The committee has specific statutory obligations which are not in your act but are in ours.

**Mr ADAMS**—The point about somebody giving information and having it lobbed onto a committee table is quite a reasonable point that you make.

**Mr GEORGIU**—Absolutely, but we were being referred to this, and I draw your attention to the fact that we have our own act as a committee.

**Mrs BRONWYN BISHOP**—And we would not ever want to put something—

**Mr GEORGIU**—I am not arguing with you; I am just saying that there is another act.

**CHAIR**—I take Mr Bradbury's point because we are in an age when an SMS could be seen as correspondence and we are getting to the stage where, if you have to consider every communication electronically as formal communication, we would be finding some particular issues there. I take your point, Mr Bradbury.

**Mrs BRONWYN BISHOP**—The problem with that is that if you wanted to circumvent ever having to have anything disclosed to this committee, then that is the form you would put it in. You cannot say that you just will not give it to us because it becomes an alternative correspondence route which is then outside your responsibilities.

**Mr ADAMS**—Yes, but there is also the point that there is information that should not be lobbed on committee tables.

**CHAIR**—And you do not want the consequence to be a diminishing in valuable and relevant communication around audits.

**Mr GEORGIU**—Also if you do not want to be stonewalled, then you will not be stonewalled.

**Mrs BRONWYN BISHOP**—I have a couple of questions on privilege. In your submissions you address the wish for you to have greater access to documents which currently claim legal privilege; is that right?

**Mr McPhee**—The only reason I am hesitating is your use of the words 'greater access'. My understanding is that we do have access to the information. It is just that it creates—

**Mrs BRONWYN BISHOP**—You say in here that it does not amount to a waiver; it only amounts to having access to it. But the privilege still pertains to the document so therefore you cannot publish, I guess is the question, and I was getting the feeling that maybe you wanted more power. No?

**Mr Coleman**—I do not believe we are looking for more power; we are looking for some clarity within the legislation to put it beyond doubt that our powers of access are not restricted by claims of legal professional privilege. That is the point we wanted to make.

**Mrs BRONWYN BISHOP**—But still maintaining the fact that you have access without that access amounting to a waiver.

**Mr Coleman**—That is correct, because we understand that, from a legal point of view, that is quite important.

**Mrs BRONWYN BISHOP**—Very.

**Mr Coleman**—There are some precedents, which we have provided to the committee, of legislative provisions that allow for that.

**Mrs BRONWYN BISHOP**—Do you presently have any difficulty getting access to such documents?

**Mr McPhee**—In the past, we have managed to get hold of the information. It just takes a while sometimes.

**Mr GEORGIU**—And often some negotiation.

**Mrs BRONWYN BISHOP**—Legal privilege is something I regard as pretty sacrosanct as a lawyer.

**Mr ADAMS**—Do you mean the information between you as a lawyer and a client? That is the report we are talking about, is it?

**Mrs BRONWYN BISHOP**—Yes.

**Mr ADAMS**—Are you talking about a report to a department?

**Mrs BRONWYN BISHOP**—There could be all sorts of documents that could be covered by legal privilege that the Auditor-General may wish to have access to. The second point of privilege is one that is very important as well, and that is the privilege that is extended to the Auditor-General to publish his reports. We did have an example some parliaments ago when there appeared to be a threat to the Auditor-General that, if he published a particular report, it would not be covered by privilege, and the report—or his findings where he had done work—was subsequently not published. Mr McPhee, I would like you to tell us how you understand the privilege that is afforded to you to publish your report works and who has the power to deny you that privilege.

**Mr McPhee**—That is where I believe section 37 comes into play in terms of the information that I have to have regard to. Section 37 covers sensitive information not to be included in public reports and states:

The Auditor-General must not include particular information in a public report if—

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I think—

that disclosure of the information would be contrary to the public interest for any of the reasons set out...

**Mrs BRONWYN BISHOP**—That is not the question. You are afforded privilege, but there is an ability to have that privilege taken away from you. When it was done before in the case of the Auditor-General becoming the tenant of the Labor Party in good old Centenary House, that was not published and there was a threat that privilege would not be accorded to the Auditor-General if he published. That opens him up to huge damages, of course, and that is again where the Auditor-General got involved in political matters.

**Mr BRADBURY**—Can I return to the earlier point on legal professional privilege?

**Mrs BRONWYN BISHOP**—No, I want an answer. Who can take the privilege away? Who can deny the Auditor-General privilege?

**Mr Coleman**—Our understanding is that, once a report is tabled, the parliamentary privilege is absolute. I do not believe there are any loopholes in that coverage at all—not that I am aware of.

**CHAIR**—Do you mean the ability to table a report not the privilege that attaches to it? So can you ever be stopped from tabling a report under our act?

**Mr McPhee**—Only if the Attorney-General under section 37(1)(b) intervenes and said disclosure would be contrary to the public interest.

**Mr GEORGIU**—For the same reason.

**Mrs BRONWYN BISHOP**—That is right and that is exactly what happened.

**CHAIR**—Is that what happened, Mr Coleman or anyone who knows the history; is that what happened?

**Mr Coleman**—I do not have a personal recollection of that incident, no.

**Mr ADAMS**—This committee made a recommendation about the privilege committee of the parliament. Why was that not taken up, does anyone know?

**Mrs BRONWYN BISHOP**—But I think it is important. I think the Auditor-General ought to be able to publish and have privilege as a right.

**Mr McPhee**—Mrs Bishop, I think the act is okay because section 37(4) says:

If the Auditor-General omits particular information from a public report because the Attorney-General has issued a certificate under paragraph 1(b) ... the Auditor-General must state in the report:

(a) that information (which does not have to be identified) has been omitted from the report; and

(b) the reason or reasons why the Attorney-General issued the certificate.

**Mrs BRONWYN BISHOP**—And the alarm bells would ring.

**Mr McPhee**—So that is public disclosure—

**Mr BRADBURY**—I know we have dealt with professional privilege on previous occasions. In view of the responses that you have provided in relation to section 37 and the ability of the Attorney-General to intervene, I wonder whether or not a more appropriate mechanism for protecting matters that are the subject of legal professional privilege might be to explicitly set out that the Auditor-General has the ability to access material that is the subject of legal professional privilege but that there be some positive prohibition—or some prohibition—on the Auditor-General from disclosing those matters.

The reason I frame it in that way is if we really are trying to balance the competing objectives of protecting the privileged nature of the material and allowing access for the purposes of the audit, then it seems to me that access to that material should only and solely be for the purpose of the audit and disclosure of that material by its nature would amount to a waiver of sorts of the privilege that attaches to the document. It seems to me that not only is the act currently unclear about whether or not the Auditor-General can do what you are doing in practice, and that is accessing material that is the subject of legal professional privilege, but also the act is silent, it seems to me, on the publication of that material. If you are to provide assurances and guarantees to those handing over the material that you are not going to through your actions bring about a waiver of the privilege, then I would have thought that leads to a very unfair set of circumstances. Would that be an appropriate way to have that specifically dealt with in the act?

**Mr McPhee**—My understanding at the moment is there is no constraint on the Auditor-General from publishing that information.

**Mr Coleman**—Except the public interest tests.

**Mr McPhee**—Except the public interest tests.

**CHAIR**—With Attorney-General involvement.

**Mr Coleman**—Yes and the Attorney-General.

**Mr McPhee**—Mr Bradbury, I appreciate there is a balance here. In the past it has been a matter for the Auditor-General's judgment. I think it would be worth while considering situations where a legal matter could be very central to an audit report.

**Mrs BRONWYN BISHOP**—I agree with that. And the point is there does not even have to be a notice issued by the Auditor-General, there just has to be the threat. That is what happened before.

**Mr McPhee**—I appreciate your perspective but the reason I am not jumping to it is there may be some absolutely significant issue which the Auditor-General may decide it is actually in the public interest to report on.

**Mr BRADBURY**—I take on board what you say, but couldn't you have a provision that was a prohibition on disclosure of matters which would amount to a waiver of legal professional privilege but then have a mechanism through which the Auditor-General could pursue trying to resolve that issue? At the moment the Attorney-General then has to intervene. What would you feel about a provision that said the default position very clearly is that you cannot do anything to waive someone's privilege.

**Mr McPhee**—Mr Bradbury, there are two parts to it: the Auditor-General has to form an opinion that the disclosure of the information would be contrary to the public interest, and/or the Attorney-General can form the same opinion. So the Auditor-General is certainly required to turn his or her mind to the issue but under the current act is allowed to table the report.

**Mrs BRONWYN BISHOP**—The trouble with that is there only has to be a suggestion. Auditor-General, I think you should decide this is not in the public interest and if you do not decide that way there will be no privilege for you, and you do not have to do anything. You just have to have that hanging out there and you would be amazed how that can persuade people.

**Ms LEY**—Because your default position would be that everything is in the public interest, wouldn't it?

**Mr McPhee**—Except I have to have regard to these particular areas.

**Ms LEY**—Yes, I understand. It is the old question of proving that something is rather than proving that something isn't, which is quite different.

**Mr McPhee**—What we have said in the past, and the committee knows this, is that if we come across legal matters we generally draft around them. They are generally not central to what we are doing. They might inform a broad statement we make in the report but we do not go to the detail so we protect the interests there. But there conceivably could be some legal advice which is absolutely central to the performance or the behaviour of particular individuals. The concern I would have is that, if I thought that was in the public interest for that to be disclosed, then I think that is probably the right answer rather than being constrained by something that may be legal professional privilege.

**Mrs BRONWYN BISHOP**—But does it protect your right to attract privilege? The point I was getting at is I would like to see provisions—

**Mr GEORGIU**—We are very concerned about you.

**Mrs BRONWYN BISHOP**—I would like to see provisions in the act that the Auditor-General can publish without fear of the Attorney-General's intervention.

**Mr McPhee**—It is well worth looking at, Mrs Bishop, you have my interest for sure. If there is an issue around that, it should be made explicit that the Auditor-General could publish.

**Mrs BRONWYN BISHOP**—I think that is fair, because in that previous example I gave you were on the other side then in finance.

**CHAIR**—Mr Georgiou.

**Mrs BRONWYN BISHOP**—Is it still on this question of privilege?

**Mr GEORGIU**—Yes.

**Mrs BRONWYN BISHOP**—Because I then want to go to two other points.

**Mr GEORGIU**—Can I say that I think Mr Bradbury's proposal is a very interesting one. You said you were not leaping at it—

**Mr McPhee**—Yes.

**Mr GEORGIU**—But it is worth while thinking about it because you are caught in a situation where, despite the fact that you claim your position is clear, it is contested. You have to negotiate with people and presumably you reach arrangements with people. I think it is really worth while saying that access is important but publication is a separate issue.

**CHAIR**—Do you think the Auditor-General should consider that and send a brief to us?

**Mr GEORGIU**—He can come back to us on this, because I think there are two sides. And you cannot default by saying there is no problem where there is.

**CHAIR**—That would be fair. The issues that have been raised have not been canvassed yet at this stage. I am flagging that I have a couple of questions that the secretariat would like me to get to and I know that Mrs Bishop had some questions.

**Mrs BRONWYN BISHOP**—It that relates firstly to the GBE exemption. The rule currently, I take it, is that if the government has the majority of appointees on the GBE then it cannot be—no, outside appointees are the majority then it cannot be audited as of right. They have to give consent. Is that still the position?

**Mr McPhee**—Assuming that the GBEs are controlled by the government, we cannot do performance audits of the GBEs. We do their financial statement audits but—

**Mrs BRONWYN BISHOP**—Performance audit—

**Mr McPhee**—No, we do their financial statement audits, so the same as any other entity on the financial statement audit basis. When it comes to performance audits, I cannot at my discretion decide to undertake a performance audit of a GBE. I either have to be asked by the minister or by this committee or I can ask this committee to ask me.

**Mrs BRONWYN BISHOP**—It provides that the test—the advice that was given to this committee several years ago was that if the majority of the members of the board I think were not government—

**Mr McPhee**—This is the control issue.

**Mrs BRONWYN BISHOP**—Yes, the control test.

**Mr McPhee**—I think you might be driving at the control issue and I know the legal interpretation of that varies a bit from time to time. But if it is Commonwealth controlled—and all the GBEs are Commonwealth controlled—then the provisions that I outlined earlier apply. I think you are dealing with the situation where maybe the Commonwealth has got a minority interest.

**Mrs BRONWYN BISHOP**—That is it.

**Mr McPhee**—If the Commonwealth has got a minority interest, we do not have any mandate—

**Mrs BRONWYN BISHOP**—Precisely.

**Mr McPhee**—and we do not do the financial statement audit.

**Mrs BRONWYN BISHOP**—Unless they ask you to.

**Mr McPhee**—Unless they asked us to, and then I would probably say no because it is not Commonwealth controlled.

**Mrs BRONWYN BISHOP**—The biggest example and the big fight revolving around that was the wish for an audit to take place on the building of this parliament house, which the government of the day denied because they had constructed the board in a manner in which the control argument favoured them. You can do that with all sorts of things and many other auditor-generals would like to get rid of that provision.

**Mr McPhee**—It certainly has not been a recent issue.

**Mrs BRONWYN BISHOP**—The next point relates to the cross-jurisdictional issues to allow you greater ability to pursue money given to state governments and agencies.

**Mr McPhee**—Yes. We touched on this a little earlier, probably just before you came in.

**Mrs BRONWYN BISHOP**—I beg your pardon.

**Mr McPhee**—I think we were saying looking forward 10 years is it a provision that would be useful, particularly with the way the COAG arrangements are going, to allow the office to audit performance of recipients of grants, the states and other parties. I think where the committee discussion got to was there is some consideration—I understand where you are coming from, but was there a need for a constraint of some sort to say, ‘You can only do this if the committee asked you to,’ or something like that. I then used the analogy of the GBEs to say that has not really resulted in much activity, so I was questioning that. But I do understand the sensitivity, as the committee members were raising, around this particular provision.

**Mrs BRONWYN BISHOP**—With section 96 grants comprising such a huge amount of state government budgets, I think it is an essential power for you to have.

**Mr McPhee**—Thank you, and I think it would be progressive to include it, but we both know that there will be a range of perspectives on this. I was seeking to understand that and see whether there were other provisions. In our own submission we put a few provisos that this would need to be significant to the audit that we have in mind and that the Auditor-General would be expected to articulate the reasons why he or she saw it as necessary to audit another jurisdiction or another party; that is put some accountability back on to the Auditor-General of the day to explain why that was necessary.

**Mrs BRONWYN BISHOP**—I do not have a problem with that, I think that is fine, but with the vertical fiscal imbalance we have these days I think it is essential. Let me give you an example: we are hearing a lot of leaks about the Henry review and the way in which the fringe benefit tax exemptions are afforded to employees of public hospitals and charities. I do not know whether you realise it, but the state government of New South Wales creams off 50 per cent of that advantage given to employees for its own coffers. Now that, in my view, needs a good solid audit.

**CHAIR**—We might deal with that another time. There are a couple of questions that the secretariat would like some clarity on. We talked about the options for performance indicators, and the option you seemed to prefer was reviewing a subset of agency performance indicators. You said that would be a sensible approach. Do you believe that that option would provide adequate assurance around the integrity of performance information, having a subset?

**Mr McPhee**—It was an option that responded to two issues: one is if the parliament and its committees have particular interest in programs we would be able to focus on those. It clearly balances the costs of such an approach so it seemed to me to be a worthwhile approach to adopt. Or you could do a range of portfolios over a period of time. It seemed to be a useful approach.

**CHAIR**—Have you given any more thought as to how this option might be implemented in a practical sense? Who would determine the subset of priorities? Would that be the government or a department, or would they be negotiated?

**Mr McPhee**—I had in mind that the committees of the parliament would get together. It may be as part of our planning process where we currently ask you about our performance audit program that the committees could agree on what the priorities could be.

**CHAIR**—So we might look at indigenous criteria or environmental sustainability across all our audits.

**Mr McPhee**—Exactly, or we could pick particular portfolios and say, ‘Let’s look at FAHCSIA or Health this year,’ or whatever. It would provide a bit of a focus on performance information which has perhaps been lacking in recent years. That is what we had in mind.

**CHAIR**—In your letter dated 30 November 2009 outlining resource implications with regard to potential cross-jurisdictional and Commonwealth jurisdictional audits you state that, provided your performance audit program is adequately funded, no budget supplementation would be required to undertake relevant performance audits. Can you elaborate on the reason behind that comment?

**Mr McPhee**—We are conscious that resources are finite. I think that, within a program of 50 performance audits a year, if we did decide to look at a particular audit in a state jurisdiction that would substitute for another audit that we would have ordinarily done. So within the basket of 50 performance audits we would program some of these.

**CHAIR**—So you do not anticipate it costing more money to do a cross-jurisdictional audit?

**Mr McPhee**—No.

**Mrs BRONWYN BISHOP**—How many performance audits per year do you do?

**Mr McPhee**—This year we are scheduled for 47, but we are hoping to do 50 next year.

**Mr Cahill**—Fifty plus the number of indigenous ones we will do as well.

**Mr ADAMS**—It is in the papers.

**Mrs BRONWYN BISHOP**—What was the average number per year under the previous government?

**Mr McPhee**—Slightly under that. Mrs Bishop, you will recall that, with the committee's support, we received some budget funding last year for performance auditing. The number of performance audits was declining, but with the new funding we are expecting to lift again to 50 per year, plus OEA.

**CHAIR**—That concludes the hearing. On behalf of the committee, I would like to thank all the witnesses who have given evidence today. If the committee has further questions, we will put them in writing to you.

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

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 11.18 am**