PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

REPORT ON THE PUBLIC FINANCE AND ACCOUNTABILITY BILL 2009 - FURTHER CONSIDERATIONS

AUGUST 2010

100TH REPORT TO PARLIAMENT
Report on the Public Finance and Accountability Bill 2009 – Further Considerations

August 2010

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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE
MEMBERSHIP - 56TH PARLIAMENT

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The Committee is supported by its secretariat.
CHAPTER 1: INTRODUCTION

1.1 Referral to Committee — Public Finance and Accountability Bill 2009

The Committee has reported comprehensively to Parliament on Victoria’s existing public finance legislation in June 2009 and the Government’s response showed that it had accepted outright or accepted in principle a large number of the Committee’s recommendations.

An amending Bill (the Public Finance and Accountability Bill 2009) was presented to Parliament by the Government in December 2009.

On 27 July 2010, the Legislative Council agreed as follows in respect of the Public Finance and Accountability Bill 2009:

That the contents of this Bill be referred to the Public Accounts and Estimates Committee for consideration and report by 31 August 2010.

This action of the Legislative Council followed passage of the Bill through the Legislative Assembly and debate in the Legislative Council.

On 10 August 2010, the PAEC tabled its report on the Public Finance and Accountability Bill 2009 to the Legislative Assembly and on 11 August 2010, the report was tabled in the Legislative Council. A copy of the report is available via this web link:


On 13 August 2010, the Legislative Council agreed:

That the contents of this Bill be again referred to the Public Accounts and Estimates Committee for consideration and report by 31 August 2010 and that the Committee be required to invite the Auditor-General to give evidence to the Committee on the contents of the Bill.

1.2 The Committee’s approach

The Committee originally did not seek a briefing from the Auditor-General. Five members of the Committee voted against this approach and voted in favour of the Auditor-General being invited to meet with the Committee.

In response to the reference of 13 August 2010 from the Legislative Council, the Committee agreed to hold two separate public hearings with the Auditor-General and the Secretary, Department of Treasury and Finance (DTF) on 24 August 2010, transcribed by Hansard. The verified transcripts of evidence are contained in Appendix 3 of this Report.

In this Report, the Committee has summarised the issues pertaining to the Bill raised by the Auditor-General including issues that he has previously raised that are no longer outstanding.

The Committee has also provided a summary of the corresponding response and comments on each outstanding issue that have been offered by the Secretary, DTF.

The Committee has also agreed to publish in Appendix 2, potentially useful responses from DTF to questions taken on notice to the Committee’s questions on the Bill articulated during a private briefing with the Secretary, DTF and DTF senior staff on 5 August 2010.
This Report is intended to provide useful reference for the Legislative Council when it resumes consideration of the Bill and should be read alongside the Committee’s earlier report on the Bill tabled on 11 August 2010.

1.3 Consultations between the Auditor-General and the Department of Treasury and Finance

At public hearings held on 24 August 2010 with the Auditor-General and the Secretary, DTF, it was confirmed that there were extensive consultations between them over several years in the lead up to the introduction of the Public Finance and Accountability Bill in the Legislative Assembly on 9 December 2009. The last formal correspondence pertaining to the Bill was a letter written by the Secretary, DTF, to the Acting Auditor-General dated 9 December 2009 which was a reply to a letter written by the Auditor-General in relation to issues on the Bill.

In a subsequent audit report to Parliament on the interim results of the 2009-10 audits of portfolio departments\(^1\), the Auditor-General formally published and raised three issues relating to the Bill that was before Parliament.

On the Bill’s proposed approach to differential reporting, the Auditor-General stated that a key feature of the Bill is:

...the proposed classification of public sector entities into four categories with different reporting and auditing requirements. The Australian Accounting Standards Board has also mandated a differential reporting framework. However, this has only two categories. It is important that these two differential reporting frameworks reconcile so that the accountability for, and transparency of, the use of taxpayer funds is maintained.

The Auditor-General also commented on the timing of implementation of the Bill’s proposed annual reporting timeframes as follows:

As the bill was not passed before 1 July 2010, the shortened annual reporting time frames proposed in the bill may not be mandatory for the year ending 30 June 2011. However, the timeliness of annual reporting by public sector agencies would be improved if the shortened time frames proposed in the bill, and which are consistent with those adopted for 2009-10, were adopted for the year ending 30 June 2011.

The Auditor-General also further concluded with comments that it would be opportune for the Department of Treasury and Finance to consider international proposals, currently at the consultative stage, for reporting on long-term sustainability of public finances, when developing the proposed Ministerial directions to underpin the Bill.

Both the Auditor-General and the Secretary, DTF, confirmed that there were ongoing consultations between them on matters likely to be consequential to the Bill, including draft financial directions. The Committee noted that the Auditor-General still had some outstanding concerns with the Bill.

\(^1\) Victorian Auditor-General’s Office, *Portfolio Departments: Interim results of the 2009-10 Audits*, July 2010, pp.ix–x
CHAPTER 2: HEARINGS WITH THE AUDITOR-GENERAL OF VICTORIA AND THE SECRETARY, DEPARTMENT OF TREASURY AND FINANCE

2.1 Introduction
The Committee heard evidence from the Auditor-General, Des Pearson, and senior executives of the Victorian Auditor-General’s Office (VAGO), on 24 August 2010. The Auditor-General provided an overview of his involvement with the Bill and what he considered to be the major issues at the start of the hearing. The Auditor-General was assisted by John Findlay, Assistant Auditor-General, Financial Audit; Dr. Peter Frost, Chief Operating Officer, Victorian Auditor-General’s Office; and Marco Bini, Director, Policy and Coordination Directorate.

Following the evidence from the Auditor-General, on the same day, the Committee heard evidence from Grant Hehir, Secretary of the Department of Treasury and Finance (DTF); assisted by Ian Gibson, General Counsel; Sue Eddy, Director, Strategy and Reform; and Bernard Rohan, Senior Project Officer, Public Finance and Accountability Legislation, Department of Treasury and Finance.

Transcripts of the hearing are provided in Appendix 3 of this report and on the Committee’s website (www.parliament.vic.gov.au/paec). Page numbers below refer to the transcripts.

2.2 General comments
The Auditor-General indicated that his Office has had an opportunity to map the bill, draft directions and draft instruction to the existing legislation and to better practice. As a result of this work, he considers that:

- there are no core elements of previous legislation missing or significant gaps (pp.3, 7, 9); and
- there are two matters warranting further consideration (pp.3, 7)
  - the Auditor-General would like to see a greater emphasis on controls; and
  - the Auditor-General is concerned that the executive’s ability to issue directions and instructions may impact on the independence of his office.

The Auditor-General indicated that there were other issues that came from this mapping exercise, but that he was happy with how they were being dealt with in the directions (pp.7–8). The Auditor-General specified the following as matters regarding which he was happy with the way they were being addressed through directions (p.3):

- the classification of public bodies and controlled entities;
- the consideration of risk management along with financial size in categorising agencies; and
- the provision for earlier annual financial reporting.
At the start of the hearing with the representatives of DTF, Mr Hehir (pp.28–9) provided:

- a summary of what the Bill aims to provide, providing an overview of what was encompassed in the proposed framework to enhance public finance and accountability in Victoria;
- an explanation of the impact of the Bill on independent officers of Parliament and their offices — whereas under the current Financial Management Act 1994, those offices are treated as departments; under the Bill, independent officers would be excluded from non-budgetary requirements; their offices would also be excluded unless they are declared public bodies; and
- comment on the application of the differential reporting framework proposed under the Bill compared to the Australian Accounting Standards Board (AASB) definitions — any differences would be clearly reconciled and work is continuing for the development of a set of accounting standards for differential reporting for the public sector.

2.3 Key matters raised at the hearings

The key matters raised in the public hearings are listed below.

2.3.1 Power for the Executive to give directions to and require the provision of information from bodies that are exempt or special bodies under the Public Administration Act (clauses 4 and 12 of the Bill)

The Auditor-General considered that:

- VAGO could be declared a public body under clause 4 of the Bill, and the Office would consequently be subject to the provisions of clause 12, including allowing the Executive to give directions and requiring the Office to provide information (pp.6–8);
- the Audit Act 1994 does not necessarily prevent directions from applying to the Auditor-General, and the Constitution Act 1975 only prevents directions being given over audits (p.6);
- an area of concern for the Auditor-General was that the Minister’s direction-making power is not subject to disallowance in Parliament (pp.3, 6);
- it is necessary for the Bill, and not just directions, to specify that these clauses do not apply to independent officers of the Parliament (pp.6, 8, 15, 19); and
- VAGO does not seek to be exempt from the Bill’s requirement (clause 12(1)(a)) that the Office carry out its functions in an effective, economic manner (p.15).

2.3.2 Other implications of classifying VAGO as a public body

The Auditor-General considered that:

- if VAGO were classified as a public body under clause 4, clause 51 could require VAGO to pay a dividend to the Treasury (p.18); and
- if VAGO were classified as a public body and clause 53(1)(f) were used to require VAGO to consult with the Executive with respect to its audit planning, this may undermine the independence of the Office (p.23).
Chapter 2: Hearings with the Auditor-General of Victoria and the Secretary, Department of Treasury and Finance

The Committee raised the Auditor-General’s concern about the potential use of the legislation by the Minister to make a regulation that was contrary to the provisions of the Audit Act 1994 regarding how the Auditor-General’s Office prepares its audit plans. (p.34).

**DTF considered that:**
- nothing in this Bill would override anything that is in a specific Act, such as the Audit Act 1994 and the Constitution Act 1975 as they apply to the Auditor-General (p.35);
- the Bill would not impinge on the Auditor-General’s ability to carry out his statutory responsibilities (p.36); and
- the Bill would apply to the Office of the Auditor-General that supports the Auditor-General, not the Auditor-General himself (pp.35–6).

The Committee suggested that these matters might be made more explicit by a statement in Parliament (e.g. in the second reading speech) (p.35).

The Committee also raised the issue that the Bill could result in new requirements for VAGO with respect to reporting (p.38).

**DTF considered that:**
- nothing in the Bill regarding financial risk management, planning and reporting is not best practice and all entities should be aspiring towards the requirements of the legislation to at least some level (p.38);
- DTF recognises that the Auditor-General has raised some concerns, and its approach has been to discuss with him how those may be dealt with through directions (p.39); and
- under the current Financial Management Act 1994, the Office of the Auditor-General is subject to financial directions except in relation to borrowing powers and dividend policy (p.37).

### 2.3.3 Whether VAGO would be declared a public body

The Committee raised the view of the Auditor-General that VAGO could be declared a public body, and asked whether that could occur (p.29).

**DTF considered that:**
- clause 4(1)(b)(iii) is the relevant clause and the legislation requires the body to be declared by the Minister (p.29);
- there are parts of the Audit Act specifying financial reporting requirements that would override the requirements of the Bill, and other parts that may not be relevant, so it may not be necessary for VAGO to be declared a public body (p.29);
- dividends policy, borrowing and investment provisions would not be relevant to VAGO (p.30);
- as VAGO is not a high-risk entity, there may be no need to apply the planning and reporting provisions to VAGO (p.30); and
- it will have to be determined whether other parts of the Bill such as those that relate to procurement should apply to VAGO (p.29).
2.3.4 Implications of not declaring VAGO to be a public body

DTF considered that:

- if VAGO were not declared a public body, then, because it is a department for appropriation purposes, the elements that relate to appropriations would apply to VAGO as well as the financial reporting requirements of the Audit Act 1994, but not the other elements of the Bill (p.35); and
- the only way the other elements of the Bill would apply to VAGO would be if it were declared a public body (p.35).

2.3.5 Implications of defining VAGO as a department of the Parliament (clause 3 of the Bill)

The Auditor-General considered that:

- clause 22(5) would allow the Minister in conjunction with the Presiding Officers to appropriate VAGO’s budget to the Consolidated Fund (p.16);
- clause 33 would allow the Treasurer in conjunction with the Presiding Officers to appropriate VAGO’s budget to distribute to other departments of the Parliament (p.16);
- this dependence on the support of the Minister, Treasurer and Presiding Officers would reduce the independence of the Auditor-General and avoid the existing accountability measures (p.16);
- these are the only aspects of the Bill affected by the definition of VAGO as a department of the Parliament (p.17); and
- possible solutions to this problem would be to not define VAGO as a department of the Parliament or to remove the Treasurer’s, Minister’s and Presiding Officers’ discretion as far as VAGO is concerned within these clauses (pp.16–18).

The Committee brought to the attention of DTF the issue raised by the Auditor-General about Parliament being able to transfer funds between departments without appropriation and sought some clarification about continued funding for his office (p.31).

DTF considered that:

- for appropriation purposes, the Auditor-General is already a department of the Parliament (under Section 31 of the Financial Management Act 1994) and under this Act, there is the same capacity as is proposed in the Bill (pp.31–2 and 38).

2.3.6 Balancing VAGO’s need for independence with its need to be accountable

The Auditor-General considered that:

- VAGO should be considered a special body and not subject to the same frameworks as other government entities — the office has its own accountability framework to ensure its accountability in a way that recognises its independence (pp.23–6).

The Committee raised this view with DTF. The Committee asked DTF whether there were any ways to preserve the intent of the Bill while ensuring the independence of the Auditor-General and ensuring he operates within an appropriate public finance and accountability framework (pp.29–30, 36).
DTF considered that:

- an amendment to the Audit Act 1994 (e.g. a clause specifying the relationship between the Auditor-General and this Bill) (pp.30, 37);
- a provision could be included in this Bill that any direction applied to Parliament or a parliamentary officer could be disallowable in Parliament (pp.30, 37);
- matters could be specified in the directions (pp.30, 37);
- the Bill could specify which elements of it apply to VAGO (p.37); or
- VAGO could be not declared a public body under the Bill (p.30).

2.3.7 Application of the Bill to different types of entities

The Auditor-General considered that:

- independent officers of Parliament need to be separated from other bodies with respect to the operation of clause 12 of the Bill; departments and other public bodies are differentiated through the differential categorisation (pp.9–10).

The Committee raised the issue that, if a minister wished to declare an entity a public body, it would be expected that the entity be consulted (p.38).

DTF considered that:

- this mirrors the provisions of the Financial Management Act 1994 except that, under the Bill, bodies would have to be declared, rather than having the legislation automatically applying to them (p.38);
- the Bill extends the coverage to all corporations (p.38); and
- the Electoral Boundaries Commission could be declared a public body (p.34).

2.3.8 Other matters

The Auditor-General considered that:

- the treatment of differential reporting through the four categories is appropriate, although there is a need for there to be rigorous criteria consistently applied and for the categories to be reconciled through developments in the AASB accounting standards (pp.10–11);
- the framework of the Bill will allow for the Auditor-General’s concerns raised in his report on departmental reporting to be addressed (p.20); and
- the Bill adequately provides for the consideration in ministerial directions of reporting on the long-term sustainability of public finances and on social and environmental performance (p.22).

DTF considered that:

- in contrast to the Financial Management Act 1994, the Bill includes a reference to achieving outcomes and not just outputs, but the definition of outputs and outcomes is referenced to what is required under the Audit Act for the Auditor-General (p.37).

2.4 Questions taken on notice at the hearings

There were no questions on notice taken at the hearings.
APPENDIX 1: REFERRAL TO COMMITTEE
REFERRAL TO COMMITTEE

Extracted from the Minutes of the Proceedings of the Legislative Council

No.184 – Friday, 13 August 2010

4. PUBLIC FINANCE AND ACCOUNTABILITY BILL 2010 – Question – That the contents of this Bill be referred to the Public Accounts and Estimates Committee for consideration and report by 31 August 2010 and that the Committee be required to invite the Auditor-General to give evidence to the Committee on the contents of the Bill – put.

The Council divided – The President in the Chair.

AYES, 21  NOES, 19

Question agreed to.
APPENDIX 2: RESPONSES FROM THE DEPARTMENT OF TREASURY AND FINANCE TO QUESTIONS ON NOTICE
9 AUG 2010

Mr Bob Stensholt MP
Chair
Public Accounts and Estimates Committee
Parliament House, Spring Street
MELBOURNE VIC 3000

Dear Mr Stensholt MP

PUBLIC FINANCE AND ACCOUNTABILITY BILL 2009

Thank you for the opportunity to brief the Public Accounts and Estimates Committee about the content of the Public Finance and Accountability Bill on 5 August 2010. At the briefing, there were three issues raised that required follow-up advice from the Department of Treasury and Finance:

a) legal advice on the operation of clause 12(1)(a) and 12(1)(b) to public bodies;

b) a mock-up of the relevant 2012-13 budget papers to illustrate how the outcomes framework will be incorporated into key budget documentation; and

c) question on the status of the Electoral Boundaries Commission under the Bill.

Attached to this letter is my Department’s legal advice on clause 12(1)(a) and 12(1)(b) of the Bill, together with a mock-up of how the budget documentation will include references to outcomes.

My Department’s research has also confirmed that the Electoral Boundaries Commission is not automatically a public body under clause 4(1)(a) of the Bill as it is not a body corporate, nor does it control money.

Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely

Grant Hehir
Secretary
Public Finance and Accountability Bill 2009

ADVICE

The Public Accounts and Estimates Committee has sought clarification regarding how clause 12(1)(a) and (b) of the Public Finance and Accountability Bill 2009 will be interpreted.

The relevant paragraphs read as follows:

(1) A Department or public body has the following responsibilities—
   (a) to support the achievement of outcomes by ensuring that outputs are delivered in an efficient and economical manner and obligations are met in a timely manner;
   (b) to comply with applicable legislative requirements and to implement associated policy frameworks...

Paragraph (a)

The proper interpretation of this paragraph must begin by reading the whole of the paragraph, not stopping at the word “outcomes” or, indeed, at the word “delivered”.

Read as a whole, the paragraph requires a Department or public body—
   □ to achieve an overall objective
   □ by doing something specific
   □ in a particular way.

The overall objective is achieving outcomes; what they actually have to do is to deliver outputs, and then only in the stipulated ways—efficiently, effectively, and with the timely observance of obligations.

Importantly, the paragraph does not require these entities to achieve the overall objective except in the manner set out, nor to do the specific thing (deliver outputs) except in the particular way set out.

It follows that any responsibility to support the achievement of outcomes, while it does exist, exists only to the extent that it can be discharged by ensuring that outputs are delivered in the manner specified. It does not exist except to that extent (that is independently of the words that follow).
Departments and public bodies will operate differently in relation to outcomes. This is because of the difference in what are the outputs of the two.

The word “outputs” is defined in clause 3 to mean “goods produced or services provided”.

In the case of public bodies, their outputs will always be defined by the legal instrument by which they are constituted. This is commonly their establishing legislation, but (to take two other examples) in the case of a corporation would be the company constitution, or in the case of a state body would be an Order in Council.

The outputs of a public body may be further defined, or refined, in two other ways, through their business plan (which is, of course, a plan to deliver their legally defined outputs), or through a contract. In the case of a business plan, while it might specifically refer to outcomes (as defined in the Bill), it cannot require the body to do anything that it cannot otherwise do under its constitution. The same is true of a contract; and, in addition, any obligation to support the achievement of outcomes would have to be explicit in the contract and would therefore become an obligation under private law, not as result of this paragraph.

For public bodies, then, the effect of paragraph (a) is only to ensure that the goods and services that they are required to deliver by their constituting instrument are delivered in an efficient and economical manner and that their obligations are met in a timely manner.

In the case of Departments, the paragraph would be construed having regard to clause 27 (3) of the Bill. This reads:

(3) The purpose of a statement of outputs is to—
   (a) specify outputs in respect of each Department and each department of the Parliament during the period to which the statement relates;
   (b) describe in respect of each Department how the outputs will contribute to the outcomes in the statement of outcomes.

Paragraph (b) of clause 27(3) requires the output of each Department (but not of a department of the Parliament, such as the department of Auditor-General), to contribute to outcomes.

However, although the linkage between outcomes and outputs will differ for Departments and for public bodies, this is not because of the wording of paragraph (a)
(which in both cases will require only that outputs are delivered in a certain way), but because the word outputs means for public bodies the goods and services they are required to deliver by virtue of their constituting instrument, while for Departments it will mean the outputs in the statement of outputs that forms part of the budget papers.

It is noted, too, that the absence of any provision equivalent to clause 27(3) in relation to public bodies supports the interpretation that outputs in the case of public bodies has no meaning beyond the non-technical meaning of the good and services that they are at any event required to deliver.

**Paragraph (b)**

This paragraph requires Departments and public bodies to comply with applicable legislative requirements and to implement associated policy frameworks.

**Applicable legislative requirements**

While for the most part this expression means much the same as “the law”, there are certain explicit or implied limitations. First, the requirements must be contained in legislation, that is, in Acts of Parliament or subordinate legislation (such as regulations and directions). Secondly, the word “requirements” casts the obligation in terms of some action or conduct that is required. The Macquarie Dictionary (4th Edn) has as its first definition of “requirement”, “that which is required; a thing demanded or obligatory”. Thirdly, the word “applicable” means those statutory obligations relevant to that Department or public body, and operative in those circumstances. Taken as a whole, then, the expression refers to obligations placed on the Department or public body by legislation in the relevant circumstances.

Those obligations could arise in two ways: first, through legislation applicable only to that Department or public body (for example, its constituting Act), and secondly, through legislation of general application, such as the *Public Administration Act 2004*, the Public Finance and Accountability Act itself, or legislation relating to occupational health and safety.
Associated policy frameworks

The expression “applicable policy frameworks” has to be interpreted and understood as a single phrase.

Full weight has to be given to the word “framework”—that is, that a “policy framework” is not the same as a policy. It would appear that the word framework has not yet been interpreted by a Court, but the meaning of the word can be illuminated by how it has been used in legislation and in judicial judgments. Legislative examples of its use are—

- the National Training Framework, defined by Regulation 3 of the A New Tax System (Goods and Services Tax) Regulations 1999 (Cth) define to mean “a nationally recognised system of training packages, training qualifications and registered training organisations”.

- section 227 of the Australian Securities and Investments Commission Act 2001 (Cth), which provides—
  
  (1) The functions of the Australian Accounting Standards Board are:
  (a) to develop a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards and international standards...

- section 16 of the Children, Youth and Families Act 2005, which makes it a responsibility of the Secretary to the Department of Human Services “to publish and promote a Charter for children in out of home care to provide a framework of principles to promote the wellbeing of those children”.

All these uses, as illustrated by these examples, envisage something that has structure and coherence, and which can be used as a reference point for activity.¹

¹ For uses by judges see, for example, an “appropriate framework against which the reasonableness of any particular order for cumulation could be assessed” (R v Seiler [2005] VSCA 146, per Vincent JA; a valuer must conduct a valuation “within the contractual framework” A J Lucas Drilling Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd [2009] VSCA 310; the “legislative framework” used in relation to the scheme of the legislation in Victorian WorkCover Authority v Syrad [2004] VSCA 234, per Phillips JA; “the legislation does not dictate the employment of any particular method in the formulation of an appropriate order for the adjustment...of property interests, and it is not desirable to attempt to formulate principles or guidelines designed to constrain judicial discretion within a predetermined framework” Kardos v Sarbutt [2006] NSWCA 11, per Brereton J at [51].
A further consideration is that it must be presumed that the phrase as a whole is capable of implementation. Since Parliament is imposing a positive obligation of compliance, to be a policy framework something would have to be known, certain, and capable of being used.

In order to satisfy to both of these requirements (that there be a framework, and that it be capable of implementation) a policy framework would therefore have to be in writing.

The only policy frameworks covered by the expression are those “associated” with the legislative requirements. The word “associate” is used in a wide variety of contexts in the law, always in the sense of two things being joined, combined or related. Thus the policy frameworks referred to here mean those which are related to the legislative requirement, even though they do not themselves have legislative force (because, if they did, they would themselves be legislative requirements). Examples of situations where there is a legislative requirement combined with a policy framework would be the “Whole of Government Financial Management Compliance Framework” (2003/2005) and the “Victorian Government Risk Management Framework” (July 2007). These are directly related to topics on which there is regulation-making power in the Financial Management Act 1994, and directions under that Act.

Finally, of course, a policy framework could not supplant the statutory obligation—the policies of government could not have legal effect in preference to the will of Parliament embodied in statute.

**Summary of paragraph (b)**

The effect of paragraph (b) is to make Departments and public bodies responsible for complying with the obligations placed on them by statute in the relevant circumstances, and with any structured and coherent written statement of policy made so as to be used in conjunction with those statutory obligations.
How these provisions relate to the constituting legislation of statutory authorities

An important legal maxim is *generalia specialibus non derogant.*

In *Blackpool Corporation v. Starr Estate Co.* (1922) 1 A.C. 27, at 34 Viscount Haldane, said of this maxim:

It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject matter appropriate to class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest.

The *Public Finance and Accountability Act* would be a general law, covering generally all the responsibilities of public bodies. It could not displace or override the responsibilities established by Parliament for particular statutory authorities in their constituting legislation.

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Ian H Gibson  
General Counsel  
Department of Treasury and Finance  

*9 August 2010*

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2 General [laws or provisions] do not derogate from specific ones.
Service Delivery
2012-13

Presented by

XXXX XXXXX MP
Treasurer of the State of Victoria
for the information of Honourable Members

Budget Paper No. 3
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CHAPTER 1 – STATEMENT OF OUTCOMES

The PFA Bill sets out Public finance and accountability principles at section 8, which among other principles includes:

- The principles that apply to public finance and public resource management in Victoria are:
  - (b) Government planning, budgeting and accountability processes will—
    - (i) focus on the achievement of stated outcomes;
    - (ii) clearly identify the outputs and investments that need to be delivered to achieve stated outcomes;
    - (iii) establish a means for measuring achievement of stated outcomes;

The PFA Bill also sets out the legislative requirement for a statement of outcomes in section 26.

Statement of outcomes: The Minister must publish a statement of the Government’s current intended outcomes.

The key purpose of this Chapter is to set the strategic direction for the Victorian Public Sector. Government will state its intended outcomes and assign performance indicators to them. This will allow departments and public bodies\(^1\) to ensure, through planning, that their activities align with and contribute to Government’s intended outcomes.

\(^1\) In a manner that does not diminish the independence of public bodies as determined by their legislatively-defined roles, functions and obligations.
CHAPTER 2 – OUTCOMES PROGRESS REPORT

The PFA Bill sets out Public finance and accountability principles at section 8, which among other principles includes:

The principles that apply to public finance and public resource management in Victoria are—

(b) Government planning, budgeting and accountability processes will—

(i) focus on the achievement of stated outcomes;
(ii) clearly identify the outputs and investments that need to be delivered to achieve stated outcomes;
(iii) establish a means for measuring achievement of stated outcomes;

The PFA Bill also sets out the legislative requirement for outcome progress reporting in section 39.

Outcomes progress report: The Minister must publish an outcomes progress report specifying progress on the Government's intended outcomes as stated in the statement of outcomes for the current financial year at least once during the following financial year.

The key purpose of this Chapter is to state performance against the Statement of Outcomes and to indicate the impact (i.e. the contribution towards outcomes) that public funds are having, and represents non-financial reporting requirements at a whole of Victorian government level.

The Chapter may:

- report progress against all performance indicators associated with the statement of outcomes;
- include historical trend series information for all performance indicators;
- include commentary regarding external factors that may be impacting progress in achieving outcomes.
CHAPTER 3 – LINKING OUTPUTS TO GOVERNMENT OUTCOMES

The PFLA Bill sets out Public finance and accountability principles at section 8, which among other principles includes:

The principles that apply to public finance and public resource management in Victoria are:

(b) Government planning, budgeting and accountability processes will—
   (i) focus on the achievement of stated outcomes;
   (ii) clearly identify the outputs and investments that need to be delivered to achieve stated outcomes;
   (iii) establish a means for measuring achievement of stated outcomes;

The key purpose of this Chapter is to present an overview of the government’s plan for achieving outcomes through the delivery of outputs in the forward estimates period.

The Chapter is intended to draw together and describe how departmental plans for the delivery of outputs are intended to contribute to the achievement of the government’s outcomes. The Chapter does this by introducing narrative to describe the link between output delivery and outcome through intermediate indicators, which are published in Chapter 4.
CHAPTER 4 – OUTPUT DELIVERY PERFORMANCE AND IMPACT

The PFA Bill sets out Public finance and accountability principles at section 8, which among other principles includes:

The principles that apply to public finance and public resource management in Victoria are—

(b) Government planning, budgeting and accountability processes will—

(i) focus on the achievement of stated outcomes;

(ii) clearly identify the outputs and investments that need to be delivered to achieve stated outcomes;

(iii) establish a means for measuring achievement of stated outcomes;

The PFA Bill also sets out Budget provisions at section 27, which among other things includes:

Budget:

(1) The Minister must prepare the following in association with the Annual Appropriation Bills for a financial year—

(b) a statement of outputs;

(3) The purpose of a statement of outputs is to—

(a) specify outputs in respect of each Department and each department of the Parliament during the period to which the statement relates;

(b) describe in respect of each Department how the outputs will contribute to the outcomes in the statement of outcomes.

The key purpose of this Chapter is to present each department’s Statement of Outputs, which provides an overview of the government’s plan for achieving outcomes through the delivery of outputs in the forward estimates period.

The Statement of Outputs details the goods and services that government departments intend to deliver in the financial year and how they will contribute over the forward estimates period to the achievement of the Government’s intended outcomes, as outlined in Chapter 1, including intermediate indicators that track the contribution of outputs to the outcome.
The Statement of Outputs contains quantity, quality, timeliness and cost performance measures listed for each output, which are used to assess each department's performance in service delivery.
EXAMPLE: DEPARTMENT OF XXXX

The following table summarises the total output cost by Government outcome.

**Table X.X: Output summary by Outcome**

<table>
<thead>
<tr>
<th></th>
<th>2011-12 Budget</th>
<th>2011-12 Revised</th>
<th>2012-13 Budget</th>
<th>Variation (a)(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Outcome 1</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output Group 1:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output 1</td>
<td>2070</td>
<td>2123</td>
<td>2150</td>
<td>3.9</td>
</tr>
<tr>
<td>Output 2</td>
<td>2968</td>
<td>2950</td>
<td>3205</td>
<td>8.0</td>
</tr>
<tr>
<td>Output 3</td>
<td>140</td>
<td>149</td>
<td>153</td>
<td>9.3</td>
</tr>
<tr>
<td>Output Group 2:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output 1</td>
<td>132</td>
<td>130</td>
<td>157</td>
<td>18.9</td>
</tr>
<tr>
<td></td>
<td>5310</td>
<td>5352</td>
<td>5665</td>
<td>6.7</td>
</tr>
<tr>
<td><strong>Outcome 2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output Group 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output 1</td>
<td>798</td>
<td>796</td>
<td>855</td>
<td>7.1</td>
</tr>
<tr>
<td>Output Group 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Output 1</td>
<td>2127</td>
<td>2099</td>
<td>1990</td>
<td>-6.4</td>
</tr>
<tr>
<td></td>
<td>2925</td>
<td>2895</td>
<td>2845</td>
<td>-2.7</td>
</tr>
<tr>
<td><strong>Total (a)</strong></td>
<td>8235</td>
<td>8247</td>
<td>8510</td>
<td>3.3</td>
</tr>
</tbody>
</table>

Source: Department of XXXX

Notes:
(a) In most cases, a department’s estimated total expenses from transactions (operating expenditure) accord with its estimated total output cost. However, where the total output cost does not reconcile with Departmental total expenses in Budget Paper No. 4, an explanation will be provided.
Output Group 1

This section describes the outputs delivered by the department [describe relevant goods and services], which are designed to achieve [broad intended results] and therefore contribute to [the government outcome of [outcome 1]].

Intermediate indicators

The following intermediate indicators provide detail on the impact of the department's service delivery in contributing to the government outcome of [outcome 1]:

<table>
<thead>
<tr>
<th>Intermediate indicators 2012-13</th>
<th>Unit of Measure</th>
<th>Outcome (retrospective year)</th>
<th>Outcome (retrospective year)</th>
<th>Outcome (retrospective year)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2011-12</td>
<td>Expected Outcome Target</td>
<td>2010-11 Target Actual</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2012-13</td>
<td>2013-14</td>
<td>2009-10</td>
</tr>
</tbody>
</table>

Outcome 1

The following indicators demonstrate the ways in which [the following outputs] are contributing to the Government's outcome 1.

**Intermediate Indicators**

- Rate of ...
- Proportion of ...
- Prevalence of ...
- Incidence of ...

**Trend series data over three years**

Note: Reporting on intermediate indicators will be based where possible on trend series data for three retrospective years. For some indicators no outcome data will be available.

<table>
<thead>
<tr>
<th>Major Outputs/Deliverables Performance Measures</th>
<th>Unit of Measure</th>
<th>2012-13 Target</th>
<th>2011-12 Expected Outcome</th>
<th>2010-11 Target</th>
<th>2009-10 Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Output 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quantity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of ...</td>
<td>number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of ...</td>
<td>number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of ...</td>
<td>number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proportion of ...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of ...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timeliness</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average time taken...</td>
<td>hours</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of... actioned within...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Timeframes...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total output cost</td>
<td>$ million</td>
<td>2150</td>
<td>2123</td>
<td>2070</td>
<td>1901</td>
</tr>
<tr>
<td>Major Outputs/Deliverables</td>
<td>Performance Measures</td>
<td>Unit of Measure</td>
<td>2012-13 Target</td>
<td>2011-12 Expected Outcome</td>
<td>2010-11 Target</td>
</tr>
<tr>
<td>---------------------------</td>
<td>----------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td><strong>Output 2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Quantity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Persons completing...</td>
<td>number</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organisations signed up as members of...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Quality</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proportion of...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Cost</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total output cost</td>
<td>$ million</td>
<td>3205</td>
<td>2950</td>
<td>2968</td>
</tr>
<tr>
<td><strong>Output 3</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Quantity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of...</td>
<td>number</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proportion of...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Quality</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proportion of...</td>
<td>per cent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Cost</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total output cost</td>
<td>$ million</td>
<td>153</td>
<td>149</td>
<td>140</td>
</tr>
</tbody>
</table>

*Source: Department of XXXX*

**Notes:**

(a) ...
(b) ...
(c) ...
APPENDIX A – OUTPUT, ASSET INVESTMENT AND REVENUE INITIATIVES

Appendix A describes output, infrastructure and revenue initiatives approved and announced since the previous Budget, typically by Government-wide initiatives and departmental initiatives.
APPENDIX B – DISCONTINUED OUTPUTS AND/OR MEASURES AND INTERMEDIATE INDICATORS

This appendix sets out the outputs and performance measures that will no longer be reported on from 2012-13. A complete listing of 2012-13 outputs, output performance measures and intermediate indicators is also provided in Chapter 4 Departmental Statement of Outputs.
STYLE CONVENTIONS

Figures in the tables and in the text have been rounded. Discrepancies in tables between totals and sums of components reflect rounding. Percentage changes in all tables are based on the underlying unrounded amounts.
### BUDGET PAPER 4

**DEPARTMENT OF XXXX**

**Total Available Resources by Fund Sources**

($ million)

<table>
<thead>
<tr>
<th>Item</th>
<th>2012-13</th>
<th>OUTPUTS</th>
<th>ATN:AB</th>
<th>POPBS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Estimates</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Outcome 1</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Appropriations(^2)</td>
<td>6010</td>
<td>80</td>
<td>20</td>
<td>6110</td>
<td></td>
</tr>
<tr>
<td>Estimated Carryover</td>
<td>35</td>
<td>20</td>
<td></td>
<td>55</td>
<td></td>
</tr>
<tr>
<td><strong>Total annual appropriation</strong></td>
<td>6045</td>
<td>100</td>
<td>20</td>
<td>6165</td>
<td></td>
</tr>
<tr>
<td>Special Appropriations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commonwealth(^3)</td>
<td>620</td>
<td>120</td>
<td></td>
<td>740</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>350</td>
<td>5</td>
<td></td>
<td>355</td>
<td></td>
</tr>
<tr>
<td>Retained (Working Account(^4))</td>
<td>200</td>
<td>50</td>
<td></td>
<td>250</td>
<td></td>
</tr>
<tr>
<td>Trust Fund revenue</td>
<td>20</td>
<td></td>
<td></td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Own source revenue</td>
<td>330</td>
<td></td>
<td></td>
<td>330</td>
<td></td>
</tr>
<tr>
<td><strong>Available resources</strong></td>
<td>7565(^5)</td>
<td>275</td>
<td>20</td>
<td>1695</td>
<td></td>
</tr>
<tr>
<td><strong>Outcome 2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Appropriations(^2)</td>
<td>950</td>
<td>8</td>
<td></td>
<td>958</td>
<td></td>
</tr>
<tr>
<td>Estimated Carryover</td>
<td>5</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td><strong>Total annual appropriation</strong></td>
<td>955</td>
<td>8</td>
<td>0</td>
<td>963</td>
<td></td>
</tr>
<tr>
<td>Special Appropriations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commonwealth(^3)</td>
<td>50</td>
<td></td>
<td></td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Retained (Working Account(^4))</td>
<td>35</td>
<td>2</td>
<td></td>
<td>37</td>
<td></td>
</tr>
<tr>
<td>Trust Fund revenue</td>
<td>5</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Own source revenue</td>
<td>10</td>
<td></td>
<td></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td><strong>Available resources</strong></td>
<td>1055</td>
<td>10</td>
<td>0</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td><strong>Summary</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total annual appropriation</td>
<td>7000</td>
<td>108</td>
<td>20</td>
<td>7128</td>
<td></td>
</tr>
<tr>
<td>Total special appropriations</td>
<td>1020</td>
<td>125</td>
<td>0</td>
<td>1145</td>
<td></td>
</tr>
<tr>
<td>Total retained</td>
<td>235</td>
<td>52</td>
<td>0</td>
<td>287</td>
<td></td>
</tr>
<tr>
<td>Total trust fund</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Total own source</td>
<td>340</td>
<td>0</td>
<td>0</td>
<td>340</td>
<td></td>
</tr>
<tr>
<td><strong>Total available resources</strong></td>
<td>8620(^6)</td>
<td>285</td>
<td>20</td>
<td>8925</td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**
1. Resources available to department for its contribution to Government's Outcome 1
2. Annual appropriations will include Commonwealth SPPs
3. Special appropriations will include Commonwealth NPPs
4. Retained in the Working Account will be Revenue received from provision of outputs, sale of assets and municipal SPPs
5. Output revenue available to deliver outputs contributing to Outcome 1
6. Total output revenue available will be linked to Total income from transactions in the departmental operating statement, in Budget Paper 4

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18 Budget Paper 4 Statement of Finances 2012-13
PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Public Finance and Accountability Bill 2009

Melbourne — 24 August 2010

Members

Mr R. Dalla-Riva  Mr G. Rich-Phillips
Ms J. Graley  Mr R. Scott
Ms J. Huppert  Mr B. Stensholt
Mr W. Noonan  Dr W. Sykes
Ms S. Pennicuik  Mr K. Wells

Chair: Mr B. Stensholt
Deputy Chair: Mr K. Wells

Staff

Executive Officer: Ms V. Cheong

Witnesses

Mr D. Pearson, Auditor-General; and
Mr J. Findlay, Assistant Auditor-General, Financial Audit,
Mr M. Bini, Director, Policy and Coordination Directorate, and
Dr P. Frost, Chief Operating Officer, Victorian Auditor-General’s Office.

Necessary corrections to be notified to executive officer of committee
The CHAIR — I declare open the Public Accounts and Estimates Committee hearing on the inquiry into the Public Finance and Accountability Bill 2009. In accordance with the guidelines for public hearings I remind members of the public that they cannot participate in the committee’s proceedings. Only officers of the secretariat are to approach PAEC members. Staff of the Auditor-General’s office, as requested by the Auditor-General, can approach the table during the hearing. Members of the media are also requested to observe the guidelines for filming or recording proceedings in this particular committee hearing room.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. There is no need for evidence to be sworn. All evidence given today is being recorded. Witnesses will be provided with a proof version of the transcript, to be verified and returned as soon as possible after receiving the transcript and certainly within two working days. In accordance with past practice the transcripts will then be placed on the committee’s website.

Committee members will ask questions related to the contents of the Public Finance and Accountability Bill 2009. They are the terms of reference for this hearing. Generally the procedure followed will be that related to questions in the Legislative Assembly. I ask that all mobile telephones be turned off.

I ask the Auditor-General, who may wish to make some points, to begin. I should note that as chair I will leave it to the Auditor-General in terms of answering questions in a reasonable and lawful manner.

Mr PEARSON — Thank you, Mr Chair. It is certainly a pleasure for us to have this opportunity to — —

Mr DALLA-RIVA — Make sure it is lawful.

Mr PEARSON — It is certainly a pleasure to have this opportunity to appear before the committee. I would like to make a range of comments, to start with some introductory and context comments and then focus directly on the bill in an introductory sense.

I have to record that I was surprised that we were not called prior to finalising the 11 August report. On our reading of the report, it is not evident that the information that we provided to the committee was taken into account. More so, we were particularly disappointed that in the report there was a report of a long outstanding reply from VAGO, and this issue was not pursued. It appears yet again a comment reflecting adversely on the office has been accepted without testing and nor has procedural fairness been afforded, so I do record that disappointment.

I would also like to clarify that I do not see the provision of audit comment in this context, to the executive or to a parliamentary committee, as being contrary to section 16(5) of the act. That section relates to audit reports and deals with policy objectives. I would contend that the Auditor-General’s views warrant consideration in relation to this bill on the count that, basically, public finance and accountability are core business for audit as well as for the Department of Treasury and Finance. Further, care needs to be taken that any subsequent legislation does not compromise section 94B of the Constitution Act.

Finally, given the importance of public finance legislation, I repeat the comments I made when we met to consider the Audit Act review, that financial legislation is core; the opportunity to address it is very rare, so again I put on the table that we really need to look at it in principle and redouble our efforts to consciously address and pay attention to the issues of public sector accountability and bear out the ideals of Public Accounts and Estimates Committees in terms of rising above the normal business to deal with the important fundamental legislation at hand.

The second thing I want to address is that I probably know you see us as needing to address two things today: the bill itself and, secondly, the independence of an independent officer of Parliament issue. First, in terms of the bill, we have certainly been in consultation with DTF for over two years now. We made submissions to this committee in August 2008 and gave evidence subsequently. In the last six to eight weeks successively we have had access to the draft directions — and that was a big breakthrough from our point of view in terms of having something more substantive — and since last week we have had access to the draft instructions and the categorisation of entities that are related to and that facilitate a more informed consideration of the draft legislation.
In the last one to six or eight weeks we have managed to map the bill, the draft directions and the draft instructions to the existing legislation and to better practice, taking them into account to better inform our views. I am happy to say in overview our perspectives have been generally adequately considered and there has been a good take-up of suggestions along the way, and as such we accept the principles set out in the bill as appropriate. I would probably add to that by saying we do not see any adverse core changes. Certainly we are pleased to see a stronger appeal to risk management; that is important in today’s world. However, we would like to see greater emphasis on controls to recognise better practice elsewhere and the public sector context.

We might want to come back to those controls, but while we do apply sector-neutral standards I have raised with the committee before that they are still developing. There is still a range of significant gaps in the standards that have been identified by auditors-general and heads of Treasury that the standards board is working with, and, further, the public sector does not operate in a marketplace to keep it honest. That is why the controls are particularly important.

As auditors we certainly like the output-outcome framework and note this is a work in progress. I suggest it is going to take quite a time to work through, and it is being appropriately dealt with in the directions, in our view. I put that one in the context that the sector adopted accrual accounting almost two decades ago. I suggest it probably took us the best part of a decade to get on top of it and there are still dividends to be harvested. We are very supportive of the move to the outcome framework, but we should not be impatient with the progress.

An area for consideration that we raise, and that we have been raising along with the Department of Treasury and Finance on the way through and in our earlier evidence to you, is the executive exercise of discretion to issue directions and instructions, and that is an area I will come back to in two respects. We note there is the implication for the independence of independent officers of the Parliament on one hand, and on the other hand we do not see that there is provision for oversight of the exercise of that discretion or for any disallowance of it, which is normal with subordinate legislation and regulations.

We are happy to see the coverage of the bill. We think the issue of more clearly defining public bodies and controlled entities has been reasonably addressed. In a recent report to Parliament we highlighted the issues relating to the differential reporting framework where four categories are provided, and that is a principal issue and we are supportive. However, we note the four categories — the accounting standards framework proposing the two frameworks — and we have already raised the issue that there is a need to reconcile it. But in the same breath I put that categorisation as in an area that it is appropriate to be dealt with in the directions ongoing. I see our priority as working in consultation with DTF to ensure there are rigorous criteria established for categorising agencies, so that will be done consistently and reliably. Again, that is another thing that I think is not a prerequisite for the passage of the legislation; it is another one of my works in progress.

As I mentioned in my earlier comments, we are certainly pleased to see that risk management has now been acknowledged as a consideration in addition to the financial size in categorising agencies. Again, I think that is an important dimension. Similarly, the provision for earlier annual financial reporting we think is a very positive move, and as I said in a recent report to Parliament, it would be good, irrespective of the passage of this legislation, if the earlier time lines achieved this year could be locked in and built on.

The second important issue for the Auditor-General is the independence issue. Not surprisingly this is an issue that auditors would raise, and we are gratified that this has been addressed and is being recognised in the latest draft of the directions. From my perspective the bigger issue, though, is that the directions that can be made in consultation can be varied without consultation, and that is the issue from an accountability perspective and why we need interplay with the provisions of the Auditor-General as an independent officer of the Parliament and interplay with the Constitution Act. Clearly that has implications for the independence of audit.

Therefore in overview I acknowledge the overall positives in this bill. It mostly reflects the issues we raised in our 2008 submission to this committee, so in broad terms they have largely been ticked off. Overall there are positives in the bill. I have noted there are a couple of areas that are understandably works in progress, and I would argue that it is appropriate for them to continue to be works in progress — working through the output-outcomes framework and the categorisation of entities. I think they can be rightly addressed in the supporting directions and developed over time.
I see that probably the headline issues from an audit perspective are the interplay of independence with the exercise of executive discretion — that is clearly a core issue — and the second issue is the matter of controls as to whether a better public sector practice is adopted of including the certification in relation to controls in the certification relating to the financial statements and making it routinely subject to audit, or whether as is currently proposed, it is left to a CFO certification. I just raise that that is a lower order delegation approach, and when you reconcile with the nature of the controls’ findings we reported in the last round of reports to Parliament, there are clearly fundamental issues with control across the sector that from an auditing and accountability perspective warrant serious attention. Thank you, Chair, that concludes the comments I wanted to make at the opening.

**The CHAIR** — Thank you very much for that, Des. I will now ask members to ask you questions about the contents of the bill, and I ask people to confine their questions to that. To start off, I note you make a range of comments in your report on portfolio departments interim results for 2009–10 in regard to aspects of the bill. These were addressed in section 2.4 of the report that we recently tabled; I am talking here in terms of the classifications and the timing of annual reports. I guess the other issue is probably not to do with the bill, but there is some relationship there. Do you have any further comments to add beyond what we have covered in our previous report?

**Mr PEARSON** — Not in relation to that, Mr Chairman.

**The CHAIR** — On those three things; okay.

**Mr WELLS** — Des, I guess we are in the embarrassing situation where the committee did not invite you in the first place. Have you read the report that was tabled in Parliament?

**Mr PEARSON** — Yes.

**Mr WELLS** — So you would have noted that in the extracts from the minutes of Monday, 9 August — —

**The CHAIR** — Can we have a question about the contents of the bill rather than other aspects?

**Mr WELLS** — I am referring to the report.

**The CHAIR** — No, this hearing, Mr Wells.

**Mr WELLS** — This is relevant. I am referring to the report. You tried to gag the Auditor-General by not inviting him. Now we just want to start on the report.

**Ms HUPPERT** — For goodness sake!

**The CHAIR** — All right. Thank you, Mr Wells.

**Mr WELLS** — I have a question about the report.

**The CHAIR** — I will comment on what you have just said. Let me make it quite clear that this committee decided not to call the Auditor-General.

**Mr WELLS** — On your casting vote.

**The CHAIR** — Can I ask you not to interfere and to allow the Chair to speak. Otherwise I will rule that you not be heard. The report said that. We have dealt with that report; that report has been submitted to Parliament, and there was a minority report. This particular hearing is to take evidence from the Auditor-General and other witnesses in regard to the contents of the bill. I ask that members follow that and ask their questions in regard to the contents of the bill.

**Mr WELLS** — Are we able to refer to the report that we tabled in Parliament?

**The CHAIR** — In terms of asking questions about the contents of the bill, yes. Get on with it.

**Mr WELLS** — Hang on. I know this is embarrassing for the committee, having to recall the Auditor-General — —
The CHAIR — It is not embarrassing at all. You are the embarrassing one. Your behaviour is embarrassing.

Mr WELLS — No, if you had done what the majority of the committee had wanted in the first place, the Auditor-General would have been called in the first place.

The CHAIR — That is actually an incorrect statement, and I ask you to withdraw the incorrect statement. It is not appropriate for members of this committee to make incorrect statements where they are clearly incorrect. Could you ask your question, please.

Mr WELLS — Des, thanks for attending. The initial part of my question was in regard to your not being invited in the first place. What conversations have you had with the Chair of this committee in regard to attending or not attending the hearings of the Public Accounts and Estimates Committee on this bill?

The CHAIR — That question is not in order. It is not related to the contents of the bill.

Mr WELLS — Hang on. Why don’t you give the Auditor-General a chance to answer it?

The CHAIR — As Chair, I am here to direct the proceedings, and the proceedings are to be in relation to what the inquiry is about.

Mr WELLS — Exactly.

The CHAIR — Your responsibility as a member is to ask questions of witnesses about the contents of the bill. I ask you to reframe the question in terms of the inquiry.

Mr WELLS — Des, in regard to the contents of the bill and your comments and views on this bill, what conversations did you have with the Chair of this committee about the contents of the bill prior to 9 August when the committee voted for you not to attend the hearings?

Mr PEARSON — I do not think I had any discussion with the chair prior to 9 August.

Mr WELLS — Since — —

The CHAIR — I actually think the question is inappropriate. The Auditor-General is free to answer it, as I said before.

Mr WELLS — Hang on. The Auditor-General can choose to answer these questions or not. He does not need you telling him what he can and cannot say.

The CHAIR — I will make the rulings in this committee, thank you, Mr Wells. I will make the rulings in terms of whether the questions are in order or not. Mr Pearson has elected to give you an answer in that regard. I have given you a view on the question. We have allowed you a great deal of latitude. You may wish to continue. You have asked your question. I will move on to the next question, if you like.

Mr WELLS — Hang on. I am only halfway through because you keep interrupting me.

The CHAIR — You have asked your question.

Mr WELLS — I am just trying to get to the — —

The CHAIR — You have asked your question. I will move on to the next question.

Mr WELLS — Are we going to be able to ask the Auditor-General questions that we want to ask?

The CHAIR — As is the normal process of this committee, you can ask the witnesses questions in regard to the terms of reference of the inquiry. Ms Huppert has the call. You have asked your question.

Mr WELLS — The second part of my question — —

The CHAIR — You did not tell me there was more than one part, so I have given the call to Ms Huppert; she has a question.
Mr WELLS — Well, I can give you a note.

Ms HUPPERT — Thank you, Auditor-General. I appreciate the introduction you have given us. You have pointed out that, as per the matters raised in your previous report, which was the reason we suggested we call you in the first place, you are satisfied with those. I am very pleased to hear that the reasons given by certain members of the committee for calling you has been satisfied. But I have another question which was raised by the matters you have raised with us here today, which is the question of independence.

I am a little bemused about why you think the bill might affect the independence of your office, because we have heard various evidence, as you have seen in the report that was tabled in Parliament, about the ability of ministers otherwise to give directions under this bill and how that power is limited by the provisions of the bill. I want to clarify why you think there might be the potential for an issue under this bill.

Mr PEARSON — I will introduce the answer to that and then ask Mr Bini to go on. Basically the direction-making provisions in the bill are far wider than they are in the Public Administration Act, and in my mind it fundamentally comes back to the distinction between the provisions in the Constitution Act and the ability for the executive to make directions, albeit legally, without consultation and to impose on the operations of the Auditor-General. Mr Bini will go — —

Ms HUPPERT — Except that there is nothing in the act which gives ministers the power to give a direction that is inconsistent with the Constitution Act or the Audit Act.

Mr PEARSON — If there is nothing that is inconsistent, what is the problem with putting it in the act to make it beyond doubt? That would give me some comfort, I suppose.

Ms PENNICUIK — That was my question. Why not fix it up, make it clear?

Mr PEARSON — Mr Bini will have more to add in the broader context.

Mr BINI — The bill, as it currently stands, provides a power for the minister and the secretary of DTF putatively to make directions or instructions under the bill. I agree with what you say, and you will see this is one of the issues that was raised in the DTF advice, which is that a general provision does not override a specific provision, but the purpose of direction-making powers is specific. A direction requires somebody to do something specific. For example, if the office of the Auditor-General was declared to be a public entity and a direction was made that it had to follow the VGPB procurement guidelines as a hypothetical example, there is nothing in the Audit Act that specifically prevents that direction from being effective.

The Constitution Act provision only deals with the power to direct over audits — that is, choice of audits, conducts of audits and so on. The direction-making power is not subject to disallowance in Parliament, and basically the minister has a much broader power than the direction-making power under the Financial Management Act.

Mr PEARSON — If I could add in there, again on my reading of the Constitution Act and the Audit Act, it is almost double jeopardy for the auditor. It sets up very stringent oversight provisions in relation to the auditor in the exercise of the independent functions and gives particular powers to this committee. Again, logically, that seems to be apart from the apparent conflict and the facility for the executive to issue directions. It is also double jeopardy in terms of the oversight and monitoring of the office that seems to contradict the independent officer of the Parliament role.

Ms HUPPERT — I am just a bit bemused about the interpretation.

The CHAIR — Thank you for that.

Mr RICH-PHILLIPS — I would like to take the Auditor-General to the same area. Just before that, you indicated in your opening comments that the audit office had mapped the bill against best practice and against the FMA. Would you be willing to make that work available to the committee?

Mr PEARSON — I would have to seek advice from Mr Findlay as to the nature, because it is a pretty extensive exercise. While there is core documentation — —
Mr FINDLAY — Yes. The Department of Treasury and Finance has done a lot of work in that space, obviously in terms of reconciling the existing framework to other better practice models in coming up with the bill and the instructions and directions that they are working through at the moment. We have obviously had a look at a lot higher level in terms of the other jurisdiction as well, and we have provided that to DTF as well — and the committee, I think, in terms of the comparison to the other jurisdictions. As Des said in his opening presentation, the model is in line with better practice. A number of other jurisdictions within Australia have recently undertaken reviews of their finance and audit legislation — namely, WA, Tasmania and Queensland. Those jurisdictions have been considered by DTF in developing namely, PFAL.

Mr RICH-PHILLIPS — This committee has not had the benefit of that DTF work, so perhaps if the Auditor-General wants to consider whether any of your work can be provided on notice and deal with it that way?

Mr PEARSON — I would prefer to do it in a briefing context because, as you can appreciate, this has been a work in progress over a couple of years. There has been a lot of talk at the conceptual level, and it is only in the last one to eight weeks that we have had the full suite and been able to do the mapping. As you would appreciate, it does not look overly pretty.

Mr RICH-PHILLIPS — Assuming those directions end up being the directions.

Mr PEARSON — Yes, but they are the latest draft, and we have now got the draft instructions, which we received last week. Last week we received the draft categorisation across the four categories. That has given us a basis to map and work through. A lot of the mapping we have done in various forms, but I have not got a bit of paper so that I can say, ‘Here is the map’, but we have got a hell of a lot of working papers, and I do not give evidence that my overview of the mapping and the briefing and advice I have got that there are no retrograde steps. There are no core elements missing, and I suppose I have highlighted two others that warrant consideration. There is the controls issue and the independence issue.

Mr RICH-PHILLIPS — Was the independence issue — —

The CHAIR — The independence one relates to the directions; correct?

Mr PEARSON — It does, because that is in the directions. The current version of the bill gives the executive — the minister and the deputy secretaries in DTF — the ability to issue directions and instructions that are not subject to scrutiny or oversight, and there is no provision for disallowance.

Mr RICH-PHILLIPS — That was the subject matter I wanted to ask you about.

The CHAIR — Since you wish to give it in evidence, would you wish to say more in response to Mr Rich-Phillips’s question. He was asking for something written, but you are saying you want to give it in evidence now.

Mr PEARSON — I would want to have the opportunity to distil a briefing or a presentation.

Mr RICH-PHILLIPS — It might require some time to prepare to do that. I do not know that the Auditor-General is in a position to do that right now.

Mr PEARSON — We basically break it down to the core elements and functions and compare it with the core elements and functions of the previous and with legislation elsewhere. The distillation of it is that the independence issue comes from our analysis of it and the reading of the provisions, and the controls issue comes from comparing with better practice elsewhere.

Ms HUPPERT — Those are the two issues you have raised here today, but other than that, you do not have any issues, because you have just said you are satisfied — —

Mr WELLS — Apart from the two issues — —

Ms HUPPERT — No, no! Two issues have been raised, but there are a number of other issues that came out of that report, and you have said that you are happy with how they are dealt with?
Mr PEARSON — Broadly, yes. There are about four live issues from my point of view.

Ms HUPPERT — But two of them are being dealt with in directions; that is right.

Mr PEARSON — Yes, that is right, and they are works in progress.

Ms HUPPERT — As we the committee have said previously there is the bill and then there are the directives and the regulations that will come afterwards, and obviously a lot of issues — —

Mr RICH-PHILLIPS — Trust me!

Ms HUPPERT — No, a lot of issues that are raised are not appropriate for dealing with in the bill itself.

Mr PEARSON — But again the independence one is a threshold issue.

Ms HUPPERT — No, I understand — —

Mr PEARSON — If the power to direct the independent officer of the Parliament was taken up to the legislation, that would make me a lot more relaxed about negotiating or being consulted on the underpinning directions and instructions.

Mr RICH-PHILLIPS — That was the area I wanted to ask you about, the audit office’s view of the way in which clause 4 of the bill and clause 12 of the bill would operate. Is it your view that as currently drafted under clause 4, which is the definition of ‘public body’ and how public bodies can be declared by the minister, the Auditor-General’s office can be declared a public body?

Mr PEARSON — That is our concern.

Mr RICH-PHILLIPS — And as a consequence of that, the provisions of clause 12, being the responsibilities of departments and public bodies, would then come into play?

Mr BINI — Yes.

Mr PEARSON — Yes.

Mr RICH-PHILLIPS — In terms of the requirement to provide information that has been asked for by a secretary to the minister, so that could impact on any inquiry you are undertaking?

Mr PEARSON — That is our reservation or concern while it is at the direction level, whereas conversely if the bill said, ‘Nothing in this clause applies to an independent officer of the Parliament’, it would be beyond doubt.

Mr RICH-PHILLIPS — You would be more relaxed? What about the requirement that clause 12 imposes to support the government’s policy objectives; is that something you also believe the audit office would be bound by under the current legislation?

Mr BINI — The audit office can be declared a public body. Once you are declared to be a public body, those provisions will bind you, including the direction-making power.

Mr RICH-PHILLIPS — And therefore the requirement to deliver government policy?

Mr BINI — If that is what is in clause 12, yes.

Mr WELLS — Can I seek clarification?

The CHAIR — Yes.

Mr WELLS — John, you mentioned in your discussion with Gordon — through the Chair, of course — about a reconciliation being done between DTF — —

Mr FINDLAY — Yes.
**Mr WELLS** — Can you explain what reconciliation they were doing — between what and what?

**The CHAIR** — I am sorry; this has to be about the contents of the bill.

**Mr WELLS** — It is exactly about the contents of the bill.

**The CHAIR** — I am not — —

**Mr PEARSON** — I interpret this as what I have labelled the mapping.

**Mr FINDLAY** — What has been done is we have obviously provided feedback to DTF on the draft directions. In terms of that exercise we pointed out a few gaps, so DTF has taken on board those gaps and built them back into the revised version of the instructions. In doing so we suggested that they do a reconciliation of the existing accountability framework load — for instance, the financial reporting disclosures, the ministerial standing directions, all that guidance material — and they have done that in framing that. We have obviously had a quick look at a high level, and we cannot see any significant gaps. As Des says, in principle we think it is basically going to be at least that the transparency and accountability mechanisms that are in the existing framework will be there, and then obviously there are going to be some more contemporary arrangements in terms of dealing with the more complex public sector. As Des said, the risk elements are being brought in, and the higher level governance aspects.

**The CHAIR** — So there are no gaps; that is what you are saying?

**Mr PEARSON** — No, we have not got any gaps. DTF will be doing that, I expect, but clearly it is the first level of review. Whether you are promoting or reviewing, it is compare and contrast with what exists and what is provided.

**Ms PENNICUIK** — There are two follow-up questions. Following on from you being concerned about your office being declared a public body, one of the concerns I had when reading clause 12 was that public bodies and departments seem to have the same requirements, notwithstanding your office is a public body, but other public bodies which are not government departments and may be statutory bodies, I am not sure what your view would be on them perhaps having not quite the same requirements in that the government department is different and not a statutory entity. That is something that I have not really got the answer to in previous hearings. I am wondering if you have a view as to whether clause 12 might be better split into the requirements of departments and the requirements of public bodies.

**Mr PEARSON** — My colleagues might have a comment on that. The big distinction I would make and why I have raised the issue of independence in relation to the Auditor-General specifically is that under the Constitution Act it is an independent officer of the Parliament.

**Ms PENNICUIK** — Yes, I take all that.

**Mr PEARSON** — The intention is to be independent. To me there are two dimensions. One is to follow through that principle and respect it at all levels. I contend that any lessening of control under the act is more than compensated for by the PAEC’s oversight of the office — its very close oversight.

**Ms PENNICUIK** — For example, it says ‘established under an act of Parliament’, so it could mean the Ombudsman, for example, could also, theoretically.

**Mr PEARSON** — It could; I do not think that is a consideration.

**Ms PENNICUIK** — That is my question.

**Mr PEARSON** — Mr Findlay has some more information he can provide there, but my starting point, I suppose, would be that it is at least independent officers of the Parliament, if we are going to respect the separation of powers and true independence.
Mr FINLAY — In terms of the differentiation, I suppose the way that DTF has set it up through the instructions is through the differential categorisation. You have the departments, category 1, category 2, category 3 and category 4 entities, I suppose that is how they deal with it. Obviously the departments are appropriation funded, so there are different rules and requirements under the legislation and in instructions. Then you get to the category 1 entities like your VFMCs, your big statutory corporations with their own independent boards who actually recover their own funds, so they are not receiving parliamentary appropriations. That is how it is treated through the categorisation process. I think from our perspective that is quite reasonable. We have just raised some issues there. The AASB has some differential reporting and accounting standards on that which have two tiers; this model has four, and basically DTF is obviously reconciling the differences between the two and the four models.

Ms PENNICUIK — Just following up, I had thought that perhaps a notation along the lines that you suggested might fix it.

Mr PEARSON — Again, it is not for me to propose or amend, but to me that seems an obvious way to resolve the issue and to be explicit. I would have thought that that is being consistent with the established principles and objectives that have been set out, and the framework to compensate for it is already there.

Ms GRALEY — Thank you for coming. In your 2006 report, Des, *Review of Major Public Cemeteries*, recommendation 48 says:

> For those cemeteries where, due to their size and risk, the requirements of the Financial Management Act 1994 are considered by the working group to be too onerous, the department should:
> 1. apply to the Minister for Finance for these cemeteries to be exempted from reporting under the act
> 2. review the current compliance and reporting requirements for these cemeteries.

My question is: does VAGO still support such an approach of exempting bodies completely for their reporting framework? Alternatively, does VAGO prefer fit-for-purpose reporting?

Mr PEARSON — I will have to ask Mr Findlay to pick up on that. That report predates both of us, but my understanding is I would think the answer is in the affirmative, that we do support it, and that is the area that I discussed in my comments as part of — —

The CHAIR — The fit-for-purpose one or the exemption?

Mr PEARSON — To me, both of them reconcile to the works in progress of categorisation of entities on one hand and reconciliation with the accounting standards on the other hand. At the moment it is one size fits all. That recommendation would have been written in that sense — and there is the fact that there are some small ones. I think in category 4, on the list we have, it is notionally 1800, with 1500 in one category and 300 in another category. That is an area of debate between us and the Department of Treasury and Finance presently. We take the view it is not the independent auditor’s job to chase around and decide which ones should be audited; it is the responsibility of the executive to exercise some form of control over it and for that to be subject to scrutiny and review by the auditor. A hypothesis would be that maybe the portfolio departments are responsible for that category and they run a control regime over it that is subject to our audit; that might be satisfactory. That is the long way of saying that.

I would argue for answering in the affirmative to both those things, making allowance for the different contexts envisaged by PFAL, but it is addressed by the reconciliation with the accounting standards. It might go from general purpose reporting to specific purpose reporting, and I could see that that could be quite reasonable.

The CHAIR — But are you introducing a fifth category of exemption?

Mr PEARSON — I do not think so.
Mr PEARSON — My reading of it is that the proposed framework is a more robust system, because at the moment — —

The CHAIR — Than the accounting standards one?

Mr PEARSON — Yes, arguably there are 1800, but under one interpretation of the current FM act they may be submitting financial statements and getting them audited. But in a sense, even from an accountability perspective and a cost-benefit perspective, that is not justified, whereas my reading of the application of PFAL is that it consciously addresses those. I would hope for the executive to develop a policy and apply it, and that would be subject to audit testing, which comes back to the role of the Auditor-General, which is the independent review and objective reporting to Parliament. There is no executive authority, but there is a facility to draw things to attention.

The CHAIR — You said before that you are happy with the treatment of differential reporting as treated in the last report that we had.

Mr PEARSON — On the basis that it has four categories and there is rigorous criteria and they are consistently applied — and that will better fit with the system we are working with. On the other hand, the issue that is on the table as part of that is that we also need to reconcile Victoria’s four categories with the proposed accounting standard of two categories.

The CHAIR — That is probably coming in later.

Mr WELLS — Des, in your opening remarks you referred to a letter that was sent to you by DTF on 9 December. As I said, you made reference to that in your opening remarks. I note that in the minority report we also referred to that letter, where the Department of Treasury and Finance claimed that they forwarded to you a letter on 9 December requesting further advice of any concerns about the bill; however, no response was received. I am wondering whether you could just give some information to the committee which could clear up that matter.

Mr PEARSON — Interestingly, this chain of letters relates to — —

The CHAIR — Insofar as it relates to — —

Mr WELLS — No. The Auditor-General referred to it in his opening remarks, so I am just picking up that part of his comments, and if he has some concerns then we need to make sure they are addressed.

The CHAIR — Thank you, without assistance. I am giving the call to the Auditor-General and asking him to respond insofar as it relates to the contents of the bill.

Mr PEARSON — It relates to the issue of the independence and the ability to be declared — —

The CHAIR — It relates to the contents of the bill.

Mr PEARSON — Yes.

Mr RICH-PHILLIPS — Are you trying to shut him down now?

The CHAIR — I am only asking him to answer insofar as — —

Mr WELLS — Yes, I know. We do not want to have to put in another minority report because of the way this hearing is being conducted.

The CHAIR — We do not wish to put in our report your poor behaviour.

Mr WELLS — My poor behaviour? If you had done what we said in the first place, he would have been here two weeks ago.

The CHAIR — Mr Pearson, I ask you to respond to the question insofar as it relates to the contents of the bill. Just for the information of the member, I am not making a judgement on the question or what you are saying.
Mr WELLS — Yes, you are.

The CHAIR — I am just asking the witness to conform to the terms of reference of the inquiry. That is all that I am saying.

Mr WELLS — On a point of order, in the opening remarks by the Auditor-General he raised concerns about this very point. I would have thought all members of the committee would have expected or allowed the Auditor-General to expand on his concerns to this committee; to do otherwise is being disrespectful to the witness. Are you saying that that is not being disrespectful to the witness?

The CHAIR — There is no point of order. The question has been asked. I have called the Auditor-General and asked him to answer the question insofar as it relates to the contents of the bill — in other words, the terms of reference of the inquiry. It is pretty clear.

Mr PEARSON — The letter relates to the issue of the independence of the Auditor-General and whether it is addressed by direction or in the legislation. The letter referred to — and according to the report, warranting reply — was the last in a series, and the only reference to a need for reply was, ‘Please contact me if you would like to discuss this matter further’. It was not as though it was a request for information.

Dr FROST — Chair, could I also add that on that very day, the date of the letter, the negotiations continued with officers of DTF. The attribution that has been put on the lack of a response by our colleagues in DTF is in fact inaccurate; it is not the case. What we are saying is that the former deputy secretary wrote back to a letter that I had originally written to him. He replied, and basically the burden of the response was addressed to the issue of independence, part of which says that, ‘Well, what we are proposing may not be ideal’, and the negotiations were continuing. I just wanted to assure committee members that on that very day, the date of this letter, negotiations were continuing and do continue.

The CHAIR — And the bill was before the house at this time?

Dr FROST — I do not know.

Mr BINI — I could not tell you off the top of my head, no.

Dr FROST — I cannot answer that question.

Ms GRALEY — What is the date on the letter?

Mr PEARSON — The date of the letter is 9 December 2009.

The CHAIR — My copy of the bill is dated 8 December. Mr Wells, do you wish to finalise your question?

Mr WELLS — Just to clarify this, the reason you did not respond to that particular letter is because of the view that there were ongoing discussions.

Dr FROST — There were ongoing discussions.

Mr PEARSON — And moreover, that letter, the 9 December letter, responded to our 1 December letter and acquitted our 1 December letter.

Dr FROST — Can I also say here it says in the last sentence, ‘I look forward to continuing this positive engagement’. This was not a put-up-or-shut-up letter or this is the last chance; this is about continuity of discussions, which has in fact happened that very day and continues to happen.

Mr WELLS — The reason I am asking the question — —

The CHAIR — Is it a clarification?

Mr WELLS — I am following up that part of the question. I asked the DTF the question, ‘Is the Auditor-General happy with the bill that was presented to Parliament?’ or words thereabout. They responded, as far as I can recall — and I will be corrected later if that is not the case — that, ‘We sent a letter to the Auditor-General on 9 December, to which we have had no response’. That to me, on the information given to us
by DTF in the previous hearing, suggested to us that the Auditor-General was completely happy with the bill that was presented to Parliament because they did not reply.

**Dr FROST** — Chair, can I just simply say there are two things. I think it is, as I have just tried to point out, a misinterpretation by DTF. DTF also knew that negotiations were continuing, as Stein Helgeby’s letter in fact says to me on 9 December. So those discussions were continuing and do continue.

**Mr PEARSON** — Mr Chairman, if I could just in a sense — —

**The CHAIR** — I am having difficulty here, because the bill was already in the house at this particular time, and the exchange of letters was not actually about the contents of the bill.

**Mr WELLS** — Hang on. You are misinterpreting what has been said in the letter and by what has been said by the Auditor-General and what the Department of Treasury and Finance are saying.

**The CHAIR** — I am not misinterpreting anything; I am just saying I am having difficulty, and I have asked Mr Pearson to clarify, which he is trying to do.

**Mr PEARSON** — Through you, Mr Chair, this goes back to my opening comment that I was surprised not to be called and disappointed because, basically, as the independent auditor, I do not think anybody is entitled to speak for us. For any agency to represent our view, I would have thought, especially with the Public Accounts and Estimates Committee, would not be accepted.

**Mr WELLS** — Which was the difficulty we had, because we could not verify the information that DTF had given us — had you been called in before or after we were able to clarify that information. I am just wondering: is it proper that we are able to have a copy of the letter that was sent to you from DTF? Is that in order?

**Mr PEARSON** — I do not have an issue.

**Mr WELLS** — It is just that because it has been raised on — —

**The CHAIR** — It is probably inappropriate for Mr Pearson to give a copy of a letter which he did not actually originate. We would need to ask the next witness. I think that is a reasonable interpretation.

**Mr WELLS** — This is the letter that was sent to the Auditor-General on the night.

**The CHAIR** — It is not your letter, is it?

**Mr PEARSON** — It was addressed to us.

**Dr FROST** — The letter was sent to me from the former deputy secretary.

**The CHAIR** — We have the opportunity to ask that of the originators.

**Mr WELLS** — No, that is incorrect.

**The CHAIR** — I think that is a reasonable thing to do.

**Mr WELLS** — No, that is incorrect. If a letter has been sent to Dr Frost, then he has ownership of that letter. My understanding is that it is Dr Frost who would make the call, in relation to the Auditor-General, whether the letter should be made available. The interpretation you are putting on this is ridiculous.

**The CHAIR** — It is not ridiculous. I have made the call.

**Mr WELLS** — Hang on.

**The CHAIR** — Next question.

**Mr WELLS** — Are you ruling out a request for that letter to be produced?

**The CHAIR** — I am saying — —
Mr WELLS — We want to make this very clear.

The CHAIR — I will make it very clear to you, Mr Wells, because you seem to have trouble understanding simple concepts. I have made it very clear that this letter, which was sent by the Department of Treasury and Finance — correct?

Dr FROST — That is right.

The CHAIR — Since they are appearing as a witness later on this afternoon, it is just a simple matter of asking them if they are willing to make the letter available.

Mr WELLS — It is not their letter.

The CHAIR — Since they are appearing before us — —

Mr WELLS — They are independent officers of the Parliament. They can make their own call.

The CHAIR — If you would just stop interfering, it would be very nice. We could actually move the show along a bit if you just did not interrupt me all the time. Your behaviour is becoming well known.

Mr PEARSON — I accept your ruling, but the letter refers to a 1 December letter from us. I am happy to provide that.

The CHAIR — That is fine. I am just trying to be fair and reasonable here in chairing this. Since the various parties are appearing before us — and I am sure they will not refuse the request of the committee anyway — I think it is only fair and reasonable that the originators are the ones we ask the questions of in terms of releasing the letter. This is normal practice, in spite of what Mr Wells has said.

Mr WELLS — But on a point of order, to ensure that the record is very clear, is it my understanding, Des, that you are happy to table the letter? Is that my understanding of your — —

The CHAIR — I think that question is out of order.

Mr WELLS — It is a point of clarification.

The CHAIR — No, I have ruled on that; there is no point of order. Ms Graley has the floor.

Mr WELLS — You want to shut it down. This is becoming a joke.

The CHAIR — There is no shutting down. It is perfectly acceptable and perfectly normal.

Mr WELLS — Let them table a letter.

The CHAIR — The fact that you are unable to deal with it, I think, we have dealt with.

Mr WELLS — You are trying to cover for the Department of Treasury and Finance.

The CHAIR — We are not covering for anybody.

Mr WELLS — You are trying to cover for the Department of Treasury and Finance.

The CHAIR — Be logical. We are not covering for anybody. They are appearing here later on in the afternoon, and we can ask them the question. We have dealt with this.

Ms HUPPERT — Mr Pearson — and I guess Dr Frost as well — you have raised, in the response to the last answer, ongoing discussions with DTF obviously about the issue of directions. To me, as I raised before, this is a general bill. Your powers are specific under the Constitution Act and the Audit Act. I just wondered if you did have ongoing discussions about the contents of that correspondence, what response you got from DTF in regard to your concerns raised in those ongoing discussions.

Mr PEARSON — Probably the short answer to that is in the first draft of the directions, which were received six to eight weeks ago, this independence issue was not addressed, but subsequently it has now been
acknowledged and included as a direction. Why I am raising it in this forum is, while at this late stage there has been an acknowledgement in the directions, I think it is an issue that is more fundamental.

Ms HUPPERT — In what sense? Could you perhaps explain how this has been addressed in the draft — —

The CHAIR — I am having difficulty in taking questions in regard to the directions when we are meant to be dealing with the contents of the bill. Once again I ask you to respond in terms of dealing with the contents of the bill. I do not think it is our mandate to go into an extensive inquiry into possible follow-up directions.

Mr PEARSON — My answer in respect of the contents of the bill is, in my view, there is a deficiency in the bill, and it is a non-content item that I would argue should be a part of the bill.

The CHAIR — That is fine.

Dr FROST — In lots of conversation, meetings and indeed exchanges of correspondence with DTF, the burden of that with respect to this issue about independence has been, ‘It is not our intention to do this. We do not want to do that’. What we, I think, are saying here is it is quite simple to address that and to actually meet this issue about saying, ‘It is never going to be our intention’ by specifically adding a single line in the legislation which rules out ‘independent officer’, of Parliament. And that is all that is needed.

Ms HUPPERT — Can I ask a question?

The CHAIR — Is this a follow-up?

Ms HUPPERT — This is a follow-up question, and it relates to the contents of the bill, because the bill relates to agencies carrying out their functions in an effective, economic manner. Surely you would expect that the Auditor-General’s office would be expected to comply with those types of good practice requirements.

Dr FROST — Can I answer that? Indeed we are not. We have just undergone our triennial audit review in which all of these issues, all 43 terms of reference, about efficiency and effectiveness were considered — which is a test which I daresay is not applied to any other public body — and we continue and welcome doing that. Of course we agree that we are not to be exempt, and we indeed are not exempt under the terms of the Audit Act.

Mr PEARSON — The principal argument I think is on the table and then there is the practical argument that as late as November 2009 a unilateral decision by the executive removed a procurement exemption from my office that caused hiccups. Again, it was able to be remedied, but it took additional effort, and I think this just goes back to the point that it is frankly not good enough just to bundle up the independent auditor with everybody else and treat them as everybody else on one hand and then impose the additional oversight and control functions on the other hand.

Ms HUPPERT — So you have a problem with the standard procurement requirements?

Mr PEARSON — This is one where we negotiated an exemption and without consultation it was removed.

The CHAIR — You can take that up later, but Mr Rich-Phillips has the call.

Mr RICH-PHILLIPS — I would like to ask the audit office — the bill will define the audit office as a department of the Parliament — what are the implications of the audit office being defined as a department of Parliament under this legislation?

Mr BINI — I can give you a little bit of context about that if you give me a moment to find the relevant provision.

The CHAIR — What section of the bill?

Mr BINI — We are looking at — —

The CHAIR — Section 12, is it?

Ms PENNICUIK — Clause 3, the department of the Parliament.
Mr BINI — Clause 3, yes: ‘the department of the Parliament means’ — it is in the definitions.

The CHAIR — Page 4 of the definitions?

Mr BINI — Yes, in the definitions it says, ‘includes the Auditor-General’s office’. The main implication from that is that if you look at clause 22(5), it says that the minister may with the agreement of the President and the Speaker direct a department of the Parliament to transfer any money, so there is a discretion there for the minister, in conjunction with the presiding officers, to transfer money from departments of the Parliament to other departments of the Parliament, which of course as VAGO has been defined as a department of the Parliament means that would operate.

Mr RICH-PHILLIPS — So conceivably the Parliament could appropriate the audit office’s budget and the presiding officers could then redirect that to electorate officers?

Mr BINI — It provides a discretion.

Mr PEARSON — That is how I would read it, and again this is where I think it is an inappropriate treatment of an office that is set up constitutionally as an independent officer of the Parliament.

Mr BINI — And there is one other implication if you look at clause 33, which is transfers between departments of the Parliament, so once again — —

The CHAIR — Clause which?

Mr BINI — Clause 33, so once again if you look at the provision, this time it is the presiding officers with the consent of the Treasurer who allow transfers of appropriations again.

Mr RICH-PHILLIPS — So we have two provisions there: within the parliamentary departments and also between Parliament and the Consolidated Fund?

Mr BINI — Yes, I think that is correct, yes.

Mr RICH-PHILLIPS — So your office could be appropriated with the left hand and drawn back into consolidated revenue with the right hand?

Mr PEARSON — Through that provision, and then equally that provision avoids the existing provisions for your committee, the PAEC, to be consulted on our budgets and to oversight the office.

Mr RICH-PHILLIPS — Presumably that would conceivably have a fairly potential influence over the operation of the office if you are effectively dependent upon the ongoing support of the presiding officers and the Treasurer for your appropriation to be maintained, with the risk of it being withdrawn by either of these mechanisms at any time.

Mr PEARSON — I would have to agree. That is why in my opening comments I raised the issue about the interaction with the constitutional provisions for the Auditor-General to be an independent officer.

Mr RICH-PHILLIPS — Thank you.

The CHAIR — Just following up from that, Dr Frost was offering some suggestions before, so what is your suggestion in regard in terms of the definition?

Dr FROST — I said that you could in fact effectively have a single line that the direction and instruction-making power does not apply to independent officers of the Parliament.

Ms PENNICUIK — But that does not cover that.

The CHAIR — Mr Rich-Phillips’s question is about the definition of a department of the Parliament, which is paragraph (e), the Victorian Auditor-General’s office, and then you have got subsequently clauses 22(5) and 33(1). So what is your suggestion in regard to dealing with that to make the bill effective in regard to your view on this matter?
Mr BINI — If I could answer that.

The CHAIR — Yes, please.

Mr RICH-PHILLIPS — Presumably not defining VAGO as a department of the Parliament.

Mr BINI — We have been caught a bit on the hop here in terms of determining what amendments might remove the problem.

The CHAIR — We are trying to move the show along. That is the whole purpose.

Mr BINI — Sure. Certainly removing VAGO as a department of the Parliament is one possibility, or alternatively for the particular clauses you simply remove the discretion as far as VAGO is concerned. There are a number of different ways you could do it. I do not have a firm view one way or the other. It is a drafting question.

Ms HUPPERT — They have no idea.

Mr PEARSON — An overriding instruction that the office of the Auditor-General is to be recognised as an independent officer of the Parliament and is not caught by the provisions.

The CHAIR — I am just going back to Mr Rich-Phillips’s question. I am not sure that is going to be effective, but that is another story altogether. There are only two other aspects of the bill which are affected by the department of the Parliament, including the Victorian Auditor-General’s office.

Mr BINI — They are the two aspects we have identified, yes.

The CHAIR — There are no other aspects, so — —

Mr BINI — We did not find any others.

The CHAIR — With your indulgence, Mr Rich-Phillips, if it is removed as being a department of the Parliament, what are the implications of that?

Mr BINI — Those discretions would be ineffective.

The CHAIR — No, wider than that in terms of other aspects of the bill, in terms of in the Auditor-General’s office then following the general aspects of the finance and accountability, does that remove you from the system of public finance and accountability?

Ms GRALEY — The rest of the bill you mean?

Mr RICH-PHILLIPS — Why would it?

The CHAIR — If they are not a department or a body, they are a nothing, they are a non-entity.

Mr RICH-PHILLIPS — They are still a public body under clause 4 if the minister chose to define it as such, quite apart from — —

The CHAIR — I guess what I am asking is what do they become? Do they become now a body, and we have had other discussions in the past about what the definitions of department and body are, so I am just trying to see how that will fit in. If they are no longer a department, how do they fit into the overall framework of public finance and accountability? I agree with Mr Rich-Phillips that probably they can only fit in insofar as they are a body. Does that provide you with an issue or not? You probably want to follow this up.

Mr PEARSON — I think it would if we were a body with a clause that said the direction and instruction-making power does not apply to the Auditor-General.

Mr BINI — If I could make a comment, Chair, if you look at the categorisation in the PAA — the Public Administration Act — there is a separate category of body called ‘special body’, which includes a range of independent entities, if you like, including parliamentary committees, the Auditor-General, the Ombudsman and
so on. That category was specifically designed because when the PAA was drafted it was thought that the broad governance provisions in particular were not to apply to those particular bodies because they were special in that sense. That approach has not been taken up in the bill.

The CHAIR — I think there would have been unforeseen consequences there.

Ms PENNICUIK — I was thinking along the same lines as Mr Bini. It goes to the other issue about what the outcomes and outputs are and doing things and meeting obligations in a timely manner et cetera. This is different for a special body than it is for a government department in terms of who is going to be measuring that and saying, ‘You did not do that in a timely manner’ — which would be to conduct that audit or conduct that investigation for the Ombudsman or the OPI, for example. They just do not apply the same way.

I think that might be a way of dealing with it, but that has been my concern all along — that everyone is lumped in together, and yet that is not the practical reality. That is basically the issue I have raised every time we have discussed this. I think that lumping everything together has consequences that have not been thought through. Some of the wording in clause 12 is problematic in that way. Maybe a special category — going back to that — is the way to get through it. I think the way the bill is now is problematic.

Mr RICH-PHILLIPS — I want to ask you about the impact of clause 51, which is headed ‘Designated public body to pay dividend or capital repayment’. In your view if the audit office was defined or declared under clause 4 as a public body, could you be subject to the requirement to pay a dividend to the Treasury at the direction of the Treasurer?

Mr BINI — It is the same issue. If an organisation is declared to be a body, then those provisions apply.

Mr RICH-PHILLIPS — So you could be subject to the requirement to pay a dividend?

Mr BINI — That provision would apply.

Mr RICH-PHILLIPS — Are there any other audit offices that you are aware of that can be subject to the requirement to pay dividends to the Treasury?

Mr BINI — I have not done research into the issue so I could not say.

Mr PEARSON — Not in my experience.

Mr RICH-PHILLIPS — It does go back to the issue of how appropriate this is for independent officers.

The CHAIR — A long bow, but anyway.

Mr RICH-PHILLIPS — You indicated earlier that you have recently, or over the last eight weeks or so, seen draft directions and draft instructions and over the last week you have seen directions that may relate to the issue of independence. Would it be fair to say that this is only since this committee was asked for the second time to look at this matter with specific reference to the audit office?

The CHAIR — I think that is a hypothetical question that does not relate to the contents of the bill.

Mr RICH-PHILLIPS — It is not hypothetical at all; it is a question of timing.

The CHAIR — Mr Pearson, insofar as it relates to the contents of the bill.

Mr PEARSON — I do not have the time line. We got the first draft about six to eight weeks ago.

Mr FINDLAY — We have raised that issue consistently since we saw the draft instructions. On the version that we received on Friday it has that specific directive.

Mr RICH-PHILLIPS — This committee was asked to look at this and to specifically speak to the Auditor-General I think about 10 days ago, so it is only since this committee was specifically asked to talk to you about this that you actually received draft instructions that go some way to addressing the independence issue?
Ms HUPPERT — The Chair has already ruled that we are not discussing this.

The CHAIR — I am not sure this line of questioning is actually raised in the inquiry reference. In terms of how it relates to the inquiry and relates to the contents of the bill, I do not think it actually does relate.

Mr RICH-PHILLIPS — The subordinate instruments under this legislation are critical to how this bill is going to work and the view that the Parliament should form about the bill.

The CHAIR — I just do not think it relates to the contents of the bill. You are talking about something completely different.

Mr RICH-PHILLIPS — Subordinate instruments created under the bill?

The CHAIR — Sorry?

Mr RICH-PHILLIPS — Subordinate instruments created under the bill do not relate to the bill?

The CHAIR — No, we are talking about the fact that this inquiry is related to looking at the contents of the bill. Yes, subordinate instruments are important and they are directions that are important as consequential actions. They are consequential actions to it. Do you have any further comment to make in light of that?

Mr RICH-PHILLIPS — Are you aware, in your discussions with DTF through the development of this bill, of any intention to address any of these concerns by way of amendment to the legislation rather than through directions or instructions? Have you discussed the prospect of that — codifying it in the bill rather than leaving it to directions? I take your point about them not being subject to disallowance and that effectively we are being asked to trust that the directions will address it after the bill has passed.

Mr FINDLAY — As I said, DTF has obviously made this recent amendment to the instruction which excludes independent officers. I think the correspondence from the secretary of DTF back to Des was that it is obviously a matter for the Parliament now to deal with that issue at the bill level.

Mr RICH-PHILLIPS — Sorry, could you just clarify that? You are talking about an amendment?

Mr FINDLAY — In terms of the instructions, an amendment has been made in the version that we received on Friday. It is in 1.4, ‘Delegation and conferral of powers’, and on clause 4 it says a DTF instruction has no application or effect with regard to the office of an independent officer of Parliament.

Mr RICH-PHILLIPS — Sorry, these are the draft directions?

Mr FINDLAY — Yes, and in a formal response — that is, the instructions from the secretary of DTF — he mentioned that any amendments to legislation would be a matter for Parliament.

The CHAIR — Which is what the Department of Treasury and Finance is recorded as saying to the committee, and it has been in our report.

Mr RICH-PHILLIPS — But those directions are not subject to disallowance.

Dr FROST — Chair, in a recent letter to the Auditor-General from the secretary he says in terms of implications for independent officers — once again, as I have already said — that it has always been the intention to maintain the independence of independent officers of the Parliament and DTF would be pleased to discuss with VAGO the specific features of the legislation VAGO considers it requires an exemption from. We have been talking about this over the passage of two years, and as I have said, we have been reassured at every turn that there has never been any intention. We are proposing a way of actually addressing this, which is a simple straight-up exemption within the bill.

Mr RICH-PHILLIPS — Presumably given DTF’s views — the government’s views — the government would have no objection to supporting such amendments in the house.

Dr FROST — That is for the government.
The CHAIR — That is not for us to decide in this committee, but it is for us to note those views and convey them for discussion of the legislation as it proceeds in the house.

Ms PENNICUIK — Thanks, Des. During the Public Accounts and Estimates Committee budget hearings I referred to your report on departmental reporting that was released just prior to those hearings. I asked the Premier and the Treasurer whether they were going to implement your recommendations, and their answer to me was that this bill was implementing those recommendations and the concerns that you raised in that report would be addressed by this bill. I was wondering if you could comment on that.

Mr PEARSON — Yes, and I think that comes back to the issue that I said about the output-outcome framework that is covered in the bill. There are draft directions emerging, but that is going to be a work in progress. I have already signalled that we can expect it to take some time. But equally the point of our report to Parliament was that, I think, the intention was launched in something like 2002 and there had been very little progress. Of course the accountability concern is that there was always an ability to do it. The bill is now going to provide a legislative thing, but nevertheless the real test is actually acting on the intention.

Ms PENNICUIK — But you are happy that the bill in general terms is heading that way? Notwithstanding the concerns we have been talking about here — putting them aside — just in terms of general reporting by departments, this is going to be the framework that addresses those issues you raised?

Mr PEARSON — Yes, we are satisfied that it is an adequate provision.

Mr WELLS — Des, in your opening remarks you mentioned being surprised about not being invited to the original hearing. The report that the Public Accounts and Estimates Committee tabled in Parliament says on page 13:

The committee considers that the seeking of comments of the Auditor-General on the government’s policy set out in the bill would bring the Auditor-General in conflict with the important statutory constraints set out in section 16(5) of the Audit Act 1994.

You referred to part of that in your opening remarks. I have looked at section 16(5) of the Audit Act and I am wondering if you would like to make comment. Do you consider that a draft bill puts you in conflict with section 16(5) of the Audit Act?

The CHAIR — I do not think the question is related to the inquiry. We are talking about the contents of the Public Finance and Accountability Bill. We need to have a question that just relates to that. I note, though, that the Auditor-General made his view clear on this already — you may have missed it.

Mr WELLS — No, I was just referring to 16(5) of the Audit Act. I have not raised the issue.

The CHAIR — Without assistance.

Mr WELLS — I just need some clarification.

The CHAIR — The Auditor-General made a statement about this. This particular inquiry is meant to relate to asking questions about the contents of the bill. It is not an inquiry about the powers of the Auditor-General, so I do not see the question as being relevant.

Mr WELLS — Can I just make the point — —?

The CHAIR — You need to ask a question, not make a point.

Mr WELLS — In regard to your opening remarks, Des, that you were surprised about not coming before the committee, and the report in regard to section 16(5) of the Audit Act, are you concerned about the interpretation of 16(5) as far as the PAEC is concerned, and your interpretation of section 16(5)?

The CHAIR — That is not the subject of this inquiry so the question is out of order.

Mr WELLS — Des made comment specifically about this.

The CHAIR — I know he made the comment.
Mr WELLS — Are you saying that we are no longer able to ask the witness questions about opening comments that he made; is that the precedent you are setting?

The CHAIR — There is no precedent. We are conducting an inquiry on the contents of the Public Finance and Accountability Bill. Therefore, we have questions in regard to that and our inquiry is in regard to that. We are not doing an inquiry on the powers of the Auditor-General.

Mr WELLS — So it was okay for you to put it in a report without proper legal advice.

The CHAIR — I think the question is out of order. Do you have other questions.

Mr WELLS — This is disgraceful. You get inappropriate legal advice, gag him from coming to this inquiry, and now, as a consequence of that embarrassing decision taken by the Labor members of Parliament we are back here two weeks later.

The CHAIR — Your comments are entirely inappropriate and, indeed, nobody was gagged. This report — —

Mr WELLS — You gagged him. You used ridiculous legal advice to stop him from coming.

The CHAIR — You are incorrect there — —

Mr RICH-PHILLIPS — There was no legal advice.

The CHAIR — The report does not say that. The report just says ‘did not seek a briefing from the Auditor-General’. You know that.

Mr WELLS — ‘Would bring the Auditor-General in conflict’ — that is the question that I was asking. That is exactly what I was asking about, why you thought it was bringing him into conflict with the act.

The CHAIR — I am not seeking to have a further discussion here on this. We are asking questions about the contents of the bill. Do you have any further questions on the contents of the bill?

Mr WELLS — Just to clarify this; you are not allowing me — —

Mr SCOTT — On a point of order, Chair, this is an issue that I have had to seek advice from the clerks about in relation to a completely unrelated matter. Parliamentary joint investigatory committees only have the power to investigate matters within the terms of reference of the inquiry they are currently conducting, so a question that relates to other matters is out of order and it is inappropriate for it to be dealt with by the committee. That is a matter that is pretty straightforward. We have significant powers, including issues such as the privileged nature of this hearing and the power to seek to in fact subpoena people to appear before committees and do all sorts of things. That stems from the fact that we receive an inquiry. The hearings at inquiries should relate to the matters of that inquiry. It is quite clear that the question you are asking does not relate directly to — —

The CHAIR — Through the Chair.

Mr SCOTT — Through the Chair, the question that has been asked by Mr Wells does not relate to the terms of reference of the inquiry and relates instead to a procedural political point that Mr Wells wishes to make. Therefore, I think the matter is out of order.

Mr WELLS — That is ridiculous. I need to respond to the point of order.

The CHAIR — Do you wish to make a comment on the point of order?

Mr WELLS — On a further point of order, we tabled the report — —

The CHAIR — No, we will deal with the — —

Mr WELLS — On the point of order, we tabled a report; the committee put the reasons why we blocked the Auditor-General from coming to this inquiry — —
Mr Wells — The Auditor-General made opening remarks which I think allows the committee to be able to quiz the Auditor-General on those opening remarks. That has been the precedent we have had during the Public Accounts and Estimates Committee hearings all the way through since you have been chair. Why is it different that today we are not able to quiz the witness on his opening comments?

The Chair — If there are no other comments, I will rule on the point of order. I uphold the point of order. I have consistently said, over the four years that I have been chair of this committee, that questions need to be asked in line with the terms of reference of the inquiry, and I am making no change to that today.

Mr Wells — Okay.

The Chair — Are there any further questions?

Mr Wells — No.

The Chair — Ms Pennicuik wanted to ask a question.

Ms Pennicuik — Chair, with your indulgence, it is a little more wide-ranging, but it is about the bill. In our report, on page 13, there is something that says:

The Auditor-General … considered that it would be opportune for the Department of Treasury and Finance to consider international proposals, currently at the consultative stage, for reporting on long-term sustainability of public finances, when developing … ministerial directions to underpin the bill.

My question is: do you think the bill is foreshadowing those international approaches and whether the ministerial directions are doing that? I have a follow-up question after that.

Mr Pearson — We think the bill adequately provides for that provision and that is an appropriate thing to be dealt with in the subordinate directions.

Ms Pennicuik — Of interest to me, and I raised it in the last hearing, is the issue of what non-financial information is in terms of perhaps the gap in public reporting on environmental assets that are held by departments and agencies — some are held by, some are maintained or looked after by. Is that something that is being looked at in international spheres — to be incorporated? I know, for example, that there is a private member’s bill before the New Zealand Parliament to do that with their public finance and accountability bill.

Mr Pearson — Non-financial is a very broad definition and it would embrace the sort of things you are talking about. In traditional terms, if you go to economic, social and environmental, the economic is sort of covered off by the financial reporting, and it is well and truly covered, but the social and environmental — the broader dimensions — that is where there is a real deficiency in public sector performance reporting. Probably I selfishly look to that being developed, because that is the core of a lot of the problems we have with performance audits. Often the first time a program administrator sees an objective assessment of what they are doing is when there is a performance audit of their area. They are working very conscientiously and in good faith but without reference to criteria and better practice in their day-to-day operations.

Ms Pennicuik — So there is scope here to move towards doing that?

Mr Pearson — Yes, and that comes back to the outcomes framework, and environmental is an important element.

The Chair — It is also related to your performance auditing as well.

Mr Pearson — Yes, we take that as the broader program outcomes.
Mr RICH-PHILLIPS — Can I ask about the regulation-making powers in the bill, clause 53(1), which states:

The Governor in Council may make regulations for or with respect to —

…

(f) planning and monitoring of performance …

Then over the page it states that the regulations can be as general or specially limited as deemed appropriate. What would be the implications for audit if you were declared a public body and regulations were made with respect to planning under the regulations provisions, given there is already a process by which the audit office plans its works program in consultation with this committee? Would this conceivably give rise to a requirement that you also consult with government and advise them and interact with the executive on your work plan?

Mr PEARSON — I will ask Mr Bini to answer that.

The CHAIR — Mr Bini, this is in respect to proposed section 53(1)(f).

Mr BINI — Obviously it would depend on what the content of the regulation was. There are specific provisions in the Audit Act about the planning process that has to be gone through. Again, you could not make a direction in that case that specifically was in conflict with those provisions.

Mr RICH-PHILLIPS — No, but you could run them parallel.

Mr BINI — It is quite possible. If there is no conflict, then you are subject to both regulations, so the possibility exists.

Mr RICH-PHILLIPS — In your view would that undermine the independence of the audit office, to have to consult with this committee and then separately have to consult with Premier’s or DTF?

Mr PEARSON — Yes, very much so, and that is why I have been advocating for over two years that the independence of the office should be recognised at the bill level.

Ms GRALEY — Is the Auditor-General’s office currently subject to any ministerial directions under the Financial Management Act?

Mr BINI — Yes.

Ms GRALEY — Including reporting on financial management?

Mr BINI — Yes.

Ms GRALEY — What are they, then?

Mr BINI — We are subject to the directions that deal with the content of annual reports, I think, as an example. I could not tell you off the top of my head all the directions that we are subject to, but we are definitely subject to the annual reporting. You are aware of the directions I am talking about it, the ones that dictate what information has to be in an annual report?

Ms GRALEY — Yes, everybody is.

Mr BINI — We are certainly subject to those.

The CHAIR — Occupational health and safety, those sorts of things.

Mr BINI — We are partially subject to procurement. Again, I could not tell you which ones we are and which ones we are not, but yes, we are subject to some.

Ms HUPPERT — And the minister has the power to make directions that affect the office of the Auditor-General?
Mr BINI — Yes, at present.

Ms HUPPERT — So that is not something that is changing between the two pieces of legislation?

Mr PEARSON — Except that in the review of the legislation I am clearly raising that that is an issue, an anomaly, that warrants addressing in light of the specific provisions for this committee to oversight the office.

The CHAIR — With the current ministerial directions regarding annual reports and, as you say, partly in terms of procurement, do you see them as infringing on the independence of the Auditor-General and the Auditor-General’s office?

Mr PEARSON — On an exception basis, yes. The removal that happened in — —

The CHAIR — What do you mean by an exception basis? The ones that Mr Bini has described, you say, do not present you with a problem, they do not interfere with your independence?

Mr PEARSON — Per se, no, and in my experience the auditor would observe those in principle anyway and is subject to oversight by your committee in the performance audit that would provide an independent view of where we have digressed, whether it is reasonable or not.

The CHAIR — If you are not in any framework, then what reliance can there be that you are going to conform with a framework which you are outside of?

Mr PEARSON — The conformance is the monitoring by this committee and in terms of the plan, reviewing our annual report, and the triennial performance audit.

The CHAIR — Should we put in the act, then, that you may be a special institution?

Ms PENNICUIK — A special body.

The CHAIR — I am just trying to come up with something which is not quite conforming with another definition which may confuse things; however, you would actually conform with the normal directions given to departments by the minister?

Mr PEARSON — Yes. There would be an expectation that you would operate as a public sector — —

The CHAIR — No, not expectation; you would need to conform to them.

Mr PEARSON — I think that is where you have to form a view, but you have to come back and reconcile that with the independent — —

The CHAIR — I am just trying to make sure that there is a firm framework. I mean, expectations is not a firm framework. We are talking about accountability here. Accountability needs to be properly constituted.

Mr RICH-PHILLIPS — So does independence.

The CHAIR — I am not disagreeing with that.

Mr WELLS — You have demonstrated that during this hearing?

The CHAIR — We know what has happened in the past in terms of experience in this regard.

Mr PEARSON — That is the tension that exists, and equally as the auditor I want to guard against being constrained. I respect and acknowledge the need to be accountable, but you do not want to divert your resources into being doubly accountable and impeding your ability to undertake your independent function. The framework has been set up with very stringent parliamentary oversight of its independent officer, yet there is a risk here that we are overlaying executive constraints as well.

The CHAIR — Right, but you do need to be within an accountability framework.

Mr PEARSON — Yes, and I would argue that is adequately covered.
Ms PENNICUIK — I think what we are talking about is the independence, and asking the Auditor-General’s office to conform to things is impinging on that.

Ms HUPPERT — To conform in terms of the format of annual reports, for example?

Ms GRALEY — Meeting certain standards.

Ms PENNICUIK — I think Des used the words, ‘There would be an expectation’, and he is also saying that the committee oversees — —

Ms HUPPERT — In other words, under this bill you want to give the powers the minister currently has to the committee.

Ms PENNICUIK — I am not happy with the powers of the executive over the Auditor-General’s office, in this bill.

The CHAIR — What I am saying is that we are talking about independence, and the independence of the Auditor-General is actually enshrined in the highest legislation in the land, in the constitution. It overrides anything, as we heard from the Department of Treasury and Finance the other week. But, at the same time, there are frameworks in which — and it does not matter who they are, whether it is the Parliament or the Auditor-General’s office or whatever in terms of financial and accountability frameworks – one needs to be placed. A lot of those are nuts and bolts, and many of them come out in financial sorts of directions. I am saying you need to preserve the independence on the one hand, but on the other hand there needs to be a firm assurance and not just an expectation that whoever they are is going to follow a public finance and accountability framework.

Mr PEARSON — We cannot go from trust the executive totally to trust the auditor totally.

Ms GRALEY — That is the point.

Mr PEARSON — I accept that point, but I would argue that a lot of the provisions that are there for the executive to make directions and instructions on are the detail, whereas the auditor has already been identified as a special case, and there has already been a principal framework imposed over the top that extends to consulting, which recognises the independence of the Auditor-General. There is a requirement to consult with the PAEC in the preparation of the annual plan, in the submission of the budget to the government for approval, in terms of individual performance audits and in addition to the normal interactions of a triennial, very detailed performance audit that no other public entity is subjected to to anywhere near the level of scrutiny.

I would argue they are the offsets to taking the principal approach that this is a special case; it is an independent officer. There is a very solid framework that this committee is in control of, to keep a check. If by chance the auditor did not embrace the detailed requirements, and the committee had a view that that was inappropriate, there are provisions to hold the auditor to account.

The CHAIR — Yes, but they are only provisions which are consultative rather than necessarily — —

Mr PEARSON — No, there is a provision to remove the auditor from office.

The CHAIR — Yes, I suppose that is a thought.

Mr SCOTT — My question has been answered partly, but there are aspects on which I would be interested for Des to provide further information. You described processes by which the Auditor-General has been held to account, but they seemed to be a little bit apples and oranges. The issue that was raised was really what standards would actually apply on which those mechanisms would hold the Auditor-General to account. I suppose we are dealing with the issue of how you uphold independence while achieving accountability for an independent office-holder. You have described adequately the institutional mechanisms that exist. I suppose to use IT parlance, you have described the hardware, but the question was really relating to the software. How would you see those standards being derived and protecting the independence?

Mr PEARSON — I think we are seeing it happening in practice. The current performance audit of this office is extremely detailed and right in the kitchen, and that is the software, because notwithstanding a lot of
effort on our part to be open, transparent and to engage with the committee, the depth and the rigour of the
scrutiny of the office has escalated. That, to me, is the software, through to a resolution to remove the
Auditor-General from office.

The CHAIR — I think that is probably outside the contents of the bill. Does anyone else have any
questions? I thank you very much for your appearance today. I know you are very busy and you had to make
changes to your schedule in order to appear today. The committee is very appreciative of that. This concludes
the hearing. I thank the Auditor-General and the officers for their attendance today. Where anything has been
taken on notice the committee will follow up and seek your responses. We appreciate the evidence you have
given today.

Mr PEARSON — We appreciate the opportunity to appear. Thank you.

Witnesses withdrew.
PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Public Finance and Accountability Bill 2009

Melbourne — 24 August 2010

Members

Mr R. Dalla-Riva
Ms J. Graley
Ms J. Huppert
Mr W. Noonan
Ms S. Pennicuik

Mr G. Rich-Phillips
Mr R. Scott
Mr B. Stensholt
Dr W. Sykes
Mr K. Wells

Chair: Mr B. Stensholt
Deputy Chair: Mr K. Wells

Staff

Executive Officer: Ms V. Cheong

Witnesses

Mr G. Hehir, Secretary,
Mr I. Gibson, General Counsel,
Ms S. Eddy, Director, Strategy and Reform, and
Mr B. Rohan, Senior Project Officer, Public Finance and Accountability Legislation, Department of Treasury and Finance.

Necessary corrections to be notified to executive officer of committee

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The CHAIR — I declare open the Public Accounts and Estimates Committee hearing on the inquiry into the Public Finance and Accountability Bill. On behalf of the committee I welcome, from the Department of Treasury and Finance, Mr Grant Hehir, secretary; Mr Ian Gibson, general counsel; Ms Sue Eddy, director, strategy and reform; and Mr Bernard Rohan, senior project officer, public finance and accountability legislation. Departmental officers, members of the public and media are also welcome. In accordance with the guidelines for public hearings, I remind members of the public cannot participate in the committee’s proceedings. Only officers of the PAEC secretariat are to approach PAEC members. Departmental officers, as requested by the secretary, can approach the table during the hearing. Members of the media are also requested to observe the guidelines for filming of recorded proceedings in the committee rooms of the Parliament.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act and protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. There is no need for evidence to be sworn. All evidence being given today is being recorded, and witnesses will be provided with a proof version of the transcript to be verified and returned by noon on Monday. In accordance with past practice, the transcript will then be placed on the committee’s website. Committee members will ask questions related to the contents of the Public Finance and Accountability Bill 2009, and the procedure followed will be that relating to questions in the Legislative Assembly. I ask that all mobile telephones be turned off.

Mr HEHIR — Thank you. I might just say a couple of words to start. Thanks for the opportunity to discuss this issue with you again. I understand that you have had some discussions with the Auditor-General prior to me coming. I thought I would just say that I acknowledge at the start that over the last couple of years or so we have really valued the interaction we have had with the Auditor-General over this process, as we have with the committee and a whole pile of other stakeholders in developing up the legislation.

This is obviously an important piece of legislation. That is obviously why the committee has been concerned to deal with issues with respect to it. It is one of the core pieces of legislation for the state. What the bill does is it tries to provide a framework to enhance public finance and accountability in Victoria by basically dealing with a number of elements around introducing more comprehensive public finance and accountability principles; putting a greater focus on accountability and outcomes by, for the first time, giving a focus on outcomes in planning reporting processes and aligning appropriations and budget management with that of appropriations; expanding the coverage of the public finance legislation to include Corporations Act entities for the first time and, going beyond the non-Corporations Act, the departments and other public bodies to bring within the ambit of financial management legislation Corporations Act bodies; trying to get a bit more cohesion across the whole range of legislation and bringing those acts together into one act; and also clarifying the responsibility of departments in supporting ministers in the oversight of public bodies. Like the current Financial Management Act, it also expresses a set of principles around good public finance, but this bill tries to expand some of those issues into the principles which are set out in clause 8 of the act.

I thought I might say a few words about a couple of issues that have been raised in the past. One is around independent officers and the other is about differential reporting, and then move on and I will finish my comments there. With respect to independent offices of Parliament, the current Financial Management Act treats those offices as departments, which basically means that all of the directions and the full gamut of what applies to departments applies to these bodies. Under the proposed bill, it shifts them from being departments for the full range of the act. The Auditor-General’s office remains the department for the budgeting side of things, but for the remainder of the act it is excluded from the act unless it is declared a public body, in which case the directions etc framework which currently apply to it, could be applied to it. So the fundamental change for independent bodies under this act is that rather than them being treated as departments, as they are under the Financial Management Act, they can become declared public bodies under the act, in which case the frameworks which apply to them at the moment could apply to them.

We expect that the requirements that would apply to independent bodies under the Public Finance And Accountability Bill will be roughly the same or the same as those under the Financial Management Act; however, the impact of that would depend upon any declaration that was made, and our expectation would be that any declaration would result from consultation between the minister and the relevant independent officers.

On differential reporting there have been issues raised around the relationship between the Australian Accounting Standards Board definitions of a differential framework and that which is proposed or potentially
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applied under the act. I think I would just like to make a couple of comments about that. One is that the proposition that we would expect is that any difference between the differential frameworks available under AASB arrangements and those which apply under the act would be clearly reconciled between each other; that would be that there would be a clear definition of any of those differences put in place.

We also continue to work with the AASB to try to get a set of accounting standards which are better placed for differential reporting for the public sector. Most of those negotiations at the moment are happening between a body that is called HoTARAC, which is the commonwealth-state group called Heads of Treasury Accounting and Reporting Advisory Committee.

The CHAIR — A wonderful name.

Mr HEHIR — It is a wonderful name, yes. It is consulting with the AASB about trying to get a better differential framework. The current framework which has been specified, in the view of departments of treasury and finance around the country, not actually very applicable to the public sector. In particular, the reduction in reporting burden is not appropriate for very small entities. As you would be aware, under commonwealth legislation very small companies and businesses have a reduced reporting arrangement compared to others under the AASB. The AASB arrangements, even in their two-tier approach, are still quite complex. We can talk a little bit about that further on if you would like. I might end my comments there and leave it open for questions.

The CHAIR — Thank you for that. Just to pick up on your first point, we just talked to the Auditor-General, and it seems that while there is a bit of convergence happening, there is a difference of views or even of expectation. Where is it in the draft bill where you say that the independent officers of Parliament can become public bodies?

Mr HEHIR — The legislation provides that for a body to become a public body they effectively need to be declared so by the minister. That is at clause 4(1)(b).

The CHAIR — Under clause 4(1)(b) at page 9 — —

Mr HEHIR — It is clause 4(1)(b)(iii).

The CHAIR — So clause 4(1)(b)(ii) would not apply or it could be by the Governor in Council and then declared by the minister? What is the exact sort of process that you are looking at?

Mr HEHIR — It is a declaration. It would be a written statement declaring that that body is a public body. Our expectation is that it would be declared as a public body in the gazette, it would be declared for the purposes of the act and that the declaration would specify the extent of that declaration.

The CHAIR — I will pursue you a bit on this, because we pursued the Auditor-General a little on this. Is it not just the expectation? Could it in fact be your recommendation to the minister that the Victorian Auditor General’s Office should be declared a public body?

Mr HEHIR — I would not say that that would necessarily be my recommendation; I think it depends on the ongoing consultations with the Auditor-General around that. We have had some discussions with them, but I do not think we have had a full landing on that matter.

For example, the Auditor General’s act specifies some financial reporting requirements on the Auditor-General’s office, so it is unnecessary and would be ineffectual to declare the Auditor-General a public body for those specific sections of the act because his act overrides them. The question would be which other parts of the act should apply to the Auditor-General’s office or not. Procurement policy, for example — we have had some discussions around that with the Auditor-General where he has raised some issues and concerns. There are issues like dividend policy, but that is irrelevant for a body like an Auditor-General’s office because they are not a commercial body. You would have to decide whether there are things in there that the Auditor-General’s office would like to have applied to him; that would be the perspective that I would take. I do not think we have actually landed on those issues.

The CHAIR — The Auditor-General says, and we are dealing with the contents of the bill, that there should be a specific provision in the bill in order to make — he used the term ‘special body’, from memory. I note that
that may well have some implications and unintended consequences for some other acts, but he was seeking to
put it into the bill. I have suggested to you that it could be more than an expectation, that it could be a
recommendation. Is there something which can be done in terms of the bill to preserve the complete intent and
reform of the bill while at the same time ensuring the continued independence of the Auditor-General and
ensuring that he is within an appropriate public finance and accountability framework?

Mr HEHIR — I think there are multiple approaches you could take to this.

The CHAIR — That is why we are asking you.

Mr HEHIR — I might talk about it. For example, as we talked about once before, and Ian provided you
with some advice about it — —

The CHAIR — He did; it was very interesting.

Mr HEHIR — You are doing a review of the Auditor-General’s act, I think, at the moment. If, for example,
there was a clause in the Auditor-General’s act which specified the relationship of him to this act, that would
override this act because it is the specific versus the general, so something could be done there. Obviously
something could be done within this act. Alternatively, if Parliament’s concern is around the impact of the act
on the Auditor-General, then I suppose you could put a provision in this act that any direction that applied to
Parliament or a parliamentary officer could be disallowable in the Parliament, for example, or it could be in the
directions itself or they could be just not declared. There is a range of options which could be available if there
was a specific concern around the impact of this act on the Auditor-General. That said, if the Auditor-General’s
office was declared a public body and you compare it to the status quo now, there is not much difference
between the arrangements which apply to the Auditor-General’s office now and what would apply if they were
declared a public body. They are all mandatory now. Under the current arrangements the minister has the
capacity to reduce that down by in his declaration saying which bits of the bill apply and which do not. There is
a range of paths there which could be gone down to apply different components of the act to the
Auditor-General’s office according to what was necessary.

I can only be vague like that because I am not exactly — the Auditor-General has raised with me a couple of
issues he is concerned about, like the dividends policy and those types of things, and I agree with him that I do
not think the dividends policy would ever apply to the Auditor-General’s office. The borrowing and investment
powers do not apply because the Auditor-General’s office, I do not think, will ever be in a situation where they
would be borrowing or investing, so those types of things would not apply. The rest of the legislation, broadly
speaking, is the same as what it is at the moment except for the planning component, the planning elements and
reporting elements are slightly different and expanded. If the Auditor-General wished those not to apply, then I
do not think that we would be particularly concerned. It is my job to advise the minister rather than say
anything, but if you look at the broad scope of the entities that this bill is meant to apply to, which is about
financial planning and risk, the Auditor-General’s office is not a high-risk entity. The Auditor-General has a lot
of incentives on him for good financial management because that is his core job, so you would not place him as
an entity which we need to declare because we are worried that he has good corporate governance put over him.

The CHAIR — All right. We may take it up a bit later on the issue of the definition of a public body and
department. There may be some other questions on that because I think there is some more to be said on that.

Mr WELLS — Through the Chair. Grant, last time DTF was before the committee I specifically asked
whether the Auditor-General was completely happy with the bill, or words to that effect. DTF referred to a letter
that they had sent to the Auditor-General on 9 December last year and said that the Auditor-General had not
replied to that letter. The assumption given to some members of the committee was that the Auditor-General
was happy with the bill that was going to be presented to Parliament. We have received a different response
from the Auditor-General today, including the reason he did not respond to that — because the actual letter that
he received on 9 December was actually in response to a letter that he sent to you on 1 December. I am just
wondering, why did the officials at the last meeting assume that the Auditor-General was happy with the bill
when there was no response given to that letter that was sent to him on 9 December? Why was that assumption
drawn?

Mr HEHIR — I am sorry if we left you with that perspective. I certainly did not intend to leave you with the
view that the Auditor-General was happy with all of the act at that stage.
Mr WELLS — No, not with all of the Act. The assumption was that because he did not reply to that letter —

Mr HEHIR — No. We have had ongoing discussions with the Auditor-General since December on issues that he has raised. I do not believe that we perceived that he was happy with all of the Act from that point, because we have continued to discuss it, particularly given that at that stage while he had seen the Act we had not had detailed discussions about what the directions might look like and things like that. It is not the Auditor-General’s role to tick government policy, because his job is to review the implementation of that policy, so I would never have expected him to say, ‘Yes, I’m very happy with this Act’. He raises issues and we try to deal with them. On a number of those we have had ongoing discussions, I feel, over the last nine months or so.

I have met and tried to clarify things with him over the last month a couple of times; Des and I meet pretty regularly and talk about things. So I do not believe that we would have been saying then that we thought he was happy with the bill. I think we have always felt, given the relationship and the dialogue we have had, that the broad parameters of what we were trying to do he thought was the right direction for reform. I have felt that that was the case over the last couple of years in our discussions with him, but not ticking off the bill or anything like that.

Mr WELLS — Are you able to table that letter that you sent to him on 9 December?

Mr HEHIR — I cannot see any reason why I would not be able to table it.

Mr WELLS — If you could table that letter to the committee. I guess the concern was that you made comment at the last hearing that he had not responded to that letter.

Mr HEHIR — I am sorry.

Mr WELLS — That was what was said.

Mr HEHIR — Yes.

Mr WELLS — When we spoke to the Auditor-General about that, when he read his letter which he had in front of him, it was clear to him that he was not expecting to respond because it was already a response to a letter that he had sent you on 1 December.

Mr HEHIR — Yes. I realised subsequent to that meeting, in conversations with him, that I may have left that impression, and I do not believe that that is — his view, I think, is that the response was through continued verbal discussions. Certainly we were comfortable with that. We did not need a response to that letter because we continued to discuss things with him.

Ms GRALEY — When the Auditor-General was here before — I think we are united in that we really want to make sure that the Auditor-General’s office is an independent entity — he was raising a number of issues, even though he said he was broadly happy with the bill. He referred to clause 33 of the bill, the transfer between departments of the Parliament without appropriation and some indication of the continued funding for the Auditor-General’s office under that clause 33.

Mr HEHIR — The funding for the Auditor-General? This says what it says. In drafting the legislation we think it is appropriate for Parliament to make decisions about how departments of Parliament are funded.

Ms PENNICUIK — What clause are you looking at, Grant?

Mr HEHIR — Clause 33.

The CHAIR — Okay.

Mr HEHIR — For appropriation purposes the A-G is now, and is proposed under the bill to be, a department of the Parliament. This applies those sorts of movement provisions under that.

Ms PENNICUIK — Can I clarify that and ask another question?
Mr HEHIR — Sorry, as Bernard just reminded me, section 31 of the Financial Management Act — the existing act — provides similar capacity for Parliament.

The CHAIR — This is just a repetition of what is a current provision?

Mr HEHIR — I think it has the same effect, Chair.

The CHAIR — Are they the same words?

Mr HEHIR — The same effect.

Mr GIBSON — We have redistributed the words across two different clauses, but yes, the words are the same.

The CHAIR — What is the other clause? Can you explain it to us?

Mr GIBSON — No. We took the concepts that were in the existing clause 31 and made them clearer by splitting up the stuff that applies specifically to the Parliament and the stuff that applies to departments. It is trying to make the legislation more easily understood — the actual concepts that are there are indistinguishable from what is in the current FMA. It is just a reworking to make it clearer on the page.

Mr RICH-PHILLIPS — Do those concepts in the FMA currently apply to the audit office, though, with respect to — —

Mr GIBSON — It is a department of the Parliament under the appropriation for the Parliament. Yes is the short answer.

The CHAIR — So categorically there is no change?

Mr GIBSON — Correct.

The CHAIR — You were very careful in the words you used, but you were giving the impression that there was maybe a bit of wriggle room, but basically there is no change?

Mr GIBSON — No.

The CHAIR — To what is existing?

Mr GIBSON — No. There is no wriggle room; I am not seeking wriggle room. I am just explaining that you asked, ‘Isn’t this identical text?’, and I said, ‘No, it is not identical text’.

The CHAIR — Okay. Understood, but the — —

Mr SCOTT — The impact of the clause is the same.

The CHAIR — The impact is exactly the same.

Mr HEHIR — Clause 31(1)(a) says that the presiding officers — and I am paraphrasing — may shift an amount, determine that part of an amount of an appropriated item in respect of a department of the Parliament may be transferred to, and applied for the purposes of, a corresponding item in that schedule in respect of another department.

Mr DALLA-RIVA — But not the minister.

Mr GIBSON — No, they are both the same.

Ms HUPPERT — But the minister — —

Mr GIBSON — No, both times it is the presiding officer.

Mr DALLA-RIVA — The new bill has ‘minister’?
Ms HUPPERT — No. The President for the Legislative Council and the Speaker for the Legislative Assembly.

The CHAIR — Thank you for clarifying that.

Mr RICH-PHILLIPS — I would like to come back to the matters that were taken on notice by DTF when the committee met previously. I note they did not make it into the committee’s report because, notwithstanding your prompt response, there was some urgency by some members of the committee to get a report to Parliament, which was actually put in before you had responded — —

Mr WELLS — Jackbooted.

Mr RICH-PHILLIPS — Even though it was only a day or two.

The CHAIR — Without assistance, thank you!

Mr WELLS — I was just making the point about the jackboot.

Mr RICH-PHILLIPS — A couple of issues arise from the response. I note Mr Wells’s question before about the impression we were left with in respect to the audit officer’s position on this bill. I think it was pretty clear to the committee from your response that issues outstanding from the auditor’s perspective had been dealt with and hence there was no response to that December letter, when in fact there was ongoing — and I understand continual ongoing — discussion with auditor about the provisions of this bill. I think it is a matter of regret that — —

Mr HEHIR — Sorry, can I just clarify that? The discussions have been around the directions and not changing the provisions of the bill.

The CHAIR — I was just about to say that I have been directing witnesses to answer questions insofar as they relate to the terms of reference of the inquiry, which are in terms of the contents of the bill. Any answers you give — and indeed I have advised the members that this also applies to any questions — should be in relation to the contents of the bill.

Mr RICH-PHILLIPS — Again, we would not like to think you are trying to be cute here, Mr Hehir, because the Auditor-General made it quite clear the discussions around the directions relate to correcting what he perceives as shortcomings in the bill relating to independence — they are not separate matters. But the matters I wanted to raise are in relation to your written response to the committee. Firstly, the committee sought a copy of the legal advice that DTF relied on with respect to its interpretation of clause 12. What we have been provided with, though, is advice prepared subsequently by Mr Gibson, addressing matters raised in that committee meeting.

My question to you is, firstly: is there separate, independent advice that DTF had that it relied on in giving those answers to the committee when we met on 5 August?

The CHAIR — I actually do not think this question relates to our current inquiry.

Mr RICH-PHILLIPS — It relates to the questions that were raised by — —

The CHAIR — Our current inquiry relates to the contents of the bill.

Mr RICH-PHILLIPS — As was the meeting on 5 August where we specifically asked DTF did it have legal advice — —

The CHAIR — That is a different inquiry, I have to say to you.

Mr RICH-PHILLIPS — It is not a different inquiry. That is the most ridiculous thing to suggest. How can it be a different inquiry?

The CHAIR — Well, it is.

Mr RICH-PHILLIPS — We are talking about the same bill.
Mr WELLS — We are talking about the same bill. That is a ridiculous ruling.

The CHAIR — It was a different reference to the committee. This particular reference is in regard to the contents of the bill.

Mr WELLS — The witness has indicated he is happy to answer the question, so let us get on with it.

Mr RICH-PHILLIPS — The question at that meeting on 5 August was: did the department have advice?

The CHAIR — You are welcome to answer the question, but I suggest we are dealing with the contents of the bill.

Mr HEHIR — I will just clarify it. At the time when the question was asked I said that we had legal advice, and the question was asked of me, ‘Can we have a copy of the legal advice?’. I said, ‘No, because we do not have written legal advice. The advice I received on this was from the chief counsel of the department’, and we undertook to provide some written advice. I feel that I made it very clear at that time that we did not have written legal advice at that time, because the chief counsel of the department sat through all of the processes when we developed this and provided us with, through his judgement and experience, the advice necessary on how these clauses are to be interpreted. When the committee asked us for something in writing, I then asked for it to be prepared.

Mr RICH-PHILLIPS — Okay, thank you.

The CHAIR — That is also my recollection as Chair.

Mr RICH-PHILLIPS — That was not my recollection; I thought you had undertaken to take on notice whether advice could be provided, because certainly the impression I took away was that you relied on advice.

The CHAIR — No, Mr Gibson actually said he would agree to provide the advice but he would have to write it.

Mr RICH-PHILLIPS — But I accept that this has been subsequently prepared by Mr Gibson. The other matter that was taken on notice was whether the Electoral Boundaries Commission could be declared a ‘public body’ under clause 4, and your response suggests — again, I would not like to think you were being cute — that the EBC is not automatically a public body under clause 4(1)(a). Clearly it is not automatically a public body. The question, though, related to whether it could be declared a public body by the minister.

Mr HEHIR — Yes.

Mr RICH-PHILLIPS — Yes, it can? Right, thank you. That is all I have for now.

Ms HUPPERT — I guess this comes back to the issue of the independence of the Auditor-General and of course other bodies, such as the Electoral Boundaries Commission, under the bill. Leading on from that question, the issues that the Auditor-General raised relate to the independence of his office, and one of the questions he raised was in relation to the power to make regulations under section 53. If it were to be declared a public body, accepting that under the bill it is not a public body by right but if, for example, the office of the Auditor-General was to be declared a public body, section 53(1)(f) might give the minister the right to make a regulation that was contrary to the provisions currently set out in the Audit Act as to how the Auditor-General’s office prepares its audit plans. Section 53(1) says:

\[
\text{The Governor in Council may make regulations for or with respect to—} \\
\text{…} \\
(f) \text{ planning and monitoring of performance …}
\]

My view is, and I know your view previously was, that there are specific revisions in specific legislation and then there are general provisions in this act that cannot override specific provisions. But the Auditor-General seems particularly concerned about whether this power could be used to provide in acts some regulation that somehow could affect the independence of the Auditor-General to plan audits. I wonder if you could provide some comment on that.
Mr HEHIR — Just checking up one thing. It is consistent with the advice that we provided previously, which is that nothing in this act can override any — —

As it is a general act, it cannot override anything that is in a specific act, such as the Auditor-General’s act and the Constitution Act as it applies to the Auditor-General. The Auditor-General has independence.

The other thing we need to make clear is we have got two things happening here. One is the office of the Auditor-General to which this applies to the extent that it is consistent with the act, and the other is this act does not apply to the Auditor-General as an independent officer. The Auditor-General in producing reports to the Parliament is something different from the office that supports him.

Ms HUPPERT — Because the public body applies to the office of the Auditor-General the regulations would have to be in terms of — —

What you are trying to say is — —

Ms PENNICUIK — The public body. There is a department in the Parliament.

Ms HUPPERT — Yes, but what would you be declaring the public body? Would it be the office of the Auditor-General or the Auditor-General himself — the role of the Auditor-General?

Mr HEHIR — The office.

Ms HUPPERT — It would be the office of the Auditor-General, so that the Auditor-General’s role in auditing those types of functions, which are clearly set out in the Audit Act, would not be subject to this legislation or the power to give directions or the power to make regulations? It would be the office of the Auditor-General.

Mr HEHIR — Only to the extent that the legislation establishing that office — —

Ms HUPPERT — Was not inconsistent.

Mr HEHIR — Not inconsistent with the directions.

The CHAIR — Would it be helpful to explicitly state this in the legislation, or is the principle of subsidiarity going to be put?

Mr HEHIR — It appears to us that this is — —

The CHAIR — I know you think it is bleeding obvious.

Mr HEHIR — I am not saying it is bleeding obvious, but the way the law works in this effect we think is clear. Whether it needs to be explicitly stated is a judgement call; for the effect of the law, no.

The CHAIR — Often the way of making these things explicit is — and the courts do take notice of these — to have a statement in the second-reading speech to this effect. Courts have been known to take into account in their interpretation of an act what is said in the second-reading speech. Sorry, you are the expert here, not me.

Ms HUPPERT — It is not just the second-reading speech; it is also things that are said during committee stages by ministers as well.

Mr HEHIR — Yes, that is correct. Can I just clarify something? You made the point about being a department of Parliament.

Ms PENNICUIK — VAGO is.

Mr HEHIR — Yes; VAGO is a department of Parliament. How that relates to this act is in respect of the budgeting side of things. If they are not declared a public body, then because they are department for appropriation purposes that element which relates to the appropriation stuff applies to them, but not the other elements of the act. The only way the other elements of the act would apply to them would be if they were declared a public body.
Chapter 3: Transcripts of Evidence

The CHAIR — The Auditor-General said he would like to be a special body. What would that mean?

Ms HUPPERT — No so much declared a special body but actually exempted, as in could not become a public body for the purposes of certain provisions. But what you are saying is your distinction between the Auditor-General — as in the independent officer — and the office of the Auditor-General in terms of the administration — —

You are telling us that there is a distinction between them.

Mr HEHIR — It depends on what the objective of the exclusion is. If the objective of the exclusion is so that provisions relating to procurement policy and risk management policy, budget planning policy and all of those things did not apply to the Auditor-General, then you would be — —

Ms HUPPERT — The office of the Auditor-General.

Mr HEHIR — Yes. You would need to exclude them from the act.

Mr DALLA-RIVA — One man in a room with no support.

Mr HEHIR — Yes, you would need to exclude those things, but for the other things our contention is that it does not apply. For the purpose of him carrying out his statutory responsibilities under the act, this legislation does not impinge on those things for the reasons of the legal advice that we have provided to you.

Mr WELLS — Grant, are you saying that, despite the real concerns that the Auditor-General has expressed in regards to his independence, this bill before the Parliament does not need any amendments to address his concerns?

The CHAIR — That is not quite what he said before, but anyway.

Mr HEHIR — It is a well-crafted question, and I am struggling to get the answer to it. The process that we have talked with the Auditor-General about is if he wished for his concerns to be addressed, how you would do it through the directions or through the declaration or non-declaration of the office of the Auditor-General.

The CHAIR — As a public body.

Mr HEHIR — If the declaration was drafted in a way which was to the Auditor-General’s satisfaction, then the implementation of legislation would address his concerns except to the extent that he had concerns that those directions or that declaration may change later.

Mr WELLS — At the whim of the executive government.

Mr HEHIR — By decisions made to change them at a later date, yes.

Mr WELLS — Would it not be clearer for all concerned if amendments were introduced to be able to address the concerns of the Auditor-General so we can all move on to the next piece of legislation?

The CHAIR — You need to be a bit more specific, but anyway, insofar as — —

Mr WELLS — With respect, Grant is the Secretary of the Department of Treasury and Finance who advises the minister.

The CHAIR — Sure. But I am trying as Chair to do a number of things, as I have said before: to ask some questions not only of the Auditor-General but also the secretary in terms of some specific suggestions in order to achieve, as I said before, the proper independence of the Auditor-General but also making sure that his office is operating appropriately within a framework of public finance and accountability. Something a bit more specific might be good rather than in general, but anyway.

Mr HEHIR — I think that is the issue the committee should be considering, and I think the Chair raised that. Which particular elements of the act — and this is something that we have consistently talked to the Auditor-General about in terms of how you would apply it through the declaration directions — is it appropriate to apply to the Auditor-General and which would be inappropriate? As I have said, at the moment if it is not a
declared body, then the financial reporting side is covered because that is in his act but the other elements of the financial framework would not be covered. Is it appropriate for none of that to apply to the Auditor-General’s office or some other body, or do you have a cut down version of that? At the moment the totality of that applies to the Auditor-General’s office and has done for many years.

In effect all this legislation does is continue past practice with respect to how the financial management legislation applies to the Auditor-General’s office. But since there is new legislation on the table, this is obviously an option where Parliament and this committee considers those things. As I said before, there is a range of ways you can deal with this. One is through the directions. Under the proposed bill, for the first time, there is flexibility to deal with it that way — directions under the normal direction-making power. The second would be if there was an amendment or change which said that directions relating to Parliament or to officers of Parliament — or however we wanted to propose it — were disallowable instruments of Parliament, which would allow Parliament to have that consideration. The third would be some specification within the act of what elements of the act would apply to that body — the Auditor-General’s office or another body — within the act itself. The fourth would be an amendment in the Audit Act to specify it. That seems to us to be the range of things to deal with it. As I have said, under the FMA the directions apply, except for those couple of exceptions like the borrowing powers and the dividend policy. They apply to the Auditor-General’s office at the moment. This act carries that on, but it provides the ability to narrow that down further under the directions, and that is how this bill is proposing — —

That is the dialogue that we have had with the Auditor-General. To put a stronger clause in, other than doing it through directions, would require amendments to the act.

The CHAIR — Okay. So there are four options, but the current provisions in the act mirror what is currently in the FMA, although the Auditor-General feels that the FMA actually does not give him enough independence. Is that a reasonable statement — that the current act does not give him enough independence? Or it has to be by logic. That is the logical outcome, is it not?

Mr HEHIR — The Auditor-General is clearly raising some concerns about how the directions can apply to him. I would take that on face value — he is concerned about being an effective officer of Parliament.

The CHAIR — So are we.

Mr HEHIR — I think we all are; it is an important role.

The CHAIR — Okay. That is helpful.

Ms PENNICUIK — I have got a couple of questions. Grant, you are saying that this mirrors provisions that are currently in the FMA.

Mr HEHIR — Which particular — —

Ms PENNICUIK — This bill.

Mr HEHIR — With the broader extensions that we have talked about with the Chair.

Ms PENNICUIK — Under the current act, do things such as the achievement of outcomes and associated policy frameworks apply to the Auditor-General?

Mr HEHIR — The amendment to this act is to include outcomes for the first time, so the FMA refers to outputs as the single source of performance information. This one adds outcomes to outputs. We have spoken about the relationship of that clause with other acts et cetera in the past.

Ms PENNICUIK — But these are new things that would apply to — —

Mr HEHIR — Yes, where the definition of outputs and outcomes is referenced to what is required under his establishing legislation.

Ms PENNICUIK — You also mentioned clause 33; this is just a clarification of something you said. You said that clause 33 meant that Parliament had the right to transfer amounts between departments.
Mr HEHIR — Parliamentary departments.

Ms PENNICUIK — But Parliament does not have the right under that clause; it is the President, the Speaker and the Treasurer.

Mr HEHIR — The President and the Speaker, yes, sorry. That is what I meant.

Ms PENNICUIK — So in fact, clarifying it, the appropriation bill can be passed saying such and such an amount is going to committees, such and such to Council, such and such to VAGO, and then under here that can be varied by the presiding officers and the Treasurer, so in fact Parliament has no role in that at all.

Mr HEHIR — Sorry, I meant the presiding officers, yes.

Ms PENNICUIK — I am just clarifying that, because you did say Parliament and I just wanted to clarify that. The other thing is you said also if the minister wanted to declare an entity a public body, he would not do so without consulting with the entity, you would expect. That is what you said just before.

Mr HEHIR — Yes.

Ms PENNICUIK — But under the bill, even if you did that, that is not a requirement in the bill. There is an expectation that that would happen in practice, but if the independent officer did not want to be declared a public body but the minister was still determined to do so, there is nothing in the act to stop that happening?

Mr HEHIR — No, the provisions of this bill mirror the provisions of the FMA.

Ms PENNICUIK — Be that as it may, there is nothing to stop the minister doing that?

Mr HEHIR — With the only difference being, as I have said, those bodies at the moment are covered as departments by the FMA, and to be covered under this they need to be declared, that is right.

Ms PENNICUIK — Can I just follow that up?

The CHAIR — Yes. It actually extends the coverage to other bodies?

Mr HEHIR — The major extension is to corporations or companies.

The CHAIR — Non-financial corporations?

Mr HEHIR — All corporations, yes.

Ms PENNICUIK — Under the Audit Act there are requirements for the way the Auditor-General’s office reports. I suppose my question is, given the oversight by this committee of the Auditor-General and the requirements under the Audit Act, does the Auditor-General need to be caught up in these as well, or is it because there is not enough in the Audit Act? I am just exploring that because you are saying there could be an amendment to the Audit Act or there could be an amendment here. The Auditor-General has made it pretty clear how he thinks it could be easily fixed.

Mr HEHIR — We are preparing a piece of legislation which is designed to cover the entirety of the state sector for good financial management planning and reporting practice, and we have tried to design some legislation which does that in a comprehensive way. Now, as I said before, with respect to good financial management reporting and risk management practices, I would not consider the audit office to be a high-risk entity with respect to that because some of the external scrutiny provided by the PAEC and the need for entities whose core business is around those type of things to actually practise good practice or lose credibility is there. It is not a significant issue, but in creating the act we have created an act for all, not an act which exempts any particular body, so the answer to the question is in my view there is nothing in this act, in the directions that currently exist under the FMA, which are largely the ones which will apply under the new act, or the associated policy frameworks which apply for financial risk management, planning and reporting, which is not best practice and that all entities could at some level, depending on their scale, be engaged in, so my expectation would be that the types of financial reporting frameworks that we have put in place are things that every entity should aspire to be doing, and under our directions we would set levels which should be happening.
Ms PENNICUIK — I do not think that is the question.

Mr HEHIR — I know it is not the question, but you can come at it from two ways. I am not going to sit here and say that the Auditor-General needs to have really strong supervision, otherwise he will undertake poor risk management and all of that, because that is not my view. It is not what you would expect of an audit office; so no, but we have created a piece of legislation which is comprehensive and with the capacity for the first time to differentially apply that, which the Auditor-General has not had before. The question that is being raised is: should that capacity be done under a directions framework or not? To me that is the fundamental question that is being asked.

Ms PENNICUIK — You are saying it is comprehensive. It is, and no-one is arguing with that, but is that somehow causing a problem? Part of the problem that I have still not quite resolved in my own head is that in terms of the four categories I understand there is some differentiation, but again the Auditor-General’s office and the other independent offices are different again. I am not quite sure this is covered off, and I am not quite sure that anything I have heard you say necessarily convinces me of that.

Mr HEHIR — All I would say is that this act is about public finance and accountability. It is about resource management, risk management, planning, resourcing and good practice around those types of things and accountability of bodies to Parliament.

Ms PENNICUIK — No-one is disagreeing.

Mr HEHIR — That is what it is about, and those are all good practice things. I also recognise that the Auditor-General has raised some concerns, and our approach to dealing with that has been to discuss with him how those are dealt with through directions. The question is asked whether that is strong enough or whether it should be at a higher level, and I have said there is a range of ways you can deal with them. We have set it here; you could set it at a different level.

Ms PENNICUIK — I suppose in terms of independence you want something that is more solid in statute, probably, than something that can be altered at a later date, as you said.

The CHAIR — The expectation is that the audit office would basically follow the general responsibilities of all bodies as set out in section 12. There are a number there. In other words, they are within and conform to the framework of public finance and accountability, whether it be in terms of occupational health and safety or preparation of annual reports or the way their accounts are presented or the achievement of outcomes. Although it is not specifically stated here, they would be expected to be following the office’s public finance and accountability principles and the procurement principles unless there is some kind of exemption from those.

The issue is: do we assume that it is appropriately covered and that the independence is appropriately ensured, partly on the basis they have separate legislation which covers them and which takes precedence over this, or whether in order to meet what Sue is saying we need to put something explicit in one of those four options, which we discussed before? You had better say ‘yes’, just for the record.

Mr HEHIR — Yes.

The CHAIR — That concludes this hearing. I thank the secretary and departmental officers for their attendance today. We will follow up anything in writing as necessary, and a transcript will be provided to you.

Committee adjourned.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Monday 30 August 2010

Report on the Public Finance and Accountability Bill 2009 – Further Considerations

Consideration and adoption of draft report for tabling.

Motion: That a new paragraph be included at the end of paragraph 1.3, Chapter 1:

‘This is contrary to the DTF evidence given in the original hearing on August 3rd. In the original hearing DTF officials, when asked if the Auditor-General was satisfied with the Bill, responded by stating that they had not received a response from a letter that it had sent to the Auditor-General on 9th December 2009. Consequently the Committee was left with the impression that as a result of a “no response” from the December 9th 2009 letter, DTF had formed the view that the Auditor-General was satisfied with the Bill. The Auditor-General strongly disputed this claim by DTF in the 24th August hearing.’

Moved: Kim Wells MP Seconded: Gordon Rich-Phillips MP

The Chair ruled the motion as out of order as it was factually incorrect and related to the previous inquiry, not the present one.

Motion: The Committee expressed its dissent on the Chair’s ruling of the above motion as out of order.

Moved: Gordon Rich-Phillips MP Seconded: Kim Wells MP

The Committee was divided on the motion.

Ayes

Kim Wells MP
Richard Dalla-Riva MLC
Gordon Rich-Phillips MLC
Bill Sykes MP
Sue Pennicuik MLC

Noes

Bob Stensholt MP
Judith Graley MP
Jennifer Huppert MLC
Wade Noonan MP
Robin Scott MP

Under Section 24 of the Parliamentary Committees Act 2003, the Chair used his casting vote.

Motion negatived.

Motion: Subject to amendments that Chapter 1: Introduction be agreed to and adopted.

Moved: Judith Graley MP Seconded: Robin Scott MP

The Committee was divided on the motion.
Resolved in the affirmative.

Motion: Subject to amendments that *Chapter 2: Hearings with the Auditor-General of Victoria and the Secretary, Department of Treasury and Finance* be agreed to and adopted.

Moved: Jennifer Huppert MLC Seconded: Wade Noonan MP

The Committee was divided on the motion.

Ayes

Bob Stensholt MP
Judith Graley MP
Jennifer Huppert MLC
Wade Noonan MP
Robin Scott MP
Sue Pennicuik MLC

Noes

Kim Wells MP
Richard Dalla-Riva MLC
Gordon Rich-Phillips MLC
Bill Sykes

Resolved in the affirmative.

Motion: That *Appendix 1: Referral to Committee, Appendix 2: Responses from the Department of Treasury and Finance to Questions on Notice and Appendix 3: Transcripts of Evidence* be agreed to and adopted.

Moved: Robin Scott MP Seconded: Judith Graley MP

The Committee was divided on the motion.

Ayes

Bob Stensholt MP
Judith Graley MP
Jennifer Huppert MLC
Wade Noonan MP
Robin Scott MP
Sue Pennicuik MLC

Noes

Kim Wells MP
Richard Dalla-Riva MLC
Gordon Rich-Phillips MLC
Bill Sykes

Resolved in the affirmative.

Motion: Subject to amendments that the whole of the *Report on the Public Finance and Accountability Bill 2009 – Further Considerations* be agreed to and adopted.

Moved: Robin Scott MP Seconded: Judith Graley MP
The Committee was divided on the motion.

**Ayes**

- Bob Stensholt MP
- Judith Graley MP
- Jennifer Huppert MLC
- Wade Noonan MP
- Robin Scott MP
- Sue Pennicuik MLC

**Noes**

- Kim Wells MP
- Richard Dalla-Riva MLC
- Gordon Rich-Phillips MLC
- Bill Sykes

Resolved in the affirmative.