

# CORRECTED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Subcommittee

#### Inquiry into Corporate Governance in the Victorian Public Sector

Melbourne –1 May 2002

#### Members

Ms A. P. Barker  
D. M. Davis

P. J. Loney

Chair: Mrs J. M. Maddigan, MP

#### Staff

Executive Officer: Michele Cornwell  
Research Officer: Mark Holloway

#### Witnesses

Wayne Cameron, Auditor-General;  
Edward Hay, Deputy Auditor-General; and  
Russell Walker, Assistant Auditor-General, Victorian Auditor-General's Office.

**The CHAIR** - Good morning, and thank you to the Auditor-General's Office for your attendance. I welcome Mr Wayne Cameron, Mr Edward Hay, and Mr Russell Walker from the Victorian Auditor-General's Office to this Public Accounts and Estimates Committee hearing on Corporate Governance in the Victorian Public Sector.

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. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript early next week.

I have an apology from Peter Loney. Do you want to make a general comment or whip into questions?

**Mr CAMERON** - I will make a general comment. This is a very important subject, and my sense is that it is an issue that needs attention in the Victorian context, from whatever happens at agencies, bearing in mind the different kinds and natures of those agencies, right up through to clarification of the accountability roles that ministers play, the appointment of chief executives, all of those issues. For that reason it seems to me that this study has a potential to be very broad. Even just dealing with the issues in local government, for example, and their ability to govern effectively and oversight business units and subsidiaries or joint ventures is a study in itself. It seems to me, intuitively, that there are scope issues here, and my advice is that the committee might need to look at what is chewable and doable in different stages. I say that with some experience, having spent some time studying, for example, local government governance issues, statutory body governance issues, and more recently providing input into the review of the governance arrangements at universities here triggered by the Minister for Education. They are all major areas in their own right. That, I think, will be one of the challenges, but of course we are happy to contribute and assist as much as we can.

The good work done by Russell Walker and his team is set out in our paper – and if you would like us to run through the paper --

**The CHAIR** - Yes, I would.

**Mr CAMERON** - I will ask Russell to do that.

**Ms BARKER** - Did you say the accountability role that ministers play; did I hear you correctly?

**Mr CAMERON** - Yes.

**Ms BARKER** - Could you just expand on that role.

**Mr CAMERON** - It is more to do with who is responsible for what in an administrative sense. In Victoria we have a small number of very large departments with a large number of ministers often involved in a relationship with an agency, and whilst those ministers have, it seems to me a sort of general hat in respect of particular portfolio responsibilities, it is not as clear, to me at least, who is concerned about capacity building, for example, in the departmental unit as a whole. They are clearly interested in the deliverables and the purchase relationships, if you like; in other words, the application for funding for the year in question, but who is it who is concerned about whether or not the right skills and capabilities and management practices and ethos, exist within the agency. To use the jargon that I am mostly familiar with, while it is not that unclear who the vote ministers are in a purchase interest sense, it is not clear, to me at least, who the responsible minister is for the operation of, let's say, a major department as a whole; in other words, who is the senior minister? That is made slightly more complex, I think, by the role of the Treasurer here, which is quite broad-ranging in its influence, obviously from a resource allocation point of view, and so it should; but who in a particular department is concerned about the general capabilities and behaviours in the agency as a whole? And I don't quite know – and this is an ignorance question, and not a challenge but it is a question to ask: who is concern about the activity in the agency as a whole rather than streams of interest?

The other question, is the question of accountability, not just in respect of the minister – I mean, normally you would expect that the chief executive is accountable to a minister and has a performance agreement between that chief executive and that minister for a range of deliverables. Question: Who appointed the chief executive? Was it that minister or was it the Premier or somebody else?

Likewise, cascading down to some statutory bodies, who appointed the chief executive of a statutory body? - let's say the Tourism Board - and who is that person accountable to? In a clear sense if, for instance, there is a statutory

body - a board - one would normally expect that that board would have appointed that chief executive and those employees are employees of the board. But that is not always the case here. That might be fine if those boards are acting simply as advisory boards; but if there is any feeling on their part or any statutory requirement on their part that they are expected to govern, then they have to have the capacity to make decisions like appointment and performance agreements and these sorts of things. So I guess I am just teasing out some of the issues that I am sure will come up in the inquiry that I think are quite important in the high-level frame of it rather than down at the codes of conduct and conflicts of interest, and even structural issues. For instance, in the context of a governance framework, there are four pillars. One is the appropriate organisational structures; another is, for example, performance monitoring; another is things like strategy and direction. Who is responsible for those? And another, finally, is the compliance and accountability dimension issue, which I know you've been briefed on. But once you've got those pillars in front of you it begs the question how clear are these principles followed. And I must say in the public sector a governance model it is not as clear as a corporate model, and therein lies the danger.

The danger is that we think Cadbury and others, when they are talking about governance in a private sector context, can fit neatly in a governmental model, and that is difficult. There is not a board generally. You can't say government or cabinet is a board. The relationships are much more complex. Really I am just sounding out that if governance is about leadership, performance and accountability, then let's try to get clear lines of responsibility and accountability established in that framework so that people are not left in any doubt about who is responsible for what. In other words, the framework reinforces performance and accountability and stimulates innovation and all the rest as well.

**Mrs MADDIGAN** - Okay, Russell, over to you.

**Mr WALKER** - I will just read some extracts from our submission, which may be of assistance and stimulate the discussion here today.

The work of our office, particularly in performance and special reviews, involves a consideration of issues relating to accountability and resource management, and therefore corporate governance is an integral part of that. In our submission we have actually made reference to a number of reviews we have undertaken, which may be of assistance for reference purposes.

Also work planned to be undertaken by our office or currently being undertaken by our office, I also believe maybe of assistance to this committee. Some of the issues we are currently looking at are risk management across the Victorian public sector; performance reporting across the Victorian public sector; control and management of parliamentary appropriations; and accountability and oversight of subsidiary entity operations in the local government and university sectors.

As you may be aware, the government is undertaking a number of reviews looking at corporate governance issues from a central agency perspective; it is looking at reviewing and updating the Financial Management Act and associated regulations; it is also establishing a compliance framework to ensure public sector compliance with the state's financial management requirements established under the FMA; and also improving performance reporting by public sector agencies, and at a whole-of-government level. We believe there are a number of areas where there could be improvement, and some of these have been identified in previous reports to the Parliament. I will perhaps touch on those. The operation and membership of audit committees within departments, particularly the membership consisting of management teams from within departments; the lack of public accountability in relation to some agencies, such as community health centres, that are established under the Health Services Act; inadequate performance reporting requirements by public sector agencies in that they are not required to include in annual reports to Parliament audited performance data; the need for external disclosure and representation in annual reports of key elements of governance arrangements, such as the operation of internal audit committees, risk management strategies and frame works, internal control environment, legislative compliance, complaints mechanisms and consultative processes, et cetera.

The Auditor-General commented on the roles and responsibilities and accountabilities of multiple ministers associated with a department and the operation of departments; the inclusion of parent entity staff on the boards of subsidiary public sector agencies where such staff are used as a mechanism to facilitate accountability between the two agencies; and the disjoint between the accountabilities for certain statutory functions and roles, such as the State Revenue Commissioner, the Director of Consumer and Public Affairs and the Surveyor-General as an example; and for the related resources, which form an integral part of the department's operations.

One of the areas that is currently being addressed, with amendments to the Audit Act - if they get it through the House, of course - is the auditing arrangements of entities controlled by government for which the state does not have 100 per cent ownership. They are just some of the issues that are included in our paper which may be of interest.

**Mrs MADDIGAN** - They certainly cover, as Wayne said, a very wide area.

**Mr CAMERON** - One of the interesting things - just touching on two things that Russell mentioned - is the whole business of staff on the governing bodies, including, for instance, departmental secretaries on the boards of statutory bodies. But the same happens with staff in a lot of the bodies or the subsidiary body in a university, or even a councillor on a subsidiary body. They essentially have a conflict of interest, in that when they are sitting on that board they have to act by statute in the interests of that board. But from an experience point of view there is another danger, and that danger - quite apart from the obvious risk of conflict of interest - is that they have the effect of undermining formal flows of information, and in fact the integrity of the deliberations in that context may be put at risk. I have always argued quite strongly that that is not the way to get the accountability relationship clear between the body - the separate body - and some parent or oversight body.

When a parent body establishes a subsidiary, even if it is a government statutory body, a framework should be established about what needs to be approved or not, like business plans and budgets, for instance, and what the flow of information to discharge that accountability relationship actually ought to be. That ought to be set out quite explicitly, because if it is not it gives rise to incredibly unsatisfactory relationship issues developing which brings the whole process into disrepute. This, from my past experience, could even include ministerial involvement in the operations of autonomous bodies and the need to get that clarified in terms of memorandums of understanding and these sorts of things. So I would always argue quite strongly that putting people on boards is not the way to gain intelligence, or even have a validation role for the parent body.

The other comment I make, just thinking about audit committees: The audit committee model comes from the private sector as a sub-body of the corporate board, and therefore has an automatic conduit and power base, if you like, with the parent board, and so obviously it has a capacity to make things happen, because if it does not the board will reinforce it. In the public sector, particularly in a government department context, not a statutory body board context, there is no equivalent. There is no board for a department. It is much more complex and a much more difficult issue about how you make that audit committee actually have teeth once you try; but how do you do that? Because sometimes audit committees have the chief executive on the committee; or should that body be reporting to that CEO because they are the accountable officer?

**Mrs MADDIGAN** - An independent body within the organisation?

**Mr CAMERON** - Yes, thinking about it as a private sector model would have you. Notwithstanding that, it is our experience that an effective audit committee is just such an incredibly powerful platform to enforce good behaviours and good practices in an organisation, particularly if they have got competent people on those bodies.

**Mrs MADDIGAN** - Tell me, do you know if the commonwealth Auditor-General's Office or any of the other state Auditor-General offices, or any of those parliaments, are looking at corporate governance at the moment? Do you know if anything is going on, from your lines of communication?

**Mr CAMERON** - I am not aware of it, but I do know - for obvious reasons - that the New Zealand office has completed a review of a study that I was involved in many years ago, reviewing governance practices in local government, and they produced a report.

**Mrs MADDIGAN** - Was that fairly recently?

**Mr CAMERON** - Just before Christmas.

**Mrs MADDIGAN** - I must get a copy of it. We would be able to get a copy?

**Mr CAMERON** - Yes, but if you can't, just contact me. The other ones I am not sure about.

**Mr HAY** - Pat Barrett in the Australian National Audit Office put out what I think he called an occasional paper on corporate governance in the public sector; it would have been three or four years ago. I actually think it is mentioned in your public document.

**Ms BARKER** - It was difficult to read, from memory.

**Mrs MADDIGAN** - Never read it, have you?

**Mr HAY** - But I can say, now I am not there, it is a reasonably difficult document to read, but it is principles based.

**Ms BARKER** - It reflects the difficulty of the issue.

**Mr HAY** - Absolutely, yes.

**Mr CAMERON** - Western Australia - not the Auditor-General - there are guidelines promulgated by the Western Australia public service which I think deal pretty well with things like behaviours and cultures and conflicts of interest and those sorts of things. So Western Australia is definitely a place to look to. The OECD, of course, has a whole website that deals with governance, but it is quite high level. It is okay for principles, but actually the guidelines put out by the public sector committee of IFAC actually have a better guide for the public sector context.

I have a feeling that Queensland – and once again not the Auditor-General's Office – but there has been some work done in the Queensland public service as well, so a bit of a website hunt might actually help there.

**Mrs MADDIGAN** - One of the things we were going to ask you was issues to look at, but I think you've covered that fairly effectively, from both Wayne and in the paper. There are lots of things there, and it is going to be a problem to try to contain it within a reasonably broad principled approach.

**Ms BARKER** - I might be a little bit off track, but some of the difficulties, as I see it - you are referring to a parent body, and it depends on what you define as 'parent body'. I say that because, for example, with hospital boards the government may wish to seek expressions of interest from a body such as a migrant resource centre which has as its interests a whole range of groups within an area, so you've sort of got a whole number of groups down here; then you've got the Monash Medical Centre, which tries to coordinate and work everything in, seeking someone from that background to go into a hospital board to ensure that the needs of people from non-English speaking backgrounds are represented, so it is how you define 'parent body', too, if you like.

**Mr WALKER** - I think the example you've just given I see as being more of a stakeholder interest group. A parent body could be a council, and a subsidiary entity being an associated company, and similarly with a statutory authority, an associated company may be set up by that statutory body.

**Mrs MADDIGAN** - Is there anything else? Any other advice you can give us? I think you've given us a fair amount to go on with. Thank you very much for coming today; we appreciate your contribution. We will be talking to you again as we go on.

**Witnesses withdrew.**

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Executive Officer: Michele Cornwell  
Research Officer: Mark Holloway

#### Witnesses

Rob Spence, Chief Executive Officer; and  
Sarah Jones, Manager, Corporate Policy, Municipal Association of Victoria.

**The CHAIR** - I welcome Mr Rob Spence and Ms Sarah Jones.

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. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript early next week.

Today, as you know, is a preliminary discussion about what we are doing in corporate governance. We want to talk to some of the major players about issues they think are important. Do you want to make a brief statement first?

**Mr SPENCE** - If I could. As quoted in this document, local government has had the *Code of Good Governance* as the driving force in a high sort of principled way of governance in the sector. I think as a result of this and another document we produced called *Doing it Ourselves - Showing the Way on Governance*, local government has shown a significant amount of leadership in the whole array of governance activities. Although the world is not perfect, and a big slab of my life is spent travelling around the state dealing with failures in relationships between councillors, breakdowns in relationships between councillors and CEOs, and breakdowns in relationships, in some cases with council and community; and we now provide a lot of support to councils, which is consistent with what comes out of that. In a governance sense, I think local government is now taking a much stronger - or much greater responsibility itself for solving its own problems, instead of having the Minister for Local Government come in and fix the problem for us.

We are running a major survey on government governance at the moment with the councils, and training programs for councillors will be starting soon on governance. We are also providing training sessions for councillors; that is the key slide, governance framework, and the whole event is focused around the components of governance and how the power of councillors as a council are driven around the use of the governance tools really, business strategy, policy development, performance monitoring, risk management, managing your employees, CEO performance, performance assessment and how the council works together as a unit. So our training is focused around that. We are also running a councillor development weekend, which has the same focus to it.

I would have said, to go back to our time in local government, back in the early '90s this didn't have a focus at all. Now I would say it is the most talked about area in the sector. In terms of governance and its relationship with the community, I think local government is probably more open than any other sector of government to scrutiny. I know when we try to look at state and federal government budgets and try to plot what is really happening, it is very hard to do it. But if you really want to put the effort into working your way through a council's budget and where it is spending its money, that information is publicly available. You can actually get right inside the entity and understand the way they think and the way they operate, which is not as easy, I think in, in other sectors.

In summary, I think we are travelling reasonably well in terms of where we have come from, so governance is now number one in terms of focus.

**The CHAIR** - What about your relationship with state government, in terms of you looking at the state government in terms of their corporate governance?

**Mr SPENCE** - I think about it every day of the week, basically. In terms of public interface, I actually find the state government and the federal government difficult to deal with because the focus is very high level. If we want to know about HACC, that information is not available to us. We can understand how much money comes from the feds, and broadly how much money is in the budget from the state from HACC, but we can't find out any more about it. So as an outsider looking in, information flows – and this is for the general community, the people who are paying the tax – I would argue that it is not that flash.

**The CHAIR** - So do you scrutinise the Public Accounts and Estimates Committee reports on the public budget each year?

**Mr SPENCE** - We do. We look at the reports that come out of this committee. What we are constantly trying to understand is where the flows are, what is happening, what the trends are, what is opened. If you look at our service areas and the things that have damaged our sector a lot, have been the changes in specific purpose grants. So our focus is very much on what happens when money comes from the federal government into the state government, goes around the Mix Master and pops out. Where in the hell does it go to? And what happens when it goes into the Mix Master, and that is the great mystery of life for me.



**Ms BARKER** - It is not a Monty Python film?

**Mr DAVIS** - Do you dwell on this?

**Mr SPENCE** - Yes. I get quite stressed about it sometimes, because we know how much comes in here but we can't work out what goes out there. And I think in terms of governance that is a major issue, that a constituent out there actually can't put the plot together. If you actually – and I know your reports have referred to this problem of trying to plot budget year on year, because you keep tweaking the policy base and it is very hard to get a track on what has happened. It is hard for us to talk in the state terms about what happens in the federal bureaucracy to minister and so on, although I do have some views I would be willing to talk to you over a cup of coffee that I would not want to put on the public record, but again I don't think it is that flash.

**The CHAIR** - Is there any work going on at the moment between local government and state government in relation to corporate governance issues?

**Mr SPENCE** - We are doing some work with the Department of Infrastructure. I am doing some joint work. We have a group called the Good Governance Advisory Committee that they sit on, and they are a very keen and active participant. We have run some projects, some events together with them. We had a big event in Beechworth last year, which was a great success, which focused around governance and strategy, a joint project - DOI and the MAV.

**Ms JONES** - That is part of the survey project that we have got underway at the moment. That is auspiced under the Good Governance Advisory Group, and there will be a series of workshops flowing out of that at the end of May with councils around the state. There is another project that is operating under that group, which is the Internal Governance Working Group as well, which is looking at the governance in the organisation and then how that supports governance at council level and the issues there, and the state is involved with that as well.

**Ms BARKER** - Is there any reason why the Department of Infrastructure, if you like, is the department that is involved in this?

**Mr SPENCE** - Because the Office of Local Government sits in there basically, yes. So on these issues we would deal with the Office of Local Government, which is a component of the Department of Infrastructure. But for the MAV, our focus is across system.

**Ms BARKER** - That's why I am asking was there any move or push or recognition that the MAV could do this with another department? Has that discussion ever come up?

**Mr SPENCE** - Not really. The legislative base for local government is under the Minister for Local Government, so we would go back to him in terms of governance normally.

**Ms BARKER** - But the MAV has done a number of things like the protocols in regard to memorandum of understanding; the work that you've done around the Department of Human Services.

**Mr SPENCE** - Certainly. Agreements on maternal and child health funding, the principles of the sort of partnership relationships between local government and the state. We have just entered into agreement with the State Revenue Office on arrangements for data sharing, so we are putting together agreements in a number of areas across the state bureaucracy.

**Ms BARKER** - I understand why the Department of Infrastructure is with you on this joint work that you are doing, but whether or not it has been employed in other departments because we all know MAV has work across departments not just the Department of Infrastructure --

**Mr SPENCE** - I think for us there has been a major shift in the last six months in that we have now got much stronger links into Premier's on the relationship, and it is my hope in the future we will have an overarching agreement with Premier's, and agreements like maternal and child health and HACC will sit under that. So we will have local agreements for particular programs; but we have made a fair bit of progress with a lot of good faith over the last couple of years.

**Ms JONES** - It should be noted as well the Good Governance Advisory Group initially was LG pro MAV and BLGA, and it has only been in the last eight months or so that the department actually asked if they could come and participate in that group. So it was at their request that they were invited on. The group has been operating for two to three years as a local government group, so that was how they came to be involved in that work.



**Ms BARKER** - When you talk about the coverage that you have with local government and the work that you do with local government in Victoria, how would you rate the number of councils that work well with the corporate governance guidelines, even as a percentage? Is it 50 per cent, 60 per cent, 70 per cent, or do you think you have them all covered with contact?

**Mr SPENCE** - It is patchy. Everyone knows about this, but when you get into the cut-and-thrust of the action, you don't necessarily pull it out of your top pocket and say, "This is the way I am supposed to operate".

**Ms BARKER** - Do you get a sense of how many are working with those guidelines well?

**Mr SPENCE** - I would have said well over 50 per cent. My sense of it is that there are a lot of spot fires. There are spot fires where stoushes occur in councils or processes fail, and you only have to look over the past four or five months in the newspapers to understand that it is not a perfect world out there. That's not to say that people are not aware of these principles, but as I say, when push comes to shove, sometimes it drops into the sort of political game and not into the governance game.

**Ms BARKER** - I just wondered if you have a sense of how many.

**Mr SPENCE** - It is pretty strong. If you look at the level of activity that is occurring in councils, a number of councils that we would see would be having difficulty at anyone time would be under five; and there are 78 out there, and some of them would say this is all a bit of a joke, but in fact they are meeting all the requirements of it anyway.

**The CHAIR** - Has the MAV done any research at all into corporate governance in other states? Do you know if there are any particular trends emerging in other areas in relation to corporate governance?

**Mr SPENCE** - Some work has been done. I haven't got it locked in my head, but we could actually get you have the advice. We have a joint project between the MAV and Melbourne University.

**Mr DAVIS** - The school of public policy.

**Mr SPENCE** - Yes, and it has looked at comparisons between states and internationally what is happening in areas like this, so we could get some material together through Rosemary Kiss on that.

**Ms JONES** - I think what has happened in Victoria with amalgamation and increased community expectation, increased media scrutiny of how councils operate, perhaps is not as strong in the other states as yet, and governance I think is much stronger in the concepts, and obviously much stronger in Victorian local government than other states; not to say they won't get there, but I think we are a bit ahead of them at the moment.

**The CHAIR** - That's good. Well done.

**Mr SPENCE** - This gets used around the country now. And we are looking at a rewrite or a bolstering of this document.

**Ms JONES** - I brought along a set of them. We are running out of them.

**The CHAIR** - That's a good sign.

**Mr DAVIS** - Just going back to your comments about piecing together the financial flows of local government, I am not so sure it is quite as easy as you make out. I think sometimes these things can be pieced together with a great deal of effort. Stuff might be there, but I don't actually see many councils that actually put forward data in a way that is very accessible to ratepayers. I would be interested in your reflections on who is doing it well in that way in councils around the state, and perhaps some reflections on how it might be done better.

**Mr SPENCE** - We have two processes occurring, both with the Institute of Chartered Accountants, looking at the budgets process and how well the budgets describe the activities, and how transparent that material is for the community. A report was done on that probably 12 months ago. It identified a number of weaknesses in the system. I can get you a copy of that report.

**The CHAIR** - Thank you.

**Mr SPENCE** - What it does demonstrate is that there are still some problems in councils in getting their head around the technical issues of cash accounting against accrual accounting, how they present things. Some

councils actually dilute their reporting by mixing cash and accrual. It identified a number of weaknesses that are now being picked up in the system through education programs.

On the other side we have the annual reporting awards, where now the MAV on an annual basis is reporting an award to the best annual reports in councils, and the awards will be announced in the next few weeks for this round. We use the criteria that comes out of the National Annual Reporting Awards, transparency, identifying where you failed, where you've been successful; it is a good model, and we have people from the national group sitting on the task force as well as from the Institute of Chartered Accountants and others, so we have a good slice of people looking at it.

What we are endeavouring to do through that process is lift the quality, so we pump out what has been successful with these councils, with the winners, what they have done, what it looks like, the sort of information that is in it. So we are trying to have the sector lift its own game.

**The CHAIR** - A very good idea.

**Mr SPENCE** - But I can get you both the details of who the stars are, and get you a copy of their annual reports.

**The CHAIR** - That would be good.

**Mr SPENCE** - I can also give you an indication of some of the not-so-good ones, and we can get you the report on the budgets.

**The CHAIR** - Some of those documents will be really useful to us, so thank you very much. Thank you very much for coming in today and helping us with your inquiry. Perhaps I will give you a ring and we might have that cup of coffee.

**Mr SPENCE** - It is a really interesting review, this one.

**The CHAIR** - I suppose our main problem is not to have it too wide. We want to have it finished by the end of the year. You could really go on for years. It sounds as though local government has done some very good things, so that will be useful for us.

**Mr SPENCE** - We are getting there. This started what, probably about four years ago?

**Ms JONES** - Yes, once elected councils started coming on and issues started emerge beginning.

**Mr SPENCE** - We have been pulling a dollar from here and a dollar from there to resource the work, and it really has flipped the focus over. So if you went back four years and we did a new council agenda, it would be on meeting procedures, the budget, communicating with your community. Now it is this is the governance framework, and you work through each of the key points in the governance framework. So it has actually put a structure around everything we do.

**Ms BARKER** - Considering some of the issues that have been happening out my way, can you emphasise the 'communicate with your community' one?

**Mr SPENCE** - The Oakleigh pool is still there. I remember riding there as a kid on my bike.

**The CHAIR** - We will leave local issues about Oakleigh to another time!

**Mr SPENCE** - It's a good pool!

**The witnesses withdrew.**

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#### Witnesses

Andrea Sharman, President; and  
John Dick, Vice-President, Energy Action Group.

**The CHAIR** - Thank you for coming. I welcome Andrea Sharman and John Dick from the Energy Action Group to the Public Accounts and Estimates Committee hearing.

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Thank you for coming in today. Would you like to make some opening comments, or would you like to make some comments specifically about corporate governance?

**Ms SHARAM** - Mark filled us in, and we have prepared a couple of notes for ourselves to try to address some of the things we thought you were trying to get towards.

One of the major issues that we would be concerned about is the policy processes within the energy policy area and the policy depth of expertise within the public sector. If you look to Treasury and Finance, Premier and Cabinet, and the three major agencies - Fair Trading, DHS, then you have regulators like the Central Services Commission and the Office of Chief Electrical Inspector, and so on, you have quite an extensive range of agencies involved. They don't necessarily coordinate together. A good example of that was the special power payment, where you had one agency handling that as the policy came through.

Secondly, within that framework we have a project management focus as opposed to the more perhaps traditional policy government development framework that has existed. We can provide some examples of the outcomes of the coordination of that project management focus. For example, with full retail competition, which I am sure you are aware of, which is opening up the electricity market to every customer in Victoria, that decision was taken without any kind of cost benefit analysis being done by the Victorian government. That was despite consumers actually requesting that and protesting within the national market institutional arrangements as well. So we took it to many different levels saying how can we proceed without knowing of the benefit; how much it is going to cost the end users at the end of the day, and what benefits do you anticipate coming out of that decision? And we badgered and we carried on, and we were told basically it was not necessary.

Now the costs nationally for the implementation for the next five years - and this is what we have been saying based on our estimates of what is in the public domain, and it has never been contradicted by anyone - it is somewhere between \$1.5 and \$4 billion of end-user money to pay for the costs before we even start getting benefits. When you have an investment of that order I would rather assume that we would have a government capable of making the cost benefit analysis that demonstrates that it is a good policy direction to go in.

Likewise, under the Electricity Industry Act the government has reserved the pricing powers which it has used. There are no regulations around use; there is no coherent statement regarding how the government would use those, what would be the trigger to use those. I badgered the department for quite some time, and the Minister's office about, "Well, tell us, because we want to know". But I am sure the industry also wants to know what would be the circumstances in which those powers will be used; what are the formal triggers? One would nominally assume they would sit as formal regulations attached to the Industry Act, but there is no such thing. In fact I was going to bring you today what I was finally given - a couple of ministerial speeches, a bit out of *Hansard*, and it was appalling, and it was incoherent and highly contradictory, so really what we have is quite arbitrary use. The government uses those powers in a very, very arbitrary way, which is very, very disturbing. We note, of course, that government has back flipped quite a few times on issues of pricing within the electricity sector.

In environmental stuff, there are quite a number of processes that are running within electricity. We have the Victorian Greenhouse Strategy, Triple Bottom Line, that sort of stuff; but you have all these processes in the energy sector. You have all these other process in the energy sector. You may know the energy sector is responsible for half Victoria's greenhouse gas emissions, that are actually there promoting consumption. There are quite a number of decisions, legislation and regulations in place currently which act contrary, and there is no coordination between those things.

In terms of the policy depth, we are very, very concerned about the extensive use of consultants within the electricity-gas area. There is a very small public service left. It is a highly, highly technical specialist area. I think there are problems with a lack of ability to manage the consultants who are coming in. I don't think necessarily government has the capacity to understand the consultants are saying good things or bad things, or somewhere in between those things; and I think that is very problematic, and it becomes very much a project management theme. You get your project, you tick it off, and you don't relate it to the next bit; so it is very ad hoc the way it occurs. In

some cases we have consultants actually managing the secretariat's of processes – I think the FRC project. There are quite a few where you get consultants, so it is further removed from representatives, and it is vastly removed from the consumer advocates.

**The CHAIR** - What is the FRC?

**Ms SHARAM** - Full retail competition. I will have to stop using that! In terms of policy also, we have problems with data collection and ongoing analysis, and I think special power payment was a classic example. There is no standing process in place to do the analysis. The information has been collected over time, so that when a situation happened - and in this case the trigger was when retail electricity companies wanted to bump the prices up - there was a process in place where you knew how to deal with those things, and you had your history behind you to do those issues. It was kind of like - panic stations is the best way to describe it.

When the government created a safety net for a lot of consumers going into the electricity market there was no consultation with end users on that particular issue. What has been typical over the last two years – before that we didn't get consulted at all – is that we would - and this has happened to me - be rung up and asked at 11 o'clock to come and see and review the legislation at 1 o'clock the same day. That is clearly inappropriate. You don't get to take it away and think about it; you read it on the spot, and you are required to bring your expertise out to help. It is really a very inadequate process. It has got a bit better but it is not that much better.

**Mr DICK** - Can I point out the Queenslanders at least put their legislation on the table two weeks before it is actually put in and read in the first reading speech. So legislation is open in public in certain jurisdictions, but clearly not in this one.

**Ms SHARAM** - We are finding that very problematic in the energy policy area. It gives you no time to do anything, and everything is through. There was no consultation on that. It has become a very problematic thing, this idea of what the safety net is about. It relates back to the price cap, which relates back to whether the market is going to be effective or not. When I read the *Hansard*, my view was that the members who spoke to those bills did not understand what they were talking about. They got terms and concepts mixed up and confused. I would think we would have a much better policy making process if the debate happened before it actually got into the House.

**The CHAIR** - They publicly release bills, you mean?

**Ms SHARAM** - No.

**The CHAIR** - Brisbane I am talking about?

**Mr DICK** - Yes, Queensland publicly releases its bills.

**The CHAIR** - On the Net?

**Mr DICK** - No, it is tabled in the House, but it is also on the Web, as I understand it.

**The CHAIR** - It is not first read and deferred again for another two weeks before it is debated?

**Mr DICK** - Yes.

**Mr DAVIS** - It is a traditional early step.

**Mr DICK** - That is right, and it is a fairly important one. We are not actually talking about small bickies in the Victorian context. The current tariff arrangements - the then standing offers - looks as though there is a head room of between \$800 and \$1000 million a year, and the reality is Victorians could be potentially overpaying. Yet we have a problem where no-one seems to understand what they are talking about.

**Ms SHARAM** - Today in the *Business Age*, Pulse, the retailer, look like they are going to achieve close to \$1 billion for that sale. It strongly indicates what the market is saying, that that is a highly profitable entity. Analysis we put to the government in terms of the price, when they use their reserve price powers, was that those companies were making sufficient profits that didn't warrant a price increase, but the processes were so poor that you had Premier and Cabinet coming in from one direction, you had the Minister for Energy who was supposed to be handling it, and there was not much scope for our analysis to get into it and it was not taken account of, because there is a basic lack of knowledge of expertise within both departments.

**The CHAIR** - What about the Office of the Regulator-General?

**Ms SHARAM** - No, the Regulator-General had a different function; they were given a special reference to make a determination, and their determination on those prices basically said, "Well, this is what their minimum revenue should be" – you know, they set benchmarks. If you look at their advice, they said it does not warrant a price increase, but then you had government going off and doing something different. It was the second time since price increase that the government had acted contrary to the Essential Services Commission advice. So we are very concerned that the government provides no public documentation to support the decisions they are making in terms of pricing.

**Mr DICK** - Look at the Essential Services Commission legislation, you will find it deals with the distribution businesses in Victoria. It deals with very minor matters around some quality of supply, and in terms of the performance of the businesses; it is not looking at what happens in the national electricity market and how those prices flow through to Victoria, nor is it responsible for full retail competition. All it is doing is allocating costs, and quite substantial ones.

**Ms SHARAM** - So it did not really have the expertise. I thought maybe we could go into a bit of background transparency. There has been some good things happen, and one of them was in relation to not the last set of price increases but the one before where I think – I can't quite remember how many went for increases - but in one of those cases, they put them in a little bit apart from each other and the government fairly much within a week sent it off to the Essential Services Commission as a special reference for them to deal with the basics of that.

In the case of Texas Utility (TXU) the government went and got an audit in council within three days to block increases using the reserved powers. It was not until a few months afterwards that TXU found out an order of council had been used against them. And they only found out because I rang them up and said, "Do you realise there is an order in council in the *Government Gazette* blocking your increases?" So we had the government not telling this company what is quite a major issue for their business.

**Mr DAVIS** - So much for consultation.

**Ms SHARAM** - Not that TXU is my favourite company, but there is a natural justice issue here, and that action was just appalling. Putting pricing decisions and terms and conditions in a *Government Gazette* is not appropriate. We have got consumers out there in the marketplace who are supposed to find in the *Government Gazette* what the prices are. I don't know if you've ever tried. You can't search the *Government Gazette* site. You have to open up every single document to find out what is in there with Adobe Acrobat. There needs to be a search engine on those gazettes to enable that.

**Mr DAVIS** - A fair point, I agree.

**Ms SHARAM** - The prices should also be advertised in another way.

There is a thing called the SEC Shell Company, which is like a residual SEC. There needs to be a fair bit of work done looking at how they do things. We regard it as the sin bin. A lot of public subsidies come out of there going back into the private sector, and we think there needs to be more transparency about what goes on, including compensation payments to Yallourn Energy for industrial relations issues. When Yallourn, from our perspective, provoked industrial action because they knew they could be compensated through taxpayers' money, they probably would have entered into that industrial situation a bit differently had they been getting paid by somebody else.

We would like to see FoI extended back across these private organisations who are regulated and who are in central services. We don't see any reason why they should get out of that because it is too vital what they do. Retailers are different, but for the regulated entities, definitely. In terms of accountability, there would be more accountability if there was more funding at the consumer end. The regulated distribution business has got around \$67 billion for the next five years to do their regulatory bits, and consumers got zero. So there needs to be some redressing of the balance. QUANGO will not go anyway; the new advocacy centre will not go anywhere near what is required. Electricity regulation issues are very expensive. Perhaps I will hand over to John to talk about some of the national electricity market issues, especially around NEMMCO, VENCORP and NECA.

**Mr DICK** - The state is on a whole range of bodies, like an inter-regional transmission planning body. I think one needs to examine those relationships closely, because at the end of the day the state has the ability to influence a lot of things within its bailiwick, even though it may not actually have legislative controls, because



there has been a substantial seceding across to the commonwealth to ACCC. There are major problems in terms of the way the secession occurred, in that ACCC can generally look at issues around competition but it does not examine what impact their decisions will have back into the jurisdiction. So there is a fairly complex set of issues about how do you go about augmenting the Victorian transmission system. It is an incredibly complex process, and very few people understand it. You need to take some account of exactly where the state has responsibility and how it has responsibility in that it has some responsibility as board members of the National Electricity Code Administrator; there is a board member who is from the National Electricity Market and Management Company; there is basically party to the inter-regional party committee nationally. There is a whole range of ways the state is involved. It is a question of how Victoria actually puts a complete package together, looking at the energy portfolio when you have a range of ministers involved. And, as Andrea has pointed out, there has been very little coordination and there have been some appalling outcomes. It is not one of the Victoria government's areas of strong performance.

**The CHAIR** - Thank you for that, John. If there is anything else, any other point you would like to make to us, you are welcome to contact us at any time. You will get the transcript next week.

**Witnesses withdrew.**

# CORRECTED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Subcommittee

#### Inquiry into Corporate Governance in the Victorian Public Sector

Melbourne –1 May 2002

#### Members

Ms A. P. Barker  
D. M. Davis

P. J. Loney

Chair: Mrs J. Maddigan, MP

#### Staff

Executive Officer: Michele Cornwell  
Research Officer: Mark Holloway

#### Witnesses

Linda Hancock, President; and  
Dimity Fifer, Chief Executive Officer, Victorian Council of Social Service.

**The CHAIR** - Welcome to Professor Linda Hancock and Dimity Fifer from VCOSS.

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. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript early next week.

Thank you for coming in today. Would you like to make some comments to us? We would be anxious to hear what advice you can give us.

**Prof. HANCOCK** - Thank you very much. Just a few words about VCOSS; we will speak to some general points because our written submission is still a written document.

**The CHAIR** - We didn't expect you to have your submission here.

**Prof. HANCOCK** - Yes, but we would like to have it to speak to. However, as you know we are the major advocate for disadvantaged Victorians. We are a peak body with an active membership of over 600 members. We have an annual congress which is about resourcing the sector and also interfacing with themes around inequality. We play a very significant role in this sector in terms of reinforcing the principles of sound management, and some of this is around training and reinforcing those principles via conferences and meetings and so on.

We want to mention here our involvement with Premier and Cabinet in developing the document *Growing Victoria Together*, mainly because that has a lot of consequences for our interface with the public sector in terms of public sector governance impacting directly on our sector. In relation to that agenda, one of the major issues for us is sorting out relationships and specific responsibilities between government and the NGO sector. Also we have an interface with this committee that we will draw on in terms of our past submissions to the service agreements inquiry and the annual reporting review, because we see that drawing on those is related to governance.

Just as an overarching issue, we want to bring the committee's attention to the fact that we would like to see the word 'public' in the discussion of corporate governance. We would see it as public corporate governance in the Victorian public sector, and that this would then signal that the public sector is different from the private. I suppose here I put my Director of Public Policy at Deakin University hat on. What we have seen over the last 20 years really is the importation of models borrowed from the private sector and transposed onto the public; but this raises big issues about what are the similarities and differences between public and private sectors, in terms of underpinning principles and values and in terms of key responsibilities. So that was one very overarching comment that we are keen to make.

The other related one is to say there are three sectors: corporate, NGO, and government. We see this as a wonderful opportunity for government to rethink its responsibilities and the overarching framework for the interface between the three sectors, and particularly, I guess, our special interest is in the NGO sector.

In relation to more specific points, our submission will include an analysis or a critique of agency theory as the major driver of the incorporation of public sector corporate management models into the private sector. One of our interests here is how this interfaces with statutory clients, because we see government as a service deliverer, and that there are certain non-delegable state responsibilities in relation to those who are most vulnerable. What we are looking here is developing principles to govern, if you like, the relationships in a contractualist environment. In terms of our constituency, we take the stand that we don't want statutory clients to be left out of this equation, that they are very important, and that in a way they raise a lot of issues to do with the differentiation between public and private governance. I guess private prisons are a good example of statutory responsibilities that are non-delegable, such as the right to punish, so that will be one of our other points.

Also we are concerned about the development of sound policy development processes where you have contracting out, because one of the findings is that in a contractualist environment, and with 20 per cent - as your briefing paper said - of the public sector workers involved in contract oversight, how does this impact on the public policy evaluation feedback cycle, and what are the checks and balances for policy development?

One of the agreed-upon observations of the reform agenda of the last 10 years, particularly in Victoria where the public sector downsized 25 per cent over nine years, is that this hollowed out the policy development capacity of government. So in this respect we are, I guess, drawing the committee's attention towards the need to focus on, within this changed environment, what is the challenge, how is it going to be addressed in relation to

sound policy development processes? I will give you an illustration: At the service sector, service delivery end of the continuum, what is the capacity for those workers working under agreements, say with DHS, to feedback into DHS policy? And some of it is so bound up and limited that it is a sorry state of affairs. So that is a practical example.

Some of what this would lead to is interrogating the notion of contract that comes out of the development of partnerships; and we see this as being integral to corporate public governance. So the whole issue about working together raises concerns about devolution and the devolution of risk, because there have been some real issues lately in that sector that speak to that issue: to what extent can you devolve risk? The other side of that coin is to ask questions about rights and citizenship and the extent to which these need to be embedded in a public corporate governance framework, as part of the ethics section perhaps. I don't know where you would put it under the current set of headings that you have; it doesn't really bounce out.

What we are bouncing off here, too, is some international work by the OECD around trust in government; and I spent some time at the OECD about a year ago, so we will be drawing on that in relation to the sorts of principles that can underpin a public governance model, and trust in government encapsulates that to some extent.

I think I have covered the broad points that I was going to cover. Just one other point about risk: it is a practical concern that is illustrated, insurance premiums in the NGO sector, so there is lots of practical playing out of these more overarching more theoretical concerns.

**Ms FIFER** - I will add to Linda's submission. Linda was looking at the overall themes, and there are a few examples I would like to add in and supportive of the same principles. Most of VCOSS's work any time we are involved in either nongovernment organisations or direct government departments - we do an awful lot of work with private companies, for example, in the utilities area or the telecommunications area. Then we also bump into the water, which is still the state-owned scenario. Most of our work in the whole regulation field over the last few years, we have always been pushing codes of conduct or charters of expectation of performance. I would like to articulate there, too, the difference between a code of conduct and performance, and the management of not just process but also of outcomes is actually really quite difficult.

One of the things that we see missing at the moment that we are hoping to be able to research is to develop a kit of best practice charters actually because there seems to be a real dearth of information; and we all see on walls medical practice charters on insurance or telecommunications, et cetera, and now government departments are into it. But the language is actually quite questionable, and sometimes people mix up the use of human rights terminology with what actually are service expectations, so there is a loose use of most of the theory in how people articulate in charters and expectations, and that needs to be tidied up.

In terms of the actual work on public sector governance - and certainly we will be pushing very hard - one of the consequences we have found is, as Linda alluded to, with the public sector, the corporate and the NGO and the lack of a consistent language in the public sector - and it has been open at different times we have been a tad facetious in that we call the department's bluff when they have used terms like 'commercial in confidence' inappropriately, and when they seem to believe they can power up by using some corporate language. I am not quite sure what the assumption is behind that, but it absolves them of all responsibility and justifies any action; and it does not take much action to call someone's bluff on that?

Behind all of that - even the use of corporate accounting standards - I mean, VCOSS obviously - well not obviously, but it is completely unresourced to develop that. But I would like someone to take some time to talk about is there a set of accounting standards for the public sector, because what tends to happen is you get in accounts the sort of - how do we articulate that? - the split between capital expenditure and recurrent expenditure that governments get into, the sort of use of off-balance sheet scenarios, the use of consultants because that lessens your staff input. So the same sort of - I could say rorts, but no - procedure used in the corporate sector is now being used by the private sector, I believe. We don't have any analysis of that, but it just seems the potential is there. We fight that at state budget times as well, and the consequences are there, I think, for ministers, for departmental staff and for people on the outside because of the way the accounting systems are set up. I do believe that it is probably about time an account standard for public sector is actually brought out into the open and a debate occurs on that.

In terms of structures - and I notice on pages 9 and 10 of your issues paper - except for the state government departments and perhaps local government and a few of the organisations, they are sort of one step removed from the nongovernment sector but they still have impacts and consequences upon us. I look at the Victorian Casino and Gaming Authority, for example, what are their links to things like gambling help agencies

and or financial and consumer rights, or the emergency relief agencies. As Linda alluded to, it might look arm's length but there will always be these links within the system that policy which may be articulated by government suddenly hits a bit of a kilter at something that has been devolved or is an arm's length relationship. So while you may believe that a government's policy in value cascades down to all entities, it actually doesn't occur like that; you suddenly go along and there is a glitch or a bump. So that ability for all organisations to be congruent is difficult, and it does not happen with governments in power. These are some of the intended or unintended consequence that are of real concern.

**The CHAIR** - Does VCOSS have any corporate governance guidelines it represents to its agencies, or are they pretty much left to themselves to decide how they organise themselves?

**Ms FIFER** - It would depend on how they are constituted. For those who are companies you have the Corporations Act, and then you have the others that are incorporated as associations; you know what I mean?

**The CHAIR** - I suppose in terms of local government, it has a corporate governance guideline they try to encourage all councils to do.

**Ms FIFER** - We don't actually have that, and I am not sure I know of any state in Australia that has developed that. You have the ATSI organisations as well; they have their own national act of how they are incorporated as well, which gives them huge difficulties. What are the structures? As I said before, to get a bottom line level of expectations we do believe that some sort of a code is really essential, so you have some level of comfort that there is a bottom line that you are holding. But then there are other things. One would hope some of the organisations that you talk about in here might have customer service obligations - that term we all used to know and love a while ago but has gone a bit squeaky at the edges. Certainly some of our staff sit on what are called customer consultative committees, such as Yarra Valley Water - whatever it might be - and they are really your only hope that things might actually be looked at in terms our constituency. That is ad hoc so it is that area of unpredictability of what you can expect from all these sorts. So that means you are left with rather than a systems or a structural confidence, you are have a personality confidence if you don't have the head of that organisation who actually understands this. You are left with a personality-base type level of confidence.

**Prof. HANCOCK** - We are also seeing a gap in current governance principles and a lack of uniformity in redress mechanisms and complaint mechanisms, so that that is a major problem with the public private divide, if you like, illustrated best, I guess, by the patient who wanted to complain about service in the hospital and was told to complain to the Regional Health Board rather than it being seen as a ministerial responsibility. So you've got this cross between corporate methods of responsibility and Westminster system, and I think from a citizenship rights perspective it is the Westminster accountability system that citizens in our sector go for and expect, but that is not incorporated into a lot of the actual modes of operation of the corporatised entities.

**Ms FIFER** - One of our staff at the moment is involved in a human rights project and has direct means of implementing human rights instruments, and that is a huge area. There is Melbourne Uni/VCOSS work on that one. I am unaware of any model that is used for decision-making. From page 9 through to 11 there are all these different organisational forms, but what decision model is actually used to get any entity within any of these forms? I think there is a level of predictability about that is essential, too. Is there a check list that says, "If this, then you turn into statutory body; if this --", you know, because where you end up has huge consequences and it may or may not be a good match to what you were hoping for.

GVT on the website has a policy paper. That was developed by the Premier and Cabinet, and that alludes to that some of that OECD. One of the staff there did a very good paper on that work.

**Prof. HANCOCK** - Just one other thing, the department has mentioned the OECD. I am on the steering committee for this conference in 2004, which is going to be run in Melbourne, and it is the World Congress of Business Economics and Ethics, but it is called corporate governance in a global economy, and the NGO sector is in there talking about themes. I thought I would bring that to your attention.

**The CHAIR** - They can use our report, which will be released well before that!

**Prof. HANCOCK** - That is what I was thinking. There are things going on.

**The CHAIR** - And there is a conference in Canberra later in the year discussing corporate governance. It is certainly the topic of the moment. Very broad, too. I think our trouble is that we need to keep it within an area

where we can produce a report in a small amount of time because the Human Services one took us considerably longer than we thought it would when we first started.

Thank you for your input. If there is anything else you would like to add, please feel free to do so, or if there is anything further we would like to know, we will be in touch with you.

**Witnessed withdrew.**



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Melbourne –1 May 2002

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Executive Officer: Michele Cornwell  
Research Officer: Mark Holloway

#### Witness

Professor Graeme Hodge, Director, Centre for Privatisation and Public Accountability, Monash University

**The CHAIR** - Welcome Professor Graeme Hodge. Thank you for making your time available to us today. We very much appreciate it. As you know, we are just at the start of this inquiry so it is great to have you people give us views about what we should consider.

**Prof. HODGE** - Thank you, from my perspective, for the opportunity to talk to you today. My comments are more from a perspective of the sorts of issues that I think you should address rather than coming up with the answers.

**The CHAIR** - That is what we want to hear at this stage. We might ask you about the answers later.

**Prof. HODGE** - Some of the comments I will be making come out of the terrific work of the committee in terms of the previous reports on commercial-in-confidence, and so on. I think it is great that we have strengthened the work of the Auditor-General, and we have increased the capacity to have scrutiny over contracts and reduce this commercial-in-confidence shield. I guess that is my starting point.

The first issue that I have comes out of experience, and perhaps some of the comments Peter Loney has made to past conferences; it has been my experience that it has often been the bureaucracy that has been behind the demands to keep the information secret rather than the private sector. I spoke to a large construction company chief executive in the area about PPPs, and I was telling this particular gathering of federal people about my concerns that there is information under partnerships that is secret, and he simply stood up and said, "That's not because of us, we have been requested by nameless bureaucrats not to divulge things".

I understand Treasury and Finance is about to go through and develop a series of guidelines for this area, including model contracts. I have seen 600 pages worth of guidelines come out on outsourcing; I have seen drafts come out on partnerships, and to me they are a symbol that we have an interest in the area, but I don't think guidelines are actually the important issue; I think it is the culture of the organisation. So that is perhaps something to watch out for: what are the incentives for cultures of central bureaucratic organisations to change, particularly the culture of secrecy?

I have done a fair bit of work on the privatisation area and the contracting area, which you may be familiar with. The big lesson from that for me in terms of accountability was that some elements of accountability improved through privatisation and contractualisation; the managerial version and perhaps the market version of accountability often improves, but that there was a simultaneous decrease in what I guess I would call ministerial accountability, parliamentary accountability and public accountability in areas such as asset sales. I guess that is an obvious flow-on, because we do 'sell off' that activity, but I guess New Zealand, the UK and other international experience remind us that citizens expect elected governments to be responsible for these things, even if they are sold off or franchised out.

So I don't think public accountability somehow is now less important, even though that might be the common perception. In the area of conflicts of interest for board members, conflict of interests for those participating in the governance process, I think that is generally well handled. The one area I think is worthwhile raising is this question of what I call 'longitudinal conflict of interest', where over a time period we have, for instance, a Treasurer who represents our interests and signs up \$2.15 billion worth of City Link contracts one day and the next week is the director for a bank, whose job it is to fund those sorts of things. I am not too sure what the answer is, whether there is a 'cool-off' concept we can institute, but the principal of a 'longitudinal conflict of interest' is a critical thing that we need to get straight because of the movement between the public and the NGO sector and the private sector.

One of the questions that I think arises in my mind for the committee is looking at corporate governance and corporate accountability. It has sometimes struck me that it is easier to do that than it is to look at sectoral accountability and sectorial governance. For example, in the ports area, where I have done a bit of reading, we have a mixture of public ports such as the Port of Melbourne, the Port of Hastings, which has a management agreement with a private company; and the Port of Portland, which is privatised. If you look at the information that is available in those areas, across the board it is fairly low, but the information that is available to stakeholders is quite mixed - virtually zero at the private end, apart from legal requirements - although even then you can't tell how the port is doing, of course, because it is part of a large corporate entity.

Traditional requirements for the Port of Melbourne are an issue. The mission of the port somehow has been changed so that instead of facilitating trade, they are now looking after real estate and managing land, I am told. Notwithstanding that concern, there is an issue of how can we as government properly look after a sector? What are the accountability requirements for the sector as distinct from just the firm? Now accountability

requirements of the private firms are just strictly legal. Accountability requirements of government are a bit stronger, although I would love them to report on not only the fact they measure stakeholder satisfaction, but I would like them to actually report what the stakeholder satisfaction was, and I think that ought to be available. But you have a mixture across that same sector. That, to me, is an issue, because ports have to be something about facilitating trade for the state.

**The CHAIR** - Well they are linked, aren't they, in the way they operate because of that state-wide method of transport?

**Prof. HODGE** - Sure. We can always say we can't provide information because it is commercial-in-confidence or there is commercial competition. I think we should be doing something a little more careful than just having a stock standard answer to that. It may well be, as Australia Post tells me, that they are in competition for three-quarters of their services, but they still provide reasonable public information on their standards and so on. So I think we have to be a bit more careful.

**Mr DAVIS** - It is almost a competitive neutrality issue, too, going back to your ports example.

**Prof. HODGE** - There is a competitive neutrality question in there, you are right, but to me it is a question of who the stakeholders are. It used to be that in the public domain we would have this ethos providing information to stakeholders. If you actually list out the stakeholders in ports and look at the information that we give them these days, it is pretty minimal; you can't get the information that needs to be able to be got out. And increasingly, that will go down over time. I suspect it to be a kind of a race to the bottom. If you follow the competition argument, we should only supply the same information as the private ports, it is really a race to the bottom.

**Mr DAVIS** - Unless it is actually manoeuvred the other way.

**Prof. HODGE** - And I think there is some work we can do to try to encourage better practice. I guess government governance rather than the market is the belief.

One issue that does come to mind from my reading of the port area is the question of the simple issue of "what did the sale involve"? Prior to these enterprises being sold off they were in the public sector and I would have thought information was reasonably public. When something is sold, for instance a port, the question in my mind is are they required to run a port any more? And I haven't been able to get to the bottom of it, but my understanding is that they are not required to run a port. There may be conditions somewhere. There was a concern in the local Shire of Glenelg at one stage that the Port of Portland - it used to be that the public port would sand, dredge a particular area. Over the last couple of years there have been bits of Portland literally falling into the sea, there have been huge erosion problems; and the shire spent a couple of years chasing up whether or not there has been a requirement on the new privatised port to look after the old sand dredging. They have not been able to get to the bottom of it.

The short version of the story is that we believe it is a responsibility of the privatised port. But what concerns me is that no-one knows. How is it that we have sold a public enterprise and yet we appear not to have a very clear picture of what the services are that are now required of a privatised enterprise?

**Ms BARKER** - Was there a clear idea of what the services were that were being privatised?

**Prof. HODGE** - In that case it was the operation of the Port of Portland, but there were some additional adjacent services that apparently were traditionally undertaken by the public port prior to that. The concern was, "Our real estate is falling into the sea; we would like to build houses there, but who is actually responsible for this dredging now?" and it has taken two or three years to find out the answers to that. My concern is that it has taken two or three years for us to understand one transaction.

**Mr DAVIS** - You see it is interesting - I understand the point you are making, but at the same time it just seems to me that a public body could have stopped doing something like that; it had never been written down or had been transparent what tasks a public body had undertaken. It is just that there has been a new transaction that has to an extent put some transparency on what duties and responsibilities are being undertaken in that vicinity.

**Ms BARKER** - It took an awful long time.

**The CHAIR** - Perhaps you would have found out a lot faster if it had been in the public domain.

**Mr DAVIS** - I don't know if that is true. I think often public parties have taken many things, and a body can undertake to stop a task.

**Prof. HODGE** - I agree with the point. I think the issue for me is we took so long to find out. I don't mind if it is one sector or the other; I want to know where the service resides, and my issue is we don't know and it takes a couple of years to find out.

**Mr DAVIS** - But my point is we didn't know previously.

**Prof. HODGE** - We knew previously when it happened; it was only when no-one was doing the dredging.

**Mr DAVIS** - We knew where the responsibility lay.

**The CHAIR** - I think this conversation might go on a bit long. We might talk about it another time.

**Prof. HODGE** - It is an issue of knowing who is responsible for the services at hand. I can also ask a simple question: tell me what the deal was for Victoria in public transport? A fellow was saying to me yesterday - the comment was off-the-cuff - that he can't find a person in Australia who knows that deal and can explain it, partly because of its complexity, partly because it is the 'shape of' the contractualised state we now live in.

I could make the same comment about the City Link contract. I have really only been reading that for several weeks, but apparently you have to have been reading it for months to know what the deal is. We are not even too sure about the annualised concession payments to the state; even that is flexible. That issue concerns me. To the people who say well it is not possible to give a three or four-page summary, I say rubbish. Bureaucrats have been required for years to provide three or four-page summaries of quite complex policy decisions to parliamentary committees and to parliaments. Why can't we do that now with contracts? I think we can, it is just that we have been lazy. So we do need a summary. We also need a contract redress mechanism, which I note was mentioned before. Redress mechanisms in places like electricity - I think the electricity market in many respects works reasonably well, but they are limited. Redress mechanisms in transport probably concern me. When friends, colleagues or members of family have travelled on transport and have been booked for using tickets that haven't been validated, I guess my question is where is the redress mechanism? I am not too sure the redress mechanisms are there at the moment; there is no redress mechanism, so you are guilty until proven innocent as far as I can see. That is one issue at the operator end.

The big issue now is what are the requirements on companies running transport to report on things like that - fare evasion and so on?

**Ms BARKER** - How often are there problems with the validation machines, et cetera?

**Prof. HODGE** - There is a set of policy concerns we could debate. Just leaving that aside, what are the legal requirements for companies to report those sorts of things? Some people would say it is in the public interest; others would say you are not legally required to report this, only revenue and expenses, so we shouldn't have to. I expect it is incumbent on governments to have those sorts of things reported. And it does not have to be everything, but it has to be things of public interest or concern.

**The CHAIR** - We are running out of time, Graeme. I know we started late, and I don't want you to miss out anything, but if you want to whip through anything you really want us to look at, go ahead.

**Prof. HODGE** - There are probably two issues. I spoke recently to a committee hearing on PPPs, and I will make the same comment here. I don't personally understand how we can have governments signing up to partnerships when the return on public equity in the deals are not transparent. In the olden days we used to have benefit cost ratios done and so on. That was not the case for City Link, but I think there is a requirement on government to make returns on public funds after the deal is signed absolutely explicit. Private funds is a separate issue, and particularly when we pay private companies for bearing these risks, that is a separate issue. Where we use public money, I think it has to be absolutely explicit.

The overall theme of my comments is that as we have gone through contractualised and outsourced, privatised and so on, there has been a theme of reducing availability of information, and particularly availability of performance information, information that is in the public interest. Given that our elected representatives govern with the authority of citizens, I think it is incumbent upon us, particularly in blurred areas such as partnership arrangements and so on, to specify explicitly the sort of performance information and contract information that

ought to be available in the public domain rather than assume information generally ought not be available. Thank you.

**The CHAIR** - Thank you very much for that, Graeme. You have presented us with some really good points for consideration. We might have a little chat to you later on, if you are available.

**The witness withdrew.**

**Committee adjourned.**