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## THE LEGISLATIVE COUNCIL SESSIONAL COMMITTEE GOVERNMENT ADMINISTRATION A MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY, 24 MAY 2023

### SHORT PROCESS INQUIRY INTO FINANCIAL MANAGEMENT ACT 2016

**The Committee met at 1.52 p.m.**

**CHAIR** (Ms Forrest) - Thank you, Rod, and your team for appearing before the Government Administration Committee B review of the Financial Management Act 2016. We have received the submission you have provided, which we appreciate. It is a public hearing. The information you have provided to us is covered by parliamentary privilege. We will ask you all, whoever is going to speak, to take the statutory declaration in a moment, and then if you could introduce the members of your team at the table. I am sure you all understand parliamentary privilege and I don't need to go through that with anyone. I hand over to you, Rod, to make the statutory declaration and ask members of your team to do likewise.

**Mr RODNEY WHITEHEAD**, AUDITOR-GENERAL; **Mr JONATHAN WASSELL**, DEPUTY AUDITOR-GENERAL; **Mr JEFFREY TONGS**, ASSISTANT AUDITOR-GENERAL; AND **Mr STEPHEN MORRISON**, ASSISTANT AUDITOR-GENERAL, TASMANIAN AUDIT OFFICE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

Rod, I invite you to make an opening statement and then we will go through your submission step by step because it is laid out really well in terms of how the act is currently drafted.

**Mr WHITEHEAD** - Thank you, Chair. Before I go through the opening statement, just by way of introduction, on my immediate left, I have Jonathan Wassell, who is the Deputy Auditor-General, and on my immediate right, I have Stephen Morrison, who is an Assistant Auditor-General in our Financial Audit Area, and I also have Jeffrey Tongs, also an Assistant Auditor-General in our Financial Audit Area. I expect that I will probably take most of the questions but on occasions I may defer to one of my colleagues at the table here. We will see how that transpires.

In terms of an opening statement, the Tasmanian Audit Office welcomes the opportunity to make a submission and to attend the Legislative Council Government Administration Committee A inquiry into the operations and applications of the Financial Management Act 2016, which I will just refer to as the act from this point forward. The act provides for the management of the public finances of the state of Tasmania in an economical, efficient and effective manner, consistent with contemporary accounting standards and financial practices. The act is aimed at ensuring high levels of accountability and transparency for the Tasmanian Government and a contemporary financial governance relationship between Tasmania's parliament, the executive government, and public sector entities. We also note the terms of reference for the inquiry, and I won't read those through.

The office has undertaken a review of the act with particular reference to the inquiry's terms of reference and the scope and role of the Auditor-General, as set out in the Audit Act 2008.

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In our view there is a need for the act to continue and, fundamentally, the act is considered to be robust and fit for purpose. We have identified opportunities for review or potential enhancement of the act, as outlined in our submission. Our submission does not discuss all matters associated with the act but only those that we felt were worthy of consideration.

**CHAIR** - We might work through the bill according to the way you have laid it out in your submission and perhaps ask further questions on each of those suggestions or areas you have highlighted in that, noting that we only got this this morning, so most of us have not had time to really deeply study it, so we might need you to provide a bit of guidance around that.

**Mr WHITEHEAD** - That is perfectly okay. Thank you, Chair, for the opportunity to do that.

What I might do is I might skip over section 2, which is really just a summary of all the points that were raised for consideration to the Chair as possible points for consideration in terms of improving the financial performance and operations of the act.

Section 3 of our submission just provides a bit of background to the Financial Management Act. Again, we probably will not go through this in any detail. It is relatively straightforward. The dot points in that particular section really highlight the significant changes that arose as a consequence of the adoption of this particular act and also the changes that applied from the previous legislation that was in place.

In terms of the long title, we have put a bit of a focus here around ethical considerations within the act. The reason for this is that the long title of the act states that it provides for the management of the public finances of the state in an economical, efficient and effective manner. Interestingly, those three criteria are also what we adopt in the conduct of our performance audits. In fact, they are also referenced within the Audit Act as three of the key criteria that we consider when we are looking at and undertaking performance audits.

Interestingly and in contrast, the Public Governance, Performance and Accountability Act 2013, which is a Commonwealth act, requires accountable authorities of Commonwealth entities to govern their entities in a way that promotes the proper use and management of public resources. The act defines 'proper' in relation to the use and management of public resources as meaning 'efficient, effective, economical and ethical'. I suppose the reason I am drawing this out is that there is a broader context around the way in which Commonwealth entities have to manage their resources, and that also includes that overlay of ethical requirements. That is quite interesting because there have been a number of audits that have been done across Australian jurisdictions. I point out here a number of performance audits, in particular, that have looked at both procurement activities and also grant administration. In a number of the cases, those audits have actually identified that although people are behaving and acting in accordance with legislative requirements, in some cases they might not be behaving necessarily in an ethical manner. So, although sometimes people are complying with the black letter of the law, in terms of the way and the outcomes that have been derived, they might not have necessarily been in accordance with the intent of the law. That is why we have this particular emphasis on ethical considerations.

Interestingly, both the Australian Auditor-General, when they conduct their performance audits now, they include ethical considerations in the subject matter that they are looking at. They make assessments about how the particular entities actually comply with those ethical

considerations as well as the legislative and regulatory considerations when they are actually looking at compliance of entities in performing their particular activities in accordance with those laws and regulations.

Similarly, the Auditor-General of New Zealand has also produced a publication that looks at ethics and integrity across the New Zealand government sector at the same time.

**CHAIR** - Just on that, before you go onto anything else, ethics is sometimes a bit of a difficult to define term because what I see as ethical may be different from what someone else sees as ethical behaviour or decision or spending or whatever. Do you know how it is managed at the Commonwealth and New Zealand parliament levels in terms of actually defining what is an ethical consideration?

**Mr WHITEHEAD** - Yes, there are other regulatory bodies that actually do look at ethical considerations as part of government decision-making. Certainly, ombudsmen, for example, would look at various elements of how administrative decisions are being made by the government. We are aware that there are a number of integrity bodies across other jurisdictions and part of their mandate is to look at how people within the public service are making ethically-based decisions. Interestingly, in terms of how this might be better ingrained into the framework here, there is the opportunity through Treasurer's Instructions and other guidelines that are produced, to also include commentary around ethical considerations, as well as compliance with the legislative or regulatory requirements.

We are not suggesting that it does not exist at the moment, but we are suggesting that there could potentially be an opportunity for some greater focus around ethical considerations.

**CHAIR** - Do you suggest then, Rod, that it should be in the legislation? Treasurer's Instructions sit over here; they don't have any legislative authority; they can be changed at the whim of a treasurer; they could be added to, removed, altered, whatever. The parliament has no oversight at all of the Treasurer's Instructions. Do you think it needs to be named up in the act, in our act, to provide that framework?

**Mr WHITEHEAD** - Well, that is probably why we have highlighted it as part of the long title - noting that the long title of the act talks about the management of public finances in the state of Tasmania in an economical, efficient and effective manner. We are suggesting that, maybe, the inclusion of the word 'ethical' would also enshrine that principle within the legislation.

**CHAIR** - You don't think it needs definition as well, in the bill?

**Mr WHITEHEAD** - It certainly could, potentially, if that was the path that was deemed appropriate. Certainly, there would need to be some consideration as to how you would define 'ethical' within the context of the legislation.

**Mr WILLIE** - Something that has been quite topical in public discussion is spending from the Treasurer's Reserve. That didn't come through parliament, it went straight to the Governor for approval. Including 'ethical' in this statement of intent, would that prevent that from happening in the future?

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**Mr WHITEHEAD** - It would depend on the guidelines that you put around ethical decision-making. I suppose it comes down to the intent of what is deemed to be necessary, and again, it's a matter of interpretation. In the particular case of the Treasurer's Reserve, it is in the Treasurer's opinion as to what purposes the Treasurer's Reserve is used for. So, one, the expenditure has to be unforeseen; and secondly, it has to be necessary for efficient financial administration.

**CHAIR** - But not for ethical administration?

**Mr WHITEHEAD** - No, that is correct; but again, ethical considerations might help people in guiding them, not only in those particular circumstances, but in other particular circumstances - particularly when, following the letter of the law regulation, something might be appropriate under pure compliance, but the question might still be, is it ethical?

**Mr WILLIE** - Would that be a consideration for the Governor, too?

**Mr WHITEHEAD** - I can't speak for the Governor in that particular circumstance, because the act is silent on what the Governor would take into account in making their determination.

**Mr GAFFNEY** - Similar to Ruth when she thought about the ethical part of it, I looked at that too. It is included in the Corporations Act 2001, but I am interested to know why they didn't include it in 2016, because it is a relatively new act and they had the Commonwealth one in 2013. Do you have any idea if there was a debate or a discussion back then about why it was not included?

**Mr WHITEHEAD** - To be honest, I have not looked at the debate to understand whether or not it was considered as part of the bill. It's probably a matter for further research to answer that question.

**Mr GAFFNEY** - Yes, because when you go to what Josh's question was, it then goes on, 'based on values, honesty, integrity, respect, responsibility, trustworthiness'. I am thinking, did OPC ask; how do you measure that, how do you define that?

**CHAIR** - It's more a question for Treasury. The secretary of Treasury was overseeing this change; we will hear from him later.

**Mr WHITEHEAD** - I will now draw your attention to part five of our paper, on page four, that talks about Part 1 of the act, which deals with preliminary matters. Overall, we do not have any concerns with Part 1 of the act. We do note that this particular part of the act does allow the Treasurer, by order, to determine that the act or elements of the act may not apply to an agency or part of an agency; and similarly, orders can be made to include entities, to apply the act to entities not in schedule 1. Section 8 also provides for the Governor to make amendments to schedule 1. Amendments are usually made as a consequence of the machinery-of-government changes from time to time. We have provided within the submission some examples of where the orders have been used in the past and the reasons for those orders, but I do not intend to talk to those in depth.

Section 6 of our submission, which deals with Part 2 of the act, deals with accounts. Again, we do not see any major concerns with this particular part of the act. Part 2 creates the

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Public Account and outlines the financial transactions that must be transacted through the Public Account, and how those transactions are accounted for. Section 17 deals with the creation of special specific purpose accounts and section 18 deals with agency trust accounts.

With regards to the specific purpose accounts and trust accounts established under sections 17 and 18, we do not have any concerns with the provisions of the act. However, outside the agency there is limited information publicly provided on the purpose of the accounts and what other conditions are applicable to those accounts to determine if the funds in those accounts are only used for the purposes of that account. General information available is restricted to the title of the specific purpose account or the trust account name. That is usually referenced in the Treasurer's Annual Financial Report and in the accounts of the Public Account within the Treasurer's Annual Financial Report.

**CHAIR** - To clarify that, it is unclear to you whether the money in the specific purpose account within an agency is actually used for that specific purpose?

**Mr WHITEHEAD** - Not so much unclear to us but unclear to the broader public because that information is not publicly reported. What we are suggesting is there may be an opportunity for enhanced reporting around what the purpose of the specific purpose accounts are for and what makes up the balances of the specific purpose accounts and also the trust accounts.

**CHAIR** - You audit those accounts?

**Mr WHITEHEAD** - Correct.

**CHAIR** - So you know what comes in and goes out and for what purpose?

**Mr WHITEHEAD** - Yes.

**CHAIR** - So you would flag if it was a concern that they were not being used?

**Mr WHITEHEAD** - We would potentially flag that but we are talking about what information is in the public domain around the use of those accounts.

**CHAIR** - Yes, I absolutely understand.

**Mr WHITEHEAD** - I should mention too, Chair, from time to time we do get referrals from members of the public to my office that often ask questions about the balances held within specific purpose accounts. Quite often they make assumptions about what the purposes of those funds are for and then draw conclusions from that. In most cases those conclusions are unfounded because, again, there is not sufficient information in the public domain to make those assumptions. Again, I think it is an example of where members of the public may potentially benefit from having further information disclosed about what is in those accounts and the purpose of those accounts.

**CHAIR** - In terms of disclosing the money that is in that account and for what purpose it has been used, should that be reported in the agency's annual report, or how do you think that should be made more visible?

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**Mr WHITEHEAD** - It could either be in the agency's annual report or the specific account balances that are actually disclosed in the Treasurer's Annual Financial Report as part of one of the statements accompanying the Public Account.

**CHAIR** - I have last year's here. Doesn't that only just tell you what is in it, as opposed to what it is being used for?

**Mr WHITEHEAD** - Correct. What we are suggesting is that there might be an opportunity within that Treasurer's Annual Financial Report for the balance of what is in the account to be explained and also the purpose for which it is going to be used.

**CHAIR** - You think in the Treasurer's Annual Financial Report, the Treasurer?

**Mr WHITEHEAD** - That is one area where it can be disclosed. The other alternative is in the agency's financial statements themselves.

**CHAIR** - In their annual reports?

**Mr WHITEHEAD** - Correct.

**Mr WILLIE** - And the reason it has been retained?

**Mr WHITEHEAD** - Correct, the reason it is being retained. Yes.

**CHAIR** - This necessarily also refers to the funds that agencies can keep and roll over in their, that would be the operating accounts, wouldn't it?

**Mr WHITEHEAD** - Correct.

**CHAIR** - Do you prefer to comment later on about that?

**Mr WHITEHEAD** - Yes, we do.

**CHAIR** - All right. I will wait until then. Thank you.

**Mr WHITEHEAD** - I will come now to part 7 of our submission, which deals with Part 3 of the act, which deals with funds management. This particular part deals with the funds management of the Public Account. The general mechanisms for funds management in respect of each financial year are robust and have appropriate approval processes in place, with sufficient flexibility for agencies to independently manage their financial obligations and their services and activities. Part 3 does deal with a various number of sections. Section 21 deals with the Treasurer's Reserve, section 23 deals with rollovers of unexpended balances and appropriations, and section 25 deals with authorities for expenditure, we have not covered all the sections in this particular part. Some of them are relatively straightforward, for example transfers, but these are the ones that we felt more relevant to comment upon.

In respect of the Treasurer's Reserve, we have replicated section 21 of the act in terms of the power of the Treasurer in any financial year to issue and apply from the public account for expenditure, the need for which could not, in the opinion of the Treasurer, reasonably have been foreseen and which is necessary for efficient financial administration. We note that there

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are two elements to that: one is the amount that is contingently appropriated by the appropriation act for the relevant financial year; and the second element is the receipts additional to the total estimated receipts specified in a statement accompanying an appropriation act that are generated within that financial year, the amount of those additional receipts, less the amount of any Commonwealth moneys received by the state.

There is an overarching cap on the amount of the Treasurer's Reserve, so the Treasurer's Reserve, in total, cannot exceed 2.5 per cent of the total appropriation in the appropriation act for that particular financial year.

We are aware that there have been two recent parliamentary inquiries that have looked into the use of the Treasurer's Reserve. We have made reference to those within our submission but we do not go back to try to reinterpret what is in those reports and also within the transcript of evidence that is available in respect of the inquiry into the Tasmanian Government's use of provisions of the Financial Management Act. to fund election commitments in 2021. However, we do note that in both instances the Parliamentary Standing Committee of Public Accounts did inquire into how the Treasurer had determined whether the use of the Treasurer's Reserve was necessary for efficient financial administration.

**CHAIR** - Maybe this is a comment you do not wish to make, maybe more a policy thing for government in many respects. We have talked about this in the Public Accounts Committee, about how an election commitment is a commitment; one should not assume it to be a guarantee because it relies on the party being elected, and one would assume that is part of them deciding to proceed with those expenditures. So, the argument that it could be unforeseen, because you don't know whether you are going to win the election or not - arguable as a definition for 'unforeseen'. But if you put that into that filter that says 'in the Treasurer's opinion, it is unforeseen', perhaps if you overlay the ethical question over the top of that, do you think that the reasonable person in the street would think that was what the Treasurer's Reserve was for?

Is this for things that come up that are really unforeseen like a natural disaster or another pandemic, whatever - something that happens that is not actually related to the government or the opposition at the time, whichever, making a determination about what they would do if they were able to?

**Mr WHITEHEAD** - It is interesting because it comes down to what the definition of 'unforeseen' actually means. One could take the view that 'unforeseen' would mean expenditure that was not foreseen at the time that the appropriation act received assent. It may be that at that particular point in time, election commitments were made at a subsequent date and it may be that some of those election commitments were not foreseen at the time the appropriation act was passed.

I think the second leg of that is around the necessity for efficient financial administration. Again, in the absence of any specific guidelines around what that means, it could be quite open to interpretation as to what is necessary to achieve efficient financial administration.

Expediently approving funds for distribution through the Treasurer's Reserve, in the eyes of some, might be seen to be efficient financial administration so as to circumvent other approval mechanisms for that particular expenditure. Again, that might be an interpretation where a strict legal interpretation of the legislative requirement could be met.

It comes down to whether or not that was the intent of the legislation for those types of expenditures. I don't have a particular view around that. It is probably one of those areas where there is judgment that can be used by the Treasurer in making that determination.

**CHAIR** - Recently we had a supplementary appropriation bill that dealt with a lot of unexpected expenditure related to COVID-19. In the last two budgets we have approved an appropriation of an additional \$150 million into the Treasurer's Reserve in addition to the \$20 million that is generally appropriated to it. The debate around that time and the comment from the Government was that the \$150 million extra payment or appropriation to the Treasurer's Reserve was for unanticipated COVID-19 expenditure. The supplementary appropriation dealt with a lot of COVID-19 related expenditure in health and other areas, which notionally was what this additional money in the Treasurer's Reserve was for. That expenditure met the criteria of being unexpected at the time of the setting of the Budget. There wasn't an appropriation already approved in the Treasurer's Reserve. We did ask this during the debate and the Government basically said, we have more coming so we will have to use the Treasurer's. Do you have a view about that - whether you should expend that appropriation first and then come back to the parliament with a supplementary appropriation, in terms of openness and transparency?

**Mr WHITEHEAD** - Yes. It is probably difficult for me to have a particular view about that, Chair. I note from the transcript of evidence given by the Treasurer about the use of the Treasurer's Reserve to fund the election commitments that there were particular dates that were used and the timeliness of when the expenditure was going to be made, prior to the end of the financial year, was used as part of the justification as to why it was necessary for them to use the Treasurer's Reserve for that particular purpose. My answer to your question would, to some extent, depend on the timing of when the supplementary appropriations would need to be passed by the parliament - whether they should go down that route, as opposed to using the Treasurer's Reserve.

**CHAIR** - The fact is that decisions like that, that the parliament is retrospectively approving because it is the Treasurer's opinion that you use the Treasurer's Reserve to draw down that appropriation to fund an election commitment, in those cases that you referred to, there is no scrutiny until afterwards. Whereas, if you brought in a supplementary appropriation bill, there would be scrutiny. It is unlikely to be rejected, because the Government have won the election and they have made those commitments. However, it is a bit more open and transparent.

**Mr WHITEHEAD** - I certainly concur with you on that particular point. Yes.

**Mr WILLIE** - Do you have advice to the committee at all, in terms of any changes here? It would not be a practice that probably should continue into the future, where the Treasury is funding election commitments out of the Treasurer's Reserve without the approval of parliament?

**Mr WHITEHEAD** - We have not made any specific recommendations on that particular point. It is probably more a matter for the committee and for the parliament, particularly around the wording that is used within the act about the use of the Treasurer's Reserve. One of the things that we have recommended, though, is that there could be great transparency about what is within the Treasurer's Reserve. In other words, what is the total capacity of the Treasurer's



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Reserve? That would include both the appropriated amount that is within the appropriation act but also the additional receipts that help make up -

**CHAIR** - We never see those.

**Mr WHITEHEAD** - That is correct - that make up the total of the Reserve that would be available in any particular year. And also the provision of additional information about what that Reserve has been used for. That could be broken down from department to department, but also outlining the particular purpose for the use of that. At the moment, within the supplemental elements, it really only discloses the agency name. It does not specific what the purpose is for the expenditure out of the Treasurer's Reserve or the appropriation out of the Treasurer's Reserve. In our submission, we have provided a pro-forma reconciliation that could be considered, to bring greater transparency about what the Treasurer's Reserve has been used for.

**CHAIR** - How often should that occur? This is on page 7 of your submission.

**Mr WHITEHEAD** - Yes. That is correct. This could form part of the supplemental estimates, it could be attached to a statement to the Public Account, to provide greater clarity about how the Treasurer's Reserve is being used.

**CHAIR** - This is when they tabled the section 21 report?

**Mr WHITEHEAD** - It could be at the time when they prepare the Preliminary Outcomes Report. It could prepared at that particular point of time. Alternatively, it could be prepared when the Public Account statements are finalised in the Treasurer's Annual Financial Report.

**CHAIR** - You also made the comment, Rod, that there is no real vision or public awareness of the balance of the Treasurer's Reserve in terms of additional monies it has been receiving - predominately from the Commonwealth, as I understand it - the additional money that comes in during the year?

**CHAIR** - It is from the Commonwealth, but it is also other amounts that are generated within that financial year. The amount of those additional receipts, less any amount of the Commonwealth money provided, received by the state.

**CHAIR** - Do you have any vision of when the comings and goings of this Treasurer's Reserve occur? It could be anytime during the year?

**Mr WHITEHEAD** - That is correct. The total amount within the Treasurer's Reserve will not be determined until closer to the end of the financial year because they could potentially receive amounts that could be incorporated within the Treasurer's Reserve. That is why we are suggesting that a reconciliation be performed, for greater transparency and accountability, about what the total amount in the Treasurer's Reserve was and what the purposes for which appropriations were made out of that Treasurer's Reserve.

**CHAIR** - Assuming that it is not all spent, or not all drawn down, then it becomes zero again?

**Mr WHITEHEAD** - It would lapse. Any unexpended amounts or any unappropriated amounts from the Treasurer's Reserve should lapse at the end of each financial year.

**CHAIR** - Including any federal government funding, or does that not form that part of the figure?

**Mr WHITEHEAD** - No, I don't think it does, because it is receipts less the amount of any Commonwealth money received by the state.

**Mr GAFFNEY** - I am interested to know, Rod, when you are going through the Treasurer's Reserve and how it operates and perhaps looking at fine-tuning it or some suggestions, do you also look at how that operates in other states? Do you do any comparison when you talk to your colleagues throughout the other states about if it is done differently, or is there a better way for this to occur, or is there some legislation we can look at that might approach this a little differently?

**Mr WHITEHEAD** - In answering your question, I haven't specifically asked the question of other Auditors-General in other jurisdictions about how the Treasurer's Reserve is used within their particular jurisdictions. In preparing our paper, we did a bit of a scan across other jurisdictions about what other inquiries have been held into similar acts like the Financial Management Act that Tasmania has. There was nothing specific that came out about the Treasurer's Reserve as part of those particular scans that we did across those other inquiries. Essentially, I don't have the information to be able to answer that question.

**Mr GAFFNEY** - Thank you.

**Mr WHITEHEAD** - I will move on, Chair. In terms of the rollover of unexpended balances of appropriation, section 23 of the act authorises the Treasurer to rollover an amount of unexpended appropriation for an agency not exceeding 5 per cent of the agency appropriation, to be issued and applied from the public account in the following financial year.

I did note that, from one of the earlier inquiries, there was some discussion - in fact, I think it may have been from the Tasmanian Government spending unallocated COVID-19 funding - where the secretary of the Department of Treasury and Finance provided an explanation as to how the rollover of unexpended balances of appropriation work. I have provided a similar, very short example within our submission. The point to make is that, notwithstanding the automatic appropriation the following year, rollovers usually reflect the commitment or requirement that moves from one financial year to the next financial year, so usually there is a justification as to why that rollover amount is needed to be rolled to the following financial year.

**CHAIR** - In respect to Health, as you have outlined here in your submission, that is a lot of money, \$2 billion, to be sitting there. I know they have a big budget, but it seems to be happening a lot that, if it was predominantly related to timing or timing issues, I think 'well, why is that'? Do you think it's reasonable for that amount of money to be sitting in an account waiting to be rolled forward?

**Mr WHITEHEAD** - The only way I can answer that, Chair, is that when we audit the supplemental Estimates, we do go through the documentation that supports the rollovers and we note that within each of the approvals provided, there is an explanation as to why the

rollover is required. Therefore, the only comment I can provide is that there is usually a justification and an explanation for why the rollover is necessary. It's probably interesting to note that, both in the case of rollovers and also in the case of the use of Treasurer's Reserve, or request for additional funds, not all of those requests are always approved - there are some that do fail to get approval. That is, again, evidence where there is judgment used in the decision-making to say that not everything that gets put up for approval is automatically approved.

**CHAIR** - In that assessment, is the reason for the rejection of the RAF made clear to you?

**Mr WHITEHEAD** - I would have to take that on notice because I am not sure whether the documentation that we examine includes the rationale for why it hasn't been approved. I would need to take that one on notice.

**CHAIR** - The reason I ask, and maybe you could have a check for us, is if an RAF was rejected, say, from Health - because they have \$2 billion sitting in their account and notionally, while most of that is earmarked for something, the Treasurer obviously, in their wisdom, would see that there was enough capacity there for you to do that - you don't need extra money. Is that part of the consideration, do you know?

**Mr WHITEHEAD** - I understand the way the question is framed in saying that if the agency had particular savings in another area that they could use to cover that request for additional expenditure, would they utilise those savings in that other area? Broadly, I understand that that is considered as part of the approval process. Similarly, where someone might be applying for a rollover of expenditure, but also apply for a request of additional funds at the same time, someone might argue, well, why don't you use the funds from that rollover instead of the request for additional funds? The reason that there may be both is because they may be used for different purposes. It may be that there may not be additional funds left over to the amount for which an RAF is requested. In other words, there cannot be a rollover in respect to an amount where a request for additional funds may be required because they have actually spent or used up all the existing appropriation for that particular purpose.

**CHAIR** - Where there are inter-agency transfers, are you aware of whether the Treasurer looks to those? Is there capacity, say - we will stick with Health because it is the one we are looking at here. It is a big department and there are many aspects prior to approval of an RAF or an approval to roll over up to 5 per cent of their appropriation. Do they also look within the agency where there may be unspent funds that won't be spent?

**Mr WHITEHEAD** - I probably could not answer that particular question because I'm not involved in that decision-making around how Treasury might look across other agencies to determine where saving could be used from one agency to help fund an appropriation in another agency. However, I do note that section 20, and, again, it is in the supplemental estimates, does give some indication as to the amount of the transfers between agencies, probably noting that, in comparison to requests for additional funds and also transfers under section 22, the amount is not as significant. I believe the secretary of Treasury may have made this point, that section 20 transfers between agencies are not that common.

**CHAIR** - No, but it used to be, from my memory. We used to see it quite a bit but not so much. Maybe that is better budgeting. However, within agencies, you would expect the agency to do that before they went to the Treasurer for additional funds, would you?

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**Mr WHITEHEAD** - It depends. I would imagine some agencies would not have any visibility over whether other agencies have savings -

**CHAIR** - No. Within their own agencies.

**Mr WHITEHEAD** - Certainly within their own agencies they would possibly look for areas where there might be savings from which they could transfer funds from other programs or activities.

**CHAIR** - Is that reported in any way? Like, say, with Health, say Ambulance Tasmania needs additional funds to pay a pay rise for their paramedics or to buy new vehicles because several became redundant, or whatever. In another area, let's say mental health, that they haven't expended all the money that was allocated there for whatever reason, would that be something that would happen internally without any visibility?

**Mr WHITEHEAD** - I cannot answer that question, Chair. That is probably more a question for Treasury to answer.

**CHAIR** - Or Health maybe.

**Mr WHITEHEAD** - Or Health itself, correct.

**CHAIR** - Any questions on this area? No?

**Mr WHITEHEAD** - Moving along, on page 8 we talk about authorities for expenditure and note that under section 25 of the act, an accountable authority of an agency can only draw money from the Public Account in accordance with the Treasurer's expenditure control authority, or the estimated expenditure approved by the Treasurer pursuant to sections 17(10) and (11) of the act, or under any other written law. Interestingly, the amount of estimated expenditure approved by the Treasurer under sections 17(10) and (11) of the act represents the estimated expenditure from specific purpose accounts approved by the Treasurer as part of the development of the annual appropriation act, as subsequently approved by the Treasurer as a variation of expenditure in relation to the specific purpose account.

When we have looked at that, we do not examine that as part of our audit process. It may be a question for Treasury as to whether or not they monitor the compliance with that particular aspect under 17(10) and 17(11) of the act.

A final note around this part of the act is that the Governor does have authority for emergency expenditure. We advise that the Governor's approval under section 30 for emergency expenditure required but not approved by the parliament has not been used to date because, under that particular act, there is a requirement to advise me where that is needed.

**CHAIR** - Since it has never been used in more recent times - I do not know that it has been used. A similar power exists under the Public Account Act. Does it need to stay there or are there enough other mechanisms to ensure that funding can be made available?

**Mr WHITEHEAD** - I think it is always useful to have that as a fallback provision. But when, at the beginning of the COVID-19 pandemic, I contacted the secretary of Treasury and

asked the question whether or not this particular section of the act was likely to be used for the purpose of providing emergency expenditure to agencies to respond to the pandemic, I think the response from the secretary at that point in time was that they were using the supplemental appropriations to cover that emergency expenditure that was required to respond to the pandemic.

**CHAIR** - Yes, it was basically unallocated funding. Same as the \$150 million into the Treasurer's Reserve in two years. It does beg the question, though, because there is absolutely zero oversight of any governors, with all due respect to the Governor, that decision, that power when you already have the Treasurer's Reserve, you have supplementary appropriation bills that can be dealt with. This is where it really was tested: when we weren't sitting because of the pandemic; it was not deemed safe to congregate. But, still, we had an emergency sitting, passed COVID-related legislation and supply bills, and supplementary appropriation bills. Unless, perhaps, the parliament burnt down?

**Mr WHITEHEAD** - I imagine the situation might be where parliament is prorogued for an election and then the pandemic or something hits while parliament is prorogued and then there would be no potential mechanism to recall parliament to pass through a supplemental appropriation. So, that could be a situation where that particular mechanism in the act might be warranted or would be warranted.

**CHAIR** - Shouldn't prorogue parliament quite so often.

**Mr WILLIE** - Do other financial management acts across the country have a similar provision?

**Mr WHITEHEAD** - I have not looked for that in other acts in other jurisdictions. Part 8 of our submission that deals with part 4 of the act deals with accountable authorities. Interestingly, the same terminology for accountable authorities is the same that applies in the Audit Act 2008, so there is consistency across the acts. We don't have any major concerns with this part.

I suppose one point that we have made - and I probably should disclose a vested interest in this particular statement - is questioning whether the Tasmanian Audit Office should be included within part 1 of schedule 1 of the act. We are suggesting that it may be more appropriate to put us in part 2 of the act. The reason for that is that because we are in part 1 of schedule 1 of the act, that makes us subject to ministerial direction for the financial management of the Tasmanian Audit Office.

I note that in some of the other jurisdictions they are starting to take steps to better preserve the independence of the Auditor-General and their respective audit officers. For example, in Queensland recently they made the Auditor-General an officer of the parliament. There were also amendments made to the act to provide the Auditor-General with more independence and greater separation from the executive government.

**CHAIR** - Rod, would that require an amendment to the Audit Act., as well as this act, potentially, for that to occur?

**Mr WHITEHEAD** - I am not sure that an amendment would be required to the Audit Act. This would basically just remove us from being subject to ministerial direction for the

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financial management of the office. But there may be other consequential amendments under some of the other acts, for example, the State Service Act, a question whether there might be a consequential amendment required for that, if that particular change was effected.

**CHAIR** - Were you the Auditor-General when this bill came through?

**Mr WHITEHEAD** - For the Financial Management Act?

**CHAIR** - Yes.

**Mr WHITEHEAD** - I wasn't when the bill was tabled. I can't recall the exact date that it received Royal Assent.

**CHAIR** - What year did you start?

**Mr WHITEHEAD** - March 2016.

**CHAIR** - You were in the middle of it. Yes, you came in when it was partway through the process.

**Mr WHITEHEAD** - I think it was September 2016. I stand to be corrected on that particular date.

**CHAIR** - Yes, it did not take effect until 2018.

**Mr WHITEHEAD** - In fact, I might have it here as to which date it received royal assent.

**CHAIR** - I am pretty sure we debated it in 2016.

**Mr WHITEHEAD** - October 2016. It would possibly have been some time after that.

**CHAIR** - Are you aware whether the former Auditor-General made submissions along that line?

**Mr WHITEHEAD** - Correct. I am aware of activities of the previous Auditor-General along these lines.

**CHAIR** - Do you understand the arguments as to why it was rejected?

**Mr WHITEHEAD** - I have had similar discussions with various people within Government. The question which often comes up is that we are seen as being a government department and, therefore, all the rules that apply to other government departments should also apply to us. That is a construct of the way that the office is currently constituted. Again, it comes down to the view of how the office should be constituted and what level of independence you want the Auditor-General and the Tasmanian Audit Office to have.

**CHAIR** - As I understand it - and I am happy for anyone to correct me if I am wrong on this - when legislative agencies in part 2 of the second schedule are not subject to Treasurer's Instructions. Would that be an issue for the Audit Office, to not be subject to Treasurer's Instructions?

**Mr WHITEHEAD** - Notwithstanding the fact that we may not be subject to Treasurer's Instructions, we would probably follow them as a matter of course if they represent good governance and also good accountability and transparency. I do not think that is the particular issue here. The issue is more about the fact that we are subject to ministerial direction in respect to the financial management of the office. Some could construe that as being a means to influence the way in which the office undertakes its work. I should point out that has never occurred during my time as Auditor-General, but some might see that as an impediment to the independence of the Auditor-General.

**CHAIR** - Are there questions on that from anyone?

**Mr WHITEHEAD** - If I move on to Part 5 of the act, which is section nine of our submission. This deals with reports. Division 1 of Part 5 deals with the Treasurer's reports and the act does list a range of different reports that the Treasurer is required to prepare. Interestingly, the only one that has any level of assurance - that is, an audit or review that is undertaken by my office - is the Treasurer's Annual Financial Report. We have highlighted that in some other jurisdictions, in some instances, some offices do work in respect of the budget and, in some other cases, some of the other offices do work in respect of other budget Estimates and forecasts. We are starting to see some of the other jurisdictions do work on more than just the Annual Financial Report of the Treasurer at the end of the financial year. We have raised that for consideration for the committee, in terms of their consideration of the act.

**CHAIR** - These quarterly reports are published on a website and then they are available for the public as well as for the parliament, of course. What benefit do you see there would be in the Audit Office having a greater role in assessing the measures, and the level of detail in those, and whether or not you would confirm their predictions or not? How do you think that would improve public accountability and transparency?

**Mr WHITEHEAD** - It probably comes down to the appetite of the parliament, in regard to the information that they are receiving. If there were ever any concerns around the accuracy in the information within any of those reports, if the parliament wanted to get another level of assurance around the accuracy or the appropriateness of the information in those reports, then we could be an opportunity to provide the parliament with that extra level of assurance.

**CHAIR** - You could do that without having to legislate it?

**Mr WHITEHEAD** - At the moment, we do not have a mandate to do that. The question would be, it may need to be mandated if that is the level of assurance the parliament wanted on those particular reports.

**CHAIR** - . If you received a request from a member of parliament to undertake a deeper financial analysis of, say, the preliminary outcomes report, that is one of your discretionary things, I imagine - that you could say yes or no to.

**Mr WHITEHEAD** - I need to have a quick look at section 23 of the Audit Act, because section 23 does cover items that we can look at. For example, the Estimates might not be specifically mentioned or referenced in that. However, it does talk about investigating any matter relating to the accounts of the Treasurer, a state entity or a subsidiary.

I am not sure whether or not the definition of the accounts of the Treasurer would necessarily include all the reports that are listed within division one of this particular part of the Financial Management Act. The 'accounts of the Treasurer' might be a reference to the Treasurer's Annual Financial Report, being the General Government sector, financial statements, the Public Accounts statement and also the supplemental Estimates. I believe they are the ones that constitute the accounts of the Treasurer.

**Mr WILLIE** - On that, in practical terms, if we look at, say, a wages policy that was in the underlining assumptions of our last budget, I think it was 2.5 per cent. Would that be something that you could look at - the assumptions built into that? Because then they came to parliament for a supplementary appropriation, and a fair portion of that was for wages.

**Mr WHITEHEAD** - The comment I make in regard to auditing Estimates is that's a particularly tricky area because there are a lot of assumptions involved. In some cases, it is very difficult to say that one assumption is right and one is wrong.

In those cases, usually the work is not so much on the number but the process that the entity's gone through to make sure that they've landed on the right assumption, rather than auditing the assumption itself. It can, potentially, be more of a control-based audit to say have appropriate processes and due diligence been undertaken by the agency to determine the right assumptions, as opposed to trying to say whether assumptions are correct or incorrect.

**Mr WILLIE** - Or realistic or not realistic.

**Mr WHITEHEAD** - Correct, yes. I'll leave that for the committee's consideration; but we've highlighted the fact that we don't do any other sort of assurance work on any of those other Treasurer's reports.

**CHAIR** - To your knowledge, there's nothing that prevents you from doing it?

**Mr WHITEHEAD** - I'm not sure whether section 23 would give us the opportunity to do that. I would probably need to get advice on that whether that would cover that.

**CHAIR** - Would you be happy to do that?

**Mr WHITEHEAD** - We could certainly ask the question about that.

If I move on, in respect to division two which is annual reports by agencies, section 42 of the act requires an accountable authority of an agency to prepare annual financial statements of the agency - sorry, I did note that there's a typographical in there. It says, 'reprepare', it should 'prepare'. Section 17.1 of the Audit Act also requires an accountable authority of an agency, other than the Auditor-General - in other words, other than me - as soon as possible and within 45 days at the end of each financial year to prepare and forward to the Auditor-General a copy of the financial statements for that financial year which are complete in material respects.

We also note that agencies are required to prepare and submit to their minister for tabling in parliament an annual financial report, or annual report, which includes the audited financial statements in the auditor's report thereon.



Currently, the budget framework provides for the state's output-based budgeting and financial reporting framework, which forms part of the annual reporting requirements.

We've also identified on page 10 of our submission other things for the committee's consideration. One is about reporting of service performance, because within the annual reports are a lot of state entities and they do include key performance measures. In some of those cases, the performance measures are insightful; in other cases they're more reporting of activity measures.

We have previously reported on this, in our Report of the Auditor-General number 12 in 2016-17, Volume 4, State Entities, 30 June and 31 December 2016. In this particular volume, we did a scan across the other jurisdictions to understand what level of service performance reporting was being undertaken in other jurisdictions and also the extent to which there was audit activity undertaken on those performance measures.

If I use an example, the Commonwealth has a well-developed performance and reporting and assurance process established under the PGPA Act - the Public Governance Performance and Accountability Act 2013 - which includes the audit of annual performance statements of Australian government entities.

We're also aware that in other jurisdictions, they're now starting to introduce this as well. For example, in Western Australia, section 15 of the Auditor-General's Act requires the Auditor-General to prepare and sign an opinion on an audit carried out on an agency's key performance indicators stating whether, in the Auditor-General's opinion, the key performance indicators are relevant and appropriate to assist users to assess the agency's performance and fairly represent the indicated performance for that period under review.

We are aware that in other jurisdictions there is quite a bit of activity that has been happening around these performance measures and performance reporting. Also, in the case of Victoria, on the Victorian Auditor-General's website there is actually a database available that has a whole list of different performance measures that can be applied for different types of agencies.

**CHAIR** - So, a standardised list of performance measures?

**Mr WHITEHEAD** - Sort of a standardised list but I think that list has actually been gathered from all the performance reporting that occurs across the Victorian public sector agencies. It is quite a comprehensive database and I can provide a link to that database to the committee, if you would like.

**CHAIR** - That would be helpful. This is one of the things that we often comment on in budget Estimates, where the performance information throughout so many departments is just output data, not outcome data, and thus is going to be meaningless. So, I am interested in whether you think there is some way that this should be included in the Financial Management Act, even though it is performance measures, as opposed to necessarily financial performance.

**Mr WHITEHEAD** - We believe that there is a Treasurer's instruction that deals with the information that goes into annual reports. I am not sure if I referenced the particular Treasurer's instruction here. However, through that Treasurer's instruction could be the opportunity where it might clarify what the expectations are in respect to performance measures. At the moment,

I think it makes a statement along the lines - I might see if I can drag up that Treasurer's instruction for you.

**CHAIR** - I don't know how many years I have sat across the table from the Coordinator-General's Office and asked, 'what do these performance measures actually measure?', and still come away none the wiser. There are others, not just that one, and they commit to looking at it and providing more outcomes-focused measures every year and still they are the same. It is not working, the influence of my badgering.

**Mr WHITEHEAD** - In that particular case, if nothing is changing, you would say that nothing is working.

**Mr WILLIE** - Like some cases, they just change the measurement. In education, for example, the Kinder development check, there were declines over a number of years so, instead of trying to address that, they changed the way that the Kinder development check is measured.

**Mr WHITEHEAD** - Having just come back from a recent conference where other Auditors-General were in attendance, there was a statement made around performance reporting that, in some cases, where an agency fails to meet the performance indicator, sometimes it drops off their reporting. So if you are going to have performance reporting, you might need a mechanism to make sure that there is an approval process why they might have particular changes to certain performance measures.

**CHAIR** - It brings us back to the question, should that be legislated in some way, even though we are talking about performance in a non-financial sense? There are, obviously, financial performance measures as well but, as a service deliverer, which is what the state government is, most of the performance measures that are meaningful are outcomes-focused, outcomes for people, whether they are students in school, patients in a hospital or people engaged with the justice system.

**Mr WHITEHEAD** - To answer your question, it could be incorporated into the Financial Management Act. I believe the State Service Act also has a requirement for agencies to produce annual reports. Alternatively, it could be through Treasurer's Instructions. It is actually Treasurer's instruction FR 4 that deals with annual reports and that particular Treasurer's instruction has instructions about the information that agencies have to include within that financial report. Although it is quite an extensive list, it does include a fairly broad statement about information on the performance of the agency in its achievement of agency objectives and meeting of agency responsibilities. So it is a fairly broad statement about how it reports on its performance and probably does not provide a lot of clarity or guidance.

**CHAIR** - Let's go back to Health and say, well, we have increased by 200 per cent the number of hip replacements we have done but, sadly, 50 per cent of those died as a result of complications of their hip replacement. That is not really good performance, is it? So, you have to measure outcomes to get the full picture. You just increase your activity but it's not done well.

**Mr WHITEHEAD** - No, that is correct. I suppose the question is, how do they assess the impact of their activities, or the outcomes?

**CHAIR** - The outcome for the people.

**Mr WHITEHEAD** - Correct.

**CHAIR** - That is pretty wishy-washy, the one of the Treasurer's Instructions there, in terms of giving clear guidance about what we are supposed to be measuring.

**Mr WHITEHEAD** - The final comment in this particular section is that we want to highlight that the Australian Accounting Standards Board, in alignment with international developments, currently has a project underway on reporting service performance information by not-for-profit entities. So, it may be that this might - through the adoption of the standard by the Australian Accounting Standards Board - become mandatory at some future point of time.

**CHAIR** - Performance reporting?

**Mr WHITEHEAD** - Correct. However, we just highlight that some of the other jurisdictions have voluntarily gone down that path much earlier.

One of the other areas that we wanted to highlight is about the reporting of the accuracy of internal controls. For example, some jurisdictions - Western Australia is one that comes to mind - there is a requirement for the Auditor-General to also express an opinion on whether the controls exercised by the agencies are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of money, the acquisition and disposal of property and incurring of liabilities have been in accordance with legislative provisions. That is an additional requirement over and above existing requirements that we have here in Tasmania in terms of my reporting obligations on the financial statement audits of entities.

The final point we wanted to make is about the tracking of progress and the implementation of Auditor-General recommendations. We have highlighted here what happens in the Australian Capital Territory, where directorates - which are the equivalent of agencies - are required to provide details in their annual reports on the progress made against commitments made in response to the recommendations made by the Auditor-General during a particular year. I should highlight it is not just the Auditor-General; it applies to other recommendations - for example, from the Ombudsman or from a Legislative Assembly committee. They have to keep track of the status and the implementation of recommendations coming out of particular bodies. It is a good way of holding them to account and reporting on what they are doing in respect of those recommendations.

**CHAIR** - Do they have time frames around that, for them to respond?

**Mr WHITEHEAD** - There is quite a bit of information on that. The best thing I could do is refer you to the footnote at the bottom of page 11 of our submission, which deals with the directive that is issued by the Australian Capital Territory Government. It deals with annual report requirements - part B: organisational overview and performance - and there is a section there on scrutiny. It has quite a lot of information about what the agencies have to report in complying with that particular directive.

**CHAIR** - Do you know if the Auditor-General's office in the ACT do follow-up reviews, or is it unnecessary because of this?

**Mr WHITEHEAD** - I have to take that on notice; to be honest, I have not looked whether they do specific follow-up reviews.

**CHAIR** - It might make it a bit less onerous.

**Mr WHITEHEAD** - It may do; but we find it is always beneficial to understand whether agencies are keeping track of your recommendations or not. Having some mechanism for agencies to keep track of the achievement or the implementation of those recommendations is appropriate.

The final thing we want to report on is on page 11 of our submission - division 3, which is on the reporting on the abolition of agencies. This was a new provision that was incorporated within the act; it didn't exist in the previous act. Interestingly, we have had to complete the audit of the Department of Communities Tasmania under this particular section of the act. I consider that is beneficial, because it provides greater transparency and accountability about agencies that cease to exist partway through a financial year. There is a mechanism now for them to prepare a final set of financial statements and have those financial statements audited.

Part 6 of the act, which deals with miscellaneous provisions - we are only probably reporting here by exception. We did note that the Treasurer's Instructions issued under section 51 have the force of law. They are principles based, because prior to the existing act, the Treasurer's Instructions were essentially rewritten on implementation of the Financial Management Act and as part of that particular process they became more principles based and less prescriptive. Treasurer's Instructions only apply to the General Government sector entities in schedule 1 Part 1, and do not apply to entities in schedule 2 Part 2. Section 6 would enable those instructions to be applied to other entities. However, there is no mechanism to apply those to government business enterprises and state-owned companies because there are separate Treasurer's Instructions that apply to those particular categories of entities.

In reflecting on some of the Treasurer's Instructions, there are some that we are aware of that agencies probably struggle to follow or comply with. One is FC3, which deals with finance manuals. Quite often, when we commence an audit, we will ask the question about whether they have updated their finance manual recently. Most agencies have been a little bit resource constrained and have volunteered that they have not been able to undertake their reviews every two years, as required under the Treasurer's Instructions. Probably another area that has come to our attention, which is covered by section 55 of the act and also Treasurer's Instruction FC13, which deals with ex gratia payments. We have had some feedback from various people within agencies that may suggest that sometimes payments might be being made when there is no contractual obligation to make those payments, in which case they might be construed to be ex gratia payments. In some cases, those ex gratia payments are not getting the necessary approvals for them to be made.

**CHAIR** - As per the Treasurer's Instructions?

**Mr WHITEHEAD** - As per the Treasurer's Instructions. Yes. We believe it might be because people might not necessarily be clear on what constitutes an ex gratia payment. It may warrant consideration as to whether there needs to be some further guidance on what might constitute an ex gratia payment, for which approval is required.

**CHAIR** - Would that be in the interpretations section of the act, do you think?

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**Mr WHITEHEAD** - I am not sure whether they are in the interpretations section of the act.

**CHAIR** - It is not in that section of the act; but if it appears unclear as to what an ex gratia payment may be, and where it is appropriate.

**Mr WHITEHEAD** - That is right. Even in FC13, it does not provide a definition of what an ex gratia payment is there either.

**Mr WILLIE** - Section 55 of the act goes through how it happens.

**CHAIR** - It does not say what it is, though. There is a presumption, then, that we know what we are talking about here?

**Mr WHITEHEAD** - Quite. I do not know whether in the interpretations section of the act, if it might include an interpretation in there. I am just having a quick look. No, I cannot see it in the definitions section either.

**CHAIR** - Is there anywhere else we might find it?

**Mr WHITEHEAD** - It could be in the Acts Interpretation Act. I do not know whether there might be a definition within that particular act. Notwithstanding, there might be a definition, I suppose, in some cases as examples of how that might be applied in practice. It can sometimes be a benefit for people to help clarify in their mind as to whether something may be an ex gratia payment that might need approval under the act.

The final note I wanted to make about the Treasurer's Instructions is that we generally have a good cooperative relationship with Treasury. Quite often, when they are revising the Treasurer's Instructions, they will make us aware that they are revising them and seek our input into some of the drafting of the Treasurer's Instructions. Recent examples include: FC16, that dealt with contributions to equities in the public non-financial corporations and public financial corporations sector; FC19, which dealt with leases; and also FC2, internal audit, which also incorporated some of the recommendations that came from one of our performance audit reviews, looking at the effectiveness of internal audit across the government departments.

**CHAIR** - While that provision in section 51 talks about being written law is then defined in section 3 of the act. That defines the Treasurer's Instructions as law. We are looking at the rest of the list, any directions given under this act and Treasurer's Instructions. They do not receive any scrutiny of parliament. They are determined by the Treasurer; with advice - it is not just the Treasurer deciding what they think it should be. They obviously do consult, because you say that they consult with you. Do you think there should be some other scrutiny? Or do you believe that because it is such a technical instrument that it does not warrant that?

**Mr WHITEHEAD** - It is probably a question for mechanisms such as this committee, whether or not there is the possibility of scrutinising some of the impact of the Treasurer's Instructions or the outcomes from the Treasurer's Instructions. Now, whether an inquiry like this might result in clarity in some of the Treasurer's Instructions that we have spoken about today, for example - that might be a mechanism by which the parliament can have some similar over what's in those Treasurer's Instructions.

**CHAIR** - Do you think there is a role for the Public Accounts to play in consulting on the revision or change of Treasurer's Instructions?

**Mr WHITEHEAD** - Possibly, because they deal with the Financial Management Act, which deals with use of resources of the government. I would suggest that there possibly is, but I would probably need to seek an opinion on that to clarify my response.

**CHAIR** - It is something we can ask the Treasurer anyway.

**Mr WHITEHEAD** - Just to round out our submission, we have some comments around the ability of the parliament to scrutinise public non-financial corporations and public financial corporations, which I think was item 2 on the terms of reference for the inquiry. We have noted that the act specifically excludes government businesses and state-owned companies from the operation of the act in section 6. The GBE act and the Corporations Act and the various principal acts of the state-owned companies govern their financial reporting and accountability frameworks. The Government Business Enterprises Act has the provision to issue Treasurer's Instructions to government business enterprises. In addition, the principal acts of the state-owned companies also require them to comply with those Treasurer's Instructions issued under the Government Business Enterprises Act.

There is a publication called the *Tasmanian Government Business Governance Framework Guide*, which was issued in October 2008. That outlines the governance frameworks for government business enterprises and state-owned companies, including the government's role as an owner. It also details the accountability framework, the role of the parliament, the role of the Treasurer and portfolio minister, the role of the Treasury and also the role of the portfolio department.

The publication states that accountability is generally through reporting to the board and a portfolio minister, and then through to parliament through scrutiny committees. If parliament requires increased scrutiny of government business enterprises and state-owned companies, then mechanisms will need to be considered outside of the Financial Management Act.

Just a couple of other comments we have made. One is in regard to subsidiaries of government business enterprises. We have highlighted to Treasury that the financial reporting framework is not clear and we have been in discussion with Treasury as to whether tier 1 financial statements should be required for subsidiaries of government business enterprises.

**CHAIR** - Might be a typo in that first line, 11.6. You say they are 'clear'. You just said they were 'not clear'.

**Mr WHITEHEAD** - Yes, it should be 'not clear'.

**CHAIR** - We will amend that.

**Mr WHITEHEAD** - We will resubmit the submission with those corrections to it. The framework guide indicates that changes to constitutions will need to be tabled by the relevant portfolio minister. But there is a footnote in the guide that says this might not be the case for all state-owned companies.

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**CHAIR** - Yes. As you would be aware, since 2010, we have had our Government Administration Committees A and B in our House for the purpose of holding some of these GBEs and PNFCs and PFCs to account, because without that, there was nothing other than a couple of hours of GBEs every second year by each House, and not for all of them.

I can't remember the debate around this at the time we debated the Financial Management Act, as it is now. Noting that they are governed by the GBE Act state-owned company provisions there, do you think there should be built in greater accountability measures or do we rely on our government admin committees, which are sessional and will have to be reestablished every session, unless we make them standing committees?

**Mr WHITEHEAD** - To be honest, Chair, I have not put my mind to that particular question. But I am aware that the opportunity for the committees to scrutinise the government businesses is relatively time-constrained. As you mentioned, it only occurs once per annum. The question is, if there was a desire to have more scrutiny over the government businesses, then there would need to be another mechanism to actually provide for that scrutiny to occur.

**CHAIR** - The Public Accounts Committee can call in any of those government businesses on a matter of financial performance particularly.

**Mr WHITEHEAD** - That might be one mechanism which could be used to provide that opportunity, but then that would be limited to members of the Public Accounts Committee.

**CHAIR** - Thanks for that, Rod. It has been very helpful to walk through that. Overall, you made the comment at the beginning that you think it is essentially fit for purpose. When it came in, there was a lot of consultation at the front end; there were several iterations of the bill before it became the final bill that was tabled. There were amendments during the process through the parliament too. It is really important to review significant change. If there was anything that could be done better in a broad sense, do you think that there is anything or do you think, overall, it's pretty sound?

**Mr WHITEHEAD** - I probably don't have a comparison to make against because most of my tenure as Auditor-General occurred pretty much once the new Financial Management Act came into effect. I don't have a comparison under the old Financial Management and Audit Act to provide a comparison against. Perhaps if I turn to the gentleman on my immediate right, Stephen, do you have a particular view about the comparison between the way in which the Financial Management Act works and the former act?

**Mr MORRISON** - They're pretty similar apart from some of the changes because they pretty much mashed them together so there's nothing too similar there. I suppose from my perspective is around the level of public knowledge around the purpose of things going on in terms of section 24 from the supplemental Estimates report is the main thing.

**CHAIR** - Do you think there's a timely release of information; it's just the detail that's the issue here?

**Mr WHITEHEAD** - Yes, I think that's the comment we were making around the level of information this act has provided in the supplemental Estimates report. It provides information around the name of the agencies that might either proceed to transfer or receive

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additional funds but it doesn't provide any breakdown of what those additional funds were for, what program or activity they were for.

**CHAIR** - One of the ways we've overcome that in the parliament is to note those reports and then seek that information during the debate, which is a pretty time-consuming and clunky way of doing it, I guess. If it was provided in the report, it would be much easier.

**Mr WHITEHEAD** - I should also note too, one of the documents we get from the Department of the Treasury and Finance as part of our audit process, is they do give us a detailed supplemental Estimates statement that has a reconciliation right back to the original Appropriation Budget and then it has all the relevant transfers, additional requests, et cetera, under sections 20, 21, 23 rollovers, and also identifies the appropriation savings to come up to the final appropriation amount. For us, that's quite a useful document but I note that's not in the public domain at all.

**CHAIR** - Would there be a barrier? This is from your perspective, would there be any secret detail in there that could be embarrassing?

**Mr WHITEHEAD** - I wouldn't have thought so but I find it a particularly useful document so it might be a question to raise with Treasury.

**CHAIR** - It's always hard to reconcile what was appropriated, what it was used for or spent on, and what's left over.

**Mr WHITEHEAD** - The interesting thing is it also identifies the appropriation savings by agencies as well which I think is useful information.

**CHAIR** - That is not necessarily the same figure as what's rolled over in their operating accounts?

**Mr WHITEHEAD** - This has the rollover figures in there as well, so you do see the rollover figure. The only question that I haven't clarified is whether the initial amount in the appropriation act includes the initial rollover from the previous year. That's the only piece of information I haven't clarified in my mind as whether that's included in the reconciliation statement or not.

**CHAIR** - You could argue that the Budget Paper is very large or that the Treasury and Financial Report is quite large, but it's not that big.

**Mr WHITEHEAD** - This particular reconciliation statement is four pages long.

**CHAIR** - Is that for one agency?

**Mr WHITEHEAD** - No, it covers all the agencies but it only has totals by agency, it doesn't have a breakdown on what the purpose of the amounts were for, as is the comment we made before.

**CHAIR** - Any closing comment you want to make, Rod, or any of your team?



## **PUBLIC**

**Mr WHITEHEAD** - Probably just to thank the committee again for the opportunity to come along and talk about the workings of the Financial Management Act.

Again, as we've covered, we broadly think it is reasonably robust. Other than the comments that were raised, we have no other comments to make at this point in time.

**CHAIR** - Thanks for your input. It's really helpful to have someone with your level of expertise across the table to help us to understand it better and how it could work better for not just people like yourselves with the expertise but also the average user and consumer of it which is us on behalf of the people.

**Mr WHITEHEAD** - Thank you, Chair.

**CHAIR** - Thank you.

**THE WITNESSES WITHDREW.**