

*Joint Audit Committee — First Report —
“Second Review of the Financial Management Act 2006” — Motion*

Resumed from 12 February on the following motion moved by Hon Diane Evers —

That the report be noted.

Hon DIANE EVERS: I acknowledge that in the course of reviewing the Financial Management Act, a number of recommendations were made and the legislation to amend that act has been laid on the table in the other house and will come to this chamber. I look forward to some of those recommendations being implemented quite soon.

Hon NICK GOIRAN: The first report by the Joint Audit Committee on its second review of the Financial Management Act 2006 has interested me, and I am glad that we now have the opportunity this afternoon to spend a few moments considering it. It was tabled as far back as 16 May last year and, regrettably, we have not had much of an opportunity since that day to consider this report, partly because a plethora of other reports needed to be considered and also because the government prevailed upon members to ensure that such times on a Wednesday afternoon were evaporated at the end of last year. Now that we have the opportunity to consider it, I will make a few brief remarks.

In my view, there is a systemic problem with this government for a number of reasons. It has a lot of form in not providing information to Parliament. It has a lot of form in disregarding the principles of good governance and, in my view, it shows blatant disregard for section 82 of the Financial Management Act 2006. Really, it appears, by virtue of its behaviour, to hold in contempt the Auditor General Act 2006. I note that the report before us has a number of recommendations and if members get the opportunity to peruse page 9, they will see that the first recommendation states that the Financial Management Act 2006 should be retained. The second recommendation follows on page 10 and it states that the Financial Management Act 2006 should be reviewed every 10 years. I have had the opportunity to particularly spend some time considering chapter 4 of the report tabled by the Joint Audit Committee, which is titled, “Matters that relate to the *Financial Management Act 2006*”. This section of the report focuses on amongst other things the operation and effectiveness of the Financial Management Act. Members will be familiar that when a minister reports decisions not to provide certain information about agencies, section 82 is enlivened. I note that the committee went out of its way to make finding 5 in the report before us, which is conveniently found on page 19 of the report. It states —

Recommendations to reduce the reporting burden on agencies may reduce the level of disclosures to Parliament, thus requiring careful consideration of any reduction of information.

I think it is important that we consider that carefully. The committee consists of members from both houses. Looking at the inside cover of the report, I see that it appears to list 10 members of the committee—five from each house. Those 10 members have gone out of their way to make and draw to our attention finding 5, which states —

Recommendations to reduce the reporting burden on agencies may reduce the level of disclosures to Parliament, thus requiring careful consideration of any reduction of information.

I share the sentiment expressed by the members in that finding because I already have a concern that, particularly with this government, there is a lack of disclosure and a lack of willingness to provide information. The very last thing we need with a government like this is to have any regime that might reduce the amount of information provided to Parliament. I note that the authors of this report go on to state in recommendation 10, which is found on page 23 —

The Treasurer amend section 82(2) of the Financial Management Act 2006 to require Ministers to include the reasons for making a decision not to provide information to Parliament in the notice to Parliament and the Auditor General.

I was grateful for the remarks made earlier this afternoon by Hon Diane Evers, who drew to our attention the fact that some reform is on its way. As I understand it, the bill has yet to arrive here. Like the honourable member, I look forward to having those discussions in the fullness of time.

The systemic problem this government has with the provision of information is perhaps demonstrated in something as recent as the twenty-seventh report of the Western Australian Auditor General, dated 20 June 2019, so it is within the last 12 months. This is one example of this government’s obsession with secrecy. This report is remarkable because on reading it we find that the Attorney General, Hon John Quigley, made a decision not to provide information to Parliament about an email from the executive director of Court and Tribunal Services. The Auditor General was required to look into this matter. Why? It is because section 82 was enlivened. However, the Auditor General was unable to obtain sufficient appropriate evidence on the Attorney General’s decision to be able to form an opinion about whether the decision was reasonable and therefore appropriate. Indeed, if members take the opportunity to look at this report, they will see that the Auditor General states —

This is the third occasion where my Office has been placed in this position ...

It is the third occasion on which the Auditor General has been put in this position. What is the position that the Auditor General has been put in? She was put in a position in which she was unable to do her job because she is dealing with a government that is obsessed with secrecy and will not provide her with information. It is bad enough that the government consistently refuses to provide information to Parliament and therefore has to regularly lodge section 82 notices in this place and with the Auditor General. It is bad enough that that happens, but it is another thing altogether for this government to be so obsessed with secrecy that it says, “Blow the Parliament and blow the Auditor General! We won’t even provide the Auditor General with the information.” The Auditor General is supposed to be the overseer, the gatekeeper, or it could even be said, the arbiter, although I use that word very loosely in this context, of expressing an opinion about whether it was appropriate that the government did not provide information to Parliament. That person, whom we the Parliament have entrusted with that job, is incapable of doing that job if a government like this wants to hide information from them. On page 7 of this report the Auditor General states —

My Office must be able to examine documents subject to public interest immunity and legal professional privilege, while at the same time protecting the status of the documents. I consider that my access to such documents is entirely consistent with the spirit and intent of the AG Act.

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: The situation is further underlined when we have the opportunity to consider other reports that the Auditor General has placed before us. I was particularly interested in the fourteenth report, dated 31 January 2020, in which the Auditor General states on page 5 —

... ‘Ministers are accountable to both the community and Parliament ... and ... should be as open as possible and give reasons for their decisions and actions to ensure they are working in the public interest’. In a similar vein, the principle of the disclosure of information in the public interest was at the heart of why sections 81 and 82 of the FM Act were introduced.

The Auditor General can almost be heard pleading with Parliament to do something about this. The Auditor General is crying out and saying that she cannot do her job properly or fulfil the functions of her job because the administration is intent on blocking the provision of information to Parliament. Worse than that, it is not even prepared to be accountable to the Auditor General and to say to the Auditor General, “Here’s the information. This is why we didn’t provide it to Parliament. We ask for your concurrence that it was appropriate for us not to give this information to Parliament.” This government will not even do that. Members who are on the Joint Audit Committee can correct me if I am wrong, but it is my understanding that it is not as though the Auditor General can order the minister to provide information. All the Auditor General can do is express an opinion and say that they think the decision is unreasonable or reasonable. That is what the Auditor General can do. The Auditor General cannot say, “In my examination of this matter I have been provided with the secret document and I have decided, as the Auditor General, that I’m going to provide it to the public.” The Auditor General cannot do that. Why is this government so fearful of providing information to the Auditor General? What does it have to hide that it will not even allow this individual—this independent officer—to be able to fulfil her functions?

On 4 September last year, when we were considering this very report before us, the first report of the Joint Audit Committee, the chair of the committee was gushing in her praise for the Financial Management Act, saying that it is unique to Western Australia and provides certain architecture and safeguards for accountability and transparency on the part of the state. The chair stated —

Of course, the Auditor General provides an important accountability mechanism and a safeguard for the people of Western Australia by ensuring the adequate—more than adequate—performance of state government agencies in terms of the financial and performance review audits conducted by the Office of the Auditor General.

Having made those important remarks, the speech may as well have included, “We, the Labor Party, consider ourselves above having to comply with the requests of the Auditor General.”

As recently as 17 September 2018, an opinion piece was authored by Gary Adshead, who was then at *The West Australian*, titled “Opinion: WA Labor on path to a secret State with use of confidentiality clause”. Within that opinion piece, he quoted the Premier, Mark McGowan, who said —

“We will strengthen governance, accountability and transparency across government,”

The author of the opinion piece, Mr Adshead, quite rightly pointed out —

He loves talking the talk, but evidence is emerging that he is not walking the walk.

That was on 17 September 2018. I have seen no evidence in the time that has transpired since then to demonstrate a change of behaviour; that is, this Premier and this government have not reformed their behaviour and they have not

desisted with their secrecy obsession. I have seen none of that. Clearly, the Auditor General feels the same and has therefore felt the need—reluctantly, no doubt—to draw these matters to the attention of Parliament. These reports get tabled in Parliament but nobody does anything about it. This arrogant government just shrugs its shoulders and says, “Too bad, we don’t care, we’re pleased with ourselves that we tricked the people of Western Australia into believing that we would bring in a gold standard of transparency when really we had no intention to do that whatsoever.” When we look at the litany of reports that have been provided by the Auditor General, it seems that the likes of the Premier, the Attorney General and the Leader of the House in this place all know how to talk the talk, but when it comes to transparency in governance and accountability, they have demonstrated nothing of the sort. Even the Auditor General would have to agree with that, given the prevalence of “Opinions on Ministerial Notifications” indicating that there is a problem.

[Quorum formed.]

Hon NICK GOIRAN: No wonder government members need to be away on urgent parliamentary business when we are considering matters of transparency, accountability and good governance, and the report card provided by the Auditor General with respect to this government being obsessed with secrecy. I can well understand why members opposite would need to find other urgent parliamentary business. It must be difficult for them, when they read under “Disclaimer of Opinion” on page 4 of the Auditor General’s twenty-seventh report for the period June 2018–19 —

I have been unable to obtain sufficient appropriate evidence on the Attorney General’s decision not to provide requested information to Parliament. Accordingly, I am unable to form an opinion on whether his decision was reasonable and therefore appropriate.

Later in the disclaimer, the Auditor General went on to say —

The inability of an auditor to access the information they need to meet their obligation is a serious matter for the auditor and for those who rely on their opinion. In the event that an auditor is unable to obtain sufficient appropriate audit evidence, auditors have few options. One of these is to issue a Disclaimer of Opinion. This is the third occasion where my Office has been placed in this position for an opinion on a section 82 notice.

I notice in this particular report under “Key findings”, the Auditor General said —

However, our inability to view the email in its entirety limits the scope of our work.

Again, I ask the question: why was this government unwilling to provide the entire email to the Auditor General? The twenty-seventh report is for the period June 2018–19, yet the government has done nothing about it since then. Has it apologised to the Auditor General? Has the Premier spoken to the Attorney General and said, “You, Mr Attorney General, need to apologise to the Auditor General for your behaviour”?

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: Has any of that happened or has this arrogant government continued to provide the exact opposite of gold-standard transparency and continued to ensure that it provides as little information to Parliament as possible and, when called to account by the overseers, thumbed its nose at the Auditor General and continued on its merry way?

It was instructive that towards the end of that report, in appendix 1, to see the Auditor General make these remarks. I quote from page 7 —

My Office must be able to examine documents subject to public interest immunity and legal professional privilege, while at the same time protecting the status of the documents. I consider that my access to such documents is entirely consistent with the spirit and intent of the AG Act.

...

Following the 2016 review of the operation and effectiveness of the AG Act by the Joint Standing Committee on Audit, I am confident this matter has support across Government and the Parliament to finally progress to a real and sensible resolution.

Is that so, government? The Auditor General is expressing confidence in the government that it will work with the opposition to ensure that this problem is fixed, but where is the evidence to support that there has been this change of heart in this reform by this government? I think it is absent.

As Hon Diane Evers alluded to earlier, I am mindful that another reform is on its way for us to consider in the fullness of time. But I might just foreshadow with members opposite and whomever might be handling that bill when it eventually comes to us that it would be a good idea to be across this issue because we can be sure that it will be raised at that time. We, the opposition, are not going to let this government get away with thumbing its nose at the Auditor General. We cannot have the chief law officer of Western Australia, the Attorney General, saying,

“I am not going to provide you with that email. In actual fact, I will give you a copy of the email but I will redact a lot of the material in it. I hope that you, Auditor General, can then try to piece it all together.” We cannot have that, yet that is exactly what has happened in this particular instance, without any explanation from the Attorney General. I trust that members will take these issues seriously.

There is really little point in us having a Joint Audit Committee in which we invest the time of 10 members plus two no doubt hardworking parliamentary staff, an advisory officer and a committee clerk, if the ultimate outcome is no change. We continue to have situations in which members of the opposition ask for information and the government does not provide it, and worse, does not provide information to the Auditor General so that a determination can be made.

That is not the only problem here. The other problem we have with this government and its obsession with secrecy is that there have been multiple occasions on which it would not even lodge a section 82 notice. I know that Hon Martin Aldridge—who is away on urgent parliamentary business—has repeatedly had to call on the government to table its section 82 notices. It is a shame that the honourable member is away on urgent parliamentary business, because I would love to know from him who in the government are the prime culprits. Which ministers oppose have the greatest form in not tabling section 82 notices? We know that the Attorney General is the prime suspect when it comes to thumbing his nose at the Auditor General; we know that courtesy of the twenty-seventh report, which I referred to earlier. He is definitely the gold medallist in that competition. However, we do not know which of the other government ministers, with disdain for the Parliament and the Financial Management Act, consistently and regularly fail to table section 82 notices. No doubt Hon Martin Aldridge, being a very conscientious and diligent member, probably has that information at his disposal, and next time I see him I intend to ask him about it. Indeed, for that reason, subject to what other members might have to say on the first report, we may need to postpone consideration of this report, because I would like to get to the bottom of this matter once and for all.

I would like someone senior in the government to explain to us why it is okay for the Attorney General of Western Australia to thumb his nose at the Auditor General; otherwise, the twenty-seventh report will have been pointless and may as well not even have been done. I would love to know what the cost was to the Auditor General to invest her time and the time of her staff to embark on an investigation, only to be blocked by the arrogant Attorney General. That is taxpayers’ money wasted yet again by this government—the government that crowed about wanting to provide gold-standard transparency. Every time these matters are raised, not one member in government is prepared to provide an explanation.

As I said, subject to whether other members will want to continue to discuss the report before us, I foreshadow that in the event that nobody else wants to, I would like the opportunity to postpone consideration of this report so that we can consider these matters when Hon Martin Aldridge is next with us.

Hon ALANNA CLOHESY: I would like to speak briefly to this report; I understand that my parliamentary colleagues might also like to speak in some detail about it. When I last spoke to this report, I talked about the first part of the report, and that was the first part of the inquiry that the committee had undertaken—that is, in relation to the Financial Management Act. In fact, there have been a number of reviews of the Financial Management Act and some consideration of those reviews. There was a review of the minister’s review of the operation of the effectiveness of the Financial Management Act. The minister, as is statutorily required, undertook a review of the Financial Management Act. I should note that that review was, in the first instance, required somewhat earlier than was undertaken by the previous government. The statutory requirement contained in the Financial Management Act was for the act to be reviewed within 10 years of its operation, as I understand it. The previous Barnett Liberal–National government took a considerable amount of time to meet its statutory requirements to review the operation and effectiveness of the Financial Management Act.

In fact, the establishment of the Joint Audit Committee was a number of years in the making. The establishment of the joint standing committee is also a requirement under legislation, in order to review the operation and effectiveness of the FMA. It also has some role in recommendations for the budget of the Auditor General. In the previous Parliament, the previous government took a considerably greater amount of time than was required to establish the Joint Audit Committee to undertake its responsibilities to review and comment on the Financial Management Act and on aspects of the Office of the Auditor General.

That delay caused some difficulties and overlaps in other reviews, including the review of the operation and effectiveness of the Auditor General Act, which is a companion act, if you like, of the Financial Management Act; it goes hand in hand because, of course, the monitoring aspects of the Auditor General relate to those contained in the Financial Management Act. The delay by the previous government in reviewing the Financial Management Act was significant and had an impact on the timing of the review of the Auditor General Act and, indeed, the review of the effectiveness of the Office of the Auditor General.

Both those reviews were undertaken but because they work in tandem or, in fact, are enmeshed in their structures, it became quite complex to undertake the review and, later, to review the review. Let me explain what I mean by

“reviewing the review”. As I mentioned, the statutory functions of the Joint Audit Committee are to consider the Financial Management Act review. Under the Financial Management Act, the Treasurer is required to review the Financial Management Act, so the role of the Joint Audit Committee was to review the Treasurer’s review, and that was undertaken.

As I have mentioned, another statutory function of the Joint Audit Committee is to review the operation and effectiveness of the Auditor General Act. Components in this report reflect on that because of the interrelated nature of the two pieces of legislation.

Other technical requirements of the Joint Audit Committee relate to the Office of the Auditor General, and the committee would need to consider those if there was ever a recommendation on the removal or suspension of the Auditor General.

In June 2018, the current Treasurer, Hon Ben Wyatt, provided to the committee a copy of his review of the operation and effectiveness of the Financial Management Act. Members need to remember that the Treasurer’s review of the operation and effectiveness of the Financial Management Act was delayed by the previous government, firstly, because the government was tardy in establishing the Joint Audit Committee, and, secondly, because the Treasurer in the previous government did not undertake the review as required. I am not sure which Treasurer that was, because there were up to seven previous Treasurers. The current Treasurer undertook a review of the operation and effectiveness of the FMA, and that review was supplied to the Joint Audit Committee on 21 June 2018.

This committee reviewed the Treasurer’s review as part of its role. The committee made a number of findings and recommendations about the operation and effectiveness of the Financial Management Act. In particular, the committee considered the component of the Treasurer’s review that related to automatic supply provisions in an election year. I will give members more details about that shortly. The committee also considered, as honourable members have mentioned previously, how to streamline reporting mechanisms for agencies to—as the report states—reduce the level of disclosure to Parliament. The intent behind that is to establish a streamlined process for providing information to Parliament, not to back away from the requirement to provide information to Parliament. I will go into more detail about the Treasurer’s review shortly.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Alanna Clohesy.

Hon ALANNA CLOHESY: The Treasurer’s review recommended some streamlining of the reporting requirements to take into account efficiency measures. The committee considered that recommendation. Part of that consideration was the type of information that was being provided to Parliament.

Consideration of report postponed, pursuant to standing orders.