

**AUDITOR GENERAL BILL 2006**

*Consideration in Detail*

Resumed from 20 September.

Debate was adjourned after clause 15 had been agreed to.

**Clause 16: Audits of accounts of certain subsidiary bodies -**

**Mr M.W. TRENORDEN:** As the minister said yesterday, some consultation and discussions have taken place behind the Chair. I am sure the member for Vasse would like the opportunity to know what has been discussed. Has he seen the amendments?

**Mr T. Buswell:** I am rarely enlightened.

**Mr M.W. TRENORDEN:** One of the joys of being in opposition is that one is rarely enlightened.

**Mr T. Buswell:** Certainly not by the government.

**Mr M.W. TRENORDEN:** I wanted to make sure that there is some understanding that there have been some discussions overnight and that we will be progressing with the bill. I assume that we will return to clause 9 at the end of this process.

**Mr E.S. Ripper:** That is right.

**Clause put and passed.**

**Clause 17: Audits of accounts of related entities -**

**Mr T. BUSWELL:** I am aware of the concerns that the Chamber of Commerce and Industry of Western Australia has raised about clause 17. I am also aware that the Public Accounts Committee has reviewed the concerns the chamber raised about clause 17. I have read the report. The Public Accounts Committee assessment was effectively that the concerns were noted but that it was not felt that the manifestation of the bill, as interpreted by the CCI, was consistent with the way the Auditor General had advised the Public Accounts Committee the power would be used. Notwithstanding that, I thought it would be opportune to raise the issues so that the Treasurer could outline a formal response for the public record. The CCI's concerns were that it was unclear whether the wording of clause 17 provided the Auditor General with the powers to audit private companies that operate independently of government. The CCI requested that the Public Accounts Committee review that. For the public record, could the Treasurer articulate why the CCI's concern is misplaced?

**Mr E.S. RIPPER:** This clause widens the Auditor General's jurisdiction to allow the Auditor General to audit, as he or she sees fit, the accounts and financial statements of any commercial activities of agencies, including partnerships, joint ventures and trusts, when those entities are carrying out, either wholly or partly, the functions of an agency. These partnerships, joint ventures and trusts are referred to as "related entities". There is clearly an issue of balance here. The Auditor General cannot be inhibited from investigating the expenditure of public moneys by complicated commercial or partnership arrangements between government agencies and the private sector. On the other hand, we do not want to subject the entire private sector to the same sort of scrutiny that the public sector gets from the Auditor General. The legislation, therefore, attempts to strike the correct balance between the need to audit everything that the public sector does in a robust and rigorous way and the need to limit intrusion on the private sector. The Public Accounts Committee examined the issue raised by the Chamber of Commerce and Industry and, in a bipartisan way, came to the conclusion that the arrangements struck a fair balance between those competing considerations. Although on this occasion the Deputy Leader of the Opposition has raised the prospect of too much intrusion into the private sector in raising the issue of the points put forward by the Chamber of Commerce and Industry, on other occasions I think the opposition, indeed any opposition, would be outraged if it thought that the government had entered into some sort of commercial arrangement that prevented proper scrutiny of how public moneys were being spent and what they were being spent on.

**Clause put and passed.**

**Clauses 18 to 20 put and passed.**

**Clause 21: Audit fees -**

**Mr T. BUSWELL:** Thank you very much, Mr Acting Speaker (Mr M.J. Cowper); I appreciate the call. I did some research yesterday evening in light of our discussion on audit versus investigate versus examine and I found an explanation in the definitions that reads -

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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“audit” includes to examine, investigate, inspect and review;

I have solved one little problem. That lets the Treasurer know that I follow up on these matters occasionally when I feel inclined in that direction. The definition for audit fees, which I assume is the same as the enabling legislation, reads in part -

- (1) The Auditor General is to determine whether a fee is to be charged . . .
- (a) the amount of that fee; . . .

I am interested in the amount of the fee and the methodology used by the Office of the Auditor General to set fees.

**Mr E.S. RIPPER:** I am advised that the Auditor General does not charge for performance audits. They constitute free advice to agencies and to government on how matters might be improved. The Auditor General bases fees for the more traditional form of audit on the number of hours required to undertake the audit, with an on-cost element to provide for overheads in the Office of the Auditor General. The idea is not that the Auditor General will make a profit from the audit, but that the fees will cover the costs of the office in the performance of those audits. If an agency is not very efficient at providing information or it has provided information that is ambiguous and requires further clarification, the number of hours taken on the audit will increase as will the fee charged to the agency. Agencies can limit their exposure to auditing fees by having everything in pristine order before the Auditor General arrives.

**Mr T. Buswell:** I think you said the cost of the office is covered by audit fees.

**Mr E.S. RIPPER:** No. The cost of the office is not covered by audit fees. The performance audits that the office undertakes are not covered by fees. However, the cost of the office in undertaking financial attest audits is covered by fees.

**Clause put and passed.**

**Clause 22: Audits and other services by arrangement -**

**Mr M.W. TRENORDEN:** This clause reads in part -

- (1) The Auditor General may enter into an arrangement with any person or body -
  - (a) to carry out an audit for or in relation to the person or body; or
  - (b) to provide services to a person or body that are of a kind commonly performed by auditors.

There is a significant problem in this state. I am aware that the Office of the Auditor General has been finding it difficult to contract appropriate auditors. That information has not come from the Office of the Auditor General but from people I know very well within both the public service and the private sector in Western Australia. A range of small firms are seeking to win contracts with the Office of the Auditor General to undertake auditing via very clearly second-rate firms. They are recruiting the expertise to do the audits by headhunting public servants. Arguably, those firms do not have the same culture as the firms the Auditor General has been using for some time. This situation is being driven by cost measures and the Auditor General having to look seriously at his budget. I do not want to argue that the Auditor General's budget should be unlimited. However, we must think seriously about the people who are recruited to fulfil some of its contracts. If we reflect on the past 10 years of American and Australian commercial history involving HIH and a range of other circumstances that quite a few people in this chamber could raise about audit failing in private enterprise, we must ask ourselves a few questions. In the real world, many of the top firms that undertake audits are more interested in consultancy. This state government has contracted more consultancies than any state government before it. The main earnings for those firms are in consultancy, not audits. As occurred with HIH and a range of other infamous circumstances about which we have read in the newspapers in the past decade, firms were not prepared to undertake audits properly because they were more interested in the big money in consultancy. The minister probably has read - I am not picking on him about this process - many articles about the division between auditing and consultancy in private businesses illustrated by the audit functions being at one end of the corridor and the consultancy arm at the other end, and the two not meeting. I find that difficult to swallow. I suggest that the commentators of these disasters over the past 10 years will also state that those arguments are not easy to swallow. I am concerned about the Auditor General's capacity to bid for his money. I am just making the point that even though the Auditor General has the right to make arrangements with any body or person to undertake audits, the vehicle that drives that audit is the Auditor General's budget. There is a clear risk in Western Australia that second-string organisations will be seeking to win contracts with the Office of the Auditor General, which probably employ one or two quality people who, as I said, have been headhunted from the public service. Those people will be capable of undertaking audits but do not work in the same audit culture that I

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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would like to see operating. I make those points because I will debate passionately later on, if the debate occurs, that some of the issues are about money.

**Mr E.S. RIPPER:** This clause provides for those limited circumstances in which, for some reason or another, a relevant body is not covered by the legislative mandate of the Auditor General. The example given to me surprises me.

I will recast my speech. I was of the view that this clause enabled some auditing of agencies that would otherwise be outside the mandate of the Office of the Auditor General. However, the latest advice I have received is that this is about the issue the member for Avon raised; namely, using contracting auditors to supplement the staffing arrangements inside the Office of the Auditor General. In some circumstances, it would not be a prudent use of resources for the Auditor General to carry all year the specialist expertise required to conduct particular audits. An example might be auditing certain government trading enterprises, when it would be a prudent use of resources for the Auditor General to contract in the specialist expertise that is required for those audits, rather than carry that as a permanent staff load for the entire year. I know that the Office of the Auditor General is facing the same challenges as the rest of the public sector, and most private sector, organisations in this state. When there is 14 per cent economic growth in a year and an ageing population, a skills shortage is bound to arise. Skills shortages are being experienced in not only traditional construction trades, but also professional areas. There is competition for the available talent, and that is a challenge for not only the Office of the Auditor General, but also other government agencies and private sector organisations. Clearly, the Auditor General will want to achieve value for money. That is part of what the Auditor General investigates in the activities of other public sector organisations. The Auditor General will want to achieve value for money. Equally, the Auditor General will not want to sacrifice standards. The Auditor General will have to use his or her independent discretion to achieve that balance. Obviously, if the Parliament is more generous with the budget allocation to the Auditor General, perhaps achieving the trade-off between acquiring skills and maintaining standards will be an easier task for the Auditor General. Anyone concerned with the budget of the Office of the Auditor General will have to take that into account.

**Dr J.M. WOOLLARD:** Paragraph (h) of the outline in the explanatory memorandum for the bill states -

widens the mandate of the Auditor General to apply his or her power as he or she sees fit to commercial activities of agencies, including partnerships, joint ventures and trusts where these relate to functions performed on behalf of an agency, . . .

Paragraph (j) states -

provides the Auditor General with the power to enter into an arrangement with any person or body to carry out an audit for or in relation to the person or body, . . .

I am very concerned that this work will be given to other agencies. It is more appropriate that the Auditor General be given the funds to coopt someone with specialist skills, if no-one within his department has those skills, for a set period rather than handing the work to an outside agency. As the Treasurer said, standards need to be met. The person who is given the work should do that work to the same standard as that done by the Auditor General in the past. The Auditor General does a wonderful job. However, I am very concerned that the Treasurer is allowing this work to be handed to other agencies. The current level of accountability of the Auditor General and his department may not be the same in future, because it could be said that it was not the Auditor General who did the audit for a particular agency.

I support increasing the funding for the Office of the Auditor General. I have read many reports of the Auditor General and what he has uncovered is amazing. Members can sit in the committee room and hear what has or has not been happening. That is good, because now there are standards and in the future the things that have not happened will start to happen. All the work should be done by the Office of the Auditor General. This bill will allow work to be given to another person or agency, and that work may not be done to the same standard as that done by the Auditor General in the past. I think the expertise should remain within the department. If the department does not have the expertise and someone is coopted to the department to work with another person from the department, the person within the department would be able to develop that expertise so that the department would not have to coopt another person with expertise for future audits.

I support increasing the funding to the office. I also support the provision to allow the Auditor General to look at partnerships. That has not happened in the past and the government is moving more into public-private arrangements. The Auditor General certainly should look very closely at those public-private arrangements. I am very pleased that the bill will widen the Auditor General's mandate to allow him to do that, but I am very concerned that audits will be carried out by other persons or bodies, rather than that expertise being developed within the department.

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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**Mr E.S. RIPPER:** I note the enjoyment that the member has in reading and being briefed on the work of the Auditor General. When I sat on her side of the house, I found a lot more pleasure in the work of the Auditor General than I do now that I occupy a seat on this side of the house. Section 82 of the Financial Administration and Audit Act 1985, "Auditor General may appoint person to audit", states -

- (1) The Auditor General may by writing signed by him appoint an officer of the public service or some other person, whether corporate or unincorporate, to carry out all or a part of any audit that the Auditor General is required by this Act or by any other Act or by arrangement to carry out and a person so appointed shall report on completion of the audit to the Auditor General.

In other words, the provision in the bill before the house is not a departure from that arrangement. In fact, clause 28 has virtually the same words. The government and the Office of the Auditor General are not embarking on something new with regard to that arrangement.

The third point I make is that there are specialist areas of activity for which it would be simply unrealistic to expect the Office of the Auditor General to carry that expertise. I will give the member an example. I have already given the house the example of the energy utilities. Another example is the Western Australian Treasury Corporation, which is required by its mandate to deal with derivatives and other sophisticated instruments for which specialist expertise is required to ensure that things are being done properly.

**Dr J.M. Woollard:** Again, they could be coopted to the Auditor General's department.

**Mr E.S. RIPPER:** If a person were coopted into the Office of the Auditor General as a permanent public servant -

**Dr J.M. Woollard:** When I say "coopted", it could be for six months or for the life of a particular audit. While that person was supervising the audit, the people within the Auditor General's department could be developing some skills in that area.

**Mr E.S. RIPPER:** I think the better arrangement is for the specialist expertise to be contracted for a particular audit. When that audit is complete, there is no need for the office to carry the financial burden of the engagement of that expertise.

The next point I make is that in the end it is the Auditor General who signs off on an opinion. It is the Auditor General who provides the opinion. This work can be done, but the Auditor General must take independent responsibility for it and put his or her reputation on the line and sign off on the opinion. There is no way that the Auditor General can, via this legislation, contract out his or her legislative or professional responsibilities. This is not a departure from what we have done in the past. It is a sensible arrangement that provides the Parliament and the public with better assurance that specialist audits can be conducted properly, rather than the arrangement that the member for Alfred Cove suggests, in which one or two people are co-opted to conduct the audit.

**Dr J.M. Woollard:** For six months or twelve months and then -

**Mr E.S. RIPPER:** The member for Alfred Cove's arrangement would not deliver the best result. We might get one or two people, but if we contract in a specialist firm, we would have the reputation, integrity, entire expertise and experience of that firm, rather than of one or two individuals.

**Clause put and passed.**

**Clauses 23 and 24 put and passed.**

**Clause 25: Report on an examination or investigation -**

**Mr M.W. TRENORDEN:** I am in the minority, but I strongly disagree with subclause (3), which states -

The Auditor General must include in a report prepared under subsection (1) any submissions or comments made under subsection (2) before the specified day, or a fair summary of them.

One of the reasons I am on a bit of a limb is that unlike with the rest of the bill, on this particular issue the government has followed the recommendations of the Commission on Government. Again, it is a watering down of the process of the Auditor General. Members must be clear about the role of the Auditor General. Although in this state he is not independent, the Auditor General should be an independent officer of the Parliament who reports to Parliament without fear or favour. Over the years a practice has developed - which is strongly supported by our current Auditor General and with which I agree - in which agencies and ministers do not get ambushed. Any adverse finding by the Office of the Auditor General is discussed with the relevant agency and minister prior to the report being tabled in this house. That gives the agency and the minister time to prepare a defence if those issues are raised by the opposition. This particular subclause brings the defence into the report; that is very good spin doctoring, but not a good function. We must have a clear process. The Auditor General makes a finding, writes a report and delivers it to the Parliament. What the Parliament does to it is the

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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Parliament's business. If the opposition of the day brings to the minister's notice a report on an agency that has received an adverse finding, it becomes a political process. That is when the minister should have the opportunity to have his or her say about the report. It is inappropriate for an agency to have two shots, including the use of the Auditor General's report.

There will be two processes. The first is that the Auditor General's report will not be written without negotiation with the agency and, if need be, the minister. Therefore, if the Office of the Auditor General is seeking to make an adverse finding or some sort of comment, the agency will have every opportunity to debate the issue with the officer who is representing the Office of the Auditor General. Under this provision they will get an opportunity to put text into the Auditor General's report! For years, those members who are interested have been going into the room next door to listen to an unabridged report of the Auditor General. What will happen in the future? Will we go into that room, listen to the report of the Auditor General and also listen to the spokesperson of the minister? Will that be the process?

Even though this provision in the bill was recommended by COG, it is a stupid idea. It is pandering to the executive yet again. The executive has enormous and overriding power in this chamber. It does not need to be protected in reports of the Office of the Auditor General. I oppose the clause, but I think I may be the only person on earth who does. Again, although COG recommended this process, I believe it is wrong.

**Mr T. BUSWELL:** I support the comments of the member for Avon. When I read this clause, the explanatory memorandum and the observations noted on the clause by the Public Accounts Committee, I thought it was about natural justice. The natural justice obligations that apply to the Auditor General are met when both the agency and the relevant minister are provided with the information prior to the report being made publicly available; that report, of course, being a report of an examination or an investigation of the agency. At that stage the natural justice obligations in this instance are met. It means that the minister or the agency will not be caught on the hop - for want of a better word; they will have an opportunity to prepare a defence against any adverse findings that may arise following the investigation or the examination of that agency. My understanding is that the process of the Auditor General giving the agencies and the ministers the capacity to be prepared fulfils those natural justice obligations.

I share the concerns of the member for Avon if we are now to have a report which effectively will contain within it, perhaps in the appendix, a series of counterarguments. That is ridiculous. The Auditor General's report is the Auditor General's report. The Auditor General should not have to dedicate a part of his report to another report containing rebuttals or other comments from the agency investigated. That is completely unacceptable. The minister can make a ministerial statement in the house or ask one of his backbench colleagues to ask one of those probing questions that the backbenchers like to ask ministers to position himself to address issues raised in these reports. It is completely unacceptable for the Auditor General to be required to include in his report a section dedicated to submissions or comments that have come back from the agency in the specified time; that is completely unacceptable. Let us not forget that the report often contains feedback and comment from the agency. A report that does not include a comment from the specific agency on the specific issues being investigated would rarely be read. The Auditor General takes that information, writes the report - rightly so - and lets the minister and the agency see the report. I agree with the member for Avon that this provision goes beyond the scope of the natural justice intent of this clause. I suspect that the member for Avon may even move an amendment to delete that requirement, an amendment we would be happy to support.

**Dr J.M. WOOLLARD:** I also agree with member for Avon. The Treasurer is trying to water down the Auditor General's report by saying that this is why something has happened. I do not think that is acceptable. I think the Auditor General should be allowed to do the report and then submit it. I would also like to ask the Treasurer about subclause (4), which says that if Parliament is not in session and sitting when the Auditor General signs a report under subclause (1), the Auditor General may transmit a copy of the report to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council. I believe the report then would be tabled at the next sitting of the Parliament. However, I would like to know from the Treasurer what status the report has in the hands of the Clerks before it is tabled.

**Mr E.S. RIPPER:** It is unusual for members of Parliament to argue that they should have less information rather than more. This clause enables the Parliament to have access not only to the findings of the Auditor General, but also to at least a fair summary of the response of the agency. I would have thought that the access to that information would be an advantage to a member of Parliament without in any way detracting from the independence, rigour or vigour of the Auditor General's report. This has not come from the Department of Treasury and Finance or from me as Treasurer. This clause has come from the Office of the Auditor General. The Office of the Auditor General has regard for professional auditing standards. The clause relates to performance audits, which can be regarded as a form of internal audit. I am advised that professional standards for auditors include standards related to communication with the client, and that best practice would be to allow

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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the client's response to be included with the findings of the auditor. I think it is a good thing. Let Parliament have access to both perspectives rather than have a circumstance in which the report is brought down and the department's or the agency's response is mediated through the somewhat unsatisfactory processes of a doorstep before television cameras, a conversation with a journalist or a minister's statement to the Parliament perhaps 24 or 48 hours later. Let us have all of the information there for members of Parliament and the public before people start making comments and before the media processes begin.

If this clause in any way inhibited an Auditor General in the conduct of his or her activities, I would not be supporting it. I cannot see that it has any negative impact on the Auditor General. I see it, in fact, as adding some information to that which Parliament has previously received. It has been common practice over a number of years for the Auditor General to provide draft findings to agencies that have been audited and for the agencies to be given a chance to respond. These matters are generally handled between the agency and the Auditor General rather than with the involvement of the government.

**Dr J.M. Woollard:** Before you sit down, the second part of my question related to the status of the report in the hands of the Clerks before it is tabled.

**Mr E.S. RIPPER:** The intention of this clause is that if the Parliament is not sitting, the report will be given to the Clerks and they can release it publicly as though it had been tabled. However, it has been pointed out to me that perhaps the clause does not precisely achieve that intention because it does not include a statement to the effect that once the report is given to the Clerks it is deemed to be tabled.

**Dr J.M. Woollard:** Do you have to amend the clause or is it sufficient that you have put it on the record?

**Mr E.S. RIPPER:** It may be sufficient that I have made the statement that the clause is intended to work so that the report is treated as though it had been tabled. I intend to have that matter examined and, if necessary, an amendment will be moved when the bill reaches another place. I do not want to move an amendment on the run here until my advisers have had a chance to look at it. It is a matter about which I have had a brief conversation with the Clerk.

**Dr J.M. Woollard:** It is very important when you think that it might be tabled on 7 December just as we finish sitting and it would then be two months before Parliament resumed.

**Mr E.S. RIPPER:** I can only repeat that the intention is that once it is given to the Clerk it will be released publicly. If the legislation does not achieve that intention, we will present an amendment.

**Mr T. BUSWELL:** I want to refer to two comments that the Treasurer made. Firstly, he said that informally the Office of the Auditor General will present draft findings to the agency and there will be a flow of information or comment between them. I think that is perfectly acceptable. However, when the Auditor General hands down a report, it is his report. I do not think that report is a forum for the presentation of both perspectives, which is another term the Treasurer used. He said that it was important that we consider both perspectives. I do not think the Auditor General's report is the vehicle to provide both perspectives. It is then no longer the Auditor General's report; it is the Auditor General's report with commentary by the people about whom the report is being made. I think the member for Avon has raised a very important issue. Clause 18 clearly gives the Auditor General the power to conduct examinations or investigations for a range of reasons. Those reasons are cherished in opposition in this house. I rise to take issue with the Treasurer's saying that the Auditor General's report should present both perspectives. How can that be? It is no longer the Auditor General's report. The issuing of the alternative perspective certainly can be done by a department, or by the Treasurer or through a question to the Treasurer. It is not the role of the Auditor General, as far as I can see, to present an alternative perspective in his report. I will be interested to hear further comment from the member for Avon, because in my view it is a substantial issue.

**Mr M.W. TRENORDEN:** I want to raise a few points about the Treasurer's response. The reality is that this clause can be regarded as interfering with the role of the Parliament. The Auditor General is not an agent; he is an independent officer whose responsibility it is to report to us as members of Parliament. He has no responsibility to carry the agency's or the minister's argument, absolutely none. The Treasurer said that this clause came from the Office of the Auditor General. I suggest that this clause has come from a group of people that included someone from the Office of the Auditor General, who put the bill together and who should have had some regard to the Commission on Government. This is the only aspect for which we have regard to COG. None of the other matters has any regard to COG at all: the appointment and the budget are all controlled by the executive. This clause reeks of more control by the executive.

When the Auditor General brings down a report - there are a large number every year - how many times are the contents of that report debated in this chamber or the other chamber? The answer is almost never. It is a rare event. The most that happens is that the opposition may from time to time ask questions about a report, but it is

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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rare for the opposition to pick up a report of the Auditor General and come here and use it against the government in a matter of public importance debate or any other debate. It happens once in a blue moon, so why do agencies have to be protected in this manner? The answer is that they do not. This is not to embarrass the gentlemen in front of me, but I can suspect what the answer might be if we spoke to people from the Office of the Auditor General separately. Collectively, with a group of other people when this bill was put together, they may have supported it, particularly given that the Commission on Government supported it also. However, as the government has not supported any other recommendation of COG, why has it picked up this one in isolation? I will give the Treasurer an opportunity to speak against what I am saying. However, there is a very strong likelihood that I will move an amendment to remove this clause from the bill.

**Mr E.S. RIPPER:** Modern notions of accountability really require the provision of more information rather than less. Modern notions of accountability anticipate that there will be different perspectives on issues and that those different perspectives should be aired. This will not stop the Auditor General making whatever findings the Auditor General wants to make. The Auditor General has the support of this Parliament, through the passage of this legislation, to act entirely independently and rigorously. All this provision says is that whatever the Auditor General finds, the report should include at least a fair summary of the responses to the findings. My view is that that is in accord with modern notions inside the auditing profession of how the profession should work. Auditors hold other people accountable. I believe they are required to think about how they are accountable. It would be natural for auditors to think about how they are accountable, because they must impose notions of accountability on others. This is a small way of the Auditor General, and his office, saying, "I have sufficient confidence in my opinions and my analysis to publish a fair summary of responses to those findings. I am confident enough that my findings will stand up against any responses put forward by the agency." Let us give the Parliament more information, not less information. Let us have the different perspectives presented to the Parliament in a way that helps members of Parliament get to the bottom of a situation, rather than in a way that can add to confusion when members must see the response mediated by a minister, by a journalist or by electronic communication.

The other point I make is that with many of these reports there will not be a parliamentary debate; there will not be a media debate. Therefore, those mechanisms which I have been talking about and which I think are unsatisfactory for seeing the other perspective might not operate at all. The member for Avon has said that quite a number of reports simply do not attract the parliamentary and media attention that he might, and the Auditor General might, wish they would. Therefore, how is a member of Parliament to find out about the response of an agency unless the member of Parliament puts a question on notice or asks the minister a question? Why not have the response available in the report, or at least a fair summary of it? The Auditor General ultimately, via this clause, has complete command of what is tabled in the Parliament, because the Auditor General does not have to print verbatim what the agency gives. If the agency gives 999 pages of commentary in response, the Auditor General does not have to publish those 999 pages. He can publish half a page that is a fair summary of those comments. This is about accountability, and the Auditor General must think about his or her accountability, just as the Auditor General thinks about the accountabilities of the agencies that he or she is auditing.

**Mr T. BUSWELL:** I think it is a load of rot to suggest that the Auditor General must be held accountable by publishing a response from the agencies to the Auditor General's investigation of their departments. The Treasurer then said that this is becoming common audit practice. I note, from reading the Public Accounts Committee's reports, that it does happen in some other states. However, to suggest that it is common audit practice, as though to imply that all over the world this is happening, is a nonsense. I look at a number of audit reports of a financial nature in the private sector.

**Mr E.S. Ripper:** Bear in mind that this is not about attest audits; it is about performance audits.

**Mr T. BUSWELL:** I understand that. However, the Treasurer did not draw that distinction. He said that this is becoming common practice. He did not say that it was common practice in investigations or examinations of public sector bodies by a state government's Auditor General.

**Mr E.S. Ripper:** With respect, I referred to performance audits as being a form of internal audit, and I made my comments with regard to performance audits, not attest audits.

**Mr T. BUSWELL:** I go back to the recent audit of the Department of Environment, as I assume it then was, in relation to wetlands. That was quite scathing of the government's failure to protect a number of wetlands through the implementation of management plans - the basic things that people would do if they had responsibility for internationally listed wetlands, such as the Vasse-Wonnerup wetlands at the back of my house where my kids play. They probably would not be allowed to do that if there was a management order, but that is neither here nor there. I am thinking to myself that if we were in that situation and an audit report was handed

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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down, under this provision, at the back of the audit report, or somewhere in the audit report, would be the rebuttal from the department, which is effectively what it would be. The department will not write and say, "Thanks for those lovely comments. We appreciate the fact that we have failed. That's a wonderful piece of news." It would be a rebuttal, on the balance of probabilities.

**Mr E.S. Ripper:** I have seen occasions on which departments have conceded that the Auditor General is absolutely right and that they must do better.

**Mr T. BUSWELL:** My view is that all that will happen is that the Auditor General's report will be diluted by giving departments the capacity to present a rebuttal. What is not to say that immediately after the Auditor General's report is presented, the department will not front up and give its own version of events, as summarised at the back of the Auditor General's report? I believe that this provision undermines the capacity of the Auditor General to provide an independent report to Parliament that accurately reflects the investigation or examination that the Auditor General has conducted of the public sector agency. I acknowledge that, within that provision, it says that the Auditor General can communicate with the agency before the report is produced. I believe the comments are not accurate, and I still maintain that this is a bad clause.

**Mr M.W. TRENORDEN:** The Treasurer is totally ignoring one of the fundamental facts with this bill. The Auditor General is an officer of the Parliament. He has no right - in fact, he would be operating totally outside his role - to adjudicate a response from an agency. If the people from the Office of the Auditor General are to be the ones who decide what goes into the report, they will be making a decision on a political debate, which the Auditor General is not entitled to do. Certainly, even if the Treasurer could find an obscure clause that says that he is entitled to do it, it is something that an Auditor General should never do. The Auditor General should report openly and without political bias to this chamber. By "political bias", I do not mean a Labor versus Liberal-type debate. The political debate I am talking about is the politics of the public service, which are quite substantial, as the Treasurer knows. It is not about information. If the Treasurer looks at the obscure document which is on my desk somewhere and which is called the notice paper, he will see that there are a million opportunities for the government, for ministers and for agencies to give information. There are limitless processes for governments, ministers and agencies to give information. Why is it put in the only report that this Parliament gets from an Auditor General? Why does this clause say that the Auditor General must include a report? It does not say it should be rewritten. My reading of the clause is that the agency has an unencumbered opportunity to rebut the Auditor General's position, so the debate is actually happening in the report and not in this chamber. That is a ridiculous proposition; in fact, it is a foolhardy proposition. It should not be allowed. I move -

Page 15, lines 8 to 11 - To delete the lines.

**Mr E.S. RIPPER:** We have proceeded very well with this debate and I was hoping that we would be able to achieve consensus on all aspects of this legislation. Regrettably, it would appear that we cannot achieve consensus on this particular clause. I cannot support the amendment. I prefer the bipartisan position of the Public Accounts Committee, which dealt with this issue at pages 55 and 56 of its report. The following is from page 56 -

The Auditor General informed the Committee that Clause 25(2) formalises the OAG's current natural justice processes for performance examinations but that Clause 25(3) is new.

Then there is a quote from submission 2 from the Office of the Auditor General. This is an independent submission from the Auditor General to the parliamentary committee that examined this legislation. This is what the Auditor General said, not what the government said. The Auditor General's submission, as recorded in the report of the Public Accounts Committee, states -

*This new practice will ensure not only a more fair and balanced process, but will also provide the opportunity for Parliament and the public to hold agencies accountable for their proposed responses to audit findings. The provision is in line with the majority of other Australian audit jurisdictions.*

That is what the Auditor General said about this matter to the Public Accounts Committee. The Public Accounts Committee said -

Based on this evidence, the Committee is satisfied with Clause 25, including sub-section 3.

The Auditor General himself, given the opportunity to make a submission on this clause, supported it as being in line with provisions found in the majority of other Australian audit jurisdictions.

**Mr R.C. KUCERA:** I ask the Treasurer to elaborate on what he was saying should he wish to do so.



Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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**Mr E.S. RIPPER:** I thank the member for Yokine for his consideration. There is one other issue that I would like to raise. I am advised that the report on the Ramsar wetlands actually piloted as a voluntary trial the new system of including an agency response. I may have erred in giving the impression to the committee that the agency response will always be presenting a contrary or contradictory perspective to the report of the Auditor General. I am aware of cases where agencies have accepted findings of the Auditor General and have committed to a program of action to rectify the deficiencies identified by the Auditor General. That may be the type of response that will be published in the report by the Auditor General. Members of Parliament will then be able to say, "This is what the agency said a year ago. It said yes. The Auditor General is right; this is a problem and we're going to fix it and this is what we're going to do. Has it done what it said it would do? Has it done what it told the Auditor General it would do?" It may not only be a device for the Auditor General in ensuring his own accountability; it may be a device that enables the Parliament to hold agencies accountable because they will be giving that sort of response. Quite frankly, agencies do not always disagree with the Auditor General's findings. Sometimes agencies are shamed by the findings of the Auditor General and agree wholeheartedly that they should be doing better than they have been.

**Mr M.W. TRENORDEN:** I listened to the debate when the report on the wetlands was tabled. Interestingly, the agency committed totally to the Auditor General's report. There was no argument. The minister is quite right to say that agencies will accept the findings of the Auditor General because often the Auditor General not only highlights a problem but also provides a solution to an issue that agencies are happy with. They are not the issues that concern me. I am concerned about the hotly contested view of the Auditor General's opinion. We never get mentioned on the front page of *The West Australian* when we are in agreement in this house. Problems occur when we are not in agreement. We will have the same argument over the Auditor General's reports.

I am not sure whether this statement is factual, but I have used it often and I have heard other people use it. Einstein apparently said that even with the best of inventions, there is a three per cent failure rate. I point out to the Office of the Auditor General that this is part of its three per cent failure rate. It is not an appropriate process. I can understand why the Office of the Auditor General may think it is good process, but this is not just about the Office of the Auditor General; it is also about the Parliament. It is about us. I do not believe it is appropriate for debate to be occurring in reports of the Auditor General. What will happen when this bill is passed and when for the first time after that an agency is heavily opposed to an Auditor General's report? The Auditor General, from my reading of this clause, will have no ability to edit the report that will go in. The clause states that the Auditor General must include in a report prepared under subsection (1) any submissions or comments made.

**Mr E.S. Ripper:** Or a fair summary.

**Mr T. Buswell:** It doesn't say that at all. It says, "Must include in a report prepared under subsection (1) any submissions or comments made under subsection (2)".

**Mr E.S. Ripper:** Or a fair summary of them.

**Mr M.W. TRENORDEN:** Who makes the fair summary?

**Mr E.S. Ripper:** The Auditor General.

**Mr M.W. TRENORDEN:** Therefore, the Auditor General is getting involved in the debate. Do we really want that?

**Mr R.C. Kucera:** Surely, member, his report would generate debate anyway.

**Mr M.W. TRENORDEN:** I know the member for Yokine understands this. There is a huge opportunity for all of us in this chamber to debate any of these issues. We have plenty of opportunities. The Auditor General's office is not always right. It is fair to have that debate. Should we have the debate in a document? That is what I am arguing should not happen. If we are really saying that a version of an agency's report edited by the Office of the Auditor General, can go into the report, the Office of the Auditor General is initiating the debate before we get there. Is that something we really want to promote? I am not saying this as a member of the opposition. I believe sincerely that it is something that we in this house should be debating.

**Mr E.S. Ripper:** I suspect that an audit would inevitably lead to that regardless of whether we want it or not.

**Mr M.W. TRENORDEN:** The debate is inevitable. The report that comes to this chamber needs to be as apolitical as possible. I do not mean the government side versus my side. I am talking about public service politics as well. The report should be as clean as possible when it hits this chamber, because from time to time we will have heated debates.

**Mr R.C. Kucera:** Isn't that a subjective thing anyway? Isn't that the interpretation of the auditor's report? People will make their own decisions as to whether it is political or apolitical.

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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**Mr M.W. TRENORDEN:** The history of the Office of the Auditor General over many years indicates clearly that the Office of the Auditor General goes out of its way, as the member may know from when he was a minister, particularly in health -

**Mr R.C. Kucera:** I am thinking of Rottnest as an example.

**Mr M.W. TRENORDEN:** The member would have gone through this process when he was a minister. I am sure we do not want a situation in which the Office of the Auditor General has to argue about whether it should be reasonable as opposed to whether it should report fairly and squarely to the Parliament. That is what this debate is really all about.

**Mr T. BUSWELL:** I support the amendment moved by the member for Avon. Although I am sure that the amendment will not be successful in this place, I will certainly be encouraging my colleagues in the other place to look at the amendment in some detail. I do not want to take too much time, because the member for Avon needs to be in Northam this afternoon to move boxes around, and there are some other issues that we need to look at in this bill, in particular appointment and resourcing. However, I still maintain that the purpose of an Auditor General's report is not to contain both perspectives, as the Treasurer has put it. I also maintain that the purpose of an Auditor General's report into an investigation or examination is not to provide a forum for other people or agencies to consider the performance of the Auditor General. To think that we could use a response from an agency as an accountability mechanism is a complete and absolute nonsense. The member for Avon has made a valid point, and I will be supporting his amendment.

**Mr E.S. RIPPER:** I am pro accountability and pro the independence of the Auditor General. I have responded to suggestions from members of this house about ways in which we can improve the accountability and independence of the Auditor General. I cannot support an amendment that will reduce accountability and the information that is made available to members of Parliament. I actually believe the more debate we have and information we receive, the better it is for members of Parliament and the better it is for the openness, transparency and accountability of our governmental processes. I am, therefore, quite surprised at the turn this debate has taken, because what members opposite are now arguing is that the Parliament should have less information, not more information.

**Mr T. Buswell:** No, we are not. If an Auditor General brings down a report that is critical of a department, and at the back of that report there is an argument from the department as to why the Auditor General should not have been critical of that department, we then find that when we ask the Treasurer a question about that matter, the first thing he does is say, "Yes, but in the opinion of the department" etc etc. Therefore, I do not accept the Treasurer's argument.

**Mr E.S. RIPPER:** The whole matter will turn on the credibility and strength of the respective arguments. An Auditor General's report may be absolutely critical of an agency, and the agency's response may be "Regrettably, the Auditor General's findings are correct. We have examined the issue, and we are prepared to implement recommendations one to 10 of the Auditor General's report, but not recommendation 11, and we have established the following processes to implement our response." That may be what the Parliament gets. A year later the Parliament may ask the minister whether the agency has done what it promised the Auditor General and the Parliament it would do when it responded to the Auditor General's report.

If the Auditor General was opposed to this proposal, I would be having second thoughts about it. However, the Auditor General has said on the record to the Parliament that he supports this proposal. He supports this proposal because it will provide the opportunity for Parliament and the public to hold agencies accountable for their proposed responses to audit findings. He supports this proposal because he regards it as a fair and balanced process. He supports this proposal because it is in line with the majority of other Australian audit jurisdictions. The Auditor General supports it. Therefore, the Parliament should support it, because it will provide more information to members of Parliament, and it has the support of other Australian jurisdictions. Moreover, modern professional standards in the auditing profession require auditors to think about how they should be accountable for their work. That is a proper subject for them to think about. While I have been prepared to support proposals, suggestions, modifications or compromises to improve independence and accountability and the provision of information to the Parliament, I cannot support an amendment that will go against accountability and against the provision of information to members of Parliament.

**Mr M.W. TRENORDEN:** Someone said to me many years ago that if we took the word "I" out of every conversation, the number of conversations would be halved. I agree with the member for Vasse that we should move on. However, because of what the Treasurer has just said, I need to put on the record my appreciation for the way the Treasurer has been handling this bill. I am in no way critical of the way the Treasurer has been handling this bill. The Treasurer has been excellent. I can speak only for myself, but the Treasurer has gone out of his way to give me full access to information - in fact, much more than most other ministers do - so I am not

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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having a shot at the Treasurer about that. However, as the Treasurer knows and as I know, the Treasurer's view is not just his view. It is the collective view of those behind him. That is as it should be. I am not picking on the Treasurer for that either. I will continue to argue with the Treasurer on issues that he and I do not agree about. That is my right as a member of the opposition. However, as I have said, the Treasurer has been very good in his handling of this bill. I am not being critical about that at all.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 26 to 35 put and passed.**

**Clause 36: Powers extend to confidential information -**

**Mr T. BUSWELL:** I have a significant concern about this clause, if for no other reason than in this clause the recommendations of the Commission on Government have been rejected and ignored. I am sure the Treasurer will tell me that this matter was reviewed by the bipartisan Public Accounts Committee. I accept that the committee has done a good job in that review. However, this is a serious and significant issue. I raised it in our party room, and I am now raising it in this chamber. This clause talks about what I will refer to as "secret information". The reason I will refer to it as "secret information" is so that I will not need to use the words "information that is deemed by the minister not to be in the public interest for it to be released". We talked about this matter yesterday during the debate on the Financial Management Bill. Under that bill, the minister is required to inform the Parliament if an agency has decided not to release certain information. The agency is also required to inform the Auditor General. The Auditor General Bill goes one step further and says in clause 36(2) that if the Auditor General has been so informed, the Auditor General may report it to the Public Accounts Committee. It does not say the Auditor General must report it. It just says he may report it. The Commission on Government recommended that the Auditor General be required to report the secret information to what it proposed would be an upper house committee.

**Mr M.W. Trenorden:** Just so that you will know, member for Vasse, the Commission on Government suggested that a new type of public accounts committee be set up that was basically a joint house committee.

**Mr T. BUSWELL:** I am not too hung up on what type of committee it should be. The fact is that a committee is a representative of the body of which we are collectively a part; namely, the Parliament. The Parliament should have some say in this matter. The Commission on Government said that the Auditor General should be required to report the secret information to a committee of the Parliament. That committee should, in turn, be required to review the minister's claim in camera. The Commission on Government says also that the committee can then deal with the information as it sees fit. In other words, the committee should determine in camera whether that information should be included in a report to be tabled in Parliament. That is a very clear process by which the Parliament, via the committee, can become involved in examining information that a minister deems to be secret. That is the appropriate and right way to go.

Sometimes when we look retrospectively at recommendations of the Commission on Government, we forget the circumstances of the genesis of COG. It was not set up as a result of a frolic in the park. It was set up as a result of some of the darkest days of government in this state. We forget the impact of those dark days of government and the need for COG. That environment drove the need for that level of scrutiny. We are now in a different environment and I think that sometimes we forget that there may be times again when the Parliament will need to have the capacity to engage in this level of scrutiny. My view is that the act is sadly lacking in the way it deals with this. That is meant to be a reflection not on the Auditor General but on the bill that has been introduced to empower the Parliament to question and understand why certain ministers deem from time to time that certain information should not be released because of the public interest. It is fundamentally important that we, as members of Parliament, albeit through a committee, have the capacity to review and hold ministers accountable for making decisions that result in certain information being kept secret. I assure the Treasurer that when this provision of the bill gets to the other place, my colleagues will be taking a good hard look at what can be done to have it beefed up to make sure that the Parliament, as the collective representative body, has the right and the capacity to examine decisions by ministers to deem information secret.

**Mr M.W. TRENORDEN:** As I indicated during my second reading contribution, I did not have the time to range over a whole raft of issues, but I have a large number of concerns about this bill. I did not speak on this aspect of the bill, but I take the time to do so now. The member for Vasse is right to go back over the process. Unfortunately for the Treasurer, we must break out the mutual agreement, because he is on record as saying on many occasions, when he sat on this side of the chamber, that nothing should be commercial-in-confidence.

**Mr E.S. Ripper:** The geography of the argument is important.

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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**Mr M.W. TRENORDEN:** That is right. I can understand the Treasurer putting forward a collective argument and not a personal one. Although I did not rate this aspect in the top four points I made when I was speaking on the bill, it is a problem with government and not with the Auditor General. I have attended many annual meetings of Auditors General, especially when I was a member of the Public Accounts Committee. Whatever the noun is for a collection of Auditors General - I suppose it might be a gaggle - I know that they are very nervous about this process, because it asks them to make a decision. The Auditor General is not a police officer. The Office of the Auditor General does not want to be in a position in which it must make decisions. The decision on what is commercial-in-confidence is made by the government. One of the great wonders of this place is that when members sit on this side of the chamber they think that nothing should be secret, but as soon as they sit on the other side of the chamber they think that everything should be secret. That is just the way it is. However, we know from the Royal Commission into Commercial Activities of Government and Other Matters, and from the Brian Burke days, that many things can be hidden from this and the other chamber by the argument that they are commercial-in-confidence. It formed a huge part of the reasons for the establishment of the royal commission and the Commission on Government. I support the Liberal Party proposal to take a very hard look at this process. If the Treasurer wants to telephone a number of prominent Australians who are ex-Auditors General, I can give him their telephone numbers. I am sure that they would very strongly support the idea. Asking the Auditor General to make a decision places the Auditor General in an invidious position, because in the end it becomes a political decision. There would be a mix of information and political outcomes, as was said in the previous debate. The Auditor General would be placed in the invidious position of saying that something could go wrong commercially. Therefore, the Office of the Auditor General might be seen in the future not to have carried out its function. That position would be in contrast to governments having the right to do whatever governments do and Auditors General not debating what governments do. Auditors General are not police officers; that is not their role. This is an interesting clause in the bill and it requires a spotlight. One of the aspects I find disappointing about this bill is that other than a few members who are in the chamber today and a few members in the other place, academics and other people who comment on politics have not scrutinised this bill. In the end, despite the good intentions and the good work of the minister, we are likely to pass a bill today that will put the Auditor General totally in the control of the executive.

**Mr E.S. RIPPER:** Of course, there is room for debate about a matter as sensitive as information that should be released in the public interest and how that affects accountability to the Parliament and Parliament's right to know. Those issues are very sensitive and there is room for different perspectives. It is interesting to note how the commonwealth Parliament has handled this issue. Section 37 of the Commonwealth Auditor General Act 1997 states -

**Sensitive information not to be included in public reports**

- (1) The Auditor-General must not include particular information in a public report if:
  - (a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); or
  - (b) the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2).

The act goes on to state -

- (3) The Auditor-General cannot be required, and is not permitted, to disclose to:
  - (a) a House of the Parliament; or
  - (b) a member of a House of the Parliament; or
  - (c) a committee of a House of the Parliament or a joint committee of both Houses of the Parliament;

information that subsection (1) prohibits being included in a public report.

The commonwealth Parliament has dealt with this in a way that is rather more protective of the information than is the proposal in this legislation. In the commonwealth jurisdiction, a commonwealth minister can say that it is not in the public interest for such information to be made public, and the commonwealth Auditor General is prohibited from providing that information to the commonwealth Parliament, a parliamentary committee or any member of Parliament. One can contrast that with the circumstance in Western Australia, in which a minister can say that it is not in the public interest for such information to be released, but the Auditor General still has a discretion to provide that information to the Public Accounts Committee, although the Auditor General cannot provide it to the Parliament as a whole.

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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I regard the proposal in this legislation as being more liberal with the provision of information than occurs in the commonwealth jurisdiction. It is fair for the Auditor General, as an independent officer who is free from political influence, to make the decision about whether certain information should be given to the Public Accounts Committee. Of course, the legislation is silent on the question of what the Public Accounts Committee might then do with that information. The Public Accounts Committee is not prohibited by this legislation from deciding how it will handle the confidential information it has received. Of course, when I sat on the opposition benches, I did argue that commercial confidentiality had been discredited as an excuse for not providing information in Western Australian politics. I was responding to the well-known events of the 1980s and the over-liberal use that was made of that excuse at that time for the protection of political rather than commercial interests. In government, I have been made aware of circumstances in which it would be deleterious to the public interest and to taxpayers if the information was provided. Yesterday I gave an example of energy prices charged to government energy utilities in the course of their commercial activities. This Parliament has deliberately established a system in which those government-owned trading enterprises are in competition with the private sector. We have tried to establish a fair and level playing field to enable that competition. If competitors have access to very sensitive information about their rivals' operations, without the provision of that information being reciprocal, the taxpayers, as the owners of the trading enterprises, could be disadvantaged. The public as consumers with an interest in fair competition would also be disadvantaged. There may be other circumstances, which I will cover in subsequent remarks.

**Mr T. BUSWELL:** I move -

Page 21, line 9 - To delete the words "but may report it to the Public Accounts Committee" and substitute -

and shall report it to the Public Accounts Committee, who shall determine in camera whether the information shall be included in a report to be tabled in the Parliament.

This is a very simple amendment. Funnily enough, all it does is impose the rigours that the Commission on Government suggested should be imposed on the use of confidential information or the determination by a minister of the Crown that information should be confidential. It is not about, as the Treasurer has alluded, denying a minister the capacity to determine that information is confidential and that its release would not be in the public interest. I have not heard anyone argue that that is not an acceptable decision for any minister to make. That is not the issue, although it might be an issue in relation to the Minister for Planning and Infrastructure's pet project at 140 William Street, but we will deal with that in another place.

**Mr E.S. Ripper:** I do not think there is any issue regarding that project by the way.

**Mr T. BUSWELL:** We will see.

**Mr E.S. Ripper:** I think it is being handled perfectly and appropriately.

**Mr T. BUSWELL:** We will see. I am sure the Treasurer did not discuss that in his meeting with Mr Grollo!

**Mr E.S. Ripper:** I did not.

**Mr T. BUSWELL:** Is that right? It is strange that a builder would travel all the way from Victoria to Western Australia and come out of a meeting and say that he was interested in expanding his business here, but did not discuss a project that was on everybody's lips and for which he was tendering. We will deal with that in due course.

**Mr E.S. Ripper:** He didn't.

**Mr T. BUSWELL:** The issue on this legislation is not confidentiality; it is the capacity of the Parliament to review the executive's decision. The Parliament should have that capacity. It does not follow naturally that because the Public Accounts Committee is charged with the task of reviewing a minister's decision that information would automatically be made public. I do not think that is the case at all. However, by this amendment, I am saying that, as a collective Parliament, we have a right to review those decisions. It seeks to avoid the events that occurred in those dark, dim days in the 1980s, illustrated by innumerable examples of disgraceful behaviour by ministers - it might have happened since then, but that period springs to mind - when this type of provision was used by ministers to hide their actions from proper scrutiny. That was the environment from which the Commission on Government emerged. We must always be mindful of the need to protect ourselves from the worst-case scenario, especially with confidential information. It is more than appropriate that the Public Accounts Committee have the capacity to review a minister's decision. That is all this amendment seeks to ensure. It is not about whether information can be confidential. The Treasurer should not make that argument again because that is not the point.

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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**Mr M.W. TRENORDEN:** If this were a larger Parliament that enjoyed the arrangements that are available to such Parliaments, a mechanism would exist that the minister could use; namely, a commissioner of the Parliament. That individual would operate on a basis similar to that of the Standing Committee on the Corruption and Crime Commission. In other words, someone other than the Auditor General, the minister and the Parliament could consider the matter to see whether it is sufficiently important to sustain commercial confidentiality. However, as a small Parliament, we do not have that facility. The minister's provision contains two steps, and the amendment contains one step. In the existing clause, the Auditor General must, first, make the decision about the information. Secondly, a Public Accounts Committee can make a decision about the process. The amendment moved by the member for Vasse removes the requirement for the Auditor General to make a decision; it becomes the Public Accounts Committee's decision. I think only one member of the Public Accounts Committee is in the chamber now. I have always supported the Public Accounts Committee and I trust it implicitly. Even if we did not trust the Public Accounts Committee, it comprises three government and two opposition members. If information is leaked, it will come from one or two people.

**Mr E.S. Ripper:** Are you sure of that?

**Mr M.W. TRENORDEN:** No; I must admit that I am not. When I was a member of the Public Accounts Committee, after the Treasurer had spent a little time on it, an inquiry was held into Notre Dame. Government members were leaking information wholesale.

**Dr J.M. Edwards:** Nonsense; I didn't.

**Mr M.W. TRENORDEN:** If the member wants to go further, the chairman was bringing into the Public Accounts Committee words written in the Department of the Premier and Cabinet.

**Dr J.M. Edwards:** I have never leaked government information.

**Mr M.W. TRENORDEN:** Was the member for Maylands on the Public Accounts Committee when it investigated Notre Dame?

**Dr J.M. Edwards:** I was.

**Mr M.W. TRENORDEN:** Without any doubt, the chairman was bringing in information; albeit, this should perhaps be a debate for another time. Information written outside the Public Accounts Committee -

**Dr J.M. Edwards:** You should retract your comment about government members leaking information.

**Mr M.W. TRENORDEN:** I am very happy to retract any implications about the member for Maylands, because I cannot remember who were the government members other than the chair.

**Mr P.B. Watson:** But you can remember that they were leaking information.

**Mr M.W. TRENORDEN:** Information was leaked all right. A major debate was held in this chamber.

**Dr J.M. Edwards:** You can't remember who was on it, but you can remember that they leaked information. Credibility denied, member for Avon.

**Mr M.W. TRENORDEN:** The member for Maylands might recall that a privileges committee was established.

**Dr J.M. Edwards:** I think you have a very selective memory.

**Mr M.W. TRENORDEN:** I will happily have that debate any time the member likes. I know exactly what happened.

This amendment will remove the capacity for the Auditor General to make decisions. Auditors throughout Western Australia would like to not be compelled to make decisions on very temperamental information.

**Mr E.S. RIPPER:** I oppose this amendment. It has two parts, the first of which requires the Auditor General to report information the subject of a ministerial determination on confidentiality to the Public Accounts Committee. That will create the bizarre situation in which confidential information must be reported but non-confidential information must not. In other words, the requirement to report sensitive information is much more onerous and, indeed, is absolute, whereas the requirement to report non-confidential or non-sensitive information will be left to the discretion of the Auditor General. That quite frankly seems bizarre. There might be a legitimate argument that the information should be protected. Why would that information be subject to a requirement to report if the Auditor General has discretion on every other matter?

The second part of the amendment concerns what the Public Accounts Committee does with that information. I think the amendment is unnecessary; the Public Accounts Committee thought it was unnecessary. In its report, it states -

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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The Committee agrees that its decision on how to handle that information should recognise the confidential or sensitive nature of the information. The Committee believes, however, that the current provisions within Standing Orders that prevent disclosure of Committee deliberations are sufficient to protect against inappropriate disclosure of such information.

Based on the above, the Committee is satisfied in relation to Clause 36(2) of the AGB.

I deliberately asked the Public Accounts Committee to examine this legislation because I want a situation in which members of Parliament are able to think about the clauses, having received expert advice from a variety of sources. The Public Accounts Committee, on a bipartisan, unanimous basis, has endorsed the legislative package with a number of suggestions for amendments, which the government has responded to in various ways. In this case, the Public Accounts Committee obviously spent quite some time examining this matter. Pages 50 to 55 of the committee's report deal with the provision of confidential information. The committee has obviously given the matter conscientious attention and has endorsed the legislation. I indicate that there is a relationship between this bill and the Financial Management Bill 2006, which has been passed by this house. Clause 82 of that bill states -

- (1) If the Minister decides that it is reasonable and appropriate not to provide to Parliament certain information concerning any conduct or operation of an agency, then within 14 days after making the decision the Minister is to cause written notice of the decision -
  - (a) to be laid before each House of Parliament or dealt with under section 83; and
  - (b) to be given to the Auditor General.
- (2) A notice under subsection (1)(a) is to include the Minister's reasons for making the decision that is the subject of the notice.

In other words, under the companion Financial Management Bill, if a minister makes a decision not to provide information, the minister has to notify Parliament that he or she has made the decision and has to give reasons for the decision to Parliament. Parliament will therefore know that this information has been the subject of a ministerial determination and will know the minister's reasons for making the decision. The Auditor General has the discretion to decide whether or not to report the information to the Public Accounts Committee. I think we should trust the Auditor General to make a decision on the matter that serves the public interest. The Auditor General has no political axe to grind one way or the other, and that is the appropriate way for the decision to be made. The Public Accounts Committee still has the ability to use its powers to decide what to do with the information. This is a much more liberal and open way of handling sensitive information than what exists in the commonwealth jurisdiction. It is regrettable that some information is so sensitive that it should not be released publicly. However, that is the reality of the sorts of issues we have to deal with. In subsequent remarks I will perhaps provide a non-commercial example of the sorts of issues that arise.

**Mr T. BUSWELL:** I am very glad the Treasurer made those comments, because I think it is important that his rejection of the recommendations made by the Commission on Government is now on public record. I do not think the Commission on Government made those recommendations to reduce accountability, transparency or access to information; I think it made those recommendations for the simple purpose of making decisions of the executive open to the scrutiny of Parliament. It is not a difficult process, and I do not think it is even a new process. I hope it is not. I am very interested in the Treasurer's continual reference to the commonwealth regime and how good it is; it is very interesting, coming from the Treasurer. In Victoria, the Auditor General may include in a report to Parliament any information -

**Mr E.S. Ripper:** "May" include.

**Mr T. BUSWELL:** Any information, confidential or otherwise. The Treasurer should let me finish. The report referred to by the Treasurer says that if the Auditor General receives confidential information, he or she cannot include it in a report to the Parliament.

**Mr E.S. Ripper:** But they may report to the Public Accounts Committee.

**Mr T. BUSWELL:** Be that as it may. The Treasurer selectively draws reference from other Australian jurisdictions when it suits his argument to do so. I say to the Treasurer that I, too, can find examples from other Australian jurisdictions to support my argument, or versions thereof. The Treasurer has made the point that he rejects the recommendations of the Commission on Government; he rejects the recommendation that Parliament should have the right to review the decisions of the executive. I am glad that he has made those points.

**Mr E.S. RIPPER:** If the member was dealing fairly with my comments, he would not have summarised them in the way he has. I am sure that the Auditor General's summary of agency comments in response to his reports

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting  
Speaker; Mr John Quigley

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will be fairer than the summary given by the Deputy Leader of the Opposition of my comments. On a number of occasions I have promised the house that I would make reference to a non-commercial issue. Occasionally the Auditor General's inquiries run parallel to, or possibly in conflict with, inquiries conducted by the Corruption and Crime Commission. There may well be a circumstance in which something included in an Auditor General's report could potentially compromise an investigation being conducted by the Corruption and Crime Commission. We do not want such an investigation to be compromised by the release of information. It may not be easy for the Auditor General to make that decision; it may be something for which the relevant minister must provide certification. Members should understand that this concerns not only commercial confidentiality issues and how government-owned trading enterprises fare in the marketplace, but also other issues such as corruption investigations. This must be understood in the context of considering how certain information has to be handled in a different way to the normal expectation, which is that Parliament has access to all of the information it wants.

**Amendment put and negated.**

**Clause put and passed.**

**Clause 37: Appointment of independent auditor for the OAG -**

**Mr E.S. RIPPER:** The member for Avon has raised the question of the appointment of an independent auditor for the Office of the Auditor General for Western Australia. He has posed the argument that it is not appropriate for the Governor, who acts on the advice of the government, to appoint the auditor. I have reflected on this matter and I can see only three possibilities. The first is that the Auditor General appoint his or her own auditor. I do not regard that as an attractive proposition, because I think some other authority should appoint the auditor. The second option is the option the government has included in this bill, namely, that the Governor act on the advice of the government. The third option might be that the Public Accounts Committee appoint the auditor for the Office of the Auditor General for Western Australia. The difficulty with that option is that the Public Accounts Committee simply does not have the bureaucratic support to perform that type of function, whereas the government has procurement professionals and the sort of professional advice that is required for making that sort of appointment.

None of the three options that I have thought of is entirely satisfactory in itself. I think that the option that the government has chosen is the best way forward, although I know I have not convinced the member for Avon. I think that the relevant minister should advise the Parliament or perhaps the Public Accounts Committee of the appointment of the auditor for the Office of the Auditor General, and should give the information to the Parliament and perhaps the Public Accounts Committee about the processes that have been engaged in to make that selection. I undertake to provide information to the Public Accounts Committee or to the Parliament - I will take some advice from members as to whether they think there should be a statement to the Parliament - about the appointment and selection process for the auditor of the Office of the Auditor General.

**Mr M.W. TRENORDEN:** Again, I am not having a go at the Treasurer's intentions, but there will come a day - because this is the best place to live on earth and it will be for a long while - when the unmentionable occurs.

**The SPEAKER:** Collingwood wins the grand final!

**Mr M.W. TRENORDEN:** That would be a good example.

**Mr E.S. Ripper:** That would be after climate change has affected hell!

**Mr M.W. TRENORDEN:** That is right.

I am referring to an abnormal situation, but it is always that sort of situation that bites hardest and hurts most. Something might happen in the Office of the Auditor General, or people might believe that something is happening in that office and that therefore an audit should be conducted. The executive will pick the auditor. Very little will be found to be wrong in an annual audit of the Office of the Auditor General. However, if there is a contested situation and a hot political decision has to be made - I use the word "political" not in terms of this chamber or the other place but in the context of the broader public service - and there is some raging argument, it would be unfortunate if the minister of the day told this house that he had just appointed an auditor to audit the Office of the Auditor General and the opposition accused the government of making that choice for its own reasons. The whole purpose of what is sought to be achieved would go down the gurgler, as we have all seen in this chamber on many occasions.

I agree that it is inappropriate for the Office of the Auditor General to select its own auditor. That is not an option. I am not so sure that the Treasurer should dismiss the Public Accounts Committee process so quickly. We had an excellent example in which the member for Churchlands and several other members in this chamber and I were involved, even though the case was not all that pleasant, in which the Speaker, as chairperson of the



Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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Procedure and Privileges Committee, brought in outside people to go through a process. Frankly, we needed that outside intervention to get through that process. There is no reason in the world why the Public Accounts Committee cannot do the same. In fact, the Victorian committee does that. I am not hot on auditing the Office of the Auditor General. If I were writing this bill, I would not include a requirement for an annual audit. I would require an audit to be carried out every three years. The audits of the Office of the Auditor General in other Australian jurisdictions have not raised any great concerns. However, the audits are still fairly expensive; I imagine they cost between \$300 000 and \$400 000. It will not be a cheap exercise.

My objection is not about the process. I think that the Treasurer will put a minister in a very delicate position at some time in the future, and it may even cloud the debate of the day. A better option would be to separate from the executive. I would have no objection to the executive of the day instructing the Public Accounts Committee, either in writing or even verbally, to go through the process of organising an auditor. As part of that process, as we said yesterday, the auditor of the Office of the Auditor General cannot be a permanent appointment, because the relationship would become too close. It can be likened to the relationship between courts and lawyers; there is a bit of a club out there. The auditor of the Office of the Auditor General will have to be rotated amongst companies on a fairly regular basis. My argument is that a committee of the house, such as the Public Accounts Committee, can be involved without causing a great problem. I suggest that if the Treasurer does not do that, the day will come when this house will regret it.

**Mr E.S. RIPPER:** This is about the attest audit of the Office of the Auditor General; it is not about performance review. I think there should be an attest audit of the Office of the Auditor General every year as there is with any other agency that has a substantial amount of money allocated to it. With regard to performance, I understand the Auditor General engages in a peer review process every three years. He uses other Auditors General to examine the progress of the Auditor General and his office in Western Australia. That seems to me to be an appropriate process. The Auditor General is not required by legislation to do that, nor is he pressed by anyone to do it. He does that as part of the fulfilment of his responsibilities, applying to himself the standards of accountability that he applies to others.

**Mr M.W. TRENORDEN:** The Treasurer still did not grasp what I am talking about. I understand that is the process, but clause 37 states that the Auditor General is not to carry out some audits, and subclause (2) states that the Governor may appoint an auditor who is a registered company auditor under the Corporations Act to carry out audits in relation to the OAG. It does not state in that clause that this is just a functional yearly process. It can happen at any time. If the executive at any time decided it wanted an audit to be carried out because it was having a heated debate with the Office of the Auditor General, this clause would provide a tool for an agitated executive to act. There have been such occasions from time to time; for example, Paul Keating had a heated debate with his Auditor General, and Jeff Kennett, as Premier of Victoria, actually got rid of his Auditor General. I would never accuse the Treasurer of doing that, but, as the Treasurer knows, this bill is not about that. We are putting legislation in place in perpetuity, until someone else comes along and alters it. This clause provides a tool, and, depending on which deckchair people have on the *Titanic*, they can argue about the value of the tool. However, it still gives a tool to the executive to act against the Office of the Auditor General.

**Mr E.S. RIPPER:** I simply point out that clause 37 must be read in conjunction with clause 38, which clearly contemplates the attest audits that I have been talking about in my remarks.

**Mr M.W. Trenorden:** It says that it must be at least one a year. It does not say that the executive of the day cannot call for an audit because it feels like it. It can.

**Mr E.S. RIPPER:** It must also be said that the word “auditor” has a meaning. One cannot just go to St Georges Terrace and grab the nearest person in a suit and say, “I want you to audit the Office of the Auditor General”. People must hire a professional auditor, who must put his professional reputation and integrity on the line when he signs off on the audit. If the government thought that it could engage a hired gun to do over the Office of the Auditor General, it would run up against those professional obligations and integrity concerns that auditors have.

**Mr M.W. TRENORDEN:** I do not have to point this out to the Treasurer, because he is a good political operator. What the Treasurer is saying is absolutely true. However, while the audit was being conducted, the government could beat the hell out of the current Auditor General. That audit might take three months, six months or nine months. In that time, a political position could be taken rather than the one that the Treasurer just outlined. However, the Treasurer is quite right. If he paid for a professional auditor from down the street, he would get a professional outcome. However, in the meantime, if the Treasurer wanted to beat up the Office of the Auditor General, he could have a wonderful time for a period, and the Treasurer’s smile tells me that he knows that.

**Clause put and passed.**

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting  
Speaker; Mr John Quigley

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**Clauses 38 to 41 put and passed.**

**Clause 42: Recommendations by the Public Accounts Committee -**

**Mr E.S. RIPPER:** Clause 42 relates to an issue that was raised in the second reading debate. That issue was the role of the Public Accounts Committee in providing to the Treasurer a recommendation on the budget of the Office of the Auditor General, and the requirement for the government to have regard to that recommendation. I have sought advice from the Clerk of the Legislative Assembly about the actions that the Public Accounts Committee could take. Although it is not normally the case that the Clerk's advice to any member is put on the public record, on this occasion the Clerk has confirmed to me that he is comfortable with my reading into *Hansard* the letter that he has written to me. It reads -

Dear Treasurer

I confirm my advice to you that it is currently within the powers of the Public Accounts Committee to investigate the budget, resources, organisation and operation of the Auditor General's Office, and make consequent recommendations to the Assembly. It can do so of its own motion.

Legislative Assembly Standing Orders 284 and 285 detail the very broad capacities of the Public Accounts Committee, which are broader than those of any other Assembly or Joint Committee.

Of course at present there is no *requirement* for the committee to undertake any review or examination of the Auditor General's office or his budget.

Yours sincerely

PETER J. MCHUGH  
CLERK OF THE LEGISLATIVE ASSEMBLY

I will elaborate on that matter. My understanding is that right now, even without this legislation, the Public Accounts Committee could conduct an annual inquiry, if it so chose, into the budget of the Office of the Auditor General. The Public Accounts Committee would have available to it, if it so chose, the full range of its powers. It could conceivably conduct a formal inquiry, with witnesses giving evidence in public. It could prepare a report, which would be tabled in the Parliament. Of course, the Public Accounts Committee is not now required to undertake that type of review, and, under this legislation, would not be required to undertake that type of review. However, if it so chose, it could have officers of the Department of Treasury and Finance give evidence; it could have officers of the Office of the Auditor General give evidence; and it could report that evidence and its own conclusions to the house.

This legislation requires the Treasurer and the government to have regard to the recommendations that the Public Accounts Committee might make on the budget of the Office of the Auditor General. The Treasurer and the government are not bound to accept the recommendations, but I know, as does the member, that if the government did not accept the recommendations of the Public Accounts Committee, the government would have to provide an explanation to the Parliament, and, indeed, to the public, of why that was the case. Knowing this, I am somewhat surprised that the Public Accounts Committee and the Auditor General have not previously engaged in this sort of process. There has been nothing to stop them, year after year, from engaging in this process. This legislation probably gives them the hint that they could do this, but, of itself, all it says is that the government must have regard to any recommendation that they might make.

**Mr M.W. TRENORDEN:** The Treasurer is wrong when he says that it has not happened. When I was the Chairman of the Public Accounts and Expenditure Review Committee, I did that. However, under the current legislation, the Auditor General is a creature of the executive. For that to happen currently, the Auditor General would have to clear it with the Treasurer before he could give the bid that he wants to make for his budget to the Public Accounts Committee. We tried that process in the past. The fact is that the current Auditor General is totally at the mercy of the executive. I do not have a problem with what the Treasurer indicated. In fact, I will not oppose the Treasurer if we can reach some sort of agreement. The difficulty I have is that what the minister described is not provided for in the bill. The Treasurer may say that the bill presents that opportunity. If the Treasurer can demonstrate to me that that opportunity is presented and that the Parliament will take it up, we will be able to reach an agreement, which would be a nice thing.

I put this to the Treasurer: the Office of the Auditor General may go through its normal processes and decide what it wants for a forthcoming budget. The Auditor General may then tell the Public Accounts Committee that that is what he will seek to submit to the Parliament. The Public Accounts Committee may write whatever it wants to write and table that in the house, and the normal processes would take place thereafter. If that can occur, I am in agreement with the minister. That is not a problem. However, the bill does not say that, does it? What the Treasurer outlined is another process. I am not arguing that the Treasurer's bill should say that. That

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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process should be decided by the Parliament, not by some process outside the Parliament. However, if we are clearly putting out a message to this Parliament and to Western Australians that the Office of the Auditor General could decide what it wants, that the Auditor General could advise the Public Accounts Committee of that, that the Public Accounts Committee could write whatever it wants to write, that Treasury could make its own decision, and that in the budget papers the allocation to the Office of the Auditor General could become public, we could have a public process. I would find it impossible to argue against that. However, we have not quite got there. If the Auditor General goes to the Public Accounts Committee and the Public Accounts Committee does not want to do what the Auditor General requests, that is okay by me too. I do not have a problem with that. It would give the Parliament - as the Treasurer knows very well, the Public Accounts Committee is just a reflection of the Parliament - the opportunity to do that. If that were the case, it would be a fantastic alteration to the bill, and I would support it.

**Mr E.S. RIPPER:** What the bill does is more limited than the description given by the member for Avon. The bill states -

In the determination of the budget of the OAG for a financial year regard is to be had to any recommendation as to that budget made to the Treasurer by the Public Accounts Committee.

I am saying that the Public Accounts Committee has available to it its full powers and range of processes in preparing and publicising any recommendation that it wants to make on the budget of the OAG. I cannot give the house a guarantee as to how the Public Accounts Committee will use its powers and processes. It is up to the Public Accounts Committee to make that determination. For example, the Public Accounts Committee may decide to take a written submission from the Office of the Auditor General and a written submission from the Department of Treasury and Finance, and send me a letter without tabling a report in the Parliament. It is up to the Public Accounts Committee to make a decision about that matter. All I am saying is that it has a full range of powers and processes available to it in considering this matter. The legislation states that the Treasurer must have regard to any recommendation that the Public Accounts Committee makes. Given that this matter has been put on the agenda through this bill, I expect that the Public Accounts Committee will have some internal deliberations about how it might approach this task.

**Mr T. BUSWELL:** I make a couple of observations. Like the member for Avon, one of the key areas that concerns me was discussed in the second reading debate. It relates to the statement at the start of the bill under clause 7(1) -

The Auditor General is an independent officer of Parliament.

That statement carries no weight. If a body is not financially independent, it cannot be independent. We could argue about that. I believe that very strongly. If a body is to be independent, it needs to be financially independent. I do not have an issue with what this bill does. I do not think it is a bad provision for the Public Accounts Committee to have the capacity to make a recommendation to the Treasurer. I think that is good. My concern is about what it does not do. It does not address the core underlying issue; that is, from a budgeting point of view, the Auditor General, with the exception of the -

Several members interjected.

**The ACTING SPEAKER (Mr P.B. Watson):** Members, I would like to hear the speaker on his feet.

**Mr T. BUSWELL:** There is a first time for everything.

**Mr M.P. Whitely:** You'll get counselling for that.

**Mr T. BUSWELL:** I would not get it from the parliamentary secretary.

**Mrs C.A. Martin:** I'll give you some counselling.

**Mr T. BUSWELL:** I am coming to see the member for Kimberley for some counselling in April next year, as promised, with my gold Speedos. I am looking forward to it. I do not want to be drawn down that path but I think -

**The ACTING SPEAKER:** I ask the member for Vasse to get back to the bill. We would like to hear his comments on the bill. We do not even want to picture what else he is talking about.

**Mr T. BUSWELL:** It is important to articulate to the house and declare that I will be visiting the member for Kimberley at her invitation. She has requested that I turn up in my gold Speedos.

I return to clause 42. The Auditor General would ostensibly be treated the same as any other department in the budgeting process if we took out the power that this clause gives the Public Accounts Committee to make a recommendation to the Treasurer. As the Treasurer said, if the Public Accounts Committee, for whatever reason, chooses not to take up that power, the Auditor General's office will be the same as any other office. I

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting  
Speaker; Mr John Quigley

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admire the work that Treasury does in keeping costs down in government. I think it is fantastic. I think these rules should apply with vigour to almost every government department, with the exception of offices such as the Auditor General, which is charged with a very important responsibility, which it has to exercise independent of the Parliament.

**Mr E.S. Ripper:** There are other important agencies, like the emergency departments of hospitals, for example.

**Mr T. BUSWELL:** I know that. Do they have to operate independently of Parliament?

**Mr E.S. Ripper:** They have to be resourced properly.

**Mr T. BUSWELL:** Within the context of the debate, that is a fairly facetious statement. It is an important issue. Both the member for Avon and I raised a substantial issue in our speeches in the second reading debate; that is, an agency is not independent if every year it has to go cap in hand to the executive to seek the money it needs to investigate the executive. The member for Avon detailed how he believed clause 42 may practically be applied, but that is not the case. He just highlighted that. It is not the case that the Auditor General's budget submission will go to the Public Accounts Committee and will be available for scrutiny and, similarly, go to Treasury so that at the end of the day, the Parliament can say, "Hang on, it asked for this much and only got that much." The member for Avon said that we need the Parliament to have the capacity to tell the Treasurer that an allocation is not high enough. However, this bill does not provide for that.

**Mr E.S. Ripper:** The Parliament does have the capacity. The Public Accounts Committee has the capacity to make a recommendation.

**Mr T. BUSWELL:** But there is no guarantee that that will happen.

**Mr E.S. Ripper:** That is a question for the Public Accounts Committee. The legal situation following the passage of this bill is that the Public Accounts Committee will have the capacity to do what you've just argued should be done.

**Mr T. BUSWELL:** I accept the Treasurer's advice; it is good advice. Maybe there is a need to go one step further and compel the Public Accounts Committee to get involved in that process.

**Mr M.W. TRENORDEN:** To the Treasurer's credit, this year in the estimates committee I asked him for the bid and the actual allocation. It was the first time those figures were given in this chamber. I asked the same question in previous years of the same person and did not get that answer.

**Mr E.S. Ripper:** That was the guy with the moustache.

**Mr M.W. TRENORDEN:** That is right. The bloke with the moustache did not give me the answer but to the Treasurer's credit, he did.

**Mr G. Snook:** The difference whiskers make!

**Mr M.W. TRENORDEN:** The whiskers made a difference of \$700 000. That was the difference between the amount the Auditor General asked for and the amount the executive gave the Auditor General for that function. That did not bring the government down. In fact, I think one person from the press asked the Treasurer that one question and then the next day moved on. That bit of accountability that occurred in the estimates process this year was a good thing.

Despite what the Treasurer thinks, the Auditor General will be in an invidious position if the Public Accounts Committee asks what its bid is before it goes to Treasury. It has not happened for a good reason. The Treasurer is probably right in what he is telling me. Even from my very ordinary bush lawyer reading of this bill, I can see that the Treasurer has considered that aspect. If the Public Accounts Committee got in touch with the Auditor General of the day and asked to look at its bid, I agree that some regard would have to be given to that request. If the Auditor General told the Treasurer that the Public Accounts Committee had asked him to attend a hearing, with his bid, he would have to give regard to that.

**Mr E.S. Ripper:** My view is that the Public Accounts Committee would have the ability in an extreme circumstance to summon the Auditor General and to require the production of the document. I don't think the Auditor General will be asking me for permission to provide a submission or a document or evidence to the Public Accounts Committee.

**Mr M.W. TRENORDEN:** That ignores the working relationship between the Auditor General and the Public Accounts Committee. When that option was put to me, I did not want to put the Auditor General in that position. The Public Accounts Committee and the Auditor General have a very good close working relationship. They need to have that. It does not have to be a friendly relationship, but it needs to be honest and open. To put an Auditor General into that position in the past would have been fairly invidious for the Auditor General. I

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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agree that it could have compelled him to do so. We are talking about politics against function. We do not have to worry about yesterday. We are going to pass the bill.

I do not want to put words in the Treasurer's mouth so I ask whether he is clearly saying that this process will be available to the Public Accounts Committee prior to Treasury decisions.

**Mr E.S. Ripper:** Yes, I believe I am saying that.

**Mr M.W. TRENORDEN:** I am trying to reach agreement with the Treasurer.

**Mr E.S. Ripper:** I imagine that the Public Accounts Committee would consider that the budget process was about to begin and would probably make inquiries as to when a recommendation would have to be received in order to fit into the budget process and would conduct itself accordingly.

**Mr M.W. TRENORDEN:** The Public Accounts Committee would not even have to do that. All it would need to do is contact the Auditor General and say, "When you are in a position to say what your bid will be, we want to know what it is." That is all that would need to be done. If the Treasurer is saying that that is the case, that is fine. I chaired the Public Accounts Committee for some time. The Public Accounts Committee has its own responsibilities. I am not concerned once it gets to the Public Accounts Committee. As long as the Public Accounts Committee has the powers that we give it under our standing orders, I am comfortable with these provisions.

**Clause put and passed.**

**Clauses 43 to 45 put and passed.**

**Clause 46: Review of Act -**

**Mr M.W. TRENORDEN:** I presume this is a one-off event. Subclause (1) states -

The Public Accounts Committee is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this Act.

Is this meant to be a one-off process?

**Mr E.S. RIPPER:** This is a standard clause that applies in most pieces of new legislation, with the exception that the clause normally requires the minister to conduct a review of the legislation. In this case, following Public Accounts Committee consideration of the package, we have amended the legislation to provide that the Public Accounts Committee will conduct a review. It is a one-off review. I do not know what the review will recommend. It may recommend a further review in another five years, but that will be determined at the time. It may recommend that as things are working so well - as a result of the wisdom of the members at the time - no further formal review is required.

**Mr M.W. TRENORDEN:** Only one Auditor General will be appointed in that period. Of course, in the next five years no auditor may be appointed at all. The term for the Auditor General is 10 years. I do not have any problems with it; I just want to make that point clear.

**Clause put and passed.**

**Clauses 47 and 48 put and passed.**

**Schedule 1: General provisions as to Auditor General -**

**Mr E.S. RIPPER:** I move -

Page 28, after line 6 - To insert -

- (2) Before applications are sought for appointment to the office of Auditor General, the Minister must consult with the Public Accounts Committee as to the appropriate criteria for selection for appointment.

The question of consultation on the appointment of the Auditor General was the subject of discussion in the second reading debate. Following consideration of the arguments that were raised, I have sought to add this legislative requirement. If this amendment is supported, we will have a circumstance in which the Public Accounts Committee is consulted on the criteria for selection, and consulted again when the government proposes an appointment to the position of Auditor General. We had a lot of discussion during the second reading debate about whether the consultation could be so perfunctory as to be useless and meaningless. I am advised that the word "consult" has a specific meaning when it is used in legislation. I will give the house some advice on this matter. Clause 1(2) of schedule 1 to the Auditor General Bill 2006 states -

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting  
Speaker; Mr John Quigley

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Before making a recommendation under subclause (1), the Minister must consult with the parliamentary leader of each political party with party status within Parliament and with the Public Accounts Committee.

Questions have been raised about the meaning of the term “consult” in this context. The Federal Court has considered what is meant by a requirement to consult when this is contained in legislation. That court, in *TVW Enterprises Ltd v Michael John Duffy*; *Australian Broadcasting Tribunal*; and *Ors* [1985] 8 FCR 93, found that an obligation to consult will be discharged if the minister, whether personally or through departmental officers, informs those to be consulted of his proposal, seeks their views and takes into account any views or suggestions they may put forward. Thus, it is clear that a requirement to consult must be meaningful and not merely a formal or perfunctory exercise. This has been confirmed by recent advice from the State Solicitor’s Office, which has advised -

... the effect of the case law on the meaning of ‘consult’ generally is that, although its precise meaning will be dependent on the statutory context, what is required will be genuine and substantive engagement (or reasonable attempts to engage), rather than treatment of the process as a mere formality. Obviously, such a requirement will apply in the case of clause 1(2) of Schedule 1 to the Auditor General Bill 2006.

A copy of the SSO advice dated 18 September 2006 has been provided. The State Solicitor’s Office has confirmed that it does not object to this advice being quoted or tabled in the Parliament.

*Point of Order*

**Mr M.W. TRENORDEN:** I understand that with the approval of the chamber, the advice from the State Solicitor’s Office can be incorporated into *Hansard* without the Treasurer having to read it into *Hansard*.

**The ACTING SPEAKER (Mr P.B. Watson):** Only graphs and charts, which cannot be read, can be incorporated into *Hansard*. The Treasurer can table the advice or he can read it.

**Mr M.W. Trenorden:** Will that get into *Hansard*?

**Mr E.S. RIPPER:** I am quite happy to read the advice from the State Solicitor’s Office onto the *Hansard* record. If I were to simply table the advice, it would be available to members but it would not be in *Hansard*. I will need a short speech from someone else to give me time to read the advice.

*Debate Resumed*

**The ACTING SPEAKER:** The member for Vasse - no gold Speedos, thank you.

**Mr T. BUSWELL:** No, I am done with those. I appreciate what the Treasurer has attempted to do and that he will somehow get the advice into *Hansard*, which is what the member for Avon is after. I thank the Treasurer for providing me with the advice from the State Solicitor’s Office, which I have read. I appreciate the Treasurer’s efforts to address our concerns. The definitions of “consult” provided in that advice will not address the issue about how the Auditor General is appointed in Western Australia. The issue is not about whether the government consults with the opposition; the issue is about the process. Again, I refer to observations made by both the WA royal commission and the Commission on Government, which recommended that Parliament play a direct role in the appointment of the Auditor General through the proposed joint standing committee that the member for Avon referred to earlier.

I need to make one point. The Treasurer has talked about the commonwealth Auditor General legislation. That legislation seems to be quite near and dear to the Treasurer’s heart. I appreciate the fact that the Treasurer is guided by it -

**Mr E.S. Ripper:** With regard to the aspect that I quoted.

**Mr T. BUSWELL:** Goodness me! Perish the thought! I remind the Treasurer that the commonwealth Auditor General Act 1997 - the act that the Treasurer likes so much - provides that the Public Accounts Committee must approve the nominee before the government can recommend the appointment to the Governor General. That is the issue for me, and I believe also for the opposition. The issue is not the definition of consultation. It is the process. We may have a bit of a chat about that in the next few minutes.

**Mr E.S. RIPPER:** I will take this opportunity to read into *Hansard* the advice that we have received from the State Solicitor’s Office. The letter reads as follows -

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Assistant Director  
Financial Policy Division  
Department of Treasury and Finance

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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**CLAUSE 1(2) OF SCHEDULE 1 TO AUDITOR GENERAL BILL 2006 - APPOINTMENT OF AUDITOR GENERAL - MEANING OF REQUIREMENT TO "CONSULT"**

I refer to our telephone conversation on Friday 15 September 2006 when you requested written advice as to the meaning of the word "consult" in clause 1(2) of Schedule 1 to the *Auditor General Bill 2006*.

Clause 1 of that schedule reads in relevant part as follows:

- "(1) The Auditor General is to be appointed by the Governor on the recommendation of the Minister, and is to hold office as Auditor General in accordance with this Schedule.
- (2) Before making a recommendation under subclause (1), the Minister must consult with the parliamentary leader of each political party with party status within Parliament and with the Public Accounts Committee."

Amongst the definitions of the word "consult" in the New Shorter Oxford English Dictionary are "(d)eliberate, take counsel, confer (*with* someone; *about upon* a matter)" and "(a)sk advice of, seek counsel or a professional opinion from."

In *Port Louis Corporation v Attorney-General of Mauritius* [1965] AC 1111 the Privy Council advised at 1124:

[T]he nature and object of consultation must be related to the circumstances which call for it ... The requirement of consultation is never to be treated perfunctorily or as a mere formality.

This view has subsequently been considered favourably in Australia appellate courts<sup>1</sup> and is consistent with the general approach to statutory interpretation adopted by the High Court in *Project Blue Sky Inc v Australian Broadcasting Authority*.<sup>2</sup> In *TVW Enterprises Ltd v Duffy & Ors (No 2)* (1985) 7 FCR 172, Toohey J stated (at 178-9) that irrespective of the statutory context, the obligation to consult carries a responsibility to give those consulted an opportunity to be heard and express their views so they may be taken into account.<sup>3</sup>

Also relevant are the comments of Donaldson J in *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 A11 ER 280, where he stated at 284:

[I]n truth the mere sending of a letter constitutes but an attempt to consult and this does not suffice. The essence of consultation is the communication of a genuine invitation, extended with a receptive mind to give advice (see p Bucknill LJ ([1948] 1 A11 ER 13 at 17) approving a dictum of Morris J in *Rollo v Minister of Town and Country Planning* ([1947] 2 A11 ER 488 at 496)). If the invitation is once received, it matters not that it is not accepted and no advice is proffered. Were it otherwise organisations with a right to be consulted could, in effect, veto the making of any order by simply failing to respond to the invitation. But without communication and the consequent opportunity of responding, there can be no consultation.

In summary, the effect of the case law on the meaning of "consult" generally is that, although its precise meaning will be dependent on the statutory context, what is required will be genuine and substantive engagement (or reasonable attempts to engage), rather than treatment of the process as a mere formality. Obviously, such a requirement will apply in the case of clause 1(2) of Schedule 1 to the *Auditor General Bill 2006*.

The letter is signed John Lyon, Deputy State Solicitor. I will table this document so that it can be available to members outside of *Hansard*.

[See paper 1877.]

**Mr M.W. TRENORDEN:** This amendment is a considerable improvement to the bill. However, I am of the same view as the member for Vasse. Under this amendment, the appointment of the Auditor General will still be the role of the executive. There is no question that that is the case. However, if this bill passes through this chamber - as no doubt it will - it will at least clear up that process, so I congratulate the Treasurer for that. I also put it to the Treasurer that this amendment is based upon his own convictions. That is excellent. The Treasurer has made the call and has done these things. However, the executive will still make the decision about the appointment of the Auditor General, and it will then consult with other people about that appointment. That is

Hon Max Trenorden; Mr Troy Buswell; Mr Eric Ripper; Dr Janet Woollard; Mr Bob Kucera; Speaker; Acting Speaker; Mr John Quigley

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against the intent of the Commission on Government and the royal commission. It is also against good administrative practice. We do not need to keep debating this matter at great length. We have now debated it for the third time. I want the Treasurer to understand that I appreciate what he has done. There is no question that the amendment will improve the bill. However, it does not go far enough.

**Mr J.R. QUIGLEY:** I want to make one point on this matter as chair of the Public Accounts Committee. The Public Accounts Committee looks at these matters in committee. In many instances throughout government the executive makes important appointments after “consultation”. One of the most important appointments that an executive can make is the appointment of the Chief Justice of Australia. That position is equally as important as the position of Auditor General.

**Mr M.W. Trenorden:** I would contest that.

**Mr J.R. QUIGLEY:** The process that is undertaken in the case of the Chief Justice of Australia is that the executive selects the appointee and makes a recommendation to the Governor in Executive Council. The process is not undertaken by a committee of the House of Representatives. The same process is undertaken for the appointment of the Chief Justice in this state. Although these positions are very important, ultimately it is the responsibility of the executive to make the call. The reason I am pleased with this legislation is that it refers to “meaningful consultation” with the Public Accounts Committee. I may or may not be a member of that committee at the time, so I am not talking about myself. I am talking about meaningful consultation with that committee. We have already heard the view of the State Solicitor’s Office about the terms “consultation” and “communication”. The Public Accounts Committee is very happy with that process.

**Mr T. BUSWELL:** I accept the goodwill with which the Treasurer has made those commitments about consultation. However, as we all know, people change. I am not saying the Treasurer will change - even though he has shaved off his mo - but the people who fill these positions may change. Other people may not be as gracious in their interpretation of consultation. The report of the Public Accounts Committee states at page 42 -

Dr Harry Phillips, Parliamentary Fellow (Education) and Adjunct Professor at Edith Cowan University and Curtin University of Technology, noted the potential for the Office of Auditor General to become engaged in the ‘political thicket’ and expressed the view that:

*In practice ‘consult’ tends to mean ‘show’ . . . and the 10 year Auditor General contract hence will become a Government Appointment. Given the sensitivity of the appointment it is my view that the appointment by the Governor, on the recommendation of the Minister, should be approved and/or endorsed by:*

- *The Public Accounts Committee; and*
- *Leader of the Opposition, and Leader(s) of each group with party status in the Legislative Assembly and Legislative Council.*

He knows what is going on, and that is exactly the position that we have.

**Mr M.W. TRENORDEN:** The example given by the Chairman of the Public Accounts Committee has a fault; that is, those of us who read the newspaper know that there is a huge debate going on in the United States, where exactly the same process occurs and the opposition there accuses the government of loading up the United States Supreme Court, which is the equivalent of our High Court. The same thing happens here in Australia: when the Prime Minister announces an appointment to the High Court, the opposition screams that the High Court has been loaded. The whole point of the debate we are having here is to prevent that happening.

Debate adjourned, pursuant to standing orders.