



THIRTY-EIGHTH PARLIAMENT

**STANDING COMMITTEE ON PUBLIC
ADMINISTRATION
SPECIAL REPORT**

Presented by Hon Max Trenorden MLC (Chairman)

June 2012

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

3. Public Administration Committee

3.1 *A Public Administration Committee* is established.

3.2 The Committee consists of 5 members.

3.3 The functions of the Committee are to –

(a) inquire and report on –

(i) the structure, efficiency and effectiveness of the system of public administration;

(ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;

(iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;

(iv) any Bill or other matter relating to the foregoing functions referred by the Council;

and

(b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

3.4 The Committee is not to make inquiry with respect to –

(a) the constitution, functions or operations of the Executive Council;

(b) the Governor's Establishment;

(c) the constitution and administration of Parliament;

(d) the judiciary;

(e) a decision made by a person acting judicially;

(f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or

(g) the merits of a particular case or grievance that is not received as a petition.”

Members as at the time of this inquiry:

Hon Max Trenorden MLC (Chairman)

Hon Jim Chown MLC

Hon Jon Ford MLC (Deputy Chairman)

Hon Ed Dermer MLC

Hon Ken Baston MLC

Staff as at the time of this report:

Dr Colin Huntly, Advisory Officer

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CONTENTS

1 HEARING WITH THE AUDITOR GENERAL 20 JUNE 2012	1
APPENDIX 1 LEGAL ADVICE SOUGHT BY THE AUDITOR GENERAL FROM THE STATE SOLICITOR'S OFFICE ON 20 JUNE 2012.....	3
APPENDIX 2 TRANSCRIPT OF PROCEEDINGS OF A PUBLIC HEARING WITH THE AUDITOR GENERAL 20 JUNE 2012	9

REPORT OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION

IN RELATION TO A

SPECIAL REPORT

1 HEARING WITH THE AUDITOR GENERAL 20 JUNE 2012

- 1.1 At a public hearing held on Wednesday, 20 June 2012, the Committee requested certain information from the Auditor General for Western Australia, Mr Colin Murphy. The requested information is necessary in order for the Committee to clarify the Auditor General's concerns, expressed to the Committee in letters dated 25 January and 21 March 2012, that this Committee's Report 14 – *Unassisted Failure*, contained "*inaccuracies and misunderstandings*".
- 1.2 The Auditor General declined to provide the information requested by the Committee, on the grounds that he had obtained legal advice which suggested that he was prohibited from disclosing the information to the Committee by virtue of section 46 of the *Auditor General Act 2006*.
- 1.3 On 37 occasions the Auditor General declined to provide with information requested by the Committee.
- 1.4 Immediately following the hearing of 20 June 2012, the Auditor General exercised his discretion under section 23 of the Auditor general Act to provide the Committee with a copy of the legal advice on which the Auditor General relied, during the hearing. A copy of this legal advice is attached to this Special Report at Appendix 1.
- 1.5 As at the date of this Special report, the Auditor General has declined to provide information in response to 35 Questions, as per the transcript of proceedings attached at Appendix 2 to this Special Report.
- 1.6 The Committee Acquaints the Legislative Council accordingly, and makes the following recommendation:

Recommendation 1: The Committee recommends that the Legislative Council call upon the Government to expeditiously amend section 46(3) of the *Auditor General Act 2006* to restore the ancient privileges of the Parliament and all of its Committees with respect to the Auditor General.



Hon Max Trenorden MLC
Chairman

27 June 2012

APPENDIX 1
LEGAL ADVICE SOUGHT BY THE AUDITOR GENERAL
FROM THE STATE SOLICITOR'S OFFICE
ON 15 JUNE 2012

APPENDIX 1

LEGAL ADVICE SOUGHT BY THE AUDITOR GENERAL FROM THE STATE SOLICITOR'S OFFICE ON 15 JUNE 2012



STATE SOLICITOR'S OFFICE

SSO Ref: 2237/12
Enquiries: Lynsey Warbey
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Date: 15 June 2012

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INFORMATION REQUESTED BY THE PUBLIC ADMINISTRATION COMMITTEE

I refer to your request for advice dated 13 June 2012.

You have specifically requested urgent advice as to whether the Auditor General has authority to provide the Public Administration Committee with the information requested in the letter of 13 June 2012 from that Committee regarding audits of Western Power.

Summary of Advice

The Auditor General is constrained by the confidentiality obligations imposed by s.46 of the *Auditor General Act 2006* (the Act) as to what information he can provide to the Public Administration Committee. I recommend that you write to the Chairman of that Committee and advise him of that constraint.

Background

The Public Administration Committee wrote to the Auditor General on 13 June 2012 requesting information concerning, in summary, audits of Western Power by the Auditor General, particularly in relation to wooden power poles.

The questions posed by the Public Administration Committee run to 9 pages and 58 questions (with sub-questions). Some of the questions are phrased as a request for certain papers held by the Auditor General.

Given the urgency of your request for advice, I have not turned my mind to the question of whether the information requested by the Public Administration Committee is publicly available or not. I have assumed, for the purposes of this advice, that most of the information requested by the Public Administration Committee is information which has come to the Auditor General's knowledge in the course of his employment or duties under the Act.

Confidentiality under the Act

As you note in your request for advice, section 46 of the Act provides that:

- (1) Subsection (2) applies to a person who is or has been —
 - (a) the Auditor General; or
 - (b) a person employed in the OAG; or
 - (c) a person appointed to assist the Auditor General in respect of a particular matter; or
 - (d) the independent auditor.
- (2) A person to whom this subsection applies must preserve confidentiality with respect to all matters that come to the person's knowledge in the course of employment or duties under this Act or another written law and must not communicate any information as to matters of that kind to any person, except as may be required in connection with —
 - (a) the administration of this Act or that other written law; or
 - (b) any proceedings under this Act, that other written law or *The Criminal Code*.

Penalty: a fine of \$50 000.

- (3) Subsection (2) does not apply to the communication of information to —
 - (a) the Joint Standing Committee on Audit; or
 - (b) the Public Accounts Committee; or
 - (c) the Estimates and Financial Operations Committee.
- (4) A person to whom a summary of findings is given under section 25 must preserve confidentiality with respect to all matters that are in the summary of findings and must not —
 - (a) communicate any information as to those matters to any person; or
 - (b) copy or reproduce any part of the summary of findings,

except as may be necessary in connection with making submissions or comments to the Auditor General under that section or obtaining legal advice as to those matters.

Penalty: a fine of \$50 000.

It would seem to me that, at least, some of the information sought by the Public Administration Committee is of the type described in sub-section (2).

Sub-section (3) provides that the prohibition on the communication of information does not apply where the information is communicated to one of the three Parliamentary Committees listed in that sub-section.

Considering each of the Committees in turn, the Joint Standing Committee on Audit is defined as meaning "the Joint Standing Committee on Audit or, if it is renamed, that committee as renamed". The Parliamentary website and the Standing Orders of both Houses of Parliament¹ do not record a current committee known as the Joint Standing Committee on Audit. The Standing Orders and the Parliamentary website also do not suggest that the Standing Committee on Audit is now known by another name. (I have not considered the proper application of s.43 of the Act regarding the establishment of the Joint Standing Committee on Audit as it is not necessary for the purposes of this advice.)

¹ Standing Orders of the Legislative Council, as adopted by the House on 1 December 2011; Standing Orders of the Legislative Assembly, as adopted by the House on 18 June 2008.

- 3 -

The Public Accounts Committee is a committee of the Legislative Assembly.

The Estimates and Financial Operations Committee is defined for the purposes of the Act as "the Estimates and Financial Operations Committee of the Legislative Council or such other committee determined by the Legislative Council to be the responsible committee for the purposes of this Act". The Estimates and Financial Operations Committee is a committee of the Legislative Council and its terms of reference require it to deal with "any matter relating to the financial administration of the State" and to "consult regularly with the Auditor General".

The Public Administration Committee is not one of the Committees named in s.46(3) of the Act. Its functions include some functions which it subsumed from the Standing Committee on Estimates and Financial Operations but this occurred on 17 August 2005, prior to the enactment of the Act. As such I am not of the view that it can be taken to be the successor to the Estimates and Financial Operations Committee. I also do not understand that the Legislative Council has determined that the Public Administration Committee is responsible for this Act.

Therefore, it seems to me that the obligations to preserve confidentiality set out in s.46(2) of the Act would apply to the Auditor General's communications with the Public Administration Committee.

I note that this view is consistent with s.7(3) of the Act which deals with the status and independence of the Auditor General and provides that:

The powers of Parliament to act in relation to the Auditor General are as specified in or applying under this Act and other written laws and there are no implied powers of Parliament arising from the Auditor General being an independent officer of Parliament.

As such, it does not seem that the Act envisages that the Auditor General will communicate with Parliament, or its Committees, other than in accordance with the specific provisions of the Act relating to such matters.

Section 46(2) of the Act requires the Auditor General, amongst others, to preserve the confidentiality with respect to matters that come into his knowledge as a result of his duties under this Act or any written law. However, he is excepted from that obligation of confidence where he is required to communicate the information for (a) the administration of this Act or that other written law, or (b) any proceedings under this Act, that other written law or *The Criminal Code*.

I assume that the information sought by the Public Administration Committee came into the knowledge of the Auditor General due to his performance of duties under the Act. If it came into his knowledge due to performance of duties under any other written law, please advise me. I don't anticipate that it will materially change my advice, but it is important that I review that other written law specifically.

The request from the Public Administration Committee is not a proceeding under this Act or the *Criminal Code* so the exception in paragraph (b) would not apply.

This leaves the question of whether the request from the Public Administration Committee requires the Auditor General to communicate the information in connection with the administration of the Act.

In my view, it does not. It seems the Act clearly makes provision for the circumstances in which the Auditor General (and the other officers listed in s.46(1)) are to communicate information to Parliament and otherwise clearly states that there are no implied powers of Parliament arising from the Auditor General being an independent officer of Parliament.

Given that the relationship between the Auditor General and the Parliament is codified in the Act, I could not see that it would otherwise usually be necessary for the Auditor General to communicate information to the Public Administration Committee for the purposes of administering the Act, as the Act clearly sets out when it is necessary, or appropriate, to so communicate with Parliament, and committees thereof. Of course, there may be individual circumstances where such communications are for the purpose of administering the Act and each request from be considered carefully to see if it falls within the exception in s.46(2)(a) of the Act.

The Letter from the Public Administration Committee

The letter from the Public Administration Committee does not seem to countenance that the Auditor General may be constrained by the operation of s.46 of the Act as to the information he provides.

As such, in the first instance, I would recommend that you write to the Chairman of the Public Administration Committee and advise him that the Auditor General is constrained by the confidentiality obligations imposed by s.46 of the Act as to what information he can provide to the Committee.

I am happy to review such a draft and to discuss this legal advice with the Committee's Advisory Officer, Mr Colin Huntly, if that would be of assistance.

Obviously, in the meantime, it will be necessary to identify, insofar as possible, which of the 58 questions posed by the Committee, the Auditor General may speak to during oral evidence. Such a process may be quite difficult and will require the Auditor General to approach the giving of oral evidence very carefully. Again, I am happy to provide any advice you require in that regard.



LYNSEY WARBEY
ASSISTANT STATE SOLICITOR

APPENDIX 2
TRANSCRIPT OF PROCEEDINGS OF A
PUBLIC HEARING WITH THE
AUDITOR GENERAL 20 JUNE 2012

APPENDIX 2
TRANSCRIPT OF PROCEEDINGS OF A PUBLIC HEARING WITH
THE AUDITOR GENERAL 20 JUNE 2012

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

AUDITOR GENERAL'S RESPONSE TO THE RECOMMENDATIONS FOR
COMMITTEE REPORT 14 — UNASSISTED FAILURE

UNCORRECTED COPY

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 20 JUNE 2012

Members

Hon Max Trenorden (Chairman)
Hon Jon Ford (Deputy Chairman)
Hon Ken Baston
Hon Jim Chown
Hon Ed Dermer

WARNING: Publication or disclosure of any portion of evidence given to the committee before the evidence has been corrected and finalised may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

<001> E/F 9:51:32 AM

Hearing commenced at 9.51 am

MURPHY, Mr COLIN

**Auditor General for Western Australia, Office of the Auditor General,
Level 7, 469 Wellington Street,
Perth 6000, sworn and examined:**

CLARKE, Mr GLEN

**Deputy Auditor General, Office of the Auditor General,
Level 7, 469 Wellington Street,
Perth 6000, sworn and examined:**

SHAFIZADEH, Mrs MICHELLE

**Assistant Auditor General, Standards and Quality Division, Office of the Auditor
General,
Level 7, 469 Wellington Street,
Perth 6000, sworn and examined:**

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting. Before we start, I need to go through the processes of the committee. I am informed that we do need to do the oath, but not for Mr Murphy. Glen and Michelle, we just require you to do an oath or an affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: Normally, at this stage we would ask you if you have got anything you wish to say before we get into the questions.

Mr Murphy: Certainly, briefly, Chair, thank you; I have a couple of administrative points. Firstly, I would thank the committee for adjusting the time of the meeting to fit in as I am tabling a report in Parliament later this morning. Secondly, I made the committee aware that in the exchange of questions that has occurred before the meeting, it has caused me to seek some legal advice in terms of confidentiality and I have conveyed to the committee that the State Solicitor has advised me that matters that come to our attention in the course of our employment do need to be kept confidential and that that would restrict some of the matters that I am able to discuss in this forum. I have also put very, very firmly on the record my intention and desire to be as open with the committee as I possibly can, and I believe there are a significant range of matters that can be discussed without being impacted on by the confidentiality provisions.

The CHAIRMAN: Okay. We will deal with those matters as we go, but as you are probably aware, that does cause some considerable tension between yourself and this committee, and we will need to talk about those things as we go through the process. If you do not mind, we will get into the questions. We are having this hearing today

because the committee referred to the Auditor General's oversight of Western Power from 2006 to 2011 in report 14, "Unassisted Failure". After that, the Auditor General wrote to us saying that report 14 contained inaccuracies and misunderstandings, and that is really what we are here to clear up, because it is a responsibility of this committee to report truthfully and openly to our Council; and, if there is any question about that, we need to clear that up. We have decided to hold this public hearing so the committee has all the facts and to give the Auditor General, yourself, obviously, a chance to be heard in an open and transparent way in this, and we have already talked about that to some extent. Once we have all the facts, and once you have put your point of view, we will report the process to the Council.

Getting back to your opening statement, last Wednesday the committee forwarded a number of questions to you that we would be asking today. We wanted to make sure you had fair warning of what you could expect. So, you have got those questions?

Mr Murphy: I do, indeed; yes.

The CHAIRMAN: You provided some written information in response to those questions to committee staff yesterday, and we have had an opportunity to look at those questions, so that is correct, obviously. In your letter of yesterday, did you advise the committee that, under section 30 of your act, you sought legal advice from the State Solicitor's Office about the committee's questions?

Mr Murphy: I do not believe I referred to section 30 of the act. I would have to check to see if that is the case.

The CHAIRMAN: Perhaps you should just have a look and tell us what you think you have done. Our understanding is that—when you look at your own answers—you referred to the State Solicitor's advice and we assumed that the core of that advice is actually going to be section 30.

Mr Murphy: I did seek the State Solicitor's advice, as I regularly do. I do not know that section 30 has a particular bearing on this matter.

The CHAIRMAN: Given that the questions put to you last Wednesday had the potential to touch on a matter of controversy between the Legislative Council and the Auditor General, did you consider seeking advice from someone other than the government's principal legal adviser?

Mr Murphy: No, I did not.

The CHAIRMAN: Is there a chance that doing this could affect the way that ordinary people might view the independence of your office?

Mr Murphy: I cannot see how that would be the case, Chair.

The CHAIRMAN: You have gone to the executive for a point of view.

Mr Murphy: The State Solicitor is who I went to for an interpretation on the operation of an act. I routinely do that.

The CHAIRMAN: Please provide the committee with a copy of the legal advice.

Mr Murphy: I have been advised that there would be some difficulty in doing that. I have spoken to a solicitor who provided that particular advice. They made the offer in their advice to provide any advice or assistance to the committee that might be

needed—indeed, the telephone contact for that particular solicitor was passed to your research officer—and we offered the opportunity for a further conversation, which I expect would have taken place, but I have no knowledge of it.

The CHAIRMAN: We will have time to talk about these matters a little later on in the morning.

Hon ED DERMER: Sorry, Mr Chairman; we are still in the situation where we are asking for that legal advice.

The CHAIRMAN: We will be in that position.

Hon ED DERMER: Just in case there is any lack of clarity on that, we are asking for that legal advice.

The CHAIRMAN: We will move on, though, because we will be talking about that in some detail a little later. Does the State Solicitor's Office advice to you suggest that section 46 of your act prevents you or restricts you from answering the committee's questions in any way?

Mr Murphy: Yes, it does.

The CHAIRMAN: Why is that?

Mr Murphy: I can refer to the advice or I can tell you my understanding from communicating with the State Solicitor's Office.

The CHAIRMAN: I think we are better served by your own opinion.

Mr Murphy: My understanding of the advice is that —

Hon ED DERMER: Personally, Mr Chairman, I would be interested to hear both.

Mr Murphy: We can certainly do both. My discussion with the solicitor was along the lines that the legislation provides a specific avenue for me to communicate confidential matters to the Parliament, and that specific avenue is, in the upper house, through the estimates and financial operations committee and, in the lower house, through the Public Accounts Committee; and there is no restriction whatsoever in my communication with those committees. I am able to provide them with any information that comes to my attention or my knowledge in my duties and to answer all of their questions very fully and very frankly. The restriction that has been imposed really relates to the fact that the legislation, as I understand it, envisages that that will be the route for communicating that sort of information to the Parliament, and that since that route exists, that is the route that ought to be taken to discuss and reveal those sorts of pieces of information.

[10.00 am]

The CHAIRMAN: So do you want to talk about the actual advice?

Mr Murphy: On the actual advice, in my letter I did say to you I had been advised that I should be very careful in my responses. Really, the response referred to section 46 of the act, which says —

... A person to whom this subsection applies —

Which includes the Auditor General —

must preserve confidentiality with respect to all matters that come to the person's knowledge in the course of employment or duties under this Act ...

The legal advice also suggested that I communicate that advice to the committee, which I have done both in writing and through the telephone advice.

The CHAIRMAN: We will talk to those matters in some detail a bit later on. Having accepted the State Solicitor's Office advice as your own view, is that your own view?

Mr Murphy: Invariably, I accept the State Solicitor's advice on all matters of state legislation.

The CHAIRMAN: Does the State Solicitor's Office advice talk about your discretion to provide information under section 23?

Mr Murphy: No; I do not believe it mentions that.

The CHAIRMAN: Does the State Solicitor's Office advice say that section 23(2) of your act gives you the freedom to answer any of the committee's questions? Just have a look at that section. It is on the wall if you want to have a look at it.

<002> I/F 10:03:10 AM

Mr Murphy: No, the advice did not address that section.

Mr Clarke: Chair, if I may, I note that subsection (2) refers to the Auditor General referring to the Auditor General's responsibilities. It does not make reference to referring to confidential information, and that is the difference that the State Solicitor is drawing to our attention.

The CHAIRMAN: We will talk about that a little later. As you are aware, some of our later questions talk about that in some detail. If section 23(2) does apply, do you have a discretion to answer our questions and why would you decide to not answer questions? Do you have that discretion?

Mr Murphy: I am particularly keen to answer as many questions as the committee asks in as great a detail as I am lawfully permitted to do. I am very, very keen to put that very firmly on the record. It is my intention to provide as much information in as much detail as I am allowed to under the law.

The CHAIRMAN: Is it in the state's interests for a parliamentary committee to be given incomplete answers to its questions?

Mr Murphy: I do not believe it is. The advice that I got from the State Solicitor, as I have outlined, makes it very, very clear that I am able to provide information to the Parliament. It just suggests a particular route.

Hon JIM CHOWN: What route would that be?

Mr Murphy: Through the Standing Committee on Estimates and Financial Operations in the upper house or through the Public Accounts Committee in the lower house or the joint standing committee on audit. Sorry, I should have added that; there are three committees.

The CHAIRMAN: We will talk about that a little later.

Mr Murphy: I would be pleased to.

The CHAIRMAN: Is there no risk to your independence in not answering a parliamentary committee's questions based solely on advice from the government's principal legal adviser?

Mr Murphy: I did not see any reason to seek alternative advice. If I have any reason to doubt or to feel there is a conflict with the State Solicitor's advice, I do have the capacity to seek alternative advice.

The CHAIRMAN: Are you going to do that? After all, you have sought advice from the government's legal adviser.

Mr Murphy: It is not clear to me that there is an issue that needs to be pursued.

The CHAIRMAN: I think we would argue to the contrary. We will move on. Are you prepared to use your discretion under section 23(2) of the act to answer the committee's questions in full?

Mr Murphy: I think I have already answered that in saying that I am very keen to provide as much information in as much detail as I am lawfully permitted to do.

The CHAIRMAN: Does the State Solicitor's Office advice make any distinction between questions and information provided in the context of a parliamentary inquiry on one hand and how you handle that information under usual operations as Auditor General under your act of 2006 and the Financial Management Act 2006? Does it make any distinction between those two points?

Mr Murphy: I do not believe it does. The advice was provided in the context of this hearing.

The CHAIRMAN: Does the State Solicitor's Office advice say that the Auditor General Act 2006 overrides the Parliamentary Privileges Act 1891?

Mr Murphy: I do not believe it addresses that point.

The CHAIRMAN: It is pretty much a core issue. It does not address it?

Hon ED DERMER: Sorry, Mr Chairman, I saw Mr Murphy nod but I did not hear him vocalise the answer. I do not know how to interpret that.

Mr Murphy: What was the question? Could you repeat the question for me?

The CHAIRMAN: Does the State Solicitor's advice say that the Auditor General Act 2006 overrides the Parliamentary Privileges Act 1891?

Mr Murphy: No, I do not believe it does.

The CHAIRMAN: Auditor General, I think we have some questions we would like to put to you without the public being involved. I would ask those people not involved in the inquiry to exit the room. We will only be a few minutes.

[The committee took evidence in private session]

Proceedings suspended from 10.19 to 10.35 am

The CHAIRMAN: Unfortunately this has taken a little time out of today's proceedings, so we will try to roll along as best we can.

Mr Murphy: I understand it is a very important matter, Chair.

The CHAIRMAN: We know you have commitments and we have commitments as well, but this is actually quite a serious day in the life of the Parliament, so we do need to tread carefully. The committee has asked me to remind you that you have a right to table anything you like in private to this committee, if you wish to do that. If that is the case, of course, you need to be aware that the Council can make public whatever it wants to make public. But this committee has the right to receive anything at all in private, which we could do. So that is an option to you and again, I need to ask whether you are prepared to table the State Solicitor's advice.

Mr Murphy: Thank you for that advice, Chair. We sought legal advice last week. The minute that legal advice was received, we passed that information on to this committee. I followed that up in writing with written confirmation that I passed to the committee yesterday. I have been quite keen to have the committee fully aware of the legal advice and the restrictions that it places on me in advance of this meeting, so that if there was any concern or any issue that needed to be discussed, I could look at it out of session. At this point, I am obviously not able to get further legal advice as I sit here. I am more than happy to do that out of session. I take your point; I understand the gravity of the matter.

The CHAIRMAN: We are going round and round in circles. Really, I just need to ask you: are you prepared to table the advice? You need to say yes or no.

Mr Murphy: No.

The CHAIRMAN: Okay; so we know where we stand.

Hon ED DERMER: At this point I would like to make it very clear, Mr Murphy, that we are willing to receive from you any information and any advice that you might like to give to us in addition to that which we are explicitly asking for. Is that clear?

Mr Murphy: I do understand that, and I believe I have made it clear that I am very keen to provide the committee and the Parliament with any information that it is seeking.

Hon ED DERMER: Having heard you say that, I want to make it similarly explicit that we are willing to receive anything that you choose to provide to us, in addition to that which we are specifically asking you for.

The CHAIRMAN: I am keen to move on, Auditor. These points are pretty important, and I think these words that we have been speaking the last half an hour or so will bounce around for a fair while yet, but I am keen to move on because we have a task to do today, so let us just move on with that task. The next question is: this committee's terms of reference were given to the committee by express resolution of the Legislative Council of Western Australia. The Legislative Council and the people of Western Australia are entitled to answers to the questions that this committee decides to ask. This committee is firmly of the view that the Auditor General Act 2006 does not override the Parliamentary Privileges Act 1891. Really, that is what this discussion has been about. Further, as these proceedings are proceedings in Parliament, they are protected by Article 9 of the Bill of Rights 1689. The privilege of Parliament to scrutinise all public sector agencies is essential, if the people of Western Australia are to have confidence in how they are being governed. It is a fundamental aspect of our modern democracy. That is why today is such an important day. We

have noted that other societies are often not so fortunate. We are keen to protect those matters that we deem to be important.

In forming its view, the committee notes that, in the second reading speech on the Auditor General Bill 2006, the then Treasurer, Hon Eric Ripper, MLA, made it clear that the independence of the Auditor General under the bill was important to strengthen the accountability of the Auditor General to the Parliament. There is no need to comment on these; we will just keep running through the information. This was an important aspect of relevant passages in the “Royal Commission on Commercial Activities of Government”, which made it clear that the Auditor General should be accountable to the Parliament. It was also central to the reforms urged by the Commission on Government. In fact, the link between the extensive powers of the Auditor General and the need for the office to be fully accountable to the Parliament was made crystal clear in its report. For this reason, this committee believes that it is not only advisable for it to be able to properly review the actions of the Auditor General in relation to Western Power; it is absolutely necessary, if the Parliament and people of Western Australia are to be assured that the office of Auditor General in this state is being properly discharged. Interestingly, this is exactly the same principle that the Auditor General has himself expressed, in the context of agency reporting on KPIs in April this year. That is on the screen. The extract on the screen, from the Auditor General’s own “Beyond Compliance” report to the Parliament makes this point very well. Are we on the right slide? The committee will therefore proceed to ask its questions to the Auditor General, and at the end of the process we will report to Parliament.

Mr Murphy: If I may respond simply to the accountability of the Auditor General, I did allude to it in my letter to the committee, and it is a crucial matter. Our office was very, very supportive of specific provisions that were included in the Auditor General Act 2006, that did not exist in the previous legislation, that allowed for a full review of the performance of the Auditor General and the office of the Auditor General. The legislation requires that such a review be conducted at five-yearly intervals. The legislation unfortunately requires that that be conducted by the joint standing committee on audit, which the Parliament has yet to form. I have been so concerned about the lack of a review and the lack of formation of the committee that I have met with both the Public Accounts Committee and the estimates and financial operations committee and put on record my concern about the need for the office to have an independent external review reporting to the Parliament, because I consider it to be a critical aspect of accountability. I have also formally written to both Chairs of those committees, so I am strongly in support of openness and accountability with regard to my own office, and I have carried out a significant amount of work in terms of preparing for such a review, and I have done everything that I can to try to make sure such a review does take place. I am very interested in the openness and accountability of my office and accountability, specifically, to the Parliament, as is envisaged in the legislation.

<004> K/F [10:43:46 AM](#)

[10.45 am]

Hon JIM CHOWN: Apart from this particular committee, obviously.

Mr Murphy: On legal matters, I will act on legal advice.

The CHAIRMAN: Let us move on, members. Mr Murphy, in your opinion, who is your client?

Mr Murphy: The Parliament; there is absolutely no doubt about that.

The CHAIRMAN: What sort of relationship does the Auditor General have with the Parliament? What do you think your relationship is?

Mr Murphy: It is a very broad and a very strong relationship. I meet with parliamentary committees on a regular basis both to provide information to them and to receive information from them. I am an officer of the Parliament and the existence of our office is with a view to providing information to the Parliament on the performance and the operations of public sector agencies. It is a very broad relationship, so I am not sure to what extent you want me to go on.

The CHAIRMAN: The questions will make it clear, but we are still talking about what we are concerned about. Is this the relationship? I guess what we are saying is: is this a relationship of mutual trust and reliance?

Mr Murphy: I would certainly hope and expect so and that has been my experience in the past, yes.

The CHAIRMAN: Section 7(5) of the Auditor General Act, which is now on the screen, says that you have the statutory independence to do your job as you see fit. How does that independence fit with parliamentary accountability, in your view?

Mr Murphy: The legislation goes on further to also say that I have to have regard to the priorities of Parliament, so read alone, that does not fully encompass the extent of independence. That section read by itself would suggest that I can act without regard to Parliament. Other sections of the legislation make it very, very clear that that is not the case.

The CHAIRMAN: When you think about conducting a performance audit on an agency, how does that process work? Do you go to the agency and ask them what area to investigate or do you make your own view on that? What are the steps that you take, and do you involve the agency in that process?

Mr Murphy: Look, it is a very extensive process and a very comprehensive one. There is an outline and a summary of that process contained in our audit practice statement, which is on our website, to try and assist the Parliament and the users to understand what that process is. Certainly, the independence requires me not to consider the aims and wishes and objectives of our individual agencies. Nevertheless, discussions with those agencies and the work that we do in our financial audit will inform us about what is going on with that agency and will be a factor that is taken into consideration in determining whether a performance audit should proceed.

The CHAIRMAN: So who pays for the cost of performance audits? Is it the Office of the Auditor General or is it the agency?

Mr Murphy: It is the taxpayer. It is paid through a parliamentary appropriation, and that is appropriate. The government agencies do pay for their financial audits. That is a predictable amount; it is known and it happens on an annual basis, so there is some logic to the agency paying for that service. It also sets up a relationship between us and the client whereby there is an incentive on both parties to reduce the amount of

effort to be as efficient as we can in that process. Performance audits are completely different in that they are not predictable; the government agency does not know when they are to occur. They cannot reasonably budget for them. They are factored into our parliamentary appropriation.

The CHAIRMAN: In all of that process the client is the agency or government?

Mr Murphy: I am sorry, Chair, the client is not involved in the funding.

The CHAIRMAN: But in your view as you go about your work, who do you perceive the client to be?

Mr Murphy: The Parliament.

The CHAIRMAN: Okay. If you could not do an important performance audit because of a lack of resources, what are your options?

Mr Murphy: I have an obligation to make the Parliament aware of that. There are specific provisions in the Auditor General Act which provide for the Parliament to have a role in the setting of my budget. Look, I am aware there does need to be a balance between constraints imposed on my office to ensure that it is not overfunded, but also I need to receive sufficient funds to be able to do my job adequately. That has been the matter of some discussion with parliamentary committees and, certainly, with Treasury and with the Treasurer. Over the years, there has been a number of discussions where I have put my view firmly on the record about the extent of resources needed, where additional resources are needed and the impact of constraints on my resources.

The CHAIRMAN: Yes, I have been a part of those debates myself. Let us get down to what we really are here today for—we have got a couple of alternative views. Do you agree that Western Power's wood pole distribution network is one of its two major assets?

Mr Murphy: Yes.

The CHAIRMAN: Let us look at EnergySafety's 2006 audit, which should be on the slide at the moment. You will be handed a copy of exhibit P, which is what is on the board. This is an extract from EnergySafety's 2006 audit of Western Power. Have you got that?

Mr Murphy: Yes.

The CHAIRMAN: Did you know that EnergySafety's 2006 audit found big problems in the areas that are shown on the screen?

Mr Murphy: Yes. Maybe I will save the committee some time by talking about our knowledge about Western Power and the reports in general terms.

The CHAIRMAN: I think for saving time, we would prefer to go through the questions, because I —

Mr Murphy: Perhaps if I could simply say that we have a relationship with Western Power as their auditor, which means we do have knowledge of major issues impacting the agency. We also have knowledge of any reports that are publicly available.

The CHAIRMAN: Yes, okay. In the financial year 2006–07, did you go to Western Power or EnergySafety to find out if any of these problems affected Western Power’s accounting or auditing treatments?

Mr Murphy: I believe there are restrictions on me talking specifically about our role in auditing Western Power, but I am more than happy to tell you that it is our general audit practice to have discussions with key clients and with their key regulators. That is very much part of our normal audit practice.

The CHAIRMAN: So it is reasonable of us to expect that you did go to Western Power.

Mr Murphy: I think that is a very reasonable thing for you —

The CHAIRMAN: And EnergySafety?

Mr Murphy: Absolutely.

The CHAIRMAN: Okay. Can you demonstrate any evidence that you actually did that?

Mr Murphy: I am not understanding why it would be necessary to demonstrate that, but I do not have any documents that specifically —

The CHAIRMAN: Would there be documents?

Hon JIM CHOWN: These discussions are obviously pre-audit, before, or are they during the audit process?

Mr Murphy: We audit Western Power on a continuous basis. We audit them every year, so at any point in time we are involved with discussions with the client, so be it pre or post a particular signing of a particular audit opinion.

Hon JIM CHOWN: And they are minuted.

Mr Murphy: Absolutely, yes. We attend the audit and risk committees of major clients as an observer, so we are not a party to the decisions that they make and we have to keep our independence and we have to make that known. But our attendance and the matters that are discussed at audit and risk committees are routinely minuted. They would be minuted by the client.

The CHAIRMAN: The point of asking the question is we need to try to establish in our own mind a bit how the office goes about its process. So we have just asked you: is it reasonable to expect that you did go to Western Power and you did go to EnergySafety? Our interest is: How do you process that? How do you go about that process? Is there any evidence—is there a document trail—of how you go through that process?

Mr Murphy: There would be documents on how an auditor goes about understanding its client in talking to the client and talking to key regulators. In terms of our processing of all of the information that comes into our knowledge about agencies and the public sector —

The CHAIRMAN: That is not our concern. What we are trying to establish is how you go about your work, not what you find in that work. Are you prepared to table the documents that assist us to understand how you go about your processes?

Mr Murphy: Those documents—I do not believe there are documents that would assist the committee in that regard.

The CHAIRMAN: We have already talked about audit working papers —

Mr Murphy: Minutes of the audit and risk committee of Western Power would be available to the committee through Western Power.

The CHAIRMAN: Okay. In the financial year 2006–07, did you go to either Western Power or EnergySafety to find out if any of these problems affected Western Power’s internal audit or internal control systems? Again, what we are trying to find out here is not what you found, but what process you go through to establish that.

Mr Murphy: Look, I would be very pleased to ask my assistant Auditor General to talk about the process that we go through —

The CHAIRMAN: What we want is a documented trail so we can follow it, not a description.

Mr Murphy: The documents that we follow are these documents—this is the auditing standards. That is the process that we follow and it will explain to the committee what we are required to do and what we do.

<005> M/4 10:55:07 AM

[10.55 am]

The CHAIRMAN: We have a misunderstanding about what we are trying to do. We are trying to find out what you actually did in this particular case. We would like to establish, for our own view, how you dealt with Western Power. So, we are looking for documents that indicated that you actually did give consideration to these matters, and the documents we think might be around are audit working papers or your own corporate executive minutes.

Mr Murphy: Chair, I have made the point in my earlier appearance before this committee and in all the communication, that I think there is a real need for a distinction between our role in financial audit and the work we do in performance audit. I think there is some confusion apparent with the information that is in the public domain about the two, and I think it is absolutely essential to get to the core of this situation to have absolute clarity about whether we are talking about financial audit or performance audit. They are very different in nature. I am raising that point because all the information about what we do in relation to a financial audit is in accordance with the auditing standards. There is a lot of information about what we are required to do, and if the committee is interested in that aspect, then we can go into some detail about the processes that are involved, about what we are looking for, and about how we incorporate that sort of information into our financial audit. There is a separate issue in relation to how the Office of the Auditor General takes information that it receives through the financial audit and then applies that to a performance audit; that is a separate discussion. I would like to have some clarity around which one we are talking about, in order to help the committee.

The CHAIRMAN: We are talking about both the financial audit and performance audit. But we seem to be at a loss; what we are trying to do is establish what the Office of the Auditor General did in this particular case. We are not concerned about what your standard performance process is; what we are trying to determine is what did you

actually do when you got the information about Western Power. If you put yourself in our shoes, we are required to report back to the Parliament about what we put in the fourteenth report, which you have criticised. We need to establish whether your criticism is valid or not. We have an absolute requirement from the President of the Council that if we have any doubt at all about our evidence, we need to report to him. We are in a position where we need to understand what you did in this particular case. This is not about how you operate in general. Are we clear where we are at?

Mr Murphy: Yes, we are. Look, I think in terms of what we are trying to identify in looking at the reports of EnergySafety or any other regulator, is whether it is going to have a material impact in the financial audit on the fair presentation of the financial statements. What we are required to do is governed by the auditing standards. Given that I have signed an opinion that says that the presentation of those financial statements was true and fair, and then I believe it is open for me to tell the committee that we have followed those procedures; we have followed all those procedures in relation to Western Power. So that means I am in a position to tell you what we considered with respect to Western Power, and it would be in accordance with the auditing standards.

The CHAIRMAN: So, are you prepared to table the audit working papers and the corporate executive minutes?

Mr Murphy: I do not believe that would provide the information the committee is looking for, but I have legal advice that suggests that I should not do that because I may be in breach of the Auditor General Act if I do that.

The CHAIRMAN: In that case, you need to say “no” or “yes” to the question.

Mr Murphy: No.

The CHAIRMAN: In the financial year 2006-07, did you go to either Western Power or EnergySafety to find out if any of these problems affected Western Power’s internal audit or internal control systems? We are talking about exactly the same issue—not the same issue, but the same process. We are going to ask you for the same information.

Mr Murphy: The answer is the same.

The CHAIRMAN: So the answer is no?

Mr Murphy: No, the answer was not no; the answer is that we routinely engage with the key regulators of our clients to see if there are any issues that will have an impact on the financial audit of that entity. So, yes, we did engage with key regulators of Western Power. We do that as a routine matter of our financial audit to see if there are any matters that will have an impact on the financial audit. We have done that in every year that we audited Western Power.

The CHAIRMAN: And we have a concern about Western Power. The question remains the same: will you table the audit working papers and the corporate executive minutes?

Mr Murphy: No.

The CHAIRMAN: In the financial year 2006-07, did you go to Western Power or EnergySafety to find out if any of these problems meant that Western Power was not complying with its statutory obligations?

Mr Murphy: We do routinely do that as a matter of course. Statutory obligations are examined to see whether they will have a material impact on the fair presentation of the financial statements, so we do that routinely as a matter of course; and, yes, we would have in this case.

The CHAIRMAN: Are you prepared to table the evidence that you actually did go through that process?

Mr Murphy: I do not believe I can.

The CHAIRMAN: In the financial year 2006-07, did you think about doing a performance audit of Western Power?

Mr Murphy: I mean, we consider a range of information all the time. The first time we formally considered doing a performance audit of Western Power was in 2009. I have previously advised the committee of that in writing.

The CHAIRMAN: In the financial year 2006-07, did you ask if EnergySafety's concerns about Western Power's wooden pole asset management was serious enough to affect that year's annual report—2006-07?

Mr Murphy: Look, I have been to great lengths, in correspondence and answering questions, to point out that a financial audit does not audit the annual report of an agency. We do not report on a routine basis, certainly in a financial audit, on the annual reports of government agencies. We have conducted specific performance audits; in fact one of our performance audits was specifically targeted at openness and compliance in annual reporting. A performance audit could and would look at the annual report; a financial audit does not audit the annual report.

The CHAIRMAN: That is the end of that section. We will move on to look the ERA's 2009 Electricity Industry Act 2004 section 32 notice, which is on the screen. You will be handed a copy of exhibit A1. This is an extract of the ERA's 2009 section 32 electricity act 2004 notice served on Western Power. Did you know that in January 2009 the ERA gave Western Power a compliance failure notice about its wooden pole network areas? A part of this notice is shown on the screen.

Mr Murphy: Was that a public document, Chair? In that case, yes, we were aware of it.

The CHAIRMAN: In the 2008-09 financial year did you go to Western Power or the ERA to find out whether this affected Western Power's accounting or auditing treatments?

Mr Murphy: We certainly would have considered the impact of this matter on the financial audit and the fair presentation of their financial statements.

The CHAIRMAN: What about the evidence—auditing papers and so forth—are you prepared to table those?

Mr Murphy: No.

The CHAIRMAN: In the 2008-09 financial year did you go to Western Power or the ERA to find out if these problems affected Western Power's internal audit or internal control systems?

Mr Murphy: We would have had conversations with the key regulators of our client.

The CHAIRMAN: The same question: are you prepared to table the working papers and minutes?

Mr Murphy: No.

The CHAIRMAN: In the financial year 2008–09, did you go to Western Power or the ERA to find out if these problems meant that Western Power was not complying with its statutory obligations?

Mr Murphy: We would have considered statutory obligations and any impact they would have had on the fair presentation of the financial statements.

The CHAIRMAN: Again, are you prepared to table the same documents we talked about?

Mr Murphy: No.

The CHAIRMAN: That is the end of another section. Any questions?

Hon ED DERMER: Not at this stage.

[11.05 am]

The CHAIRMAN: We will move on.

Let us look at EnergySafety's 2008 audit, dated May 2009. The document is exhibit M1. This is an extract of EnergySafety's 2008 audit of Western Power. Have you had time to make yourself familiar with that?

Mr Murphy: Yes.

The CHAIRMAN: Did you know that EnergySafety's 2008 audit found that there were still problems in the areas shown on the screen. There is a long list of problems.

Mr Murphy: Yes, we were aware of that.

The CHAIRMAN: In the 2008–09 financial year did you go to Western Power or EnergySafety to find out if these problems affected Western Power's accounting or auditing treatments?

Mr Murphy: We certainly would have considered the impact of this on our financial audit, yes.

The CHAIRMAN: The same question from us: are you prepared to table the audit working papers or documents?

Mr Murphy: No.

The CHAIRMAN: I think we need to make sure that was a no. In the 2008–09 financial year did you go to Western Power or EnergySafety to find out if these problems were affecting Western Power's internal audit or internal control systems?

<006> I/F 11:06:05 AM

Mr Murphy: We would have had a discussion with the client and its regulators about the impact of these matters on the financial audit.

The CHAIRMAN: I ask the standard question again: are you prepared to table working papers, minutes and the like?

Mr Murphy: No.

The CHAIRMAN: In the 2008–09 financial year did you go to Western Power or EnergySafety to find out if these problems meant that Western Power was not complying with its statutory obligations?

Mr Murphy: We would have.

The CHAIRMAN: I ask the same question again: are you prepared to table legal opinions, audit papers, minutes?

Mr Murphy: No.

The CHAIRMAN: In the 2008–09 financial year, did you think about doing a performance audit of Western Power?

Mr Murphy: Yes, we did.

The CHAIRMAN: Is there evidence there that you are prepared to table?

Mr Murphy: No. I have written to the committee though, and put it on record. I have advised the committee in writing that we did consider conducting a performance audit. It first entered our topic selection list in 2009.

The CHAIRMAN: In the financial year 2008–09 did you find out whether EnergySafety's or the ERA's concerns about Western Power's network asset management were serious enough to affect that year's annual report?

Mr Murphy: We do not audit the annual report. We certainly consider whether those matters were serious enough to impact the financial audit and a fair presentation of their financial statements.

The CHAIRMAN: Again, are you prepared to table audit working papers, minutes and the like?

Mr Murphy: No.

Hon JIM CHOWN: Mr Murphy, in regard to your proposed performance audit of Western Power in 2009, what triggered that process to have such an audit?

Mr Murphy: The concerns that have been alluded to in all of the previous questions.

Hon JIM CHOWN: Why did you not proceed with the performance audit?

Mr Murphy: I think that is an impossible question to answer comprehensively but I would certainly be prepared to go through some of the key considerations.

Hon JIM CHOWN: Please do.

Mr Murphy: Firstly, it is an unusual thing for an Auditor General to do a full performance audit into the core activities of a corporatised entity.

Hon JIM CHOWN: You answered my initial question by saying you had concerns regarding Western Power processes and that is why you were not going to initiate it.

Mr Murphy: Correct. It is very unusual for a public sector auditor to conduct a performance audit into the core business of a corporatised entity.

Hon JIM CHOWN: Unless it has great concerns.

Mr Murphy: Absolutely. I do not think you will find any history anywhere in Australia of any Auditor General doing a performance audit into an energy utility. But if the concerns get to the point where there is a public interest, then we would certainly proceed.

Hon JIM CHOWN: So you had come to that opinion?

Mr Murphy: There were a number of considerations.

Hon JIM CHOWN: That would have been the prime -

Mr Murphy: That was a key concern that we had, absolutely. Corporatised entities are set up quite separately from government departments, at arm's length from government. The audit that we perform of them is very different to that which applies to government departments in that it is a financial audit exclusively. Members will be aware that the audit of a department like health, education or police is much more comprehensive in that I give a three-way opinion, I give a particular opinion on controls and I also give an opinion on performance indicators. The level of depth provided for in the legislation for an audit of a corporatised entity is much lower. I think there is a recognition in the legislation that corporatised entities are subject to commercial pressures and also subject to other regulators, so they are different in natures and I guess that is a point. The second point is the extent of information that is already in the public domain. We monitor issues quite closely to see if there is a need for us to assist in transparency of issues. If we believe that it is already known, people are already acting on it and Parliament's already well aware of it, then it is not an area that we put significant resources into because there is a limited capacity for us to add value.

Hon JIM CHOWN: Can I just take you back to the commencement of my questions. As the Auditor General, you obviously had great concerns regarding the operations of Western Power. You had contemplated doing a performance audit on all aspects of that, and that is what a performance audit is about. You have just stated now that you stepped back from doing a performance audit because you believed that these considerations and problems within Western Power were in the public domain.

Mr Murphy: No; I am saying to you there are a large number of reasons, and I was going through them. That is one of the considerations. Another consideration is the extent of action by other regulators. There are other regulators in this domain, as you have pointed out, and those regulators have certainly done their job in terms of holding the agency to account and making publicly known the issues and concerns and the things that need to be addressed. In a normal circumstance, where an agency is operating in a regulated environment, the regulator expresses concern and the agency addresses the problem and it goes away. There would be limited value for me to add as an Auditor General. The extent of other regulators in the area—their reporting and their action—is a further thing that would be taken into consideration. If I get to a final point, it would simply be a matter of our resourcing and audit programming and scheduling to see when we could fit such an audit in. All those factors would have been taken into account in 2009. They were factors that were considered. It was not until 2010 that those issues were dismissed and the concern about Western Power rose

above those to the point where we commenced planning a performance audit into Western Power.

The CHAIRMAN: Can we move on, members, because we are going to run out of time.

Let us look at EnergySafety's 2009 section 18B Energy Coordination Act 1994, inspector's audit. This is exhibit U. You have been handed a copy of that so you can have a look at. This is an extract of EnergySafety's 2009 section 18B inspector's audit served on Western Power. Did you know that EnergySafety's 2009 section 18B inspector's audit said that Western Power was breaching the act because of the reasons shown on the screen?

Mr Murphy: Yes.

The CHAIRMAN: In the 2009–10 financial year, did you go to Western Power or EnergySafety to find out if these breaches affected Western Power's accounting or auditing treatment?

Mr Murphy: We certainly would have considered the impact of that on our financial audit and a fair presentation of their financial statements.

The CHAIRMAN: Again, we would ask for tabling of papers.

Mr Murphy: No.

The CHAIRMAN: We are just saving time. We have a long way to go. We expect that you will answer no but we will ask you on every occasion.

In the 2009–10 financial year, did you go to Western Power or EnergySafety to find out if these breaches affected Western Power's internal audit or internal control systems?

Mr Murphy: Yes, we would have.

The CHAIRMAN: Are you prepared to table the working papers, minutes, et cetera?

Mr Murphy: No.

The CHAIRMAN: In the 2009-10 financial year did you go to Western Power or EnergySafety to find out if these breaches meant that Western Power was not complying with its statutory obligations?

Mr Murphy: We would have.

The CHAIRMAN: Are you prepared to table legal opinions, minutes, working papers?

Mr Murphy: No. In each of those cases, it is worth pointing out that we arrived at the conclusion that they would not have a material impact on the financial audit.

The CHAIRMAN: It is fair for you to say that. As I say, our job is to try to find out what you actually did and we report back to the Council. That is what we are trying to do.

We move on to the ERA's 2009 Western power AA2 decision. You have been handed a copy, exhibit A. This is an extract of ERA's 2009 AA2 final funding decision of Western Power. Did you know that the ERA's December 2009 final AA2 funding decision on Western Power made damning comments on paragraphs 471 and 472,

including information from a range of sources indicating substantial deficiencies in Western Power's management and governance process as they relate to the undertaking and the costs of operating and capital activities? Did you also know that the ERA's concerns were so serious that the ERA did not approve funding to Western Power of \$261 million in the AA2 period? Are you aware of that?

Mr Murphy: Yes.

The CHAIRMAN: In the 2009–10 financial year, did you go to Western Power or the ERA to find out if any of these problems affected Western Power's accounting or auditing treatment?

Mr Murphy: We would have taken that into consideration to determine whether it would have a material impact on the financial audit.

The CHAIRMAN: Again, are you prepared to table documents like working papers, minutes et cetera?

Mr Murphy: No, but I can tell you that we did take those factors into consideration.

The CHAIRMAN: In the 2009–10 financial year did you go to either Western Power or the ERA to find out if these problems affected Western Power's internal audit or internal control systems?

Mr Murphy: We would have had those discussions.

The CHAIRMAN: Again, are you prepared to table documents?

Mr Murphy: No.

The CHAIRMAN: In the 2009–10 financial year did you go to either Western Power or the ERA to find out if these problems meant that Western Power was not complying with its statutory obligations?

Mr Murphy: We would have and we certainly would have considered any statutory obligations that have an impact on the financial audit.

The CHAIRMAN: Are you prepared to table any legal opinion, working papers?

Mr Murphy: No.

The CHAIRMAN: In the 2009–10 financial year did you think about doing a performance audit of Western Power?

Mr Murphy: Yes, we did.

The CHAIRMAN: Can you demonstrate that you did that?

Mr Murphy: I have put it in writing to the committee. I have advised the committee about the processes leading up to a letter to Western Power saying that we were about to conduct a performance audit. Yes, I did.

The CHAIRMAN: Are you prepared to table working papers of corporate minutes and the like?

Mr Murphy: No.

The CHAIRMAN: In the 2009–10 financial year, did you find out if EnergySafety's inspector's audit or the ERA's reasons for holding back \$261 million in funding might affect that year's annual report?

Mr Murphy: It is important to make a distinction between the annual report and the audit. We do not audit the annual report so we do not consider whether those matters have an impact on the annual report. We certainly do consider whether those matters have an impact on our financial audit and the fair presentation of the financial statements.

The CHAIRMAN: Again, are you prepared to table working papers and minutes?

Mr Murphy: No.

<007> Q/F 11:18:01 AM

Hon JIM CHOWN: In regard to the auditing process and the presentation of annual reports, I am sure there are compliance requirements. In your opinion, Mr Murphy, did Western Power meet the minimum or maximum requirements in regard to these matters?

Mr Murphy: We do not audit the annual report, so I have not conducted —

Hon JIM CHOWN: I said either in an annual report or in the audit processes that have been conducted to date—there should be minimum requirements that have to be upheld.

Mr Murphy: Look, there are minimum requirements and I would argue that public sector agencies should not seek to meet the minimum requirement. They should seek the highest possible standards of governance that they possibly can.

Hon JIM CHOWN: So where did Western Power fall in regard to these parameters that you have just —

Mr Murphy: I have not conducted an audit that would put me in a position to make an assessment or a judgement. I have put on record in my response to the committee that I concur with your expert's finding that the director's report was not as open as it should be. I do not have any disagreement with that at all. Standards of governance are a very different matter to a financial audit required under the Electricity Corporations Act and that goes to the very core of understanding this issue. Meeting the minimum requirements under the financial statements is one issue. Meeting all of the accountability requirements to the Parliament and to the public is a very different issue and I am not able to incorporate those governance issues into a financial audit. I am simply not allowed to. If I want to, if I like to—I cannot change that. I am bound by legislation, by the professional standards and by the auditing standards to follow the auditing standards when doing a financial audit. Those governance issues—they are very, very important to me—can only be examined by extending the financial audit into a performance audit. That is why I think it is absolutely critical to an understanding of these issues to draw a very clear distinction between financial audit and performance audit.

[11.20 am]

The CHAIRMAN: We need to move on so we can look at some of these issues. Let us look at the ERA's 2011 funding inquiry into Horizon Power. You are being handed exhibit B. This is an extract from the ERA's March 2011 funding inquiry into Horizon Power. Have you got the document?

Mr Murphy: Yes.

The CHAIRMAN: Did you know about the ERA's March 2011 findings about the condition of Horizon Power's Esperance network, what they call the ENRUP proposal and how to fix it?

Mr Murphy: Yes, we would have been.

The CHAIRMAN: Just keep hold of that document because you will need it for the next one. You are being handed a copy of exhibit L. This is an extract from Western Power's internal 2009 distribution of asset management plan. Did you know that as far back as 2009 Western Power's distribution asset management plan showed that Western Power's distribution network was in the same conditions as Horizon's Esperance network?

Mr Murphy: I cannot be certain of that.

The CHAIRMAN: We will continue on. In the 2010–11 financial year did you go to Western Power or the ERA to find out if this might affect Western Power's accounting auditing?

Mr Murphy: We would have had discussions with the key clients —

The CHAIRMAN: We will go through the whole process of the auditor. So, are you prepared to table the working papers and minutes?

Mr Murphy: No.

The CHAIRMAN: In the 2010–11 financial year did you go to Western Power or the ERA to find out what this might tell you about Western Power's internal audit or internal control systems?

Mr Murphy: We would have had discussions with the client and the key regulators about issues that impact the financial audit.

The CHAIRMAN: Are you prepared to table audit papers and executive minutes?

Mr Murphy: No.

The CHAIRMAN: In the 2010–11 financial year did you go to Western Power or the ERA to find out if Western Power was complying with statutory obligations?

Mr Murphy: We would have had discussions. Statutory obligations are only considered to the extent they have a material impact on the financial audit—the true and fair presentation of the financial statements in our financial audit.

The CHAIRMAN: Okay. So, the same question again: are you prepared to table legal opinions, working papers or minutes?

Mr Murphy: No.

The CHAIRMAN: Members, that is the end of another section, so we will move on.

Let us look at Western Power's annual report of 2010–11. You are being handed exhibits B1 and B2. These are extracts of Western Power's board pack documents on 7 June and 30 June 2011 board meetings. Did you know that before the episode of the 2010–11 financial year Western Power's management had calculated the risk caused by the condition of its wood pole network? I see you looking at those. Do you need a moment?

Mr Murphy: No. We do not attend the board meetings, so we would not have —

The CHAIRMAN: So you would not have known about that?

Mr Murphy: We would not have known about that. The quantification of the risk and the amount is an issue that I have addressed in my written response.

The CHAIRMAN: So, again, did you know that before the end of the 2010–11 financial year, Western Power’s management had costed the capex challenge caused by the state of its wood pole network? Would you have been aware of that?

Mr Murphy: I cannot answer that with certainty. I believe we certainly are aware in general terms of the issue around the network. I cannot answer in specific detail.

The CHAIRMAN: We will hand you a copy of exhibit V3. This is an extract of Western Power’s board pack documents of 7 April 2011 board meeting. If you just have a quick look at that.

Mr Murphy: Yes.

The CHAIRMAN: Did you know that before the end of the 2009–10 financial year Western Power management advised the board of Western Power, Treasury and the EERC about these things before the 2010–11 annual report annual audit options were signed off for that financial year? Were you aware of the situation?

Mr Murphy: We do not attend the board meetings, so we would not have, in terms of the specific issue. We do not attend the board meetings, so I cannot confirm that we had specific knowledge. We certainly had general knowledge about the issue.

The CHAIRMAN: So were you at the board meeting of 2010–11 when the annual report and annual financial statement were signed off?

Mr Murphy: No, it would be very unusual for an Auditor General to attend a board meeting.

Hon ED DERMER: Have you ever attend a board meeting?

Mr Murphy: I have attended some board meetings, yes, but it is very rare.

Hon ED DERMER: What would be the special circumstances?

Mr Murphy: Some corporatised entities do like to sign the financial statements in the presence of the auditor at the completion of the audit process. So, there is one that I am familiar with that does that. Certainly Western Power does not.

Hon ED DERMER: So you would not attend for any other purpose?

Mr Murphy: I attend audit and risk committee meetings when I can to discuss audit matters with clients on a fairly regular basis.

Hon ED DERMER: We are talking about board meetings.

Mr Murphy: Certainly entrance and exit interviews are conducted with key clients, but they are not usually board meetings. They are a separate meeting that can include a chair of the board or a chair of the audit committee but they are not board meetings, no.

The CHAIRMAN: Auditor, were you present when the annual report and annual financial statements were signed off?

Mr Murphy: No.

The CHAIRMAN: In the 2010–11 financial year, did you go to Western Power to find out whether the internal processes might affect Western Power’s accounting for auditing treatments?

Mr Murphy: We would have considered the impact of those issues on our financial audit.

The CHAIRMAN: Again, are you prepared to table any working papers or minutes?

Mr Murphy: No.

The CHAIRMAN: In the 2010–11 financial year did you go to Western Power to find out if these internal developments affected Western Power’s internal audit or internal control systems?

Mr Murphy: We would have.

The CHAIRMAN: Again, are you prepared to table working papers, minutes and the like?

Mr Murphy: No.

The CHAIRMAN: In the 2010–11 financial year did you go to Western Power or the ERA or EnergySafety to find out if these internal developments meant that Western Power was not complying with its statutory obligations?

Mr Murphy: We would have considered the extent to which statutory obligations had an impact on the financial audit, absolutely. It is a very important requirement.

The CHAIRMAN: Same question: are you prepared to table legal opinions, audit papers or executive minutes?

Mr Murphy: No.

The CHAIRMAN: In the financial year 2010–11, did you think about doing a performance audit of Western Power?

Mr Murphy: Yes, I have outlined that.

The CHAIRMAN: Again, are you prepared to table working papers or minutes?

Mr Murphy: No.

The CHAIRMAN: What action did you take after we asked you to think about doing a performance audit of Western Power on 28 September 2011?

Mr Murphy: We undertook some quite considerable planning for an audit looking at the timing, at the scope, at the lines of inquiry. It is important for our audit processes that we do as much planning as we can before we engage with the client. We need to look at all the external material that is available. We also look at what is happening in other jurisdictions. So, we conduct quite extensive work before engaging with the client, which is our normal practice.

The CHAIRMAN: Who is the client?

Mr Murphy: If you will forgive me, I am using —

The CHAIRMAN: I understand that, but the —

Mr Murphy: The Parliament is my key client and I do know that some Auditors General refer to their agencies as auditees to make it absolutely clear and if that clarity is helpful, I will be more than helpful to use the term auditee.

The CHAIRMAN: I think it is helpful in the direction of perception.

Mr Murphy: Absolutely.

The CHAIRMAN: That is really the only reason we ask you that question. You have been handed extract E. This is an extract from Western Power's 2010–11 annual report. What we ask you to look at is on the last page of that document. In the 2010–11 financial year, did you check whether the ERA's decision about Horizon's then proposal or the level of Western Power's public disclosures about the state of the network were serious enough to affect that year's annual report? That goes back to exhibit B, if you have still got that in front of you.

Mr Murphy: It is not a matter that would be considered in our financial audit of Western Power. The extent of disclosures outside of the financial statements is not a matter that would be considered in a financial audit, so the answer to that is no. It is a matter that could and would be considered in a performance audit and we have discussed that.

The CHAIRMAN: Clearly the point for us is that Horizon established a position with their lines and Western Power had not established a position with their lines. So, again, can you give the committee any evidence that you followed that up? Are you prepared to table working papers and corporate minutes?

<008> Q/F 11:30:11 AM

[11.30 am]

Mr Murphy: No.

The CHAIRMAN: You are being handed a copy of exhibit V4. This is an extract from Western Power's board pack documents for the 28 January 2011 board meeting. Western Power's problems have big implications for the state's finances given that Western Power on its own contributes between 40 and 50 per cent of the total state debt, which is the document that you have in front of you. In 2010–11 financial did you check whether the size of Western Power's capex problems were big enough to affect that year's whole-of-government financial statements or global state budget?

Mr Murphy: We certainly would have considered the impact of Western Power on the annual report of state finances. We conducted an audit of Western Power and found that their presentation was true and fair, and therefore it is reasonable for that information to be consolidated into the annual report on state finances. We do not audit the state budget.

The CHAIRMAN: Again, are you prepared to table audit working papers and corporate minutes?

Mr Murphy: No.

The CHAIRMAN: Do you think that Western Power's 2010–11 annual report tabled on 22 September 2011 gave an accurate picture to the Parliament about the capex challenges and the risks to public safety created by Western Power's distribution network?

Mr Murphy: I have not audited the annual report, but I do know that in the committee's report has advice from an expert that suggests that the disclosures were not to the standard that would have been expected and I certainly agree with the advice of the expert, but we have not conducted an audit into the annual report or the disclosures.

The CHAIRMAN: Western Power has had a history of breaches and asset management problems since 2006. Why have you approached your statutory obligations regarding Western Power so differently from the way that EnergySafety and the ERA has approached their statutory functions?

Mr Murphy: My statutory obligations under the Electricity Corporations Act have been fully met. I have met my statutory obligations.

The CHAIRMAN: Okay, members, this is also the end of another session.

Hon ED DERMER: I have listened carefully to the questions that you have asked and that Mr Murphy has answered. We have the Office of Energy and others indicating serious problems with Western Power. As I understand your answer, you have said that within the scope of the financial statement audits that you perform, you are not obligated to consider the evidence of those problems.

Mr Murphy: That is not correct. We are obligated to consider those issues. We have an obligation under the auditing standards to consider the impact of all of those issues on the true and fair presentation of the financial statements. In each of those cases, the point that I have tried to make, those issues do not impact on the true and fair presentation of historical financial reports, which is precisely what we are auditing. We are auditing historical financial statements and we are required to give an opinion in accordance with the auditing standards. That work requires us to consider all of the issues that impact the entity and whether they are going to have an impact, and our judgement has been that those issues—very, very serious as they are—have serious implications for the state, they have serious implications for the budget, they have serious implications for the community, but they do not have serious implications for the true and fair presentation of the financial statements of Western Power.

I do not always agree that the auditing that we do in the public sector answers all the questions that the community and the Parliament might like. In fact, for my challenges to some of the standards, I am now a member of the auditing standards board for Australia because I believe there is a need for more consideration of broader public interest issues in the public sector and audits of the public sector. But at this stage I am constrained in terms of what I can do in a financial audit—severely constrained by the legislation and the auditing standards and my professional obligations. Now, I have met those fully. I have met those fully. They have not met other expectations that people have, and I do understand those expectations. I do understand why people would like to know more things other than simply the true and fair presentation but my obligations under the act are very, very clear and I have gone to enormous lengths to make sure that we do meet those obligations. We have conducted extensive reviews and checks on the work that we have done in that area following the committee's report to verify for ourselves that we have met all of our standards and all of our obligations and we have not uncovered any audit failure.

Hon ED DERMER: Mr Murphy, I am doing my very best to understand your very long sentence and if I understand it correctly, your obligation to conduct an audit of Western Power's financial records did not oblige you to comment on issues of public safety concern that were apparent to you personally and to us at the time.

Mr Murphy: Not only did it not oblige me to; it did not permit me to. There are matters that I am simply not able to incorporate into a financial audit.

Hon JIM CHOWN: What about a performance audit?

Mr Murphy: Performance audit—absolutely. That is exactly the right forum for these issues to be addressed. I made that point in my meeting with this committee in September and I continue to make the point that I really do believe that we need to make a very clear distinction between my obligations in conducting a financial audit and a performance audit, and indeed all of my concerns with the matters that appear in the committee's report relate to criticisms of the financial audit.

Hon ED DERMER: So if the constraints on the financial audit prevented you in your capacity as the Auditor General from alerting the Parliament to concerns about the public safety and how assets of Western Power compromise public safety, I would have hoped that that would have led you as the Auditor General to use the other instrument that you had, which was to conduct a performance audit. I recollect at our hearing in the context of the investigation into the distribution of assets of Western Power that went to the report that brought us here today, saying—I certainly recollect the Chairman saying very clearly—that the committee believed that you should have conducted a performance audit.

Mr Murphy: That is correct.

Hon ED DERMER: And you chose not to?

Mr Murphy: No, quite the reverse.

Hon ED DERMER: So you did have a performance audit but we have not found out about it?

Mr Murphy: We commenced the process of conducting a performance audit early in 2011. It is a matter of public record. We wrote to Western Power —

Hon ED DERMER: But you did not conduct it through to its completion. That is the point I am making.

Mr Murphy: We discovered that the committee was doing its report—something we should have known before we embarked on that audit; it was an error on our behalf. We felt it would be problematic to be doing an audit that paralleled the work of this committee.

Hon ED DERMER: The members of the committee who were part of that exchange, particularly Mr Chairman, made it very clear that the committee felt that if there was a need for the Auditor General's office to conduct a performance audit, which obviously you had, because you had commenced one, that that should be continued and not be terminated for reason of the fact that we were conducting our inquiry. Now, there is an expectation, Auditor General, on your office to investigate these matters when the need is there. The essence of the report that we tabled in the Parliament on Western Power was to say that we had expected you to find, to investigate—to investigate the

matters once you were aware that there was likely to be the need to investigate them. If that is a point of difference between us, it is very simple. We believe that you should have conducted an inquiry to investigate those matters of public concern whether by way of a performance audit or any other instrument that you had before you.

Mr Murphy: I do not believe that is a point of difference. I am required to exercise my judgement about when to conduct a performance audit. It is very open to this committee—indeed any member of Parliament—to take a different view and to take me to task over those matters. That is not a point of difference between me, my office and the committee. I respect absolutely the right of the committee to have a different view about whether I should or should not have done a performance audit.

Hon ED DERMER: If that is not a point of difference, Mr Auditor General, what were the misunderstandings in our report that you were referring to in your letter of 25 January?

[11.40 am]

Mr Murphy: They relate to the expectation that a financial audit would audit matters such as the condition of the wooden poles, that it would audit the disclosures that were made in the annual report or the director's report, that it would look at the condition of the poles, that it would look at all statutory noncompliance—those issues. Essentially, the core of my concerns about the committee's report relate to inaccuracies about the role of financial audit.

Hon ED DERMER: Our expectation was that the Auditor General would investigate a serious matter of risk to public safety. Whether you were to conduct that as a financial audit or as a performance audit would not be of concern to the committee. What would be of concern to the committee is whether you conducted the investigation at all. That was the point we were making in our report, and the idea that that can somehow be a misunderstanding—I fail to see how that could possibly be a misunderstanding.

Mr Murphy: Well, I am happy to clarify that I do not believe there is any misunderstanding in that regard. The concerns of my letter were about inaccuracies in relation to financial auditing.

Hon ED DERMER: So the misunderstanding part should not be in your letter, is that what you are suggesting?

Mr Murphy: No, it absolutely—well, there are inaccuracies. Whether they are a result of misunderstandings or some other form, I am unable to say. My expectation —

Hon ED DERMER: You talked about the inaccuracies and the misunderstandings —

Mr Murphy: There are inaccuracies —

Hon ED DERMER: You have a duty to explain what you were talking about.

Mr Murphy: I am very happy to. There are inaccuracies in the report. My view is that they were likely to arise from misunderstandings. They relate to financial audit. They do not relate to —

The CHAIRMAN: I am conscious of the time.

Hon ED DERMER: You failed to point them out when you were invited to do so, Mr Auditor General.

Mr Murphy: I would be very pleased to do so.

Hon ED DERMER: At any time you are very welcome to put forward anything you might wish to suggest. The committee would be happy to receive it. We are still waiting to see some indication of any inaccuracies or misunderstandings that you referred to on 25 January.

<009> A/4 11:42:04 AM

Mr Murphy: So my letter of March did not clarify?

Hon ED DERMER: It failed to indicate to me any inaccuracy or misunderstanding.

The CHAIRMAN: If you will take that on board and consider that; and, if you wish to, you can respond in another letter.

Hon ED DERMER: At any time.

Mr Murphy: Chair, I have experienced some frustration in communicating with this committee in the requirement to communicate only formally. It was been my experience in the past to have access and to be able to talk to research officers or to talk to individual members of the committee. The committee's approach has meant that that is not possible. I think that has hampered communication, and I would ask the committee whether it is prepared to consider the option of allowing detailed discussions. I mean, the report is quite comprehensive. There are a number of areas in that report, and I would be very pleased to sit down with any members of staff or the committee to go through, point by point, line by line, where there are inaccuracies in the report.

Hon ED DERMER: You have the opportunity to do that on the public record here today. You also have been invited a number of times this morning to put forward—again, I would suggest on the public record would be appropriate—any suggestion you may have, which bears up to examination, to suggest any inaccuracy or misunderstanding in our report.

Mr Murphy: I would be pleased to do so.

Hon ED DERMER: Good; go ahead.

Mr Murphy: Section 6.23 of the report says “acceptance without question or comment on the part of the Auditor General of the accounting treatments adopted by Western Power strongly suggests that —

The CHAIRMAN: Auditor, if we keep going with our questions, we will actually get to that point. You did express some interest earlier in the day to try to get through today, and we have an interest in trying to get through today as well. We do get to that point a little later in the questioning.

Hon ED DERMER: It might be appropriate, Mr Chairman, for the auditor to take the opportunity to give us a letter pointing out any matters that he is unable to cover in the course of the hearing.

The CHAIRMAN: We all have to deliberate in not too many minutes' time.

Hon ED DERMER: The Auditor General is obviously welcome to indicate —

The CHAIRMAN: The Auditor General is welcome to write to this committee any time he likes. We will give consideration to the other matters that he wants us to consider when we get down to the process of deliberation. Right now we would like to get through the questions.

Mr Murphy: I am sorry that my letter of March has not made clear —

The CHAIRMAN: We do need to have it clear. But can I move through the questions, because otherwise we are going to run into a problem. Your letters—this is what we are talking about—are dated 25 January and 21 March 2012. Firstly, you wrote to us about financial audit. You said Western Power’s asset management system is relevant to its financial statements.

Mr Murphy: All aspects of Western Power’s operations are relevant to their financial statements to some extent. The question that the auditor needs to consider is whether they will have a material impact on the fair presentation of the financial statements and whether there is likely to be a material misstatement as a result of the impact of that issue.

The CHAIRMAN: Okay. Did your financial audits for Western Power between 2006 and 2011 assume that Western Power’s distribution asset management systems were fit for purpose?

Mr Murphy: I think “assume” is not a good word to use with an auditor, because we are required not to assume—in fact, quite the reverse; we are required to be sceptical about information that is given to us. Under the standards, we are required to approach our work with scepticism. The area that you asked me about —

The CHAIRMAN: It was about the status of their assets.

Mr Murphy: On the status of their assets, the condition of the assets

The CHAIRMAN: What we want to know —

Mr Murphy: We did consider the fair presentation; that is, whether the value of those assets is fairly presented in accordance with the accounting standards, and we check that —

The CHAIRMAN: And the systems?

Mr Murphy: No. The systems are not part of the financial audit. We are not giving an opinion on the systems. However, we must look at the systems to see if the information derived from those systems can be relied upon in terms of delivering information that complies with the accounting standards.

The CHAIRMAN: So how does—whatever you call it; I would use the word “assumption”—your determination compare to EnergySafety’s and the ERA’s repeated findings about Western Power’s distribution asset management system? They all keep saying their systems were not up to standard. So how does that relate to what you are now telling us?

Mr Murphy: I think it is an important matter that those regulators were making those findings, which are absolutely important findings, and putting them on the public record so that the public and the Parliament could be aware of those deficiencies. They are not matters that would be addressed and identified in a financial audit.

The CHAIRMAN: So are you indicating that you looked into those matters?

Mr Murphy: Absolutely. Those matters are taken into consideration in the audit, but only to the extent that they have an impact on the financial area.

The CHAIRMAN: So the same process: are you prepared to table your working papers and corporate minutes?

Mr Murphy: No.

The CHAIRMAN: You are now being handed a copy of exhibit C. This is an extract of Western Power's media statement dated 15 September 2011. I am sure you are very aware of this statement.

Mr Murphy: Yes.

The CHAIRMAN: So you remember that statement?

Mr Murphy: I do indeed.

The CHAIRMAN: Western Power's public statements about the condition of its wood pole network in its annual reports 2006 to 2011 do not match up very well with its media statement of 15 September 2011 that its "network was reaching the end of its useful and safe life". How do you reconcile these two statements?

Mr Murphy: I do not reconcile those statements. They are certainly not matters that are addressed as part of our financial audit.

The CHAIRMAN: If Western Power's asset management systems were not fit for purpose between 2006 and 2011, would that make you qualify any of your opinions on Western Power's annual financial statements?

Mr Murphy: I do not believe there is any basis for a qualification of the financial audit opinion.

The CHAIRMAN: In reaching your opinions about Western Power's financial statements in the financial years 2006–07 to 2010–11, did you investigate Western Power's systems of internal control?

Mr Murphy: We certainly do look at those systems to ascertain what impact issues around those systems would have on the fair presentation of the financial statements.

The CHAIRMAN: Again, are you prepared to table your working papers and minutes?

Mr Murphy: No.

The CHAIRMAN: In reaching your opinion about Western Power's financial statements in any of the years 2006–07 to 2010–11, did you address whether or not Western Power had complied with its statutory obligations?

Mr Murphy: We do, but the financial audit does not examine all instances of statutory compliance. It is required to consider those issues that are likely to have a material impact on the fair presentation of the financial statements.

[11.50 am]

The CHAIRMAN: Again, are you prepared to table your opinions and working papers?

Mr Murphy: No.

The CHAIRMAN: Let us move to paragraph 6.23 of our fourteenth report, which is now up on the screen. Your 21 March 2012 letter says that a chunk of paragraph 6.23 in report 14—underlined on the screen—shows the committee lacks understanding of accounting and auditing standards. Could you please tell us how paragraph 6.23, read as a whole, and in its full context, shows a lack of understanding of accounting and auditing standards? This is the question that we are all getting to.

Mr Murphy: Yes, it is. If I could put the statement into context, paragraph 6.22—the paragraph before that—quotes me and suggests that I was asked the issue about how the accounting treatment for assets differs from economic and safety requirements, and I was at pains in my appearance before the committee to explain that accounting considerations were very, very different to safety requirements and condition-based maintenance. What I believe has been done in this paragraph is to then take the words that I used in describing condition-based maintenance—which is not part of our audit—and then suggest that we had assessed as safe and in good working condition the poles, which is completely not correct. It is completely incorrect. “Acceptance without question or comment”, I mean, the role of an auditor general is to do precisely that. It is to question and comment. We would not accept anything from Western Power without question and comment. We are required under the auditing standards to be sceptical and to question and comment all the time. But the accounting treatment is precisely what we do check. Issues that are covered later in the paragraph, such as safe and in good working condition, and replacement of the poles, is not a relevant consideration in the financial audit. It is not a matter that we consider. So I am strongly of the view that the accounting treatments adopted by Western Power are appropriate. That is not to say that all of their actions have been appropriate. Clearly, I think the committee, EnergySafety and ERA have all demonstrated that there are a wide range of deficiencies in Western Power. The point that I am trying to make is that deficiencies in their accounting treatments and their financial statements are quite separate from those issues.

The CHAIRMAN: We will consider those matters, but given the time I will try to move on.

Hon ED DERMER: Mr Chairman, I have to raise one matter. The wooden power poles and the other assets used for the distribution purpose are a large asset, and they would be expensive to replace if replacement was found to be necessary. Is that right?

Mr Murphy: Absolutely.
<010> D/F 11:53:41 AM

Hon ED DERMER: Okay. So if I was running Western Power and I was aware that my very expensive asset was reaching near the end of its safe and useful life, I would feel a duty to make an adequate financial provision for the replacement of that asset.

Mr Murphy: That would not be permitted under the accounting standards. It used to be. It is not permitted anymore.

Hon ED DERMER: What—the agencies are not permitted to make provision —

Mr Murphy: A provision for deferred maintenance is no longer allowed. It was a feature of our accounting in years gone by. Since the adoption of international

financial reporting standards, that is prohibited, so that if Western Power had sought to put a provision for replacement of its poles into its financial reports, I would be required to make adverse comment about that. If I can touch on the accounting treatments, the two issues in accounting that impact on the wooden poles issue—one is whether the poles have been overvalued. Most of these aged poles have had their value written down to zero, so there is very little question about them being overvalued. In fact, if anything, they are in there at zero. The other point is whether there should be some sort of obligation or commitment recorded into the financial statements, and having a significantly deteriorating asset base simply does not meet the test of a present obligation. There is no contract in place, so it does not meet the test of a constructive obligation that would either allow them to put that matter into their financial statements or require me to make an adverse finding in relation to their financial statements. It is simply a matter of the accounting standards and the auditing standards, and that is really at the heart of what I am trying to get across to the committee.

The CHAIRMAN: We will talk about those matters some more. Twelve o'clock is getting very close. I am not quite sure where I am going to draw these matters to a close. But can we move on? Let us look at paragraph 8 of the executive summary of our report 14, which is now on the screen. Your 21 March 2012 letter says that a chunk of paragraph 8 from the executive summary in report 14—underlined on the screen—shows that the committee lacks an understanding of the accounting and auditing standards. Can you please tell us how paragraph 8 of the executive summary, read as a whole and in its full context, shows a lack of understanding of the accounting and auditing standards?

Mr Murphy: For the purposes of brevity, Chair, I will simply go to the issue of qualifications. We have spent months going through both our audits and the presentation of Western Power's financial statements. I cannot find any basis that would allow me to qualify their accounts in a financial sense.

The CHAIRMAN: Let us move on. Paragraph 9.10: again your letter says that a chunk of paragraph 9.10 in report 14—underlined on the screen—shows that the committee lacks an understanding of the accounting and auditing standards. Do you wish to comment on that?

Mr Murphy: The points I have already made—the qualification—I do not believe there is any basis for a qualification, and the annual report is not something that we audit. We do not audit annual reports for any of our auditees, other than through a performance audit, of course.

The CHAIRMAN: Do you think that the committee is limited to the accounting and auditing standards in judging the performance of the Auditor General?

Mr Murphy: Absolutely not.

The CHAIRMAN: Okay. So what other standards should we look at?

Mr Murphy: It is critical to me that our financial audits are judged on the basis of the auditing standards. I think that is the standard that should be measured. Any other standard that the committee wants to apply to judging the performance of my office should be high ones.

The CHAIRMAN: And we will come to a bit of that in the future, whenever we get there, so we will talk about those matters when we do. Finally on the question of financial audits, let us look at paragraph 9.9 of report 14, which is on the screen. Your 21 March letter says that a chunk of paragraph 9.9 of report 14, which is underlined on the screen, shows that the committee thinks that you audit agencies' annual reports. Can you please tell us how paragraph 9.9, read as a whole and in its full context, shows that the committee thinks you audit annual reports?

Mr Murphy: It is simply holding me to account for work that I have not done. It is troubled by the fact that I have signed off on the annual report. I simply have not done that. I have not audited the annual report.

The CHAIRMAN: Okay. Do you have anything that you would like to add to your letter of 21 March 2012 that might help the committee understand an inaccuracy or misunderstanding relating to financial audit?

Mr Murphy: I certainly would be prepared to go through the report in detail, either with the staff or individual members of the committee, in order to help gain an explanation. I also identified in my letter, though, that my purpose was to put on the record the fact that there were inaccuracies in the report. Having now done that, my sole objective in this matter is to assist the committee.

The CHAIRMAN: We will give consideration to that. It is not the practice of the committee, which you have already told us and which is not the case—it is unlikely that we will allow you to deal directly with the staff. You will need to deal with the committee. So we will give that consideration.

Hon ED DERMER: Just to repeat, Mr Chairman, that the Auditor General is welcome to put any further submissions that he believes may suggest, in his view, an inaccuracy or a misunderstanding.

Mr Murphy: I would only suggest that I would be aided by some dialogue to identify what particular areas are of concern to individual members. That would certainly aid me in what sort of information I could provide that would assist the committee.

[12.00 noon]

The CHAIRMAN: Auditor General, if we move on pretty expeditiously, we should be able to get to the end of the process. I am keen to press on. You also wrote to us about performance audits. Can you tell us what paragraphs of report 14 concerning performance audits show that the committee has made inaccuracies or misunderstood performance audits?

Mr Murphy: I thought I had previously tried to make the point that my concern about misunderstandings and inaccuracies relates to financial audits.

The CHAIRMAN: Okay.

Mr Murphy: My aim in providing information about performance audits is simply in order to assist the committee to understand what we do and what we have done.

The CHAIRMAN: You did write to us and say that you need to be satisfied about the public interest in conducting a performance audit. Do you want to comment on that?

Mr Murphy: I think that is self-evident. I mean, it is a core consideration, but not the sole consideration, in conducting a performance audit.

The CHAIRMAN: Is it your own personal concept of public interest that you have got in mind or is there a broader definition of “public interest”?

Mr Murphy: The matters that come to bear in a decision to conduct a performance audit are potentially unlimited. Other than the requirement for independence under the legislation, there are no constraints on matters that can be considered in determining whether or not to conduct a performance audit.

The CHAIRMAN: Let us assume that the committee used your reasoning for not conducting an inquiry into Western Power. Would it have been reasonable for us to not inquire into Western Power over the past two years because EnergySafety and the ERA were already investigating?

Mr Murphy: Chair, my response, I hope, is very, very clear, and I would encourage the members to read my response to that question that I have written. I believe that the committee’s work complementing the regulators has been an excellent example. It has had good outcomes for the public and for the community, and it is an excellent example of regulators working together with parliamentary committees to get to the bottom of an issue. My office has a long record of working very, very well and very closely with parliamentary committees to achieve similar outcomes. When I identify matters in an audit, and the Public Accounts Committee does not think they have been addressed satisfactorily by the auditee, the Public Accounts Committee comes in and does complementary work, which helps to achieve change in that particular area. I think the work that the committee has done is an excellent example of complementary work between regulators and parliamentary committees.

The CHAIRMAN: Where would Western Power be now, and where would the Parliament and the people of Western Australia be today, if the committee had just said, “Other people are looking into this”?

Mr Murphy: I have already said that I do believe that the work the committee has done has added considerable value to the public interest and to the community.

The CHAIRMAN: We agree you have already said that, so let us move on. You will recall that the statutory independence of the Office of the Auditor General, in its current form, goes back to the WA Inc royal commission and the Commission on Government. This is the area that I said we would come to. The first reference shown on the screen is from the royal commission. It stresses how much Parliament depends on your office. So you can see that statement. Do you wish to have time to read it?

Mr Murphy: Look, I understand this matter fairly well. I do not believe I do need additional time.

The CHAIRMAN: Okay. The Commission on Government’s views about the Office of the Auditor General are now up on the screen, as you can see. You can see that even though they supported the concept of statutory independence, your office was always understood to be directly accountable to the Parliament.

Mr Murphy: Absolutely; and I understand that. I think I did discuss my desire to be more accountable to the Parliament earlier.

<011> E/F 12:03:57 PM

The CHAIRMAN: Since you wrote to us on 21 March this year, the government has tabled its response to report 14. The government’s response talks about your office.

We want to look into that response today. You are being handed a copy called exhibit 5. This you may not have seen, so you might want time to see it. This is an extract of the government's response to report 14 tabled on Tuesday, 12 June this year. Have you seen this document?

Mr Murphy: I have.

The CHAIRMAN: Please turn to the last page of the extract. A copy of the relevant bit is shown on the screen. The bit we wish to talk about is on the screen. When did you ask for copies of Western Power's board minutes and supporting documents and examine them before telling Western Power that this was your opinion?

Mr Murphy: Chair, I do not have any record of us providing that information to Western Power. I think it is an unfortunate choice of words in that it appears to address auditing and accounting standards, but it does not state that. I think it is an unfortunate choice of words.

The CHAIRMAN: Yes; we were a bit concerned that you might ascertain that as well.

Mr Murphy: I certainly do not agree with that statement. There is certainly no auditing or accounting standard governing the level of disclosure required in directors' reports.

The CHAIRMAN: We are concerned about that statement as well.

Mr Murphy: The standard of disclosure in directors' reports is a matter that is covered in a wide range of different forums—people like the Chartered Secretaries and the Australian Institute of Company Directors. There are a whole range of people who would have high standards for the level of disclosure required in directors' reports, but the accounting and auditing standards do not have standards relating to directors' reports.

The CHAIRMAN: So where do you think that statement has come from?

Mr Murphy: Probably from a misunderstanding in communication between my office and Western Power. If they asked us whether there was anything in their director's report that caused us concern as auditors, we would have pointed out to them what I have just said to you—that there is no standard required in the auditing or accounting standards.

The CHAIRMAN: So, to make it clear, is it your opinion that agencies of government only need to meet a defined minimum level of disclosure?

Mr Murphy: It is quite the reverse, Chair. I believe it is important that government agencies meet the highest possible standards of disclosure.

The CHAIRMAN: We may have to do some work on where that has actually come from.

Mr Murphy: The requirements for the disclosure are covered in the Electricity Corporations Act.

The CHAIRMAN: We are getting to the final stretch. Is it true that the Office of the Auditor General's periodic peer review audits are conducted by an Auditor General's office from another Australian jurisdiction?

Mr Murphy: We do conduct a range of different reviews and we do regularly have our work subject to peer review from auditors from other jurisdictions, yes.

The CHAIRMAN: Would that be your expectation of what the future is?

Mr Murphy: The future is up to the Parliament. I certainly would not presume to tell the Parliament who should review me.

The CHAIRMAN: No, but still we understand that that committee has not been put together, but that would have been your expectation.

Mr Murphy: Not necessarily, no. I think it is very important that the Parliament decide who should conduct an external review.

The CHAIRMAN: So, the committee understands that the Office of the Auditor General conducts periodic peer review audits for Auditor General's offices in other Australian jurisdictions.

Mr Murphy: Yes, we do.

The CHAIRMAN: Given the small number of Auditors General, is there not a potential for this to be seen as confusing the auditor–auditee relationship?

Mr Murphy: I get considerable value out of those reviews. They do identify areas in which we can improve, and I am always interested in finding out areas in which we can do our work better. The reviews of Auditors General are not confined to the group as such. Statutory reviews have been conducted by private firms, former Auditors General and individuals with specific knowledge, so reviews of Auditors General are not, and nor should they be, confined to other Auditors General.

The CHAIRMAN: But when they do happen, how is a potential conflict of interest managed?

Mr Murphy: I do not know that there is a particular conflict of interest between auditors from one jurisdiction conducting a peer review on auditors from another.

The CHAIRMAN: We could have a long conversation about that.

Mr Murphy: We could.

The CHAIRMAN: But we will not. A special relationship of mutual trust and confidence is supposed to exist between the Parliament and the Auditor General. Do you think that your actions regarding Western Power since 2006 as an independent information provider to the Parliament has met the needs of Parliament in this special relationship?

Mr Murphy: I have certainly done everything within my power to meet that requirement. I would point out that since my time in the role of Auditor General, I have added to the communication with all of the committees of the Parliament a quarterly briefing on my work program so that they can be aware of what work I am and am not conducting.

The CHAIRMAN: Let us have a look at your statutory duties under your own act, and it is all on the screen. Section 28 of the Auditor General Act 2006 lays down general statutory duties that apply to you when you perform your statutory functions. Subsection (1) duties let you exercise some discretion, but subsection (2) duties are mandatory. Do you agree with that?

Mr Murphy: In a broad sense, yes.

The CHAIRMAN: Subsection (1) talks about accounting and auditing standards and also about the internal controls and internal audit. There is some discretion given to you there. Subsection (2) talks about agencies complying with statutory obligations, and there is no discretion allowed there for you to exercise. Do you agree?

Mr Murphy: Yes.

The CHAIRMAN: So why should this committee not make a formal finding that you may have failed to comply with your statutory duties in respect of Western Power since 2006?

Mr Murphy: The audits that I have conducted under the energy corporations act are limited in scope and would not address the issues that the Chair has referred to. I could address such issues in a performance audit, which is the point I have made before. It is open for the committee to form a different view from me about whether a performance audit should have been done or not.

The CHAIRMAN: That is the end of our questions, Auditor, believe it or not. It has been a difficult morning, but we appreciate your attitude in getting through it. We still have a difficulty in this question about parliamentary privilege, which I suspect you will hear a lot more about. I think we just have to leave it at that. What we will do obviously, Auditor, is meet on our own and deliberate about what has happened this morning. But you look like you wish to make a final comment.

Mr Murphy: Chair, time is short, but I would be very keen to follow up on the very important matters that you have raised; and, if there is any opportunity to have some discussion that would hasten that, rather than awaiting correspondence from the committee, then I would certainly appreciate that.

The CHAIRMAN: That may not be our consideration; it actually may be a consideration of the Council. We will have to think about that, or we will probably get told whose role that is.

Hon ED DERMER: Told by the Council, to make that clear, Mr Chairman.

The CHAIRMAN: The exhibits that you have got that you referred to, do you need to leave those in our possession?

Mr Murphy: If you would like a copy of the auditing standards —

The CHAIRMAN: We need to be able to go back over what we have talked about today, so we need a copy of the matters that you have referred to.

Mr Murphy: These exhibits? I am more than happy for them to remain here.

The CHAIRMAN: Thank you. Thank you for your time. The hearing is closed.

Hearing concluded at 12.13pm