

Consideration of the estimates by committees

Current procedures

- 4.1 The estimates are not currently referred to committees of the House. Committees are able to scrutinise government expenditure, but do not do so on a systematic basis.
- 4.2 Standing order 324 which establishes the general purpose standing committees, empowers each of these committees 'to inquire into and report on any matter referred to it by either the House or a Minister, including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper.' This provision would allow the estimates (as covered by the expression 'vote or expenditure') to be scrutinised by House committees in a comprehensive way if the House or Minister were to refer them. However, this has not once occurred since the establishment of the committees in 1987.
- 4.3 Standing order 324 also provides that 'Annual reports of government departments and authorities and reports of the Auditor-General tabled in the House shall stand referred to the relevant committee for any inquiry the committee may wish to make'. If used systematically, this provision would enable general purpose standing committees, on their own initiative, to scrutinise the annual expenditure of government departments. The resolutions establishing joint committees contain similar provisions. While several committees have made effective use of this ability to instigate their own inquiries, these provisions have not been used to enable comprehensive scrutiny of expenditure except for an initiative of the Joint Standing Committee on Foreign Affairs, Defence and Trade,

which has started using the annual reports referrals to systematically scrutinise outcomes of the relevant departments. This initiative is discussed later in this chapter at paragraph 4.39.

- 4.4 While the budget debate is taking place in the House, the estimates are being considered by Senate legislation committees¹ to which copies of the estimates contained in the appropriation bills (and other documents including the portfolio budget statements) have been referred by the Senate immediately after the Budget. The Senate estimates process is outlined in Chapter 2.
- 4.5 A criticism of the current situation sometimes encountered is to the effect that the House has abandoned its financial scrutiny role to the Senate. The Committee has found it difficult not to agree with this. While the Committee accepts that Senate estimates hearings play an important role in the scrutiny of government expenditure, and that they are well entrenched, the Committee also feels that the House should be doing more in this area.
- 4.6 The Committee does not accept that the scrutiny of government expenditure and performance is a role for the Senate alone. The Committee also does not accept the view expressed in submissions to it by some Ministers that the current standing orders provide sufficient opportunities for scrutiny.²
- 4.7 A more specific and practical criticism of current practice is that Members of the House of Representatives are excluded from the estimates hearings process—House Ministers are not able to represent their own departments, and Members are not able to ask questions. For example, a former Minister commented ‘I found it very frustrating to have somebody answering the questions on my behalf’.³ A shadow Minister commented ‘it is also frustrating for the shadow minister and their staff do all the work then have to hand it over to Senators’.⁴
- 4.8 The fact that most Ministers are Members of the House and therefore do not appear before the Senate committees is a central weakness of current accountability mechanisms.

1 Since 1994 Senate estimates committees have been legislation committees considering the estimates, but the term ‘estimates committees’ continues in common use.

2 Submissions by Hon Tony Abbott MP, Leader of the House and Minister for Employment and Workplace Relations, Hon Dr Brendan Nelson MP, Minister for Education, Science and Training, Hon Daryl Williams AM QC MP, Attorney-General.

3 *Transcript of roundtable discussion with committee chairs and deputy chairs*, pp. 5, 8.

4 *Transcript of roundtable discussion with committee chairs and deputy chairs*, pp. 8–9.

- 4.9 While the Committee acknowledges that some Members are not attracted to the concept of estimates committees in the House because of their observations of Senate estimates hearings (e.g. ‘the theatre, the circus that goes on over in the Senate’⁵), it is convinced that there is a real case for the involvement of the House committee system in the scrutiny of the estimates of expenditure.

Lessons from the 1979–81 House estimates committees

- 4.10 As outlined in Chapter 2, the House experimented with estimates committees between 1979 and 1981. Why were the estimates committees discontinued?
- 4.11 Reid and Forrest⁶ state that the creation of the House estimates committees (which they describe as ‘a novel and useful innovation’) had been grudgingly approved by the Government following pressure from government Members,⁷ and that, after Members’ enthusiasm had declined, hope for maintaining the committees went when Members who had been instrumental in pushing for estimates committees lost their seats.⁸
- 4.12 In 1982, when the then Leader of the House, Sir James Killen, wrote to the then Manager of Opposition Business, Lionel Bowen, informing him of the decision not to re-appoint estimates committees, he noted ‘On a practical level, the operations of the Committees have indicated that both sides of the House have reservations . . . On a number of occasions . . . Committees have not been able to commence hearings . . . because of a lack of a quorum due to a lack of interest.’
- 4.13 In debate in the House (on an unsuccessful motion by Mr Bowen to re-instate the sessional orders providing for estimates committees), reasons for low attendance were given as competing interests and responsibilities, insufficient notice of a meeting, lack of interest in a particular subject by members of a particular committee, and grandstanding and hogging by one or two individuals which led to a loss of interest by other Members.⁹

5 *Transcript of roundtable discussion with committee secretaries*, p. 14.

6 G. S. Reid and Martyn Forrest, *Australia's Commonwealth Parliament 1901–1988: 10 perspectives*, Melbourne University Press, 1989, p. 357.

7 Specifically from the Government Members’ Parliamentary Reform Committee (unofficial backbench committee).

8 John Hyde MP and Barry Simon MP.

9 *House of Representatives Hansard*, 16/9/82 pp. 1535–48. The letter referred to above was quoted in the debate.

- 4.14 In 1981 the then Speaker, Sir Billy Snedden (a supporter of estimates committees), had noted that it was always difficult for the Opposition to service the estimates committees, simply because of the smallness of their numbers, and that unhappy experiences of this kind had led to opposition Members questioning the value of the committees. Speaker Snedden also observed that ‘. . . the Executive’s natural inclination is to avoid that sort of examination and scrutiny, and so if the committees do not work the Government is not going to be unhappy about it . . .’.¹⁰
- 4.15 However, other statements made by Members in the debate on Mr Bowen’s motion support the opinion expressed in the submission by the Clerk of the House—that the experiment with estimates was successful in letting Members get an insight into departmental operations, and in letting departmental officials get an insight into Members’ thinking.¹¹ In fact Members’ claims in the debate went beyond this—they viewed the process as preferable to considering the estimates in the House with its ‘set-piece speeches’; information was obtained from departments, and some Ministers were, in the eyes of some Members, found not to be on top of their portfolios. In other words, the estimates committees could be seen as effective.
- 4.16 Lessons can be drawn from the House’s previous experience of estimates committees. If re-introduced, their success will depend on bipartisan support, the willingness of Members to become involved, and good timetabling with advance notice of hearings.

Options for House committees to examine the estimates

- 4.17 The Committee considered several options for consideration of the estimates by House committees. The Committee’s preferred option is outlined at paragraph 4.26.

Joint estimates committees

- 4.18 Joint estimates hearings would enable Members of the House to be involved with no additional expense for the Parliament and no additional requirements or expense for government departments. The Committee was initially attracted to joint estimates hearings because of these considerations.

10 New Zealand. House of Representatives, *[Proceedings of] Twelfth Conference of Presiding Officers and Clerks, 15-21 March 1981, Wellington*, p. 27.

11 Submission from the Clerk of the House, p. 10.

4.19 Under this option House committees would be authorised to meet with their Senate counterparts as joint committees for the purpose of estimates consideration. House Ministers would have leave to appear before the joint committees.

4.20 Senate attitudes towards joint committees and joint meetings of Senate and House committees are not favourable. *Odgers* states:

Joint committees have some potential difficulties in a bicameral legislature. In the Australian situation, in which one House is rigidly controlled by the ministry, the use of joint committees tends to prevent the Senate exercising a review and second opinion function and thereby subvert the concept of bicameralism. The effect is worse when there is unequal representation of the Houses.¹²

and

The independence of each House from the other, and their differing composition and history make joint meetings of committees a rarity not lightly authorised by the Senate, which values particularly the advice of its own committees. Practical difficulties in reaching agreement on rules for joint meetings and in securing agreed reports are also grounds for the traditionally strong resistance in the Senate to such joint meetings.¹³

4.21 In face of such attitudes, it is evident that the Senate would have to be persuaded to cooperate with joint estimates hearings. Rather than a full blown joint committee system giving the House an equal role, joint committees in which the Senate is allowed to dominate may be possible. Existing Senate procedures could operate and administration could continue to be a Senate responsibility. Traditionally, joint committees have equal numbers of members from each House, but this is not necessarily essential.¹⁴

4.22 A variation of the minimalist joint committee approach could be ‘concurrent estimates hearings’. SO 342 gives a House committee the power to confer with a similar Senate committee. This provision could be extended to permit committees of the two Houses to confer and meet concurrently (rather than jointly) for the purposes of deliberating and

12 *Odgers’ Australian Senate Practice*, 10th edn, Department of the Senate, Canberra, 2001, p. 390.

13 *Odgers*, 10th edn, p. 429.

14 For example, *Erskine May’s Parliamentary Practice* gives examples of joint committees with unequal numbers of members from the Commons and the Lords (22nd edn, p. 725). *May* also notes that in Britain the Lords always determines the time and place of meetings of joint committees (p. 727).

examining witnesses.¹⁵ Under this system, the ‘concurrent’ committees could be in essence Senate committees in all but name. The difference would be that a (perhaps limited) number of House Members would be able to participate and House Ministers would be able to represent their departments.

- 4.23 However, in the end the Committee concluded that an arrangement that would allow Members of the House to participate in joint or concurrent estimates hearings would be difficult to negotiate to the satisfaction of both Houses. In addition, for such a system to be successful, goodwill and compromise from both Houses would need to continue. This cannot be guaranteed. The Committee notes the fate of the joint estimates committee system in the New South Wales Parliament. New South Wales had joint estimates committees until 1995, when the Legislative Council withdrew from the joint arrangements to establish its own estimates committees.¹⁶

Referral of estimates to the Public Accounts and Audit Committee

- 4.24 An option which the Committee has not seriously considered is the referral of the estimates to the Joint Committee of Public Accounts and Audit (PAAC).
- 4.25 If the Parliament was designing a scrutiny process from scratch, the process followed by the Parliament of Victoria, which refers the estimates to its joint Public Accounts Committee, would be worthy of attention. However, this is not a practical current option in view of the reservations with respect to joint committees discussed above, and existing PAAC responsibilities.

15 As is the case in the UK where committees and subcommittees of the Commons and Lords now regularly have the power to confer and meet concurrently, for the purpose of deliberating and examining witnesses, with a committee or subcommittee of the other House appointed to consider a similar matter. The committees may also communicate evidence to the committees of the other House. *May*, 22nd edn, p. 731.

16 Since then the Legislative Assembly has not participated in estimates committee processes—while its standing orders make provision for Assembly estimates committees, these are not in practice appointed; nor has the Assembly in recent times considered the estimates in committee of the whole (submission from the Clerk of the NSW Legislative Assembly).
The appointment of Assembly estimates committees depends on a motion from a Minister, which the Government has consistently declined to supply, preferring instead to push for the continuation of joint committees. After 1995 negotiations between the Houses continued over the re-establishment of joint committees, but failed to agree on their nature. For example, compare the Council's proposals in which government members would not be a majority and chairs would be elected (*NSW Legislative Assembly Hansard*, 7/5/1997 p. 8257) with the Assembly's proposal for a majority of government members and chairs nominated by the Government. (*NSW Legislative Assembly Hansard*, 22/5/1997 p. 9118).

Parallel House estimates hearings—the preferred option

- 4.26 This option envisages parallel, rather than duplicate, House and Senate estimates hearings. House committees would cover only those departments and agencies which have Ministers who are members of the House.
- 4.27 If Senate committees covered only those departments and agencies which have Ministers who are members of the Senate, this arrangement would impose minimal additional requirements or expense for government departments; but an additional demand for resources on the Department of the House of Representatives¹⁷, and additional demands on Members' time.¹⁸
- 4.28 The proposed House estimates hearings would be held by the existing general purpose standing committees, and committees composed of House members of joint committees. The allocation of departments to committees would be determined by the Speaker (in the same way as the current allocation of annual reports). In addition to the normal provision for two supplementary members for a standing committee inquiry, any Member of the House should be able to attend any estimates hearing and question witnesses.
- 4.29 If the second reading debate is concluded rapidly, as proposed in Chapter 3, the estimates themselves can be referred to the committees. Alternatively, copies of the estimates could be referred. In either case the consideration in detail stage of the appropriation bill could commence in the Main Committee before or during standing committee consideration. Departments not being scrutinised by standing committees (that is, those with Senate Ministers) would go straight to consideration in detail, followed by the first batch of departments whose committee hearings had concluded.
- 4.30 The Committee proposes that the hearings be held after the rising of the House on Thursday evenings, and on the Fridays, of the first two sitting weeks after budget week (that is, in the same two weeks that Senate estimates hearings are currently held¹⁹), and that three hearings be held concurrently. The timetable of hearings would be notified to Members, Ministers and the relevant departments well in advance.

17 *Transcript of roundtable discussion with committee secretaries*, pp. 4, 5, 7. However, the point was also made that a lesser need for increased resources would be necessary if other inquiry work paused while the estimates were being considered, p. 5.

18 The issue of Members' time is addressed at paragraph 4.47.

19 Because the Senate committees would have fewer estimates to consider, the Senate could perhaps sit for other business on some days during these two weeks.

- 4.31 Appendix E shows a proposed schedule for estimates hearings by House committees, using current Ministers as examples, and showing the correspondence of departments to existing committees. The Department of the House of Representatives has been allocated to the Standing Committee on Economics, Finance and Public Administration. This will be the first time there has been provision for the House to scrutinise its own administration and expenditure.

Recommendation 8

The committee recommends that:

- **immediately after the second reading of the main appropriation bill is agreed to (in accordance with recommendation 1), the House refer the estimates of proposed expenditure, and other budget documentation including portfolio budget statements, to the relevant House standing committees or to House committees composed of the House members of joint committees administered by the Department of the House of Representatives;**
- **the allocation of departments to committees be determined by the Speaker;**
- **the committees hold estimates hearings for those departments where the responsible Minister or Presiding Officer is a Member of the House of Representatives;**
- **the hearings be held after the rising of the House on the Thursday evenings and the Fridays of the two sitting weeks immediately following budget week;**
- **the standing orders relating to estimates hearings permit any Member of the House to attend and question witnesses;**
- **the timetable of hearings be notified to Members, Ministers and departments well in advance;**
- **the processes above be adopted for the additional appropriation bills, adapted as appropriate to the shorter time frame.**

Options for expenditure and performance scrutiny by House committees

- 4.32 Submissions to the Committee have proposed that House committees concentrate on reviewing departmental expenditure and performance, rather than on the estimates. For example, a submission from a Member proposed that present committees should establish a program to look at expenditure in their portfolio areas to see if outcomes meet objectives.²⁰
- 4.33 As noted above, and as pointed out in submissions to the Committee, existing standing orders allow committee scrutiny of departmental expenditure and performance by means of the automatic referral of annual reports and Auditor-General's reports to standing committees. However, existing provisions are not used or used inconsistently. The main use of annual reports by the committees has to date been to use them 'as a hunting ground to establish policy inquiries.'²¹
- 4.34 If existing provisions were used or further developed, a distinctive role for the House could be developed outside the time restraints imposed by the estimates process. Changes to standing orders could be made to either facilitate or ensure annual scrutiny of departmental expenditure and performance.

Facilitate more comprehensive scrutiny

- 4.35 This is an essential first step—the objective being to improve the operation of existing provisions by including copies of the estimates (and other financial documents, such as the portfolio budget statements) in the class of documents that are automatically referred to committees.
- 4.36 The estimates and other documents would be available with annual reports and Auditor General's reports so that a committee scrutinising a department's expenditure or performance would have a complete set of documentation. With the estimates and portfolio budget statements available, preparatory work on an inquiry could be started before the relevant annual report has been presented. The referral of other financial documents, in particular portfolio budget statements, could give committees a basis for extending their inquiries to include expenditure not covered in the annual estimates.

20 Submission from Hon D. Adams MP.

21 *Transcript of roundtable discussion with committee secretaries*, p. 10.

- 4.37 Under this option, committees would have no obligation to undertake such inquiries. The decision to do so, as now, would rest with the individual committee.

Recommendation 9

The committee recommends that (if not already occurring in accordance with recommendation 8) portfolio budget statements, portfolio additional estimates statements and copies of details of expenditure contained in appropriation bills be automatically referred to the relevant general purpose standing committee.

Formalise comprehensive scrutiny

- 4.38 In addition to providing for the automatic referral of estimates and related documents to the standing committees, this option would explicitly require committees (or subcommittees) to carry out an annual scrutiny of the departments under their responsibility. Work in this area has been started by the Joint Standing Committee on Foreign Affairs, Defence and Trade (JCFADT).

The JCFADT model

- 4.39 The Joint Standing Committee on Foreign Affairs, Defence and Trade's first report on annual reports was tabled in September 2002.²² The report reviewed the 2000–2001 annual reports from the Department of Defence, the Department of Foreign Affairs and Trade, the Australian Agency for International Development (AusAID) and the Australian Trade Commission (Austrade), which had been tabled in February 2002. Two days of public hearings were held in May with officials from the departments and agencies attending as witnesses.
- 4.40 In the report's introduction the committee stated that part of its motivation for this initiative was 'a desire to ensure both Houses of Parliament play a role in holding Executive agencies to account for their performance and their expenditure of public monies', and that 'members of the House should be able to participate in activities similar to those routinely available to Senators'. These sentiments were well received by members of the Procedure Committee who had commenced this inquiry into the estimates with a similar motivation.

22 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Review of Foreign Affairs, Trade and Defence Annual Reports, 2000–2001*, September 2002.

4.41 The joint committee stated that it had been careful not to duplicate the type of scrutiny undertaken by its equivalent Senate committee. The joint committee had taken a broader view— surveying a range of operational, policy and management issues on the Government’s agenda, seeking status reports on key issues of interest, and seeking responses to issues canvassed in earlier reports of the joint committee. In other words, it concentrated on policy and performance outcomes rather than on financial matters.

4.42 Benefits of the process identified by the committee included:

- Committee members were able to meet with the officials of the relevant departments.
- The committee was able to obtain up to date information and place it on the public record as a contribution to community debate and parliamentary scrutiny.
- The committee was able to identify issues for further inquiry.
- The committee had the opportunity to determine the status of overdue government responses to its reports.

4.43 The committee stated that it expected that annual report reviews would become a regular part of its work program. Soon after presenting the report, the committee resolved that:

- the Foreign Affairs Sub-Committee, the Defence Sub-Committee, Trade Sub-Committee and Human Rights Sub-Committee should develop separate or combined programs for the review of the 2001-2002 annual reports from government agencies responsible within their area of interest; and
- the review programs should aim to result in the presentation of a report to Parliament in the Autumn sittings 2003.

In the event this timetable proved over-ambitious. Subcommittees each held one-day public hearings between December 2002 and April 2003, and the report was still pending in August 2003.

The committee also adopted guidelines for the reviews, the key elements of which were:

- the reviews to be conducted by each sub-committee should focus on the performance of agencies in delivering products (that is, outputs) for the Government, rather than on seeking information updates on issues of interest;
- each sub-committee should select a limited number of issues (say 3, 4 or 5 issues) from annual reports within its area of interest—to allow for consideration in detail;

- agencies should be advised in advance of the issues to be reviewed (ensuring that relevant officials attend the hearing, but, as a consequence, requiring that members do not go beyond the selected areas of examination); and
- ideally, all questions should be put on the day of the hearing.²³

The new guidelines can be seen as serving to narrow the ambit of the annual review and to make proceedings more predictable for the agencies.

Benefits to individual Members

- 4.44 A closer ‘shadowing’ of departments by the standing committees, as well as providing the overall benefit of greater scrutiny, and the benefits to committees identified at paragraph 4.42, would bring benefits to individual Members. Involvement in the process will assist Members, some of whom will be future Ministers, and especially new Members, to develop their knowledge of the financial processes of government and familiarity with the activities of government departments and agencies.

Committee resources

- 4.45 Before any recommendation for annual reviews of departmental expenditure and performance by House standing committees can be adopted, the question of the availability of adequate committee resources needs to be considered.
- 4.46 If the JCFADT model is to be adopted universally by House standing committees, additional resources will be required if other committee activities are not to be affected. Evidence from committee chairs and committee secretaries made the point that existing committee resources are under strain even with current activities.²⁴ Alternatively, other inquiry work would have to be reduced. In the case of the JCFADT annual report scrutiny, the committee has the following guideline on resource implications:

‘The requirement to support annual report reviews will, for the duration of the review (especially in the pre-hearing phases of the review), limit the secretariat’s capacity to support the Committee’s on-going inquiry work.’²⁵

23 *Guidelines for reviewing 2001-2002 annual reports*, attached to Submission from the Secretary of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The summary of key elements is from the committee’s website at www.aph.gov.au/house/committee/jfad/annreps_0102/.

24 *Transcript of roundtable discussion with committee chairs and deputy chairs*, p.10. *Transcript of roundtable discussion with committee secretaries*, p. 9.

25 *Guidelines for reviewing 2001-2002 annual reports*, attached to Submission from the Secretary of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

- 4.47 The availability of Members is a crucial consideration, in some eyes the most crucial,²⁶ especially bearing in mind the experience of the 1979–81 estimates committees. Members are already thinly stretched with other responsibilities—an example was given of one committee where three of the opposition members were shadow ministers and three of the government members chairs of other committees.²⁷ The point was also made that Members have constituencies to look after and want to get back to the electorate when Parliament is not sitting.²⁸ There is a community expectation that Members will be available in their electorates to fulfil their constituency role.
- 4.48 One solution to the shortage of Members might be to divide each standing committee into two subcommittees, an inquiry subcommittee and an expenditure subcommittee. Another might be to have fewer committees—that is, divide the range of government activity covered by the general purpose standing committees into fewer but larger groupings by subject area. In this case, each secretariat could again support a single committee, rather than two or three as they do now.

Recommendation 10

The committee recommends that:

- **the resources, staffing and workload of House general purpose standing committees, and joint committees administered by the Department of the House of Representatives, be reviewed by the Clerk of the House with a view to accommodating annual reviews by the committees of the expenditure and performance of government departments and agencies; and**
- **following a satisfactory outcome to the review, each general purpose standing committee form an expenditure subcommittee to report annually on the expenditure and performance of the departments and agencies within its area of responsibility.**

26 *Transcript of roundtable discussion with committee secretaries*, pp. 7, 9.

27 *Transcript of roundtable discussion with committee secretaries*, p. 12.

28 *Transcript of roundtable discussion with committee secretaries*, p. 12. The observation was also made that this responsibility does not rest to the same extent on Senators.

Pre-budget involvement by committees

- 4.49 The Clerk of Senate recommended House committees become involved in the scrutiny of financial requirements of departments before the annual estimates are issued by the Government, so as to understand and influence the estimates formulation process.²⁹ The Clerk of the House also raised the possibility of House committees having an input into budget formulation through committee reports on expenditure priorities and issues.³⁰
- 4.50 The Committee sees no role for direct or formal involvement by parliamentary committees in budget formulation. However, pre-budget briefings of committees on departments' future funding needs, and committee reports (soundly based on the examination of past performance and expenditure) seeking to influence the direction or amounts of future expenditure, could be later, and perhaps natural, developments of the expenditure committee proposal.

MARGARET MAY
Chair
18 September 2003

29 Submission from the Clerk of the Senate, pp. 2-3.

30 Submission from the Clerk of the House, p. 10.