

## Standing Committee on Procedure

### Inquiry into The adequacy of procedures for examining the estimates of expenditure.

#### Terms of Reference:

To inquire into the adequacy of procedures for the House's examination of the estimates of proposed expenditure in annual and additional appropriation bills and to suggest ways in which the role of the House in examining the estimates could be enhanced.

#### Summary

*The Committee hopes to canvass views on the adequacy of current procedures for the House to examine "the estimates" as well as innovative suggestions on how this could be improved. This background paper focuses on the role of committees in scrutinising expenditure and performance but it is hoped that submissions to the inquiry are not restricted to this option.*

*From the beginning of the Commonwealth until the 1960s the House used to examine the estimates before the appropriation bills were introduced. This was in keeping with the manner in which, over several centuries, the House of Commons' had come to control the granting of funds to the Crown. However by the 1960s the practice was seen as an empty procedure, inconsistent with how budgetary processes really worked in the Commonwealth, and appropriation bills were subsequently treated similarly to other bills with the detail being examined after the bills had been introduced and agreed to in principle. For three years when the Fraser Government was in office, the House experimented with estimates committees (1979-81) but because the Government was unenthusiastic, they were not reappointed in 1982 and subsequent Governments saw no need to revive them.*

*The experience in the Senate has been in strong contrast to the House's experiment with estimates committees. Senate estimates committees began in 1970 as a way of obtaining detailed information about budget proposals before the House had passed the appropriation bills and sent them to the Senate. Because the Budget Estimates hearings in the Senate are held as soon as possible after the presentation of the Appropriation Bills and before those bills are sent to the Senate, the particulars of proposed expenditure (i.e. the schedules at the back of the Appropriation Bills) are the actual matters referred – not the bills themselves which cannot be considered by both Houses at the same time. Over the last quarter of a century Senate estimate committees have taken on an additional (and now dominant) role of reviewing the performance of executive agencies in an environment less constrained by Government numbers than is the case in the House. In addition to the particulars of proposed expenditure, the Senate reference documents during estimates hearings are the Portfolio Budget Statements which detail Government programs and the outputs (proposed results) of those programs.*

*The House's general purpose standing committees, which were first established in 1987, have progressively acquired powers and responsibilities which would enable them to examine government outputs and proposed expenditure in a comparable manner to Senate estimates committees if the House wished. However, the different political composition of the House would presumably dictate that the process would be very different.*

## Introduction

On 20 June 2002 the Standing Committee on Procedure decided to conduct an inquiry into the opportunities for the House to examine the estimates of expenditure. The term “estimates of expenditure”, largely through the Senate experience of “estimates” committees, has come to mean not only anticipated expenditure as provided for in the annual and additional appropriation bills, but also the performance of agencies as foreshadowed in the portfolio budget statements and reported in the annual reports of agencies. The committee intends examining opportunities for the House (including its committees) to examine “the estimates” in this broader sense.

## Purpose of estimates committees

The term ‘estimates’ refers to the anticipated financial requirements of the Government for the coming financial year. Modern estimates committees—particularly those of the Senate—are as much concerned with reviewing performance during the current and previous financial years as with considering the narrow justification of proposals for future expenditure. The actual reference to the Senate committees in their role as estimates committees are the schedules at the end of the Appropriation Bills with the technical reference being “the particulars of proposed expenditure”. In this sense, those committees are considering “the estimates”.

## History of House consideration of estimates: 1901-60s

The House of Representatives followed Commons practice (see Note at end) for its first 6 decades by giving preliminary consideration to proposed charges in committee of the whole. The main appropriation bill each financial year was initiated by the Governor-General transmitting estimates of proposed expenditure which on receipt were referred to the Committee of the Whole House sitting as the Committee of Supply. The Treasurer made the Budget Speech in committee while moving that the first item in the estimates be agreed to.

The Committee of Supply’s item-by-item consideration of the estimates extended for several weeks. When the Committee of Supply had reported to the House its resolution that a sum not exceeding a certain quantity be ‘granted to Her Majesty ... for the services of the year’, the Committee of Ways and Means (the Committee of the Whole House under another designation) then convened and resolved the granting of a sum out of the Consolidated Revenue Fund ‘towards making good the Supply granted to Her Majesty for the service of the year’. As soon as the Committee of Ways and Means reported to the House, the main appropriation bill was introduced and usually passed through all stages immediately.

The House followed a similar procedure in dealing with the additional estimates and the subsequent interim provision for the next financial year.

During the 1960s the procedure was streamlined to remove what had come to be seen as ‘a mass of formal and time consuming procedure involving the moving of a great number of motions, consequent questions from the Chair, and movements in and out of various committees’. Subsequently the estimates were presented as a schedule of the appropriation bill and were considered in committee of the whole (in modern House procedure, the consideration in detail stage), like other bills, following the second reading debate.

### House consideration of estimates: estimates committees 1979-81

The House experimented with separate estimates committees during three years of the Fraser Government (1975 - 1983) in 1979, 1980 and 1981. In the first year two estimates committees were appointed. Their membership comprised an ex officio chair, the Minister responsible for each item of proposed expenditure as it was considered and between 12 and 18 other Members per portfolio (in effect providing a differently constituted committee for each portfolio) nominated to reflect the proportional numerical strength of the Government and Opposition in the House. The committees could examine and report—and express an opinion—on proposed expenditures but not vote upon or vary their amount. A Minister's departmental advisers could respond to committee members' queries subject to the Minister's approval. Meetings were public.

More committees were appointed in the next two years—4 in 1980 and 6 in 1981—each with fewer members (chair, Minister and 10 Members) but the Government abandoned the experiment in 1982. Despite Opposition protestations in 1982, estimates committees were not revived when there was a change of Government in 1983. In 1981 Speaker Snedden had foreseen a lack of Government enthusiasm for House estimates committees 'no matter what the complexion of the Government of the day'.

### Operation of Senate estimates committees

Senate estimates committees were first established in 1970. In 1994 they ceased to exist in their own right. They were replaced by a system of 8 legislation committees which act as estimates committees when 'particulars of proposed expenditure' (essentially the schedules in the Appropriations Bills containing the estimates) are referred to them when tabled in the Senate on Budget night. (This allows Senate consideration of the estimates before the Budget legislation has passed the House of Representatives because the bills cannot be considered by both Houses at the same time.)

The legislation committees conduct hearings in estimates mode usually over a week-long period shortly after the Budget legislation has been introduced in the House of Representatives. Senate standing orders require evidence to be taken in public session. Committee members may question public servants directly however the responsible Minister (or Minister representing a Minister who is a Member of the House of Representatives) is expected to be present and to deal with matters of policy as distinct from administration.

The committees have the power to send for persons, papers and records. Information not provided during the initial round of hearings may be requested on notice and delivered for examination at supplementary meetings some weeks later. In the meantime the committees present their respective reports to the Senate in accordance with a timetable set earlier in the year by resolution of the Senate. By this stage the Budget legislation has passed the House and been transmitted for passage through the Senate. A further single round of hearings (with no supplementary hearings) is held when the additional estimates are presented later in the financial year.

Senate estimates committees were established in the first instance to provide the basis for informed debate during detailed consideration of the Budget legislation in the Senate after its second reading. However, this pre-consideration has largely replaced the Senate's equivalent of the consideration in detail stage. In addition, it

has been suggested that individual Senators have been able to develop a more detailed knowledge of government operations, and by requiring officials to explain in open forum the rationale for aspects of departmental administration, accountability extends beyond less revealing mechanisms like departmental annual reports. The process of holding the Government accountable to the Parliament has been assisted by new forms of budgetary documentation which focus on outputs and outcomes – that is, what the funds are meant to achieve, rather than the narrower focus on how the funds will be spent. The Portfolio Budget Statements which detail the outputs (expected results) of government policies are referred to during estimates hearings as much as the “particulars of proposed expenditure”.

### Options for the House

In the Australian system of government—which has inherited the partial fusion of the executive and legislative arms of government from Westminster rather than maintaining the clear tripartite separation of powers evident in other systems like the United States of America—the composition of the House of Representatives determines who shall govern. Because the Government is formed in the House (though the executive consists of Senators as well as Members) it is consistent with the practice of institutional checks and balances that Senate committees be more active in scrutinising the exercise of executive power. The fact that the Government has not had a majority in the Senate during the period in which estimates hearings have become significant tools for holding the Government accountable, is no coincidence.

#### *Options available under existing standing orders.*

If it were the will of the House to become more active in scrutinising the exercise of executive power then there would be no need to create a new layer of investigative committees. There are various options in the standing orders which would permit similar hearings to those conducted by Senate estimates inquiries.

- Reference by the House or a Minister: Standing order 324 provides for the existing general purpose standing 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’. The essential difference between this opportunity and that afforded Senate committees is that the matter must be referred by either *the House* or *a Minister*. If the Government does not choose to provide committees with this opportunity to scrutinise it, the committees are powerless to do so.
- Reference to a committee after the second reading is moved: Standing order 217A provides that bills may be referred to a committee for consideration and an advisory report. This would allow the House to refer the appropriation bills to a committee.
- Inquiry by the Joint Committee on Public Accounts and Audit: This joint committee used to investigate the estimates but ceased doing so when the role was subsumed by Senate committees. The committee can determine its own references and it does play an important part in scrutinising the executive, mainly by taking references from Audit Reports.
- Standing reference of annual reports and audit reports: Standing order 324 provides that the general purpose standing committees have the annual reports of government agencies automatically referred to them, and, by

consultation with the Public Accounts and Audit Committee (to avoid duplication), audit reports.

These provisions, together with the power of those committees to call for witnesses and documents, make any special provision for estimates committees superfluous. The same sort of questions put by Senate estimates committees could, in theory, be put by the general purpose standing committees or by the Joint Committee on Public Accounts and Audit (thus providing an opportunity for Members on that committee which is already available to Senators on the committee through Senate estimates hearings).

#### *Other options which could be explored*

The opportunities already available have not been exercised during the past quarter of a century because the perception has arisen that this is now a role for the Senate. Moreover, no committees or committee practices can eventuate in the House without the support of the Government (either through House control of the standing orders or through government majorities on every House committee). It has not been the will of the House (or any individual Minister) to refer the estimates (as schedules to the Appropriation Bills) or Portfolio Budget Statements to House committees. There is nothing to indicate that the current government wishes to make more opportunities for the House to scrutinise its performance, which is the essence of estimates hearings. There is a view that the Opposition already has adequate opportunities for scrutinising the Government through Question Time. In relation to the Appropriation Bills, the consideration in detail stage was recently conducted in the Main Committee where there was considerable interaction between backbench Members from both sides and the responsible Minister.

It seems likely that for any option relating to House estimates hearings to become reality, the Government would have to be persuaded that the proposal would produce a different process and outcome to Senate estimates hearings. Senate hearings are enormously expensive for the Government in terms of public service staff attending the hearings and researching answers taken on notice.

#### Note: Practices in other jurisdictions

A survey of any of the parliamentary links sites on the Internet shows how widespread is the use of committees to scrutinise either the budget estimates or expenditure on government programs. The relevance to the House of Representatives of these varied practices depends on the comparability of budget processes in other jurisdictions. Nevertheless it can be anticipated that the practices used in other Australian parliaments as well as those used in some overseas parliaments will be useful in the conduct of the inquiry. The committee will be particularly interested in the practice followed by the state parliaments. All the states have some form of scrutiny of public expenditure. A few background notes on practices in other parliaments follows.

There is a variety of approaches to the type of witnesses examined, some legislatures questioning only Ministers (who are usually accompanied by advisers). In other cases, the relevant Minister may invite public servants to take particular questions which were originally directed to him or herself. In the New Zealand

House of Representatives the approach developed of focusing on officials as witnesses when the estimates were referred to the Finance and Expenditure Select Committee. The officials were questioned primarily on outputs they proposed to deliver and appropriations they administered. It was considered that Ministers answered in the House for the outcomes to which outputs and appropriations were designed to contribute.

The practice in the United Kingdom House of Commons is of particular interest because of the historic connection between the forms of that House and the development of the House of Representatives. From the early 17th Century the UK House of Commons, in granting public funds requested by the Crown, gave preliminary consideration to proposed charges (a) upon the public revenue (appropriations) or (b) the people (taxes) in committee of the whole House before the necessary legislation was brought in. In this manner the Commons could set the upper limits of appropriation or taxation to be sought in bills which the ministry would then draw up and introduce for subsequent passage through Parliament. By sitting in committee of the whole, Members could more exhaustively examine the estimates than they could in the House operating under its more restrictive rules of procedure. When dealing with annual expenditure, the committee of the whole was designated the "Committee of Supply"; with revenue, the "Committee of Ways and Means"; and with separate new expenditure proposals, as ad hoc "Money" committees.

Under each of these designations the committee of the whole served as an estimates committee with a focus on future expenditure at a relatively fine level of detail. During the 19th Century the House of Commons recognised that it was impossible for it to control, item by item, the administration of the expenditure of money it granted and that more realistically it should concern itself with the policy that drove that expenditure. The "new" committee system which was introduced in 1979 appointed select committees "to examine the expenditure, administration and policy" of specified government departments and associated public bodies.

## Conclusion

The committee has adopted very broad terms of reference to facilitate an exploration of all useful approaches to the better scrutiny by the House of the "estimates of expenditure". We look forward to receiving submissions from Members of the House and others with an interest in the topic.

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