

2. A GENERAL HISTORY OF PARLIAMENT'S APPROPRIATIONS AND STAFFING

Appropriations

2.1 Debate about the appropriations for Parliament has largely centred on whether or not they should be considered as part of the ordinary annual services of the Government.

2.2 In 1961, in evidence before the Joint Committee on Public Accounts, Professor K.H. Bailey, Solicitor-General, made an important statement of principle that the composition of the ordinary annual Appropriation Bills was a *matter of policy and not of law*. 'This is a matter peculiarly for decision by each House of the Parliament and, to the extent that the parliamentary practice is inconsistent with conclusions reached simply on the basis of legal interpretation, the parliamentary practice clearly prevails.'¹ The Joint Committee endorsed the principle that what constituted the ordinary annual services of the Government was a matter for determination of the two Houses of Parliament.

2.3 On 12 May 1964, during the Senate debate on a Ministerial Statement concerning appropriation measures, Senator Murphy expressed the view that *the Parliament is not an ordinary annual service of the Government*. He continued that:

'one would be extremely surprised to find that included in what were apparently departments of the Commonwealth was the Parliament of the Commonwealth. I would like to know whether the Leader of the Government in the Senate and the Solicitor-General consider that the Parliament of the Commonwealth has become one of the departments of the Government'.²

2.4 In 1965, the Committee appointed by Government Senators on *Appropriation Bills and the Ordinary Annual Services of the Government*, and chaired by Senator Cormack, recommended that the appropriations for the Parliament should not be included in the Appropriation Bill for the ordinary annual services of the Government.³ The Committee pointed out that it had been suggested that it was *inconsistent with the concept of the separation of powers and the supremacy of the Parliament for the Parliament to be treated as an ordinary annual service of the Government*.

2.5 That Committee also referred to the position of the Legislative Council in Victoria where under schedule D of the Constitution Act of Victoria an amount is specifically appropriated for 'the Clerk and Expenses of the Legislative Council'.⁴ It noted that the purpose of the special appropriation is primarily to allow the Legislative Council to function fully and independently of the Legislative Assembly and of the Government of the day. (This arrangement has since been extended to provide separate appropriations for the Executive Council and the Legislative Assembly.)

2.6 In the Senate debate on 10 September 1968 concerning the 1968-69 Budget, Senator Cormack again referred to the inclusion of the appropriation for Parliament in the annual Appropriation Bill for the ordinary annual services of the Government. He repeated the view that Parliament was not an ordinary annual service of the Government and noted that the Senate had only the 'lightest control' in dealing with its own housekeeping and safeguarding its own integrity as a Chamber in the bicameral system.⁵ Senator Cormack 'regarded Parliament as a unique institution and it was to be recognised that *the internal arrangements of the Parliament must be handled as House and not Government matters. Parliament, he argued, is not like any ordinary Government department; it is a separate arm of government to which the Executive is accountable; and it must be master of its own House*'.⁶

2.7 In 1972, the Senate House Committee reported on the provision of staff and other facilities for members of Parliament and in relation to appropriations for the Senate it recommended:

'That the proper course is that the appropriation by Parliament for such staff and other facilities for the Senate, its members and office bearers, should be administered by the President acting, where necessary, with the advice of the Senate House Committee and subject to any direction of the Senate; and that insofar as it may be convenient for such staff and facilities to be provided by Departments or Branches of the Executive Government, such agencies should act purely as service agencies on the authority of and in accordance with arrangements made with the President'.⁷

2.8 In 1974, Senate Estimates Committee A considered the question of the Parliament's appropriations and in its Report it referred again to the principle that the Parliament's vote should *not* be included in the Appropriation Bill for the ordinary annual services of the Government.⁸

2.9 The Committee also suggested that, in recognising the autonomy and independence of the parliamentary arm of government, the Parliament should have some provision, 'by way of uncommitted funds, for unanticipated parliamentary expenses, which could be used without the necessity for going back to the Treasury for funds'.⁹ The Chairman, Senator James McClelland, suggested that such a contingency fund was 'the only solution consistent with the dignity of Parliament'.¹⁰ The Estimates Committee concluded its deliberations by recommending that the matter be considered further and be referred to an appropriate Legislative and General Purpose Standing Committee.

2.10 The funding of Parliament was again commented on in the Report of the Joint Committee on the Parliamentary Committee System.¹¹ A number of witnesses suggested to the Committee that the Parliament should not be dependent upon the Government or upon Treasury decisions for the funding of its operations.¹² The Committee made no recommendation on the question of financing parliamentary committee operations but pointed to the greater level of financial independence of the committees of the British and Canadian Parliaments and to the inappropriateness of the present arrangements whereby parliamentary activity, including parliamentary committee activity can be curtailed by Government financial restriction.

2.11 The Joint Committee considered that the Presiding Officers alone should be responsible for determining the funds required for parliamentary committee operations and the manner of disbursing those funds.¹³

2.12 Following the suggestion in the Report of Estimates Committee A of 1974, the Senate Standing Committee on Constitutional and Legal Affairs brought up a Report in which it considered the means by which the constitutional right of the Senate to amend proposed laws appropriating revenue or moneys for expenditure on matters other than the ordinary annual services of the Government might be preserved. The Committee reiterated the established principle that the content of Appropriation Bills was a matter for the two Houses of Parliament and not the courts to decide, and recommended that the Senate reaffirm the 1965 Compact, i.e., its constitutional right to amend proposed laws appropriating revenue or monies for expenditure on all matters not involving the ordinary annual services of the Government.

2.13 The principle has since been restated in the Report of Senate Estimates Committee A, in May 1978, as follows:

'This Committee firmly holds the view . . . that the appropriation for Parliament is not an ordinary annual service of the Government. Parliament is a separate arm of Government to which the executive is accountable, and it must be master of its own affairs. The Committee suggests to the Senate that the time is long overdue for the appropriation for Parliament to be excluded from the non-amendable Appropriation Bill for the ordinary annual services of

the Government, and included in a Special Appropriation Bill which is subject to Senate amendment'.¹⁴

This point was reiterated in the Estimates Committee A Report of November 1978. It was referred to yet again by Senate Estimates Committee A in its October Report for 1979, as follows:

'Any Parliament which claims, or aspires to, accountability of an Executive Government to the Parliament, must make such arrangements for its own resources and facilities as are necessary to achieve this constitutional relationship, in practice as well as in theory.

The Committee has previously stated (November 1978 Report) that the Senate must assist its President in his (and the Speaker's) efforts to achieve greater control over the expenditure and staffing of the Parliament and that the matter should perhaps be referred to the Senate House Committee'.¹⁵

Staffing

2.14 Staffing of the Commonwealth Parliament was first legislated for in the *Public Service Act* 1902. That legislation required appointments, promotions and other matters relating to the departments of the Parliament to be determined on the nomination or recommendation of the Presiding Officer(s). The Senate made amendments to the Bill to put beyond doubt the principle that all staff servicing the Parliament should be under the control of the Parliament and not of the Public Service Board. During the second reading debate on the Bill, it was emphasised that, for the purposes of the legislation, control of officers of the Parliament was to be exercised by the Presiding Officers in place of the Public Service Commissioner.

2.15 In the Report of the Royal Commission on Public Service Administration, published in 1920, Commissioner McLachlan recommended that:

'Officers of the Parliament should be brought into the general system of administration of the Public Service as regards classification, fixing of salaries, determination of appeals other than in relation to punishments, the internal administration being left to the Heads of Departments of Parliament'.¹⁶

This recommendation was not fully accepted, for in the debate in the Senate on the Public Service Bill 1921, it was again emphasised that control of parliamentary staff by any authority other than the Presiding Officer(s), for example, by a Public Service Commissioner, would be a severe encroachment upon the rights of the Parliament.

2.16 It is significant that the argument in favour of the recommendation which considered that consultation with the Public Service Commissioner could be appropriate was concerned solely to protect the rights of officers of the Parliament with respect to conditions of service. In no way could, or should, that examination by the Public Service Commissioner of staffing conditions prevailing in the parliamentary departments be construed as either a detraction of the Presiding Officers statutory authority to act in all senses as the equivalent of the Public Service Commissioner for the parliamentary staff, or an abrogation of the rights of the Parliament to determine its own affairs.

2.17 The current operations of the *Public Service Act* 1922 are described below in Chapter 4, however, before the present practice evolved, a different interpretation prevailed which was also inconsistent with the spirit of the legislation. Prior to 1973 there was a requirement, as a result of a Cabinet determination, that parliamentary staff matters should be considered by a committee consisting of Presiding Officers, the Prime Minister, the Treasurer and the Attorney-General.

2.18 In practice, this meant that the advice of the Public Service Board was sought on any matter relating to parliamentary staff, be it classification or additional staff requirements. On receipt of the Board's advice, letters were sent by the relevant Presiding

Officer (or by them jointly) to the other members of the Committee seeking their concurrence in the proposal and, on agreement being reached, the proposal was submitted to the Executive Council, after signature by an appropriate Minister.

2.19 In 1973, the Prime Minister wrote to the Presiding Officers advising them that the procedure, whereby such consent was required before the approval of the Governor-General to a staffing proposal was sought, had been reviewed and that, in future, staff changes in the Senate and the House of Representatives would need only the consent of the President and the Speaker, after consultation with the Public Service Board. This is the current procedure.

2.20 In the Senate House Committee's Report of May 1972, the Committee considered the matter of the provision of staff and other facilities for Members of Parliament, necessary for the discharge of their Parliamentary duties. The Committee reported the following resolution to the Senate as a statement of principle:

'(1) That it is inconsistent with the constitutional relationship between Parliament and the Executive Government that the need or justification for the provision of any staff or other facilities for members of Parliament, necessary for the discharge of their parliamentary duties, should be determined by any agency of the Executive Government.

(2) That it is therefore not proper that Senators should have to make application to the Prime Minister, Minister for the Interior or other Ministers or their Departments, for the staff or other facilities necessary to carry out the duties of their offices, whether as Senators or as office bearers of the Senate, such as the President, Chairman of Committees, Leaders or Deputy Leaders of Opposition parties or Whips'.¹⁷

2.21 In its Report of May 1978, Senate Estimates Committee A noted its concern at the imposition by the Government of staff ceilings on the Parliament. The Committee went on to note that since the Public Service Board 'does not have the knowledge and understanding of the staffing requirements necessary for, and peculiar to, the Parliament', then the Parliament might do well to consider making 'other arrangements'.

2.22 In November 1978, the issue of staff ceilings for the Senate was again the subject of comment by Senate Estimates Committee A. The Committee noted that new positions providing for Research Officers for Estimates Committees had been approved by the Board, with the proviso that the positions be staffed from within the existing staff ceiling imposed by the Government. The Committee reported that 'clearly, the Senate must assist its President to overcome this most disturbing form of executive domination of the Parliament', and suggested that a reference of Parliament's control of its own staff could perhaps be referred to the Senate House Committee.

2.23 On 20 November 1979, Senator Jessop in a speech during the debate on Appropriation Bill (No. 1) 1979-80, recounted the main suggestions made for Parliament to gain control over its own appropriations and staffing and proposed that a number of matters be brought before the Senate for its consideration in the 1980 Autumn Sitting including:

- the need for the Senate to set up a Committee charged with the responsibility to consider the annual estimates for the Senate and for the President to then submit these to Government as the Senate's requirements;
- whether or not these estimates should be submitted to Government and then to the Parliament in the form of a Parliamentary Appropriation Bill for consideration in the sittings prior to the commencement of the financial year to which they refer;
- the need for an advance to the President of the Senate similar to that which operates as the advance to the Minister for Finance; and
- whether or not the Committee appointed to examine the estimates for the Senate should also be charged with responsibility to advise the President of the Senate on the creation and salary levels of offices for the Department.

2.24 On 23 May 1980, the Senate resolved that a Select Committee be appointed to inquire into and report upon Parliament's control of its own appropriations and staffing, and related matters.

Notes and references

1. J. R. Odgers, *Australian Senate Practice*, Fifth Edition, Canberra, 1976, p. 383
2. Hansard, Senate, Vol 25, 12 May 1964, p. 1075
3. Parliamentary Paper No. 55 of 1967, p. 29
4. *ibid*, p. 29.
5. Hansard, Senate, Vol 538, 10 Sept 1968, pp. 482-3
6. Odgers, *op. cit.*, p. 386
7. Parliamentary Paper No. 34 of 1972, Recommendation 2(3)
8. Parliamentary Paper No. 194 of 1974. p. 6
9. *Ibid*, p. 6
10. *Ibid*, p. 6
11. Parliamentary Paper No. 128 of 1976, p. 100
12. *Ibid*, p. 101
13. *Ibid*, p. 102
14. Parliamentary Paper No. 19 of 1978, p. 9
15. Parliamentary Paper No. 221 of 1979, p. 3
16. Australian Government Administration, *Report of the Royal Commission*, Canberra 1977, p. 26
17. Parliamentary Paper No. 34 of 1972, p. 1