



For the Assembly, the question of the costs of sitting Fridays rather than Thursday evenings does not apply, given the rarity of Thursday evening sittings in recent years. It should be noted that operations usually carried out on the Friday of a sitting week — preparing bills for royal assent, archiving, outreach program visits — would all have to carry forward until the next week, or be cancelled, thereby potentially affecting some output targets.

In summary, savings for Departments of the Parliament could be modest but the impact on resource management could counteract any savings.

The above is predicated on the assumption that should Friday sittings be introduced that the business of the House will finish by 4.30pm and therefore overtime, allowances and additional security personnel will not be required.

**2. Please provide further information to the Committee regarding the Parliamentary Departments' views on the current Appropriations process and how this might be improved.**

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**Response:**

The current appropriation process for the Parliamentary Departments was established following the recommendations of a Joint Select Committee on the Parliament of Victoria established on 10 April 1991 to inquire into, and report upon, the administration and funding of the Parliament. The Committee reported:

- upon “*Budget Process for Parliament*” in November 1991<sup>1</sup>
- upon a “*1992-93 Parliamentary Appropriation Bill*”<sup>2</sup>, and
- upon “*Appointment of a Parliamentary Service Committee*” in May 1992<sup>3</sup>

The Joint Select Committee consulted extensively, held public hearings, sought the views of House Committee, reviewed arrangements in other Westminster jurisdictions and was informed by a “*Strategic Management Review of the Parliament of Victoria*”<sup>4</sup> ordered by the Presiding Officers.

The Strategic Review concluded<sup>5</sup>:

*In Victoria, there are many signs that our arms of Government are seriously out of balance, and that a weakening of the institution of Parliament has occurred which permits a more unfettered application of executive power. Regrettably this trend has occurred under successive governments regardless of political hue. The following are in our view manifestations of the trend which has led to the weakening of the institution of Parliament over recent years:*

- *the independence of Parliament has been compromised by requiring detailed approval of its budget by public servants;*
- *the requirement for government approval of parliamentary committee inquiries and their proposed budgets significantly compromise Parliament's ability to scrutinise the executive; indeed one might well argue that such practice makes a mockery of the notion of independent parliamentary scrutiny;*

The Joint Select Committee endorsed the view that achieving Parliament's financial autonomy is the most significant remedy by which the Parliament can assert its independence from the Executive.

To that end, the Committee recommended the introduction of a separate appropriation bill for the Parliament.

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<sup>1</sup> Joint Select Committee on the Parliament of Victoria, Progress Report upon the Budget Process for Parliament, November 1991, Parliamentary Paper No. 195/1988-91

<sup>2</sup> Joint Select Committee on the Parliament of Victoria, Second Progress Report upon a 1992-93 Parliamentary Appropriation Bill, April 1992, Parliamentary Paper No. 212/1988-92

<sup>3</sup> Joint Select Committee on the Parliament of Victoria, Third Progress Report upon the Appointment of a Parliamentary Service Committee, May 1992, Parliamentary Paper No. 225

<sup>4</sup> E.W. Russell & Associates, Strategic Management Review of the Parliament of Victoria, February 1991, Ordered by the Legislative Assembly to be printed 1991, No. 159

<sup>5</sup> E.W. Russell & Associates, Strategic Management Review of the Parliament of Victoria, February 1991, pp. 57-59

While the Appropriation (Parliament) Bill has been enacted for each year since 1991, it does appear that the original enthusiasm surrounding the work of the Joint Select Committee has not been reflected in subsequent years. The reports of Hansard show that since 1995, the introduction of the parliamentary appropriation bill includes no budget papers as these have been subsumed into the State's appropriation Bill.

Separate budget papers have not been tabled for the Parliamentary Budget thus, enacting a separate Parliament Appropriation Act is nothing more than symbolic.

In the view of the parliamentary departments, the current application of the Appropriation (Parliament) Bill process is problematic on a number of fronts:

### **1. Appropriateness of the Purchaser/Provider model**

The Victorian state appropriations process works on the basis of a Purchaser/Provider model: the executive government "buys" outputs from public service agencies and aggregates these outputs to achieve the government's political objectives.

Outputs are defined in the Financial Management Act 1994 (FMA) as meaning "goods produced or services provided by or on behalf of an authority or public body", both of which are also defined in the FMA and neither of which includes the Parliament.

In this context, the Executive purchasing outputs from Parliament is plainly contrary to the Westminster principle of Separation of Powers, particularly as the core purpose of Parliament includes making the Law and scrutinising the executive.

However, in order for Parliament to fit into the state funding model, a series of proxy output measures unrelated to the core business of Parliament (making the law) were adopted as a pragmatic solution to an illogical situation. On that basis Parliament outputs funded by Executive are:

- Indexes, records and speeches and transcripts provided within agreed timeframes
- Payroll processing completed accurately and within agreed timeframes
- Monthly management reports to MPs and departments within 5 business days after the end of the month to include variance information against budgets
- Parliamentary audio system transmission availability
- Inquiries conducted and reports produced in compliance with procedural and legislative requirements
- Reports tabled in compliance with procedural and legislative deadlines

This is generally not problematic until earnest public service officials, who do not have the corporate history explaining the pragmatic fix, apply the Performance Management Framework based on these output measures.

Further, it can generally be said that the concept of the Separation of Powers and the independence of the Parliament is a concept not well understood by many public servants. This often leads to the relationship between the parliamentary departments and the public service to be managed in a context where conflict can arise due to the desire of each party to assert their position.

This is most noticeable in the application of public service criteria, geared to managing government service delivery, to the operations of the Parliament. This situation is exacerbated by frequent staff

rotations and departures with core public service agencies so that parliamentary departments need to devote resources to educating new staff in concepts such as the Separation of Powers, independence of the Parliament, privilege, etc.

These efforts meet with mixed success as they mostly depend on personality rather than well-established principles and protocols.

## 2. Application of the FMA

In general terms the funding relationship with Parliament is managed by central agencies within the context of the FMA:

- Section 40 of the FMA requires the Treasurer to prepare annual budget estimates in estimation of the annual appropriation Bills. Separate budget papers are not tabled for the Parliamentary Budget
- 2016-17 Budget Paper No. 3 Service delivery *“outlines the Government’s priorities for the goods and services provided to Victorians and details the budget decisions the Government has taken to implement its agenda”*.<sup>6</sup> Parliamentary departments are not government service delivery departments
- Schedule 1 of the Appropriations (Parliament 2016-17) Bill 2016 indicates *“Provision of Outputs (section 29 of the Financial management Act 1994 applies)”* – However Section 29 of the FMA is not applicable to the parliamentary departments as these are not departments within the meaning of the Public Administration Act 2004. Parliamentary departments are statutorily prescribed departments of the Parliament

Whilst it is understandable, from DTF’s point of view, that a Budget process dealing with both the general Bill and the parliament Bill together may be expedient, it does not give due regard to the fact that the appropriation (Parliament ) Bill is separate Bill for Constitutional reasons.

## 3. Just another government department

In the same context, parliamentary departments are required to undergo all the same processes that a public service/government department must undergo in submission for funds, the preparation of the appropriation, regular reporting to DTF, and compliance with various planning requirements issued under section 40 of the FMA.

Section 40(1)(a) Financial Management Act 1994 drives the management and reporting of service delivery by Victorian public sector entities and this is supported by requirements in the Standing Directions of the Minister for Finance.

Documents issued by DTF including the Financial Reporting Operations Framework (FROF), the Budget Operations Framework (BOF), the Performance Management Framework (PMF), and the Asset Management Accountability Framework (AMAF) are described as setting out *“the **mandatory requirements** for performance management (including associated annual state budget process requirements)”*<sup>7</sup>

<sup>6</sup> State of Victoria, Department of Treasury and Finance, Budget Paper No. 3 Service Delivery 2016-17, p.1 para 1

<sup>7</sup> Performance Management Framework for Victorian Government Departments, March 2016

These are all required by DTF in order for Parliament to be part of the state's funding process and form de-facto conditions for Parliament funding and extend to reporting and acquitting obligations on a quarterly basis.

**In fact Victoria is the only jurisdiction in Australia and New Zealand where Parliament is required to report performance, financial outcomes and achievement of outputs to executive government on a quarterly basis in the same form as a government department.**

ACT, Commonwealth, NSW, Queensland, South Australia and Western Australia do not report to their respective Treasury. New Zealand, Northern Territory and Tasmania report annually in the context of Annual reports.

The management of the Appropriation (Parliament) Acts is the responsibility of the Presiding Officers, the Clerks and the Secretary of the Department of Parliamentary Services. Once enacted decisions as to expenditure, for example, transfers between items of Parliamentary appropriation—are their responsibility.

The roles of the Treasurer, Minister for Finance, and the role of DTF, in relation to the Parliament appropriations, recognising the independence of the Parliament as a separate institution from the Executive, do not extend to Ministerial or DTF oversight of the Parliamentary Budget, beyond an advisory role, where required, and the overall management of the finances of the State for which the Minister and the Department are responsible.

Further, S. 3 of the Appropriation (Parliament) Bill indicates that "*The Treasurer may issue out of Consolidated fund in respect of the financial year 2016-17 the sum of \$128 888 000 as set out in Schedule 1*".<sup>8</sup>

The wording of section 3 and the use of "**may**" is frequently taken to mean that the allocation of the amount appropriated is entirely at the Treasurer's discretion "up to" the amount specified. This has led to circumstances where Parliament's funding has been reduced after the appropriation Bill has been passed by both Houses and assented to as law.

Summarising the above, the Parliament is currently treated by executive and DTF as just another public service department, subject to funding decisions made by executive and to performance management and reporting to DTF.

#### 4. Appropriate funding for Parliament

The Latimer House principles<sup>9</sup> are designed to underpin the values of the Commonwealth and the separation of powers between Executive, Legislature and Judiciary.

A fundamental stated principle is of the independence of Parliamentarians:

- *Parliamentarians should have equitable access to resources, and*

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<sup>8</sup> P. 2 S. 3 (1)

<sup>9</sup> Commonwealth Parliamentary Association, *Commonwealth (Latimer House) Principles of the Three Branches of Government, Edinburgh Plan of Action*, August 2008, 1.2 Independence of Parliamentarians, p.42

- *Parliaments should have control and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances*

The 1991 Strategic review, and the Joint Select Committee, concluded that the ‘weakening of the institution of Parliament over recent years’ was due amongst other things, to -

*The independence of Parliament has been compromised by requiring detailed approval of its budget by public servants;*

*The requirement for government approval of parliamentary committee inquiries and their proposed budgets significantly compromises Parliament’s ability to independently scrutinise the executive; indeed one might well argue that such practices make a mockery of the notion of independent parliamentary scrutiny.<sup>10</sup>*

In current terms this has meant that approximately 50% of all funding submissions by Parliament have been rejected by Government on the advice of DTF including:

- 2006-7 MP Communication allowance
- 2006-7 Upgrade WAN for electorate offices
- 2008-9 Legislative Council Committees
- 2008-9 St Andrews Place rent
- 2010-11 Electorate Officer redundancy costs
- 2011-2 Legislative Council Committees
- 2011-2 Electorate Office rents and outgoings
- 2012-3 Legislative Council Committees
- 2012-3 Accountability and Oversight (AO) and IBAC Joint Investigatory Committees
- 2013-4 Member Services
- 2013-4 Electorate office rent and utilities
- 2016-7 Legislative Council Committees

As a result of these decisions:

- Members are located in electorate offices selected on the basis of lower rent costs but with less desirable and accessible locations
- Legislative Council committees are unable to perform their function effectively scrutinising legislation
- Electorate officer salary costs must be met by reducing other services to Members

## Conclusion

In the view of the parliamentary departments, the constitutional independence of the Parliament is not respected or well served by the current process as described above.

Proposing solutions for improvement are, however, a longer term proposition requiring additional discussion and reflection. An appropriate starting point would be to reflect on the issues identified by the

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<sup>10</sup> Ibid, p 57.

Russell review and the Joint Select Committee in 1991-92, and examine to what extent those issues have actually been addressed.

In the short term:

- Parliament's budget should be determined in discussions between the Treasurer and the Presiding Officers rather than Parliament being subjected to the standard purchaser/provider submission process that service delivery government departments are subjected to.
- Such a process would particularly enable consideration of Parliament budget requirements with a particular understanding of Parliament's constitutional role and not within public service delivery assessment criteria
- The constitutional independence of the Parliament should be recognised by removing the requirement to report to DTF on a quarterly basis thereby bringing the Victoria Parliament in line with other parliamentary jurisdictions
- In the medium to longer term, PAEC or a joint select committee could be tasked with reporting to the Houses on a model for independent parliamentary budget setting.
- The Parliament acknowledges that parties and the Government will need a stake in and confidence in any recommended model, but through participation by party leaders/nominees and or parliamentary secretaries (eg. Parliamentary Secretary to the Treasurer) on a budget setting committee or commission.
- Parliament's governance arrangements, particularly overseen by Parliament's Audit Committee, would ensure, through the use of reputable independent lay members, that impartial, technical expertise in budgeting complements the financial considerations of Members and Parliament's Executive.



### 3. Please provide information on the timing, staffing and location of the Parliamentary Budget Office to the Committee.

#### Response:

Discussions are continuing with the Government to how we can best facilitate this new initiative. The following provides an overview of key points.

The Parliament's Appropriation for the Parliamentary Budget Office in 2016-2017 is \$4.4 million for 2016-2017 and \$3.3 for forward years to 2019-2020. Before any decisions can be made on the timing, staffing and location of the Parliamentary Budget Office, a Governor in Council appointment of the Parliamentary Budget Officer must occur first.

As outlined in the bill: *The Parliamentary Committee has given the Minister a recommendation that the person be appointed as the Parliamentary Budget Officer.*

*(4)A recommendation under subsection (3)—*

*(a) must be in writing; and*

*(b) may specify the terms and conditions that the Parliamentary Committee recommends should apply to the appointment to which the recommendation relates.*

In preparation, the Department of Parliamentary Services outline the following matters for resolution:

#### **Proposed Administrative Arrangements**

- Location of Parliamentary Budget Office on level 4, 55 St Andrews Place
- IT, Payroll and Employment and Finance support to be offered by the Department of Parliamentary Services at a cost to be negotiated with PBO as DPS has not been funded to provide corporate services
- Infrastructure office set up provided by DPS at a cost to be negotiated with PBO as DPS has not been funded to provide corporate services

#### **PAEC Role**

- Selection of the Parliamentary Budget Officer and recommendation to Parliament for Governor in Council appointment
- Review of the operational plan developed by the Parliamentary Budget Officer

#### **Appointment Milestones (dates to be determined)**

- Determination of selection methodology (eg external search consultant and sub-committee of PAEC to interview)
- Endorsement of position description and classification level (draft prepared at EO1 range)
- Search and advertising
- PAEC selection and recommendation
- Governor in Council appointment
- Commencement of Parliamentary Budget Officer

Staff employed by the Parliamentary Budget Officer in the Parliamentary Budget Office will be employed as Parliamentary Officers covered by the Parliamentary Administration Act 2005 and the Parliamentary Officers' (Non-Executive Staff – Victoria) 2012 or its successor.

### **Parliamentary Services Support**

Relevant business units within DPS are able to assist the PAEC Secretariat.

Significant support will be required to support the establishment of the office, employ staff, provide accommodation, IT infrastructure, etc. which needs to be reimbursed on a cost recovery basis by the Parliamentary Budget Officer from the PBO Appropriation to DPS.

Please note that no provision has been made in the Parliament appropriation for either establishment, or ongoing, corporate services and accommodation to be provided by DPS.

### **Contingency**

The appointment date of a Parliamentary Budget Officer is contingent on the passage of the Bill and proclamation.

Note: Council orders of the day on 21 June 2016 include the PARLIAMENTARY BUDGET OFFICER BILL 2016 — *(from Assembly — Mr Jennings)* — To be committed.