

5. THE COMMITTEE'S CONSIDERATION OF THE OPTIONS

5.1 During the course of the Committee's examination a number of options were considered in relation to both appropriations and staffing. The results of this consideration are detailed below.

Appropriations

5.2 The Committee recognises that the present constitutional arrangements place financial initiative firmly in the hands of the Executive. Section 53 of the Constitution provides that proposed laws appropriating revenue or moneys shall not originate in the Senate and section 56 provides that such proposed laws shall not be passed unless the Governor-General has recommended the purpose of the appropriation by message.

5.3 The Committee accepts that this is a proper arrangement for Government appropriations but not for Parliamentary appropriations. The arrangement which best recognises the relationship between the Parliament and the Executive is for the appropriations for each House to be contained in a separate amendable Bill which would not require a Governor-General's message and which would be capable of introduction in either House. This arrangement would serve to underpin the independence of the Parliament and yet would still allow the Executive the opportunity to influence each House's appropriations on the floor of the respective Chambers.

5.4 The Committee is not, of course, suggesting that the machinery to so amend the Constitution be put in motion at this stage, however a proposal to seek such an amendment could well be added to other proposals when the occasion next arises.

5.5 In the meantime, and within the limitations imposed by the Constitution, it is still possible to make new arrangements to achieve a desirable measure of autonomy for the Parliament.

5.6 In Chapter 4, the Committee has outlined the procedure which now applies to the preparation, review and approval of the estimates for the Parliament prior to their inclusion in the Appropriation Bills by the Minister for Finance. This arrangement, whilst an advance on that which operated prior to 1976, is still not satisfactory. In the words of the Speaker of the House of Representatives ' . . . it involves Parliament making 'bids' about which the Executive may apply a qualitative judgement and thereby restrict the ability of the Legislature to discharge its constitutional duties. The purpose of the Westminster system is to enable the Parliament to overview the Executive, not the other way around'.¹

5.7 Another arrangement suggested to the Committee, as an alternative to a separate Bill for the Parliament, is for the inclusion of the Parliament's appropriations, without modification by the Government, in the normal Appropriation Bill. Even if the Government was prepared to accept this procedure, it is still not a satisfactory solution for the Parliament as it perpetuates the classification of the Parliament as an ordinary annual service of the Government. Clearly, this is not the case. As pointed out in the 1967 Report of the Committee appointed by Government Senators, the Parliament may be ordinary; it may be annual; it may even be regarded as a service; but it is not a service of the Government. It is therefore inconsistent with the concept of the separation of powers and the supremacy of Parliament to treat the provisions made for the Parliament as being an ordinary annual service of the Government.

5.8 Within the limits currently imposed by the Constitution, the Committee is confident that the arrangement which best recognises the proper relationship between Parliament and the Executive is for the appropriations for each House of the Parliament to be included in a separate Appropriation Bill. And, if to this arrangement is added a Committee for each House, with provision for representation of the Executive, charged

with the task of examining the parliamentary estimates and agreeing to them with or without modification prior to their inclusion in the Parliamentary Appropriation Bill, not only is a desirable level of autonomy achieved for the Parliament, but also the Government's examination from the standpoint of its budgetary policy is preserved.

Staffing

5.9 The formal provisions relating to parliamentary staffing as detailed earlier in Chapter 4 give the impression that staff are not subject to Executive influence and control. Section 9 of the Public Service Act provides that staff are subject only to the control of the President in relation to the Senate, the Speaker in relation to the House of Representatives or both in relation to the Parliamentary Library, the Parliamentary Reporting Staff and the Joint House Department. However, all appointments and promotions of parliamentary staff and the creation and abolition of offices require the approval of the Governor-General in Council. The administrative procedure imposed by Government has meant that, without the agreement of the Public Service Board, a proposal has virtually no chance of approval by the Executive Council. And the history of the debate surrounding this matter shows that the Senate, in particular, believes that the Board is not qualified in matters concerning staffing of the Parliament to be given what virtually amounts to a power of veto over the Parliament's proposals. This, of course, is quite apart from the proprieties of a proper relationship between Parliament and the Executive.

5.10 It was partly with the problems of staffing the Parliamentary departments in mind that the Royal Commission on Government Administration developed proposals for the enactment of common legislation to cover Commonwealth employment generally. The Report of the Commission goes on to say that the ' . . . concept of this legislation is that it will enable the relevant management groups to draw on the main streams of legislated conditions of service, for example, for leave, superannuation and compensation, while leaving each group to develop its own distinctive patterns of service. One advantage of these provisions is that they would simplify and encourage the movement of staff within the total field of Commonwealth employment and might therefore benefit the parliamentary departments, by offering them the capacity to engage staff for relatively short periods if this is thought to be desirable in some areas of their activities'.²

5.11 The Commission further stated that it had in mind that Parliament might consider the appropriateness of taking advantage of the provisions it had proposed so that the two Houses could apply the main features of Commonwealth employment to the parliamentary service, while reserving, for special determination by the designated authority within the Parliament power to develop particular features for the Parliamentary Service. One feature of the new legislation would be to provide that Parliament (and its officers) would have access to the Public Service Board for advice wherever that was considered desirable or necessary *by the Presiding Officer* (compare with paragraph 5.13 (c)).

5.12 The Committee finds itself very much attracted to the Royal Commission's concept and agrees that, whilst some work remains to be done to refine the plan, it might well be of benefit to the Parliament. However, in the meantime, other arrangements can be made to achieve a desirable level of autonomy for the Parliament in relation to its staffing.

5.13 The Public Service Board's submission to the Committee concluded with a list of features that a possible revision of Parliament's control of its own staffing might include. The main features were:

- (a) appointment powers vested in the Presiding Officers, separately or jointly as the case may be (instead of the Governor-General in Council at present), with power of delegation (e.g. to Permanent Heads);
- (b) promotions power vested in the Presiding Officers, separately or jointly as the case may be (instead of the Governor-General in Council at present) on the recommendation of the appropriate Permanent Head, or with the Permanent Head subject (where appropriate) to the approval, of the Presiding Officer/s (similar arrangements to be made in relation to transfers); and
- (c) rates of pay and terms and conditions of service to be determined by the Presiding Officers, separately or jointly as the case may be, '*subject to their obtaining and considering the advice of the Public Service Board on such matters*'³ (compare with paragraph 5.11).

5.14 The Committee agrees with the proposals in relation to promotions and appointments and would also treat in a similar way powers in relation to the creation, abolition and reclassification of offices. However, the Board's proposal in paragraph (c) that it be mandatory for the Presiding Officers to obtain and consider the advice of the Public Service Board shows that it still does not understand its position in relation to the Parliament. In the words of the Royal Commission on Government Administration given emphasis by the Committee in paragraph 5.11 above, the Parliament should have access to the Public Service Board for advice wherever that was considered desirable or necessary ' . . . by the Presiding Officer'.

5.15 Subject to the modifications concerning the creation, etc. of offices and the Board's advisory role, the proposals of the Board cited above are sound and would only require a simple amendment to section 9 of the *Public Service Act 1922* to be implemented.

5.16 If, in addition to this arrangement, the Committees of each House as proposed in paragraph 5.8 in relation to the Parliament's appropriations were also charged with an advisory role in relation to staffing proposals, once again not only is a desirable level of autonomy achieved for the Parliament, but also the Government's examination from the standpoint of its manpower policy is preserved.

Notes and references

1. Evidence, p. 311.
2. Australian Government Administration, Report of the Royal Commission, Canberra, 1977, p. 263.
3. Evidence, p. 126.

6. THE COMMITTEE'S RECOMMENDATIONS

6.1 Despite the evidence that, in the majority of countries throughout the world, the respective Parliaments and Executives have made arrangements which provide for real autonomy in relation to Parliamentary appropriations and staffing, the Committee can understand that there may be a reluctance on the part of the Government to agree to an immediate total reform package. In addition, the House of Representatives may determine that in some areas other arrangements may be more suitable for their administration.

6.2 The Committee is mindful of the need for an experimental approach to be adopted in making any new arrangements for appropriations and staffing. This is especially true in a bicameral Parliament and in one in which there is a sharing of certain services such as the Library, the Reporting Staff and those areas administered by the Joint House Department.

6.3 For these reasons, the Committee does not see a Commission similar to that established by the United Kingdom House of Commons, for example, as being suitable for adoption at this stage by the Commonwealth Parliament or either House of the Parliament. The creation of a Commission would involve the passage of a statute which would, of necessity, produce a rigid, structured approach, rather than the flexible approach which is required at the moment.

6.4 Accordingly, the Committee believes that the Senate, and, where appropriate, the Government, should agree to a trial of the following arrangements.

A Senate Appropriations and Staffing Committee

6.5 As a first step, it is recommended that the Senate establish a Standing Committee to be known as the Senate Appropriations and Staffing Committee.

6.6 It is proposed that the Committee would be chaired by the President and would comprise 6 other members—the Leader of the Government in the Senate to represent the Executive, and two other Government Senators, and the Leader of the Opposition in the Senate and two other Senators not being members of the Government.

6.7 The Standing Committee would be charged with the responsibility for the consideration of the proposed estimates for the Senate and the consideration of staffing proposals affecting the Senate and its Committees.

6.8 In relation to the Estimates, the Committee would examine the proposals of the President and the officers of the Senate at, unless otherwise ordered, public hearings. The Estimates as finally agreed by the Committee would be submitted to the Minister for Finance for inclusion in a separate Parliamentary Appropriation Bill. The Minister would then introduce the Bill in the House of Representatives in accordance with current practice. The Senate, upon receipt of the Bill from the House of Representatives would consider its provisions in the normal way and, at that time, would also have before it a report from the Appropriations and Staffing Committee covering its deliberations concerning the Estimates.

6.9 Should the Government of the day be opposed to any of the Estimates as agreed to by the Committee and included in the Parliamentary Appropriation Bill, it has the opportunity (on matters affecting the Senate) to seek amendments in the Bill during the Committee of the Whole stage on the floor of the Senate. (The arrangement which operates in the Federal Republic of Germany is of relevance to this point. After the Parliamentary Committee responsible for the preparation of the Bundestag's Budget has agreed to the Estimates, the Minister for Finance has the right to have his view recorded when the Budget is presented and where appropriate, to propose amendments to the Bundestag).

6.10 In relation to staffing, the Committee would examine proposals seeking to vary the organisational structure of the Senate and its Committees, and staffing and recruitment policies and make recommendations to the President. It would report to the Senate on any matter it considered necessary.

6.11 The Committee would meet in public or in private session, have power to call for persons, papers and records, and would present an annual report to the Senate on its operations. Generally, it would operate with the same powers and in the same way as the Senate's Legislative and General Purpose Standing Committees. Senators, not being members of the Committee would be able to attend meetings of the Committee and question witnesses, unless otherwise ordered, but not vote.

6.12 A draft resolution for the establishment of the Appropriations and Staffing Committee is included as Appendix 10.

A Parliamentary Appropriation Bill

6.13 The Committee recommends that the appropriations for the Parliament be removed from the Bill for the ordinary annual services of the Government and included in a separate Parliamentary Appropriation Bill.

6.14 It is also recommended that all items of expenditure administered by the Executive departments on behalf of the Parliament be brought together in the Parliamentary Appropriation Bill and that provision be made for an Advance to the President of the Senate on the same basis as the Advance to the Minister for Finance.

6.15 A draft format for a Parliamentary Appropriation Bill is included as Appendix 2.

6.16 Following the implementation of these arrangements, the Committee recommends that the President arranges for discussions to be held with the appropriate Executive departments to review those functions which are currently administered by them and subsequently to plan the transfer of functions suitable for administration by the Senate.

6.17 Some items such as payment of Senators' electoral staff would be taken over by the Senate almost immediately, others would be gradually transferred, whilst some, such as repair and maintenance could remain in the hands of the appropriate Executive department as the agent of the Parliament.

Amendment of the Public Service Act

6.18 The Committee recommends that section 9 of the *Public Service Act* 1922 be amended to vest in the Presiding Officers, separately or jointly as the case may be, the power of appointment, promotion, creation, abolition and reclassification of offices, and the determination of rates of pay and terms and conditions of service.