



DEPARTMENT OF FINANCE

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APPENDIX 9

Reference :

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Mr P.N. Murdoch
Secretary
Senate Select Committee on
Parliament's Appropriations and Staffing
Parliament House
CANBERRA ACT 2600

Dear Mr Murdoch

During the examination of Department of Finance Officers on 7 April 1981, the Committee sought further advice on amendments that would be necessary to the Audit Act and other legislation to provide for an Advance to the President of the Senate on the same basis as the Advance to the Minister for Finance. Comment, in consultation with the Attorney-General's Department as necessary, was also sought on the practicality of providing such an Advance to a committee under the chairmanship of the President or the Speaker.

I understand the advice was sought against the background of the Committee's consideration of a possible separate Appropriation Bill(s) for the Parliament and that the Advance to the President/Committee would be included in the Bill(s).

As indicated in Mr Lidbetter's evidence to the Committee, an amendment to the Audit Act 1901 would appear necessary to enable amounts issued from an Advance to the President/Committee to be charged to specific heads of expenditure as is presently the case, under section 36A of the Act, with issues from the Advance to the Minister for Finance. Section 36A reads:

"Expenditure in excess of specific appropriation or not specifically provided for by appropriation may be charged to such heads as the Minister (for Finance) may direct provided that the total expenditure so charged in any financial year, after deduction of amounts of repayments and transfers to heads for which specific appropriation exists, shall not at any time exceed the amount appropriated for that year under the head "Advance to the Minister for Finance".

A parallel provision to section 36A would seem an appropriate course if an Advance were included in a separate appropriation measure for the Parliament.

Apart from an appropriation for the Advance in the separate Appropriation Bill for Parliament, no other Act or amendment to any Act, and no amendments to the Finance Regulations or Finance Directions, would appear necessary (subject to the comment below in relation to the question of an Advance to a committee of the Parliament).

Turning to the question of the practicability of an Advance to a committee of the Parliament, and leaving aside any policy implications of such a proposal, there are at least two issues that arise: the first is a legal issue, the other a question of practicality.

As regards the legal point, it would not be possible to make an appropriation available to a Committee unless it had specific legal status either in legislation or in Standing Orders or resolutions of the Houses, detailing the Committee's powers, functions, quorum, voting rights etc.

As to practicality, I would merely point out that, having in mind the comment of the Chairman of the Select Committee at the Public Hearing on 7 April that the same sort of criteria would apply to the proposed Advance as applies to the Advance to the Minister for Finance (namely that it shall be drawn upon only if the Minister is satisfied that the expenditure concerned is urgently required and was unforeseen on a specified date), the need to convene a committee meeting to approve issues from the Advance would very likely prove difficult in dealing with requests for urgent requirements. This would be the more so when the Parliament was in recess.

I would make two further observations relevant to the question of a separate Appropriation measure for the Parliament and an Advance to the President/Committee. First, by virtue of section 17(i) of the Act Interpretation Act 1901 and the Administrative Arrangements Orders made by the Governor-General in Council, the Minister for Finance is responsible for the issue of moneys from the Consolidated Revenue Fund (see for example section 3 of the Appropriation Act (No 1) 1980-81). The Minister is also responsible, under section 32 of the Audit Act, for obtaining Governor-General's Warrant in respect of any appropriation of the Consolidated Revenue Fund before moneys may be drawn against such appropriation. We believe these fundamental requirements should continue even for a separate appropriation Bill for the Parliament.

Secondly, as regards any Advance to the President/committee, the purposes of such an Advance would not appear to need to be as widely drawn as is the case for the Advance to the Minister for Finance. Thus it would not seem to be necessary to provide for recoverable advances or for expenditures pending the issue of a warrant of the Governor-General; the only provision that would seem necessary would be the equivalent of paragraph (b) of Division 310/1 of Appropriation Act (No 1) 1980-81 and, if appropriate, paragraph (b) of Division 855 of Appropriation Act (No 2) 1980-81.

I conclude by emphasising that the foregoing addresses only legal and administrative aspects of the questions posed by the Select Committee. It does not reflect any possible policy attitude the Government might have towards the issues involved in separate appropriation measures for the Parliament and/or the question of an Advance to the President/Parliamentary Committee.

Yours sincerely


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 First Assistant Secretary