



LEGISLATIVE COUNCIL

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GENERAL PURPOSE STANDING COMMITTEE NO 1

# **Inquiry into the Current Provisions for the Appropriation of Moneys and Authorisation of Expenditure in New South Wales**

## **Interim Report**

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Ordered to be printed 13 April 2000

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the Appropriation of Moneys and  
Authorisation of Expenditure in  
New South Wales**

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## **Terms of Reference**

That General Purpose Standing Committee No. 1 inquire into and report on the current provisions for the appropriation of moneys and authorisation of expenditure, and in particular:

- (a) the provisions of the Appropriation (1998-1999 Budget Variations) Bill;
- (b) the continuing practice of government agencies to unlawfully spend moneys from the Consolidated Fund and seek retrospective approval by the parliament, as referred to by the Auditor-General in his reports to parliament (Volume 2, 1998) and (Volume 1, 1999) and subsequent comments on the Appropriation (1998-1999 Budget Variations) Bill 1999;
- (c) any proposals for change to financial and annual reporting legislation; and
- (d) the powers of the Parliament to oversight Government expenditure.

These terms of reference were referred to the Committee by the Legislative Council on the motion of the Hon John Ryan MLC on 1 June 1999 (Minutes of Proceedings No 7, pp114-115).

## **Committee Membership**

The Rev Hon Fred Nile MLC, *Chairman*

Christian Democratic Party

The Hon Tony Kelly MLC, *Deputy Chairman*

Australian Labor Party

The Hon Doug Moppett MLC

National Party

The Hon Peter Primrose MLC

Australian Labor Party

The Hon John Ryan MLC<sup>1</sup>

Liberal Party

The Hon Henry Tsang MLC

Australian Labor Party

The Hon Dr Peter Wong MLC

Unity Party

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<sup>1</sup> The Hon John Ryan MLC is representing the Hon Patricia Forsythe MLC for the purposes of this inquiry.

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## **Chairman's Foreword**

The role of the Legislature in overseeing the work of the Executive is a fundamental principle of our system of democracy. The manner in which monies are appropriated for the operations of Government is a crucial part of that oversight process.

In recent years, Auditor-General's Reports to Parliament have raised a number of concerns relating to the appropriation of Consolidated Fund monies. In November 1998, the New South Wales Legislative Council took the unprecedented step of calling the Auditor-General to the bar of the House to answer questions relating to these concerns.

After the March 1999 State Election, the Legislative Council resolved to refer matters relating to the current provisions for the appropriation of moneys and authorisation of expenditure to General Purpose Standing Committee No 1 for inquiry and report. The terms of reference ask the Committee to look at past practices and propose future changes.

This interim report of General Purpose Standing Committee No 1 considers past practices, particularly those relating to the unlawful expenditure of moneys from the Consolidated Fund, and to the retrospective approval of such expenditure by the Parliament. The Committee welcomes recent moves by the Government to rectify these practices, particularly the use of additional Appropriation Acts to ensure Parliamentary approval is granted prior to the allocation of additional funds to agencies.

The terms of reference for the inquiry required the Committee to consider in detail provisions contained in the Appropriation (1998-99 Budget Variations) Bill 1999. Of particular interest to the Committee was the level of detail and the accuracy of information contained in the Bill, as well as the retrospective clauses contained in the Bill. The introduction of the Appropriation (Budget Variations) Bill 2000 into the Legislative Assembly on 4 April 2000 provides Members with an opportunity to consider that Bill in light of the Committee's report.

The final report of the Committee will focus on the powers of Parliament to oversight Government expenditure, and consider changes to financial and annual reporting legislation.

I thank my fellow Committee Members and the Committee Staff, Director Anna McNicol, Senior Project Officer, Jacqui McManus, and Committee Officer, Phaedra Parkins, for their assistance in preparing this interim report.

**The Rev Hon Fred Nile MLC**

Chairman

## Glossary and Abbreviations

### Glossary

Accruals basis	Refers to accounting for income <i>earned</i> and liabilities <i>incurred</i> in a period, regardless of the actual cash flows.
Activity	A group of tasks which contributes towards the achievement of the objective of a program <sup>2</sup> .
Agency	State department or body specially established by statute to provide a specified range of services to the public, which in most cases are subject to the directions of the Minister.
Appropriation	The process whereby Parliament allocates funds to Ministers for the purpose of funding agency activity.
Consolidated Funds	This is the main bank account of the Government. It consists of: <ul style="list-style-type: none"><li>▪ Taxes, fines, fees collected;</li><li>▪ Commonwealth grants; and</li><li>▪ Financial distributions from non-General Government agencies such as dividends or dividend equivalents<sup>3</sup>.</li></ul>
Executive	Refers to the Head of State, the members of the majority party in Parliament sitting on the front benches and the agencies used by the elected majority to put its policies in place <sup>4</sup> . The terms government and executive are often used interchangeably.
General government sector	Refers to agencies that depend on public tax revenues for more than 50 percent of their funding, ie those public sector entities which mainly provide goods and or services outside the market mechanism. Goods and services are provided free of charge or at a nominal charge well below cost of production <sup>5</sup> .
Government Trading Enterprises	State bodies that generally provide self funded goods and services, ie they finance their operations mainly through their own activities.

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<sup>2</sup> Nicholls D, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, p184.

<sup>3</sup> *Budget 1999-2000 Budget Guide*, NSW Treasury, p10.

<sup>4</sup> Funnell W & Cooper K, *Public Sector Accounting and Accountability in Australia*, UNSW Press, 1998, p21.

<sup>5</sup> The term is included in the *General Government Debt Elimination Act 1995*, which refers to the Australian Bureau of Statistics. The ABS defines general government sector in Catalogue 55160.

## Glossary (...cont)

Net appropriations	Whereby sales of goods and services and other items of revenue are retained directly by the agencies (rather than being passed through the Consolidated Fund) such that amounts appropriated to agencies are funds required in excess of these revenues.
Program	The principal building block where government policy objectives are set to be achieved through a series of activities <sup>6</sup> .
Public Accounts	The annual audited statements of the Consolidated Fund and the Special Deposits Accounts.
Public Financial Enterprise Sector	Agencies which have one or more of the following functions: that of a central bank; the acceptance of demand, time or saving deposits; or the authority to incur liabilities and acquire financial assets in the market on their own <sup>7</sup> .
Treasurer's Advance	An appropriation given to the Treasurer to allow for unforeseen expenses at the time of the budget preparation. Specific approval is required from the Treasurer to agencies to gain access to these funds. Expenditure details are subsequently submitted to Parliament for formal appropriation from the Consolidated Fund. The Treasurer's Advance can only be used for recurrent purposes, it can not be used for capital works and services.
Section 22	Section 22 of the <i>Public Finance and Audit Act 1983</i> provides that the Treasurer, upon approval of the Governor, can pay from the Consolidated Fund, in anticipation of appropriation by Parliament, such additional sums as may be necessary in the public interest to provide for expenditure of a recurrent nature or for capital works and services.

<sup>6</sup> Nicholls D, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, p184.

<sup>7</sup> *Budget 1999-2000 Budget Guide*, NSW Treasury, p10.

## **Abbreviations**

GTE            Government trading enterprise

NSW           New South Wales

PFAA          *Public Finance and Audit Act 1983*

PFE            Public Finance enterprise

# Chapter 1 - Introduction

## 1.1 Background to this inquiry

Several of the Auditor-General's Reports to Parliament in recent years have referred to particular problems with regard to appropriation and expenditure of public moneys in New South Wales<sup>8</sup>.

In summary, as a matter of practice some expenditure has been made by some agencies before funds were appropriated. It is unlawful to spend moneys from Consolidated funds without appropriation<sup>9</sup>. The 'unlawful' expenditure is typically made lawful by retrospective appropriation (ie various appropriation variation bills are enacted to cover moneys spent outside of the annual appropriations Act). This practice (followed for many years) was of significant concern to the former Auditor-General, Mr Tony Harris. Consequently he sought advice from the Crown Solicitor on this matter. The Crown Solicitor confirmed that the practice in question was invalid or unlawful<sup>10</sup>.

Given the importance of the matter, the then Auditor-General, Mr Tony Harris, was summoned to the bar of the Legislative Council on 10 November 1998 to give evidence in relation to:

- i. unauthorised expenditure from the Consolidated Fund on recurrent services and capital works and services for the year 1997-98;
- ii. payments made from "Advance to Treasurer" during 1997-98;
- iii. variations on authorised payments from the year 1997-98; and
- iv. related matters<sup>11</sup>.

The issues raised by the former Auditor-General can be summarised as follows:

- Agencies were reallocating funds between programs without necessary approval;
- Agencies were spending amounts greater than appropriated. Overspending was retrospectively approved when it was later identified, usually after year-end;
- Consolidated Funds appropriated in a particular year were being spent after the end of that year at which time the appropriation had lapsed; and
- The use of the Treasurer's Advance was not determined until after year-end when agencies' overspending was identified. At this time the appropriation of the Advance had lapsed.

<sup>8</sup> NSW Auditor-General's Reports to Parliament: Volume 1 of 1995, Volume 3 of 1995, Volume 3 of 1996, Volume 1 of 1997, pp57-59, Volume 1 of 1998, pp12-15, Volume 2 of 1998, pp1-2 and 7-10.

<sup>9</sup> Section 21 of the *Public Finance and Audit Act 1983*.

<sup>10</sup> This advice was reported to the Parliament in full in the *NSW Auditor-General's Report to Parliament for 1998*, Volume 2, pp431-437 (also see pp7-9).

<sup>11</sup> *Minutes of the Proceedings*, 10 November 1998, No 73, pp841-842.

The Government responded to the former Auditor-General's concerns by introducing or amending relevant legislation and practices. For example, amendments made in 1998 to the *Public Finance and Audit Act 1983*<sup>12</sup> (PFAA) sought to eliminate these problems in part by removing the legal concept of programs from that Act: the *Appropriation Act 1999* consisted of a one-line appropriation for each individual agency under a Minister. The Budget was still compiled on a program basis for 1999-2000 and scrutinised in Estimates Committees in that form. However, as a result of the abolition of appropriations on a program basis, an agency can now spend any amount on any program within its overall appropriation. Overspending in a particular program (which would have been unlawful in previous years) is no longer possible as specific amounts are not appropriated for individual programs. This eliminates one area of concern regarding unappropriated expenditure.

Additionally, on 26 May 1999, the Appropriation (1998-99 Budget Variations) Bill 1999 and Public Finance and Audit Amendment Bill 1999 were introduced into the Legislative Council.

The object of the Appropriation (1998-99 Budget Variations) Bill 1999 was to appropriate additional amounts from the Consolidated Fund for recurrent services and capital works and services for the 1998-99 year *before* year-end. These additional amounts were appropriated to cover certain Budget variations as a result of the exigencies of Government during that year. Consequently, the enactment of this Bill rectified another type of expenditure, which would otherwise have been unlawful.

In addition, the Variation Bill effectively reported on and replenished the use of the Advance to the Treasurer during the 1998/99 financial year. The Bill also included clauses making it retrospective (effective from 1 July 1998). The Variation Bill was passed without amendment, and was assented to on 9 June 1999.

The Public Finance and Audit Amendment Bill 1999 proposed amendments to the PFAA that would update the definition of a controlled entity, allow agencies to retain unspent Consolidated Fund moneys at year-end and remove conflict in financial reporting deadlines between agencies. Altering the PFAA to allow agencies to retain unspent Consolidated Funds would have removed the basis for another of the former Auditor-General's concerns listed above.

After the second reading of the Bill in the Legislative Council on 1 June 1999, the Hon John Ryan MLC, leading for the Opposition, announced an intention to propose amendments to the Bill, including provisions to re-establish program budgeting.<sup>13</sup> Mr Ryan's contribution to the second reading debate was interrupted for question time. The Bill was withdrawn after question time<sup>14</sup>, but later that day both the Hon Ian Cohen MLC and the Hon Arthur Chesterfield-Evans MLC indicated they too had intended to move amendments to the Bill.<sup>15</sup>

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<sup>12</sup> By the Public Finance and Audit Amendment Bill 1998.

<sup>13</sup> NSWPD Legislative Council, 1 June 1999, p639.

<sup>14</sup> Another amendment bill to this Act was later introduced and passed without amendment (Public Finance and Audit Amendment (Consolidated Financial Statements) Bill 1999). This subsequent Bill omitted all changes with regard to the lapsing of appropriation of revenue and was assented on 7 July 1999.

<sup>15</sup> NSWPD Legislative Council, 1 June 1999, pp660-661 and p672.

The Hon John Ryan MLC proposed an open discussion on annual reporting and financial legislation at that time, resulting in the referral of the current reference to General Purpose Standing Committee No 1.<sup>16</sup> The terms of reference for the committee's inquiry are:

That General Purpose Standing Committee No 1 inquire into and report on the current provisions for the appropriation of moneys and authorisation of expenditure, and in particular:

- (a) the provisions of the Appropriation (1998-1999 Budget Variations) Bill,
- (b) the continuing practice of government agencies to unlawfully spend moneys from the Consolidated Fund and seek retrospective approval by the parliament, as referred to by the Auditor-General in his reports to parliament (Volume 2, 1998) and (Volume 1, 1999) and subsequent comments on the Appropriation (1998-1999 Budget Variations) Bill 1999.
- (c) any proposals for change to financial and annual reporting legislation, and
- (d) the powers of the Parliament to oversight Government expenditure.<sup>17</sup>

This interim report addresses the terms of reference set out at (a) and (b) only.

## 1.2 Conduct of the Inquiry

The Committee met on 7 June 1999 to discuss the reference. At that meeting it was resolved to write to all Commonwealth, State and Territory Treasurers, Treasuries and Auditors-General requesting details of the relevant law and procedures in their jurisdictions, and inviting them to make written submissions to the Committee addressing the terms of reference. The Committee also resolved to place advertisements calling for public submissions in the *Sydney Morning Herald*, *Australian* and *Financial Review* newspapers. Advertisements appeared in these publications on 18 and 19 June 1999. The Committee received 15 written submissions, a list of which can be found at Appendix 1.

The Committee was unable to progress the inquiry as quickly as had been originally intended. During the second half of 1999, the House sent three other references to the Committee for inquiry and report, in each case specifying a short timeframe for completion. Given the current inquiry had no reporting deadline, these other inquiries took precedence.

The Committee held two separate public hearings at Parliament House, on 29 October 1999 and 2 February 2000. A total of six witnesses gave evidence before the Committee, including representatives from NSW Treasury and the former Auditor-General, Mr Tony Harris (refer to list of witnesses at Appendix 2).

An additional public hearing has been scheduled for 1 May 2000 to gather evidence from the current Auditor-General, Mr Bob Sendt, specifically with respect to the terms of reference at (c) and (d). The Committee will release a separate report addressing these terms of reference.

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<sup>16</sup> NSWPD Legislative Council, 1 June 1999, p655.

<sup>17</sup> *Minutes of the Proceedings*, 1 June 1999, No 7, pp114-115.

### 1.3 Parliament and Appropriations

By way of introduction to these issues it may be useful to review the basic principles underlying our parliamentary system within which Government operates and relevant financial management and reporting legislation.

The State Legislature consists of two Houses of Parliament, the Legislative Council (Upper House) and the Legislative Assembly (Lower House), and the Sovereign. State laws are enacted as a result of agreement by these two Houses and Royal assent by the Governor.

The public purse has traditionally been under the control of the Legislative Assembly and consequently Bills appropriating money or imposing taxation must originate in the Legislative Assembly.

... the Westminster principle of parliamentary control of the purse developed over hundreds of years.

Originally the battle was between Parliament and King over control of taxation. The powerful in the land and the wealthy were the most likely victims of taxation. Their efforts were firstly to restrict taxation and secondly as far as possible have other sections of the populace pay the taxes. ...

Later, Parliamentary battles were fought over the purpose for which taxation was needed and thus control over expenditure and then the superiority of the elected house of parliament (representing taxpayers in general) over the non-elected house (the Lords).<sup>18</sup>

In New South Wales, the *Constitution Act 1902* provides the legislative framework for the operation of the legislature, executive and judiciary, and includes a number of important financial provisions.

Under section 5 of the *Constitution Act 1902*, all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.<sup>19</sup> Section 39 of the Act establishes the main government fund, the Consolidated Fund, which comprises the State's main revenues, taxes, fines and government grants.<sup>20</sup> Section 45 of the Act states that any expenditure of that Fund must be appropriated by an Act of Parliament<sup>21</sup>.

This structure allows Government to allocate funds to specific activities in accordance with its policy whilst maintaining due accountability by requiring those funds to be appropriated by an Act of Parliament. The ability to govern is not hindered by this process. Where there is a disagreement between the Houses in respect of bills, section 5A of the *Constitution Act 1902* provides that those bills relating to the ordinary annual services of Government may be presented to the Governor for Royal Assent with or without any amendment suggested by the Legislative Council<sup>22</sup>.

The *PFAA* contains specific provisions relating to the administration and audit of public finances. Amongst other provisions, this Act sets out the manner in which the Treasurer is to administer the public accounts<sup>23</sup>, the requirement that moneys are not to be paid out unless authorised<sup>24</sup>, the fact that

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<sup>18</sup> Nicholls D, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, pp17-18.

<sup>19</sup> Section 5 of the *NSW Constitution Act 1902*.

<sup>20</sup> Section 39 of the *NSW Constitution Act 1902*.

<sup>21</sup> Section 45 of the *NSW Constitution Act 1902* and also refer s21 of the *PFAA*.

<sup>22</sup> Section 5A of the *NSW Constitution Act 1902*.

<sup>23</sup> Sections 5 to 20 of the *PFAA*.

<sup>24</sup> Section 21 of the *PFAA*.

appropriations lapse at 30 June<sup>25</sup>, and the role and responsibilities of the Auditor-General.<sup>26</sup> Under the Act, the Governor has the power to make regulations consistent with the Act<sup>27</sup>.

Despite major reforms in New South Wales' public sector financial management (refer section 1.5.3), the basic principle of control over the people's money prevails. At the end of the day the developments that have taken place have been made for the purpose of improving the efficiency and effectiveness of government and increasing accountability through better reporting by government agencies. Further changes can be made to improve the financial management of New South Wales public moneys.

#### **1.4 The structure of the New South Wales Public Sector**

The control of public funds in New South Wales is practically administered by agents on behalf of the Government. Government services are provided either through departments that are directly responsible to Ministers or through bodies, specially established by statute to provide a specified range of services, which in most cases are subject to the directions of the Minister. Collectively these organisations are referred to as government agencies.

The complexity of government and the size of the task with which government is confronted have made it necessary to create agencies to assist government. Initially this role was fulfilled by departments of state and later expanded to include statutory bodies and government trading enterprises.

The New South Wales Government categorises public sector agencies according to the level of competition they face and their level of dependence on the budget. Accordingly, the public sector is usually described as comprising agencies that belong to either the budget sector or the non-budget sector (refer Figure 1 at Appendix 3). The Australian Bureau of Statistics (ABS) uses the term 'general government sector' to refer to agencies which depend on the budget for more than 50 percent of their funding. There are currently 74 New South Wales agencies, out of 157 agencies in 1999, that are said to be budget dependent<sup>28</sup>.

Departments are typically part of the budget sector. They are established by order of the Governor under section 55A of the *Public Sector Management Act 1988*. A Department is generally set up to administer services that are mainly funded from public funds rather than user charges. All agencies operate within a regulatory framework, principally composed of government committees and statutory officers, which endeavours to ensure that government intentions are followed and through which all agencies eventually will be made accountable. Ministers are responsible for the overall development of the department's policy and administration, and accountable to the Parliament for activities of agencies under their control.

Although non-budget sector agencies are largely not supported from taxation revenues (Consolidated Funds) raised through the budget, they may receive some budget funding to pay for community service obligations. Non-budget sector agencies receive the majority of their funding from user charges or, in

<sup>25</sup> Section 23(1) of the *PFAA*. Note that section 23(2) provides special arrangements relating to salaries and wages.

<sup>26</sup> Sections 28 to 52B of the *PFAA*.

<sup>27</sup> Section 64 of the *PFAA*.

<sup>28</sup> *Budget 1999-2000 Budget Statement Budget Paper No 2*, NSW Treasury, Appendix, ppA1-A5.

the case of marketing boards, from contributions from industry members. Government trading enterprises (GTEs) generally provide self funded goods and services; ie they finance their operations mainly through their own activities. Accordingly, they form part of the non-budget sector. As a result, the structures and mechanisms of accountability of these entities are very different from departments (refer Figure 2 at Appendix 3). Many agencies are required to contribute to the Consolidated Fund in the form of dividends or dividend equivalents.

The non-budget dependant agencies are largely comprised of Statutory Authorities and State Owned Corporations. These are bodies established under their own statutes or the *State Owned Corporations Act 1989* respectively. State Owned Corporations that are registered companies are subject to the Corporations Law.

All general government sector agencies are responsible for providing social, community and public services on behalf of Government. These broad functions are broken down into 'programs'. Programs are a collection of similar services and are identified within agencies. These can be further broken down into specific activities. The agencies undertake various activities or tasks contributing to the achievement of the objectives of the relevant programs. For example, Government is responsible for welfare. Programs relating to welfare may include children's services, disability support and child and family support. Specific activities within the child and family support program may include foster care services, community education and awareness, etc.

As noted above, prior to 1998-99 the Consolidated Fund was appropriated on a program basis. However recent amendments to the *PFAA* have resulted in appropriations now being made on an agency basis (refer 1.1).

## **1.5 Financial management in New South Wales**

For governments to implement their programs they need to obtain financial resources and allocate those resources. The government's plan for its revenue raising activities and expenditure is referred to as a budget. Like any budget, a government budget is a plan setting out the achievements expected generally limited by the funds available. The revenues raised will comprise Consolidated Funds, revenues assigned for special purposes but not paid into the Consolidated Fund, and borrowings and other funds for capital works most of which are not paid into the Consolidated Fund.

The budget process is one prescribed by legislation<sup>29</sup>. Once a budget is set, the moneys required to achieve budget plans need to be appropriated to agencies in accordance with the *Constitution Act 1902* and the *PFAA*. The actual use of funds and results of the activities planned are reported by way of financial statements and other financial and non-financial information presented in an Annual Report. Various Acts and associated regulations stipulate the form and content of Annual Reports<sup>30</sup>. Finally, a third party (ie an auditor) scrutinises the reporting in accordance with the *PFAA*.

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<sup>29</sup> Section 27A of the *PFAA*.

<sup>30</sup> The *Annual Reports (Statutory Bodies) Act 1984* and the *Annual Reports (Departments) Act 1985*.

### **1.5.1 NSW Treasury**

NSW Treasury (a central agency) advises on and is responsible for the accounting and overall management of the State's finances. It is divided into the Office of Financial Management and the Office of State Revenue. The mission of the Office of Financial Management is to promote 'the allocation of resources that increases the economic wealth of the community'<sup>31</sup>. The powers and duties of NSW Treasury are found in Part 2 of the *PFAA*.

In order to achieve its mission and fulfil its statutory responsibilities, various directorates within the Office of Financial Management have been established including the financial management directorate, the economic and fiscal strategy directorate and resource allocation directorates. Collectively they are responsible for preparing the budget, the public accounts and the consolidated financial statements for the State. NSW Treasury also issues directions to public sector agencies in relation to accounting and financial matters through Treasurer's Directions<sup>32</sup>, Treasury Circulars and Statements of Best Practice.

### **1.5.2 Legislative framework**

A brief description of some of the relevant current legislation and its limitations follows.

#### *Constitution Act 1902*

The *Constitution Act 1902* states the powers of Parliament, provides for the election of members of both Houses and includes a number of important financial provisions. However, it is not a Bill of Rights specifying the limitations of government powers.

Under section 5 of the *Constitution Act 1902*, all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.<sup>33</sup> Section 39 of the Act establishes the main government fund, the Consolidated Fund, which comprises the State's main revenues, taxes, fines and government grants.<sup>34</sup> Section 45 of the Act states that any expenditure of that Fund must be appropriated by an Act of Parliament<sup>35</sup>.

This structure allows Government to allocate funds to specific activities in accordance with its policy whilst maintaining due accountability by requiring those funds to be appropriated by an Act of Parliament. The ability to govern is not hindered by this process. Where there is a disagreement between the Houses in respect of bills, section 5A of the *Constitution Act 1902* provides that those bills relating to the ordinary annual services of Government may be presented to the Governor for Royal Assent with or without any amendment suggested by the Legislative Council<sup>36</sup>.

<sup>31</sup> *NSW Treasury Office of Financial Management Annual Report 1998-99*, p1.

<sup>32</sup> In accordance with section 9 of the *PFAA*.

<sup>33</sup> Section 5 of the *NSW Constitution Act 1902*.

<sup>34</sup> Section 39 of the *NSW Constitution Act 1902*.

<sup>35</sup> Section 45 of the *NSW Constitution Act 1902* and also refer section 21 of the *PFAA*.

<sup>36</sup> Section 5A of the *NSW Constitution Act 1902*.

*Public Finance and Audit Act 1983*

The *PFAA* contains specific provisions relating to the administration and audit of public finances, including the manner in which Parliament exercises control over the Executive Government's expenditure of public money. Amongst other provisions, this Act sets out how the Treasurer is to administer the public accounts<sup>37</sup>, the responsibility of authorised officers to ensure liabilities incurred are in accordance with appropriations<sup>38</sup>, the requirement that moneys are not to be paid out unless authorised<sup>39</sup>, the fact that appropriations lapse at 30 June<sup>40</sup>, and the role and responsibilities of the Auditor-General.<sup>41</sup> Under the Act, the Governor has the power to make regulations consistent with the Act<sup>42</sup>.

All statutory bodies and departments listed in Schedules 2 and 3 of the *PFAA* are required to produce annual reports. The requirements for annual reports are set out in the *Annual Reports (Statutory Bodies) Act 1984*, the *Annual Reports (Departments) Act 1985* and associated Regulations. These Acts require the board of a statutory body or the head of a department to submit an annual report to the Minister and a copy to the Treasurer within four months of the end of the financial year. Under the legislation, the Minister is required to table the report in Parliament within one month of receipt. The legislation also requires departments and statutory bodies to include in their reports certain information on the activities of those entities that they "control", for example subsidiary bodies, trusts and partnerships. The information to be provided includes objectives, a review of operations and performance measures.

*Appropriation Bills*

It is current practice for the Government to introduce three Appropriation Bills into the Parliament around May/June each year. The main Appropriation Bill appropriates various sums of money required for the ordinary annual services of the Government (referred to as recurrent services) and for capital works and services of the Government, for the coming financial year. Separate amounts are appropriated for agencies for these two categories of appropriation, although allocations for capital works and services are only provided to those agencies that will be requiring these funds in the coming year.

A separate Appropriation (Parliament) Bill appropriates sums for the recurrent services and capital works of the Legislature, and a similar Appropriation (Special Offices) Bill relates to the Independent Commission Against Corruption, the Ombudsman's Office, the State Electoral Office and the Office of the Director of Public Prosecution.

The introduction of the Appropriation (1998-99 Budget Variations) Bill 1999 into the Legislative Assembly on 12 May 1999 saw the Government seek the prior approval of the Parliament before additional supplementary funding was provided to agencies in that that financial year. A similar Bill, the Appropriation (Budget Variations) Bill 2000, was introduced into the Legislative Assembly on 4 April 2000.

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<sup>37</sup> Sections 5 to 10 of the *PFAA*.

<sup>38</sup> Section 12 of the *PFAA*.

<sup>39</sup> Section 21 of the *PFAA*.

<sup>40</sup> Section 23(1) of the *PFAA*. Note that section 23(2) provides special arrangements relating to salaries and wages.

<sup>41</sup> Sections 28 to 52B of the *PFAA*.

<sup>42</sup> Section 64 of the *PFAA*.

*General Government Debt Elimination Act 1995*

This Act applies to the general government sector. The objects of the Act are:

- (a) to set out fiscal targets and fiscal principles for the State,
- (b) to make it a goal for the Government to pursue its policy objectives in accordance with those fiscal targets and fiscal principles, and
- (c) to provide for reports on departures from those fiscal principles to be prepared by the Treasurer, and
- (d) to deal with the budget coverage, presentation and contents, and
- (e) to provide for various financial statements to be released publicly by the Treasurer during each financial year.<sup>43</sup>

The short term fiscal target set under the Act was to achieve a budget surplus by the end of the 1999 fiscal year. The medium term fiscal target is to reduce, by 30 June 2005, the level of general government sector net debt to a sustainable level.

Fiscal principles set out in the Act include maintaining or increasing general government sector net worth; funding employer superannuation liabilities; asset maintenance; constrained growth in net cost of services and outlays; prudent risk management; and tax restraint.

The Act does not place any enforceable obligation on any person. Consequently, no court or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance with the Act<sup>44</sup>.

**1.5.3 Financial management and reporting reform in New South Wales**

The New South Wales public sector has undergone fundamental financial management reforms over the past 15 to 20 years. It is useful to briefly outline some of the major reforms and consider these in the context of the issues raised below.

Some of these reforms include:

*Accrual accounting and budgeting*

Accrual accounting was phased into all departments from 1990-91. Accrual accounting or accounting on an accrual basis refers to accounting for income *earned* and liabilities *incurred* in a period regardless of the actual cash flows. Consequently, expenses that are incurred (ie where a liability exists for payment) but are not yet paid are included in the financial reports for that period when the expense was incurred as opposed to the period in which it was finally paid. The reverse of course holds for revenues received in advance. These revenues under accrual accounting are not included in financial reports until such time as the good or service paid for (or a portion of it) is in fact earned, ie the goods or services are delivered by the agency particularly where the amount is refundable. In summary, accrual accounting results in proper recognition of income and expenditure and a more accurate valuation of assets and liabilities.

<sup>43</sup> Section 3 of the *General Government Debt Elimination Act 1995*.

<sup>44</sup> Section 27 of the *General Government Debt Elimination Act 1995*.

In addition to accrual accounting within departments, accrual budgeting has also been introduced into the New South Wales public sector. 1998-1999 was the first year a full set of accrual budgets was prepared (along side budgets prepared on a cash basis).

The accrual based budgeting system in New South Wales includes details about the total cost of providing services under a program in a financial year, revenue generated under a program and the net cost of providing services under a program. Additionally, the value of assets under the control of each agency, accumulated depreciation, liabilities of the agency and its cash flows can be ascertained.

#### *Forward Budget estimates*

Budget estimates are now released around May each year, ie before the commencement of the financial year (1 July). In addition, the Appropriation Bills tend to be passed before financial year-end.

#### *Target and Global Budgeting*

Target budgeting provides agencies with rolling three-year expenditure ceilings. Consequently, it provides agencies with tighter control over growth in budget expenditure and facilitates forward financial planning. Appropriations are still made annually under this system.

Global budgeting provides the ability to move budget allocations between different programs and types of expenditure.

These initiatives were introduced in 1989.

#### *Financial Performance Targets and Dividends for Commercial Authorities*

Target rates of return on total assets and strategic planning and other performance targets are set for major business authorities. Additionally, a dividend policy was introduced in the late 1980s.

#### *Net appropriation*

Budget-dependant agencies have been able to retain customer charges since July 1991. Now the appropriation process involves only those revenues that are taxes and regulatory charges. Whilst other revenues are reflected in the Budget Estimates, they are not subject to Parliamentary appropriation. This has resulted in allocation of Consolidated Funds to each agency that more clearly reflects the true cost to the public of each agency.

#### *Inclusion of output and outcome measures in the Budget Papers*

There has been a growing focus on output and outcome measures to enable assessment to be made on the effectiveness and appropriateness of government provided or funded activities.

#### *Commercialisation and corporatisation of Government Trading Enterprises and other commercially-orientated agencies*

Certain GTEs have been restructured as companies, with shareholdings vested in Ministers (refer *State Owned Corporations Act 1989*). Some of the prerequisites or consequences of restructure were management autonomy and competition in an open market.

*Whole-of-government reporting*

The total State sector is reported on in addition to the general government sector. The State sector comprises the general government sector, the public financial enterprise sector and the public trading enterprise sector.

*A move to General Government sector coverage of the Budget*

'General Government' is a term defined by the ABS and is reported on in the Public Accounts. The General Government sector comprises all agencies excluding GTEs and the public finance enterprise sector.

The major GTEs in New South Wales are Pacific Power, Sydney Water Corporation and the State Rail Authority.

Public Finance enterprises (PFEs) primarily manage government and private funds on behalf of various government entities. The major PFEs in New South Wales are Treasury Corporation, the Dust Disease Board and Construction Industry and the Long Service Leave Payment Board.

## **Chapter 2 – Appropriation (1998-99 Budget Variations) Bill 1999**

### **2.1 The provisions of the Bill**

The Appropriation (1998-99 Budget Variations) Bill had three main purposes:

- it provided for the appropriation of funds for the purpose of providing supplementary funding to agencies of \$344,423,000 and \$3,263,495,810 for accelerating Crown contributions to the closed public sector superannuation schemes;
- it replenished the Treasurer's Advance to its original level of \$125 million by appropriating \$116,815,000 to the Treasurer; and
- it provided for certain payments in excess of available appropriated funds under section 22 of the *Public Finance and Audit Act 1983* totalling \$50,852,000 for recurrent services and \$57,717,000 for capital works and services.

The Bill was passed without amendment, and assented to on 9 June 1999. A copy of the Bill is provided at Appendix 4.

The provisions within the Bill were largely aimed at addressing some of the issues raised by the former Auditor-General over the past few years. These actions are welcomed and indicate a real willingness of the Government to operate within the confines of the existing law regardless of its impracticalities. Although the purpose of the Bill was positively approved by Parliament some issues concerning it have been raised.

The first concern relates to the level of detail contained within the Bill, a matter raised during debate on the Bill in the Legislative Council. For example, items listed as payments from the Treasurer's Advance are all described as 'Further sum'. A more detailed schedule of expenditure was provided to the Opposition on request and the Coalition subsequently agreed that the Bill be amended to incorporate that information into it<sup>45</sup>. However the Bill was later passed without amendment. In fact, the Treasurer refused to table the detailed schedule in Parliament on the basis it was already included in the Bill<sup>46</sup>. The information was later incorporated in Hansard on the request of the Hon R Jones MLC<sup>47</sup>.

The Hon John Ryan MLC stated:

... If [this] item had been included in the budget papers in the normal course of events, honourable members would have been able to ask Government what the allocation was for, what it was intended to do and how the people of NSW were advanced by it ...<sup>48</sup>

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<sup>45</sup> NSWPD Legislative Assembly 25 May 1999, p382.

<sup>46</sup> NSWPD Legislative Council 1 June 1999, p653.

<sup>47</sup> NSWPD Legislative Council 1 June 1999, p668.

<sup>48</sup> NSWPD Legislative Council 1 June 1999, p654.

The Committee emphasises the importance of full and complete disclosure of proposed expenditure in bills appropriating public monies. The Committee notes that the overall level of detail provided in the Appropriation (Budget Variations) Bill 2000 has increased compared to the Appropriation (1998-99 Budget Variations) Bill.

The second concern relates to inaccuracies in the content of the Bill, as noted in Volume 2 of the *New South Wales Auditor-General's Report to Parliament for 1999*<sup>49</sup>. In summary, three amounts totalling \$253,000 were included in the Bill as amounts approved by the Governor in accordance with Section 22 of the *PFAA* however no such approval could be substantiated; \$400,000 was approved by the Governor for recurrent purposes but listed in the Act as capital works and services; and two amounts were noted as relating to non-budget sector agencies (WorkCover and the Crown Solicitor's Office) instead of the relevant budget sector agencies (NSW Fire Service and the Auditor-General's Department).

As noted in the Auditor-General's Report to Parliament, complete and accurate information is essential if Parliament is to "effectively discharge its responsibilities in ensuring that the Government is held accountable"<sup>50</sup>.

Each of the purposes of the Bill outlined at 2.1 are examined below.

### **2.1.1 Budget overruns**

The Bill requested appropriation of funds totalling \$344 million to cover anticipated budget overruns by agencies.

Although not stated during the debate on this Bill, it is assumed that the agencies needing additional funds had not yet spent those additional funds. The Premier, when introducing the Bill in the Legislative Assembly, stated that:

... the Government recognises that past procedures, under which retrospective approvals were sought, often after the close of a financial year, are no longer tenable. As a result, it is necessary that prior approval of the Parliament be obtained before any additional supplementary funding can be provided to agencies where the funding request is supported...The bill seeks to ensure that the legislative requirements governing payments from the Consolidated Fund are complied with fully...<sup>51</sup>

Consequently, it would appear that the Bill rectified the past problems identified by the former Auditor-General regarding expenditures without appropriation.

The Committee notes this Bill is retrospective in its entirety<sup>52</sup>. This means that even if moneys had already been spent in excess of amounts originally appropriated, this Bill when enacted made them lawful. This issue is dealt with further at 2.2.

<sup>49</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume 2, p30.

<sup>50</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume 2, p30.

<sup>51</sup> NSWPD Legislative Assembly, 12 May 1999, p102.

<sup>52</sup> Clause 2 of the Appropriations (1998-99 Budget Variations) Bill 1999.

### **2.1.2 Superannuation**

The \$3.26 billion described as superannuation payments was required to fund an offer to members of closed superannuation funds with a view to reducing the State's superannuation liabilities. The funds to be appropriated will be used to repay a number of years contributions to the closed superannuation schemes. This will result in a reduction in the unfunded liabilities of the scheme whilst reducing the net present value of those unfunded liabilities. Additionally, by prepaying the Commonwealth debt it has been suggested by the Treasurer that tax advantages will arise by way of a tax credit for the superannuation scheme<sup>53</sup>. No amounts were previously appropriated in 1999-2000 for this purpose.

The offer to superannuation fund members was to issue in February or March 1999. The offer was in fact delayed until October 1999 (effective 1 July 1999). However, funds (approximately \$3.3 billion) were already borrowed in January 1999 for this purpose before the Appropriation Bill was prepared<sup>54</sup>. No approval was required to borrow those funds. The Treasurer claims the funds are typically borrowed in these circumstances to reduce liabilities<sup>55</sup>. He explained that:

Regardless of the uptake of the conversion offer, this money will pay down the unfunded superannuation liability. As a result, the present net value of the State's total liabilities will be reduced by about \$1 billion.<sup>56</sup>

### **2.1.3 Treasurer's Advance**

The former Auditor-General holds the view that the advance to the Treasurer should be used for unforeseen and urgent expenditures. If expenditures are foreseen they should be properly appropriated. If they are not urgent they should wait for the next Appropriation Act<sup>57</sup>. Despite that view, the Advance is available for any recurrent expenditure the Treasurer so chooses. There are in fact no specific legislative provisions governing the use of the advance to the Treasurer. The advance was \$125 million for the 1998-99 financial year, and \$160 million in 1999-2000<sup>58</sup>.

The Appropriation (1998-99 Budget Variations) Bill clearly addressed a concern of the former Auditor-General's that the Treasurer's Advance has in the past not been allocated until after the appropriation had lapsed (ie post 30 June). The Bill demonstrated that, in 1998-99, the Advance was allocated in the prescribed time frame as it was enacted before 30 June.

Details of the use of the Treasurer's Advance are typically included in the following year's Appropriation Act for formal parliamentary approval<sup>59</sup> although there does not appear to be any statutory requirement for this practice. However, the earlier disclosure of its use as occurred in the 1999 Variation Bill is useful and informative to Parliament. The Audit Office note that early disclosure

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<sup>53</sup> NSWPD Legislative Assembly, 25 May 1999, p377 and NSWPD Legislative Council, 1 June 1999, p671.

<sup>54</sup> Correspondence from NSW Treasury, dated 13 March 2000, p11.

<sup>55</sup> NSWPD Legislative Council 1 June 1999, p671.

<sup>56</sup> NSWPD Legislative Council 1 June 1999, p671.

<sup>57</sup> Letter from the Auditor-General to Mr Debnam dated 21 May 1999, cited by Hon John Ryan MLC, NSWPD, Legislative Council, 1 June 1999, p654.

<sup>58</sup> Section 24 of the *Appropriation Act 1998* and section 24 of the *Appropriation Act 1999*.

<sup>59</sup> Nicholls D, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, p311.

also brings with it additional flexibility to the Treasurer ie the ability to advance that amount again as it is effectively replenished as a result of the disclosure of its use<sup>60</sup>.

Additionally, given the retrospective nature of the Bill in question, it is claimed that any “unlawful use of the Advance before the *Budget Variations Act* was proclaimed...would have been rendered valid by the *Budget Variations Act* <sup>61</sup>.” This is dealt with further at 2.2.

#### **2.1.4 Exigencies – unforeseen and urgent**

Under section 22 of the *PFAA* the Governor may determine that unappropriated funds can be spent ‘in anticipation’ of appropriation by Parliament. The provision only covers items that can be described as exigencies of the Government. Such exigencies to the value of \$108,569,000 appear to have arisen during 1998-99 and appropriation of this amount was sought under the Appropriation (1998-99 Budget Variations) Bill 1999. However, these items were not listed or detailed in any way within the Bill.

The following details were provided by the Government to the Opposition on request (and entered into Hansard)<sup>62</sup>:

- Attorney General’s Department

Additional funding of the Crown Solicitor’s Office to ensure adequate representation of the Crown in legal cases – a major cost was incurred in pursuing the British Telecom matter; and

- Department of Health

Motor Vehicle Leases Costs The Department’s motor vehicle fleet was sold during 1998 and leased back under a facility established for the future leasing of vehicles for the Department. The facility provides a cost effective form of financing yielding a net benefit of roundly 1% on government borrowings. Leasing also has the benefit of introducing better fleet management practices.

The former Auditor-General has expressed the view that the term exigencies has been given “flexible interpretation” and it “is not yet clear that this interpretation has been narrowed to accommodate the terms of the legislation.”<sup>63</sup> Further, Mr Harris commented, “I do not know that Parliament has ever examined in recent times what the Government thinks the term “exigency” means.”<sup>64</sup> The Oxford Dictionary defines ‘exigency’ as meaning “an urgent need or demand; an emergency.”<sup>65</sup>

The use of section 22 of the *PFAA* was the subject of the Public Accounts Committee’s 1989 *Report on Payments Without Parliamentary Appropriation*. Although the term ‘exigency’ was not examined in great detail, the Public Accounts Committee reported that in the years 1986-87 and 1987-88 it believed the use of the section 22 facility was not for urgent or pressing matters as it believed was intended by the use of the term, but for funds reserved for future expenditures<sup>66</sup>. Additionally, specific uses of that

<sup>60</sup> Submission No 5, the Audit Office of NSW, dated 28 July 1999, p22.

<sup>61</sup> Submission No 5, the Audit Office of NSW, dated 28 July 1999, p22.

<sup>62</sup> NSWPD Legislative Council, 1 June 1999, p668.

<sup>63</sup> Submission No 5, the Audit Office of NSW, dated 28 July 1999, p22; also see *New South Wales Auditor-General’s Report to Parliament for 1998*, Volume 2, pp128-129.

<sup>64</sup> Evidence from Mr Harris, 2 February 2000, p41.

<sup>65</sup> Moore, B. (Ed.), *The Australian Oxford Dictionary*, Oxford University Press, 1999, pp454-455.

<sup>66</sup> Public Accounts Committee, *Report on Payments Without Parliamentary Appropriation*, Report 43, February 1989, p8.

facility were examined and recommendations were made in each case for eliminating the need for its use in the future.

The question of whether the items in relation to the Attorney General's Department or the Department of Health in 1998-99 could be classified as 'exigencies' was a matter for Parliament. It is noted however, that details of the expenditure were not listed in the Variation Bill. Consequently it would have been difficult to determine whether it was appropriate that section 22 of the *PFAA* applied to them or whether Parliament should appropriate the required funds (refer general comments on available information at 2.1).

The current Auditor-General was concerned that the Governor's approval had not been sought until after the section 22 expenditure had been made (refer general comment on inaccuracies at 2.1). The use of funds in anticipation of parliamentary approval under section 22 is conditional on the Governor's *prior* consent.

The Minister representing the Premier, in reply to the second reading debate in the Legislative Assembly on the Bill, stated:

... that the Treasurer received advice from the Treasury that in each case, when approval was sought from the Governor, there was a pressing need for payments to be made and no payments had been made in anticipation of receiving the Governor's approval.<sup>67</sup>

As noted at 2.1, the current Auditor-General was unable to substantiate whether in fact the Governor's approval had been obtained appropriately in all cases where section 22 payments were made in 1998-99.

In their submission to the Committee, NSW Treasury stated that:

The Government has abandoned the practice of seeking the Governor's approval retrospectively under Section 22 of the Public Finance and Audit Act to cover expenditures in excess of available appropriations since the validity of this practice was, on the advice of the Crown Solicitor, determined inappropriate.<sup>68</sup>

## **2.2 Retrospectivity of the Bill**

The Appropriation (1998-99 Budget Variations) Bill was retrospective in its effects: it commenced on 1 July 1998<sup>69</sup>. Additionally, any unlawful expenditures from Consolidated Funds made in anticipation of this Bill (ie prior to assent) were made lawful under clause 7. NSW Treasury has described this provision as one that recognises the possibility of urgent payments being necessary<sup>70</sup>.

The Committee has not been able to establish any need for the Bill to be retrospective, as it would appear there was no requirement for any of its provisions to apply retrospectively. As noted above, expenditure made under section 22 does not require appropriation before it is made; items described as budget overruns and the superannuation contribution should not have been spent before parliamentary approval; and the Treasurer's Advance had already been appropriated.

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<sup>67</sup> NSWPD Legislative Assembly 25 May 1999, p385.

<sup>68</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p10.

<sup>69</sup> Clause 2 of the Appropriation (1998-99 Budget Variations) Bill.

<sup>70</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p9.

The Committee notes that the Appropriation (Budget Variations) Bill 2000, introduced into the Legislative Assembly on 4 April 2000, contains two retrospective clauses. Clause 2 of the Bill provides that the proposed Act is “taken to have commenced on 1 July 1999, which is the date of commencement of the *Appropriation Act 1999*”. Clause 11 of the Bill “validates, to the extent (if any) to which it may be necessary to do so, the approval or expenditure, before the date of assent to the proposed Act, of any sum to which the proposed Act applies.” It would appear these clauses are cautionary in much the same way as Clauses 2 and 7(3) contained in the Appropriation (1998-99 Budget Variations) Bill 1999.

## Chapter 3 – Unlawful spending of Consolidated Funds

### 3.1 Unlawful spending: why?

The former Auditor-General, Mr Tony Harris, when he appeared before the bar of the House in November 1998, stated that a major reason for departmental overspending is that agencies cannot track their spending on a real-time basis:

In essence, they stem from the fact that agencies do not know during the year, on a real-time basis, how much money they are spending on their programs. At the end of the year they sit down, work out how much money they spent, and find that they spent more than was appropriated. They then seek the approval of the Government and/or the Parliament to remedy that matter.<sup>71</sup>

Mr Harris went on to explain that overspending on individual programs was often linked to the fact that no one person had responsibility for those programs, and no appropriate accounting system applied.<sup>72</sup> This has long been identified as a disadvantage of appropriating on a program basis in New South Wales<sup>73</sup>.

Mr Pierce, Secretary, NSW Treasury, agrees program budgeting more recently became inappropriate:

... that move to net appropriations really mitigated the validity of appropriating at the program level as distinct from the agency level.<sup>74</sup>

The Committee notes that the Government has taken steps to ensure any additional funds required are appropriated prior to the expenditure being made (refer Appropriations (1998-99 Budget Variations) Bill and chapter 2 above).

The Opposition and other members of the Legislative Council have expressed concern that the abolition of program budgeting has diminished parliamentary control over government expenditure, despite the difficulties associated with tracking spending<sup>75</sup>. The issue of control and the role of program budgeting will be explored in a subsequent report to be released by this Committee.

In any event, it seems that program budgeting or any other alternatives will not reduce the need for supplementary funding throughout the year. Consequently, it is important to ensure both NSW Treasury and agencies put in place appropriate systems to track overall spending. A common theme emerging from this Committee inquiry is that:

...issues raised in this area by the former Auditor-General are only symptomatic of a broader problem: the inadequacy of public sector information systems to track how public funds are spent and with what effect ... overspending or underspending on programs are less significant than this fundamental problem of the capacity of government management information systems to track how public funds are spent and with what effect.<sup>76</sup>

NSW Treasury agrees to some extent with these comments. In addition they added:

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<sup>71</sup> NSWPD Legislative Council, 10 November 1998, p9461.

<sup>72</sup> NSWPD Legislative Council, 10 November 1998, p9461.

<sup>73</sup> Nicholls D, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, p177.

<sup>74</sup> Evidence from Mr Pierce, Secretary, NSW Treasury, 2 February 2000, p14.

<sup>75</sup> NSWPD Legislative Council 1 June 1999, p672.

<sup>76</sup> Evidence from Professor Bob Walker, UNSW, 2 February 2000, p31.

It is more that the breadth and quality of information required for decision making needs to be improved.

Treasury has gone some way to improving financial management systems through the introduction of accrual accounting both for external financial reporting, reporting to Treasury and budgeting.

However, Treasury sees the major driver to future improvement in information systems is the change in focus to the outputs/services that an agency delivers that is proposed in the Fundamental Review of NSW Financial and Annual Reporting Legislation ...<sup>77</sup>

### **3.1.1 Responsibility for the overspending**

As to the responsibility for over spending, officers within agencies who authorise expenditure are required by the Treasurer's direction to ensure, before the expenditure is authorised, that cash and or appropriated cash is available<sup>78</sup>. So it may follow that they are responsible for the over spending. However, in the greater scheme of things it would appear as though the true issue is the design and implementation of control mechanisms. The fact that unappropriated funds *can* be spent is an issue of major concern to the Committee.

The Committee notes that Parliament has been agreeable in the past to the passage of retrospective legislation, indicating that these cases of expenditure have been acceptable to Parliament. Nonetheless, it is important not to lose sight of the fact that expenditure without appropriation is not subject to proper scrutiny by Parliament.

### **3.1.2 Control mechanisms**

Much of the expenditure in excess of appropriations has ceased to occur as a result of various initiatives by the Government. However, the Parliament should be satisfied that no such over spending could possibly occur again. To the extent that adequate controls have not been implemented, action must be taken by responsible Ministers, NSW Treasury and individual agencies to improve tracking of expenditure of funds.

Ministers who receive appropriated funds on behalf of agencies are responsible for those funds. Ministers must actively ensure that agencies under their control are complying with legislative provisions governing the financial management and reporting in New South Wales.

NSW Treasury has the umbrella responsibility for establishing systems and then monitoring that they are working appropriately, including issuing directions and rulings where necessary. These systems should ensure Consolidated Funds are not spent unlawfully<sup>79</sup>. To achieve this NSW Treasury must ensure the financial arrangements with individual agencies are such that Consolidated Funds can be traced and monitored at any time<sup>80</sup>.

<sup>77</sup> Correspondence from NSW Treasury, dated 13 March 2000, p38.

<sup>78</sup> Section 12 of the *PF*AA. The Committee further notes that misappropriation of money or property or contravention of the *PF*AA generally are offences under that Act and can be prosecuted in a court of petty sessions. The Office holder guilty of an offence may be subject to penalty.

<sup>79</sup> Section 9 of the *PF*AA.

<sup>80</sup> Section 5 of the *PF*AA.

Agencies have to establish controls over commitments to ensure they do not incur liabilities that cannot be met from appropriated funds. Likewise, controls must be established to ensure expenditure incurred for appropriated items does not exceed the amount appropriated.

These control mechanisms must include the ability to identify Consolidated Funds, as opposed to other revenue (commonly referred to as Special Deposits). In fact, the Audit Office holds the view that it “is not lawful for the Treasury to permit Consolidated Fund moneys to be intermingled with retained moneys in an agency’s working account”.<sup>81</sup> This view is most likely based on the requirements set out in section 5 of the *PFAA* (refer 3.3 for further discussion).

The Committee will consider further the issue of agency tracking of spent funds in its subsequent report to the Legislative Council.

### **3.2 Treasurer’s Advance**

The NSW Treasurer’s Advance can be used for any recurrent purpose including non-urgent matters and purposes that may not have been foreseen at the time the Appropriation Bill was prepared. There are no specific legislative provisions governing the use of the Advance to the Treasurer. In contrast, the Commonwealth Advance to the Minister of Finance is constrained in usage in that it can not be applied for matters that have been foreseen or for matters that can await Parliament’s approval.<sup>82</sup>

In the past, the Treasurer’s Advance has been used to rectify some of the expenditures made in excess of appropriated funds. As detailed above, this typically was done after year-end when it was possible to ascertain amounts spent.

In August 1998 the former Auditor-General wrote to the Crown Solicitor asking for advice on the use of the Treasurer’s advance after the expiry of the financial year. Given the lack of legislative guidance with respect to the Treasurer’s Advance, there was some question as to its use and the required timing for making a determination that an amount was paid out of the advance.

The Crown Solicitor advised:

... While as a practical matter it may be necessary to know how much expenditure has been drawn from the Advance to the Treasurer before further payments are made, there does not seem to be any legal requirement to state at the time of the authorisation of the incurring of the liability, or at the time the payment is made, that the payment will be drawn from the Advance to the Treasurer.

That being said, the effect of the operation of the Appropriation Act and the *PFAA* may be that it will be clear that the expenditure is being drawn from the Advance to the Treasurer. This is because other mechanisms for expending in excess of an appropriation require prior authorisation or approval.

It is clear that, by virtue of s 23 of the *PFAA*, the appropriation to the Treasurer for the Advance to the Treasurer lapses at the end of the fiscal year. Therefore there is no authority to make a payment from the monies appropriated to the Treasurer for the Advance to the Treasurer after that date. ...<sup>83</sup>

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<sup>81</sup> Submission No 5, the Audit Office of NSW, dated 28 July 1999, p13.

<sup>82</sup> Submission No 5, the Audit Office of NSW, dated 28 July 1999, p28.

<sup>83</sup> Crown Solicitor’s advice, dated 24 August 1998, paragraphs 3.7 and 3.8, reproduced in the *New South Wales Auditor-General’s Report to Parliament for 1998*, Volume 2, Appendix, pp435-436.

Since the Crown Solicitor provided this advice to NSW Treasury, NSW Treasury has ensured that any funds allocated from the Treasurer's Advance are done so before year-end. The Committee notes that the Appropriation (1998-99 Budget Variations) Bill, in fact itemised the amount paid out of the Treasurer's Advance before year-end (also refer 2.1.3).

The Committee notes the former Auditor-General's view that the use of the Treasurer's Advance "should be for unforeseen and urgent purposes".<sup>84</sup> The Secretary of NSW Treasury, Mr John Pierce, told the Committee that:

... the Parliament needs to consider the relative effectiveness of trying to place rigid constraints on a Minister's decision making versus providing flexibility for a Minister or a chief executive officer to manage within the competing demands while requiring them to report the consequences of the decisions they have made.<sup>85</sup>

The Committee will further consider this matter in its next report.

### 3.3 Post year-end expenditures

Appropriations lapse on 30 June each year<sup>86</sup>. Consequently, Consolidated Funds that are spent after 30 June are without appropriation and thus unlawful. The lapsing of appropriations was specifically provided for to ensure agencies are not permitted to hoard unused appropriations and later endeavour to use them at their discretion (ie without the consent or scrutiny of Parliament).

Moneys from the Consolidated Fund left with agencies at the end of a financial year have in the past been retained by agencies and spent during the following year. In fact, NSW Treasury informed the Committee that agencies were permitted if not encouraged to retain funds after year-end as an incentive to reduce the end-of-year spend-ups by agencies. The incentive allowed agencies to retain savings from Consolidated Funds appropriations for operating expenses of up to 2 percent of the estimated net cost of services<sup>87</sup>. However, this was only the case in circumstances where an agency's total expenditure was less than the appropriation from the Consolidated Fund. Additionally, NSW Treasury advised the Committee that:

A number of restrictions can be imposed by the Treasurer on the use of savings. This principally relates to "protected items" (items such as grants or demand driven items, where expenditure is largely beyond an agency's control) where any savings are not transferable for other purposes unless the Treasurer's approval is given.<sup>88</sup>

Notwithstanding the practicalities of irresponsible spending at year-end, the spending of excess appropriated funds after year-end contravenes the controls legislated and is currently unlawful. Indeed in May 1999 the Government introduced the *PFAA Amendment Bill 1999* that included amendments that would allow agencies to retain unspent Consolidated Fund moneys at year-end (refer 3.3.1). The Bill was withdrawn however after it reached the Legislative Council. The current Auditor-General

<sup>84</sup> Letter from the Auditor-General to Mr Debnam dated 21 May 1999, cited by Hon John Ryan MLC, NSWPD, Legislative Council, 1 June 1999, p654.

<sup>85</sup> Mr Pierce, Secretary, NSW Treasury, Committee Hearing, 2 February 2000, p9.

<sup>86</sup> Section 23 of the *Public Finance and Audit Act 1983*.

<sup>87</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p6 and correspondence from NSW Treasury, dated 13 March 2000, p6.

<sup>88</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p7.

takes the view that if such an amendment were passed, it would have the effect of reducing Parliament's control over appropriations in future years<sup>89</sup>.

One of the problems still remaining regarding post year-end expenditure is that it is difficult to identify Consolidated Funds in the hands of some agencies. Based on the Auditor-General's 1999 Report it would appear as though it was not possible in all cases to identify Consolidated Fund moneys amongst other moneys at 30 June 1999.<sup>90</sup> As noted above (refer 3.1.2), the former Auditor-General believes that it is not lawful for Consolidated Funds to be intermingled with other moneys<sup>91</sup>. In his 1999 report to Parliament, the current Auditor-General reinforced this position and recommended unspent Consolidated Fund moneys be separately identified and returned to the Consolidated Fund at year-end<sup>92</sup>.

However, NSW Treasury has advised the Committee that:

... to accurately track each dollar received through to expenditure would require the maintenance of separate bank accounts. This would lead to additional bank charges, additional time and cost being incurred on unnecessary accounting for arguably little purpose.<sup>93</sup>

NSW Treasury has confirmed that appropriated funds identified as excess at 30 June 1999 were returned by agencies<sup>94</sup>. The process by which this occurred was described as follows:

Prior to 30 June an estimate of their final cash drawdown entitlement against appropriations is calculated and the agency is paid the balance. As this estimate is based on preliminary figures it is possible that following the audit of an agency's financial statements and the rework of the final cash drawdown an agency may have been provided with funds in excess of their entitlement. ...

Post 30 June a reconciliation is undertaken and where an agency has received funds in excess of their entitlement, the Consolidated Fund drawdown for the current years is reduced. If the amount is significant the agency would be required to return the unspent moneys to Treasury.<sup>95</sup>

NSW Treasury have advised the Committee that they will continue discussions with the Audit Office about possible methods to improve the tracking of appropriated funds received as distinct from other revenues such as user charges whilst the current laws remain in place. However it should be noted that it is:

... Treasury's considered view that cash appropriations authorised through the annual budget process should be a contribution to support the programs of an agency, rather than an annual appropriation which lapses at 30 June.<sup>96</sup>

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<sup>89</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume 2, p30.

<sup>90</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume 2, p30.

<sup>91</sup> Submission No 5, the Audit Office of NSW, dated 28 July 1999, p13.

<sup>92</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume 2, p31.

<sup>93</sup> Correspondence from NSW Treasury, dated 13 March 2000, p12.

<sup>94</sup> Correspondence from NSW Treasury, dated 13 March 2000, p6 (also see p20).

<sup>95</sup> Correspondence from NSW Treasury, dated 13 March 2000, p6 (also see p20).

<sup>96</sup> Correspondence from NSW Treasury, dated 13 March 2000, p24.

### 3.3.1 Possible Remedies

When the Public Finance and Audit Amendment Bill 1999 was first introduced into the Legislative Assembly on 12 May 1999, it contained the following provision regarding funds transferred to agency working accounts from Consolidated Funds that were not spent before year-end:

Omit section 23 (2). Insert instead:

- (2) If an amount appropriated for recurrent services for a financial year:
- (a) is transferred from the Consolidated Fund to the working account of an authority before the end of the financial year, and
  - (b) is not spent before the end of the financial year,

the appropriation does not lapse and the amount may be spent to meet payments for recurrent services of the authority in the following financial year.

During the Committee stage of the Bill in the Legislative Assembly, the Government moved an amendment to the provision, which was agreed to by that House, that effected the following change to the provision:

... the appropriation does not lapse and the amount may be spent to meet payments for recurrent services of the authority in the following financial year and is to be treated as expenditure from the Consolidated Fund in the financial year in which the amount was transferred from the Consolidated Fund.<sup>97</sup>

The amendment was proposed following comments by the former Auditor-General that funds that have not been expended by 30 June are still part of the Consolidated Fund even though they are held in an agency's working account<sup>98</sup>. The problem NSW Treasury has is that when funds are transferred to an agency they are effectively pooled with funds from other sources and so unidentifiable. Current practice is to assume (under NSW Treasury's Financial Reporting Code TPPP99-4) that appropriations are expended prior to revenue from other sources. NSW Treasury advised the Committee that the Audit Office has endorsed that practice<sup>99</sup>.

The proposed amendment sought to overcome the difficulty of tracking Consolidated Funds by determining that once moneys are transferred out of the Consolidated Fund they are expenditures and no longer part of the Consolidated Fund.

This Bill was withdrawn shortly after the commencement of the second reading debate in the Legislative Council.<sup>100</sup> No explanation for its withdrawal was made. However, earlier that day it was made clear that the Opposition would not support it without amendment<sup>101</sup>. Already concerned with the erosion of parliamentary controls over government spending, the Opposition intended to request some additional mechanism to ensure Parliament would remain informed as to the actual use of moneys retained after year-end.

<sup>97</sup> Public Finance and Audit Amendment Bill 1999, page 3 Schedule 1 [3].

<sup>98</sup> NSWPD Legislative Assembly 25 May 1999, p386.

<sup>99</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p7.

<sup>100</sup> The Bill was withdrawn in the Legislative Council on 1 June 1999.

<sup>101</sup> NSWPD Legislative Council, 1 June 1999, p672.

Apparently since the introduction of net appropriations in the 1991-92 budget, agencies have been permitted to carry forward savings achieved in the financial year. It is argued that this initiative has reduced costs and provided an incentive for agencies to stop 'end of year spend ups' as outlined above. In his speech in reply to the Appropriation (1998-99 Budget Variations) Bill, the Minister representing the Premier stated that this practice has not resulted in any loss of control<sup>102</sup>. Further, accrual accounting has produced more reliable, useful information of an agency's financial position and that of the Government as a whole.

NSW Treasury suggests that the concept of appropriations extending beyond the end of a financial year is already embodied in sections 23(2) and 23 A of the *PFAA*.<sup>103</sup> These sections effectively allow for payments on certain salaries and other commitments after the end of a financial year. Additionally,

... with the level of information now available to analyse an agency's financial performance, there is no real need for concern if cash drawdowns within a financial year are not spent until the following year. In fact with the introduction of net appropriations and the early presentation of Budgets it is virtually impossible to precisely match actual payments in a financial year to cash appropriations.<sup>104</sup>

The Committee acknowledges that the introduction of public sector finance reforms, such as accrual accounting, requires corresponding changes to financial management and reporting legislation, and notes comments of the Crown Solicitor in this regard:

It seems many of the issues raised ... have arisen out of the introduction of accrual accounting, net appropriations and the need for more flexibility in the management of the State's expenditure. These new procedures raise practical issues not dealt with by the current legislation. I note in this regard that there is a project currently in place to review the State's financial and annual reporting legislation.<sup>105</sup>

The Committee will be reviewing NSW Treasury's 1998 *Fundamental Review of NSW Financial and Annual Reporting Legislation*, in its subsequent report.

### **3.4 Subsequent approval**

In conjunction with the issue of spending in excess of appropriation is the matter of subsequent approval. Without it, the expenditures remain unlawful. Once funds are spent any discussion of controls seems purely academic. Parliament can scrutinise the expenditure, and has the power to disallow it. However, in practice, once monies have been spent it is unlikely they can be recovered.

Similarly with the actual expenditure without approval, it seems the real issue is one of control and safeguards. Mr Harris commented:

The dilemma posed is no real dilemma. It is not a matter of spending unlawfully or not spending; it is a matter of obtaining Parliament's approval for the changed circumstances in a timely way. ... So it is not a matter of not spending ... or spending invalidly; it is a matter of seeking Parliament's approval at the appropriate time.<sup>106</sup>

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<sup>102</sup> NSWPD Legislative Assembly 25 May 1999, p386.

<sup>103</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p11.

<sup>104</sup> Submission No 7, NSW Treasury, dated 2 August 1999, p13.

<sup>105</sup> Crown Solicitor's advice, dated 24 August 1998, paragraph 5.1, reproduced in the *New South Wales Auditor-General's Report to Parliament for 1998*, Volume 2, Appendix, p437.

<sup>106</sup> NSWPD Legislative Council, 10 November 1998, p9478.

Naturally, controls would be reinstated where the necessary approval is sought at a time before the expenditure is made. The Committee notes that the Premier has undertaken to comply with the relevant provisions.<sup>107</sup>

### **3.4.1 Retrospective approval**

One concern still remains in regard to subsequent approvals and that is the ongoing introduction of retrospective legislation. Naturally if unlawful expenditure is made, it can only be made lawful by retrospective approval. The goal of course being to eliminate unlawful expenditure. As noted previously, it is clearly the intention of the Government to ensure that this does occur (refer 2.1.1).

As previously noted, payments made under section 22 of the *PFAA* are approved by the Governor in anticipation of appropriation. Consequently, when monies are appropriated in a Bill to cover section 22 payments, it is implicit that the appropriation is retrospective. This is the very nature of the concession afforded under that provision. Consequently in these cases, retrospective clauses are not necessary or valid (refer 2.2).

### **3.4.2 After year-end approval**

In August 1998 the former Auditor-General wrote to the Crown Solicitor asking his advice on the use of section 22 of the *PFAA* seeking Parliament's approval for expenditures after the year in which they had already been spent and section 28 of the *Appropriation Act* which allows overspending in one program's appropriations and underspending in another after year-end. The Crown Solicitor advised that the use of these facilities after year-end is invalid or unlawful.

At the end of the fiscal year the appropriations for that year lapse by virtue of s 23 of the *PFAA*. Therefore there is no authority to make a payment of the estimate for a program after the end of the fiscal year.<sup>108</sup>

The need for these facilities has been substantially diminished since the abolition of the program concept within the *PFAA* and specifically appropriations on a program basis. However, where these facilities are used, the Committee notes that the Government has sought to ensure that the necessary actions are made contemporaneously<sup>109</sup>.

## **3.5 Control mechanisms**

The Committee acknowledges the importance of establishing mechanisms that provide both for parliamentary scrutiny and executive flexibility. The Committee is therefore anxious to ensure that appropriate controls exist to ensure unauthorised expenditure does not occur.

NSW Treasury informed the Committee that controls are in place to ensure that government agencies do not spend in excess of appropriated amounts. NSW Treasury identified these controls to include Treasurer's Directions and audits.

<sup>107</sup> NSWPD, Legislative Assembly, 12 May 1999, p102.

<sup>108</sup> Crown Solicitor's advice, dated 24 August 1998, paragraph 3.6, reproduced in the *New South Wales Auditor-General's Report to Parliament for 1998*, Volume 2, Appendix, p435.

<sup>109</sup> For example, the *Appropriation (1998-99 Budget Variations) Act 1999* was enacted prior to 30 June 1999.

Treasurer's Direction 170 requires agencies to maintain a list of delegations, sometimes referred to as a delegation manual. This ensures that all payments are made according to preset limits as to purpose and amount. This reduces the risk of unauthorised expenditure.<sup>110</sup>

The Committee notes NSW Treasury's opinion that compliance with the Treasurer's Direction reduces the risk of unauthorised expenditure. However, the Committee also notes that despite efforts by the Government to address concerns raised by the former Auditor-General, unauthorised expenditure still *may* occur. The Committee, in its next report, will explore whether or not it is possible and/or desirable to put in place control mechanisms to *prevent* unauthorised expenditure.

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<sup>110</sup> Correspondence from NSW Treasury, dated 13 March 2000, p23.

## Chapter 4 – Conclusion

This interim report on the inquiry into the current provisions for the appropriation of moneys and authorisation of expenditure in New South Wales addresses the terms of reference (a) and (b) for the inquiry. The Committee has paid particular regard to the following concerns raised by the former Auditor-General:

- the reallocating of funds between programs without necessary approval;
- agencies spending amounts greater than appropriated. The overspending being retrospectively approved when it was later identified, usually after year-end;
- Consolidated Funds appropriated in a particular year being spent after the end of that year at which time the appropriation had lapsed; and
- the use of the Treasurer's Advance not determined until after year-end when agencies overspending was identified. At this time the appropriation of the advance had lapsed.

The Committee has found that the move to agency appropriations has addressed the problem of overspending within programs. The Committee notes that while the move away from program appropriations has provided increased flexibility to Ministers and agencies, this has led to less specific parliamentary controls over government expenditure. The Committee will address this matter in detail in its next report.

With respect to the Appropriation (Budget Variations) Bill 1999, the Committee has noted two concerns, relating to the level of detail included in the Bill and inaccuracies about expenditure. The Committee also noted the current Auditor-General was unable to substantiate whether the Governor had provided prior approval for three section 22 payments detailed in the Bill. The Committee notes NSW Treasury's assurance that the past practice of gaining retrospective approval from the Governor for section 22 payments has now been abandoned, and urges the House to carefully monitor the use of section 22 payments in the future.

The Committee strongly supports the view of the current Auditor-General that:

To enable Parliament to effectively discharge its responsibilities in ensuring that the Government is held accountable, it is essential that information presented to Parliament should be complete and accurate. This is particularly relevant in the case of legislation relating to the expenditure of taxpayer provided funds.<sup>111</sup>

The Committee has been unable to establish any need for the Appropriation (Budget Variations) Bill 1999 to be retrospective, as it would appear there was no requirement for any of the Bill's provisions to apply retrospectively. Given the Premier's commitment, made in the Legislative Assembly when the Bill was introduced, to obtain prior approval of the Parliament before providing supplementary funding to agencies, there appears to be no sound reason for such a clause to be inserted in future Bills of a similar nature. The Committee notes that the Appropriation (Budget Variations) Bill 2000 adheres to this policy, in that the appropriation has been introduced prior to expenditure taking place. The Bill

<sup>111</sup> *New South Wales Auditor General's Report to Parliament for 1999*, Volume 2, November 1999, p30.

does, however, include retrospective commencement and validation of expenditure clauses (clauses 2 and 11). It would appear that these provisions are cautionary.

The Committee has also identified the need for improved control mechanisms within agencies, to ensure agencies are aware at all times of the level of expenditure of Consolidated Fund moneys. The Committee will consider this issue in greater detail in its next report.

With respect to concerns relating to the use of the Treasurer's Advance after year-end, the Committee welcomes the mechanism used in the Appropriation (Budget Variations) Bill 1999 to address this issue. It is hoped that a similar mechanism will be used in future years.

The Committee acknowledges that significant reforms have been implemented in New South Wales in relation to financial management and reporting. The major driver to future reforms appears to be a change in focus from the inputs provided to an agency to the services that an agency delivers. The Committee is optimistic that future reforms of this kind will improve Parliament's ability to undertake its role in overseeing the government.

The next report to be released by this Committee will address the remaining terms of reference for the inquiry:

- (c) any proposals for the change to financial and annual reporting legislation, and
- (d) the powers of the Parliament to oversight Government expenditure.

# APPENDIX 1

## LIST OF SUBMISSIONS

1. Catholic Commission for Justice, Development and Peace
2. Queensland Audit Office
3. Australian Senate
4. Nesmith Consulting
5. The Audit Office of New South Wales
6. Northern Territory Auditor-General's Office
7. NSW Treasury
8. NSW Council of Social Service
9. Government of Tasmania
10. Treasury (Western Australia)
11. Australasian Council of Auditors-General
12. Australian National Audit Office
13. ACT Legislative Assembly
14. South Australian Treasury
15. Mr Don Nicholls

## APPENDIX 2

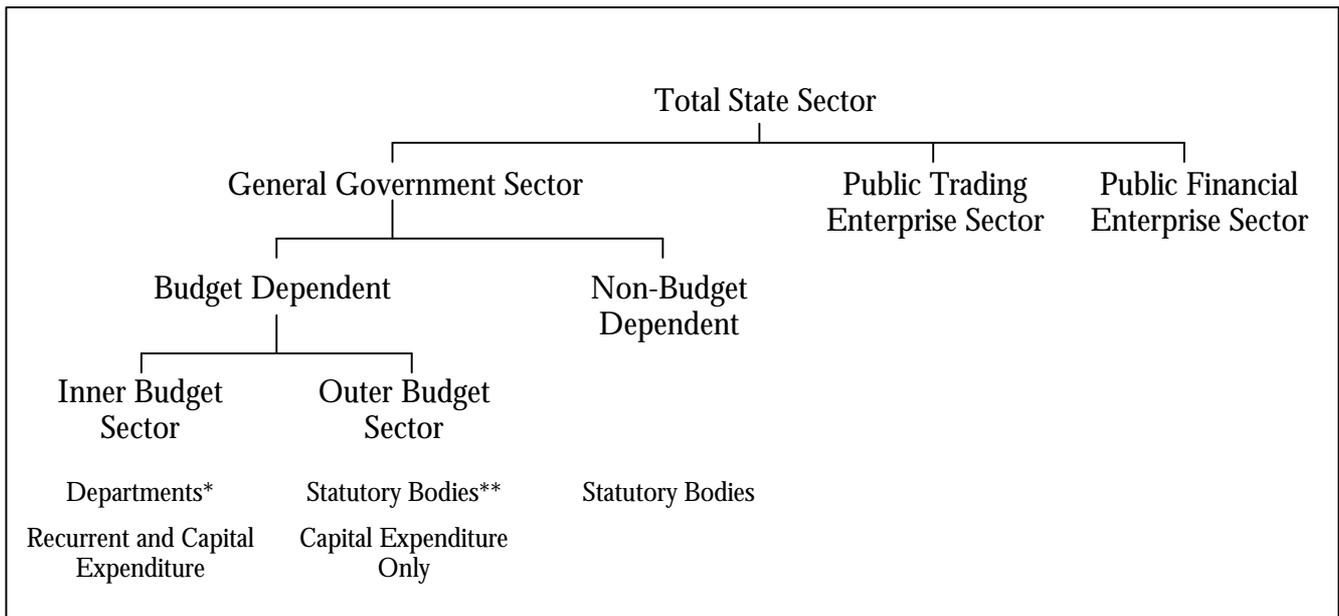
### LIST OF WITNESSES

Mr Tony Harris	Former Auditor-General 2 February 2000
Mr Gary Moore	Director, Council of Social Service of New South Wales 29 October 1999
Mr Ian Neale	Executive Director, Financial Management, NSW Treasury 2 February 2000
Mr Don Nicholls	Former Deputy Secretary, NSW Treasury and Author, <i>Managing State Finance: the New South Wales Experience</i> 2 February 2000
Mr John Pierce	Secretary, NSW Treasury 2 February 2000
Prof Bob Walker	School of Accounting, Faculty of Commerce, University of New South Wales 2 February 2000

## APPENDIX 3

# THE STRUCTURE OF THE NEWS SOUTH WALES PUBLIC SECTOR

**Figure 1 – Composition of Total State Sector**



\* Includes some statutory bodies which are 50% or more subsidised by government subsidies

\*\* Those statutory bodies which have capital expenditures and usually, borrowing programs

Source: Adapted from the Audit Office of New South Wales, *NSW Public Sector Financial Administration*, March 1999, p27 and Nicholls, D, *Managing State Finance: The New South Wales Experience*, 1991, p56.

**Figure 2 – System of classification of Government owned organisations for the purpose of determining application of Government controls.**

No Output Controls ↑ ↓ Output Controls	Competitive			COMMERCIAL ENTERPRISE
	Partly Competitive		SEMI COMMERCIAL SERVICE	COMMERCIAL BUSINESS
	Monopolistic	GOVERNMENT SERVICE	SEMI GOVERNMENT SERVICE	COMMERCIAL SERVICE
		Mainly Subsidised (Inner Budget Sector)	Partly Subsidised (Outer Budget Sector)	Self Sufficient (Outer & Non Budget Sectors)
		← Input Controls		No Input Controls →

Source: Nicholls, D, *Managing State Finance: The New South Wales Experience*, 1991, p58.

## **APPENDIX 4**

### **APPROPRIATION (1998-99 BUDGET VARIATIONS) BILL 1999**

















































# PROCEEDINGS OF THE COMMITTEE

## Minutes No. 1

Monday, 7 June 1999  
At Parliament House at 4.00pm

### 1. Members Present

Revd Nile (in the Chair)  
Mrs Forsythe  
Mr Kelly  
Mr Primrose  
Mr Ryan (Moppett)  
Mr Tsang  
Dr Wong

### 2. Apologies

Nil

### 3. Election of Chairman and Deputy Chairman

The Clerk declared the meeting open according to the Resolution establishing General Purpose Standing Committees adopted by the Legislative Council on Thursday, 13 May 1999.

The Clerk tabled the Resolution.

In accordance with paragraph 7(1) of that Resolution, the Clerk announced receipt of a letter dated 7 June 1999 from the Opposition Whip, the Hon. J Jobling MLC, nominating the Hon. J Ryan to act as a substitute Member of the Committee for this meeting, replacing the Hon. D Moppett MLC.

The Clerk called for nominations for the Chair.

Mr Ryan moved: That Revd Nile be elected Chair of the Committee.

Mr Primrose moved: That Mr Kelly be elected Chair of the Committee.

There being no further nominations, the Clerk invited the two candidates to address the Committee.

Revd Nile addressed the Committee.

Mr Kelly addressed the Committee.

The Clerk informed the Committee that there being two nominations, in accordance with the practice of the House a ballot must be held.

Ballot papers were distributed by the Clerk to Committee Members and Members lodged their votes.

The Clerk invited the Members who nominated each candidate to act as scrutineers.

The Clerk announced the result of the ballot as follows:

Revd Nile—4 votes

Mr Kelly—3 votes

Revd Nile, having a majority of the Members present and voting, was therefore declared elected Chairman of General Purpose Standing Committee No. 1.

Revd Nile took the Chair.

The Chairman called for nominations for Deputy Chair.

Mr Ryan moved: That Mr Kelly be elected Deputy Chair of the Committee.

There being no further nominations, Mr Kelly was declared elected Deputy Chair.

#### **4. Appropriation and Expenditure Inquiry**

The Chairman made a statement to the Committee concerning the current inquiry and tabled the following reference from the House:

That General Purpose Standing Committee No. 1, inquire into and report on the current provisions for the appropriation of moneys and authorisation of expenditure, and in particular:

- (a) the provisions of the Appropriation (1998-1999 Budget Variations) Bill;
- (b) the continuing practice of government agencies to unlawfully spend moneys from the Consolidated Fund and seek retrospective approval by the Parliament, as referred to by the Auditor-General in his Reports to Parliament (Volume 2, 1998) and (Volume 1, 1999) and subsequent comments on the Appropriation (1998-1999 Budget variations) Bill 1999;
- (c) any proposals for change to financial and annual reporting legislation;

- (d) and the powers of the Parliament to oversight Government expenditure.<sup>112</sup>

The Committee deliberated.

Resolved, on motion of Mrs Forsythe: That the Clerk confirm the date that the term of office of the Auditor-General expires.

The Committee deliberated.

Resolved, on motion of Mr Kelly: That the Clerk prepare and place advertisements calling for submissions in relation to the inquiry in the *Sydney Morning Herald*, *Australian* and *Financial Review* newspapers and selected professional publications.

Resolved, on motion of Mr Ryan: That the date for close of submissions be Friday, 30 July 1999.

Resolved, on motion of Mr Kelly: That the week of Tuesday, 17 August to Thursday, 19 August 1999, be reserved for hearings.

Resolved, on motion of Mr Primrose: That the Chairman write to the Treasurer, Secretary to the Treasury and Auditor-General in each State informing them of the Committee's inquiry and requesting details of the relevant law and procedures in operation in each State and inviting a submissions addressing the Terms of Reference.

Resolved, on motion of Mr Kelly: That the Clerk make inquiries in relation to employing a Specialist Project Officer for recommendation to the Chairman and Deputy Chair.

Resolved, on motion of Mr Ryan: That the Clerk write to the Secretary of the Treasury requesting copies of the Draft Working Paper on Financial and Reporting Legislation.

Resolved, on motion of Mr Primrose: That the Committee Members prepare a list of witnesses for submission to the Clerk by Wednesday, 30 June 1999.

## 5. General Procedural Motions

Resolved in globo, on motion of Mr Ryan:

That arrangements for the calling of witnesses be left in the hands of the Chairman and the Clerk.

That media statements concerning the deliberations of the Committee be made only by the Chairman on behalf of the Committee.

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<sup>112</sup> *Minutes of the Proceedings*, No 7, 1 June 1999, pp105-114.

That, unless otherwise ordered, parties appearing before the Committee will not be represented by members of the legal profession.

That, unless otherwise ordered, transcripts of evidence taken by the Committee be not made available to any person, body or organisation, provided that each witness will be given a proof copy of their evidence for correction and return to the Clerk.

That the Chairman and Clerk be empowered to request that funds be provided to meet expenses in connection with travel, accommodation, advertising and approved incidental expenses of the Committee, including additional staff.

**6. Adjournment**

The Committee adjourned at 4.45 pm to a date to be finalised by the Chairman and Deputy Chair, or to a date to be decided by a majority of Members in writing to the Chairman.

Warren Cahill  
Clerk to the Committee

## **Minutes No. 9**

Thursday 21 October 1999  
At Parliament House at 6.40pm

### **1. Members Present**

Revd Nile (Chair)  
Ms Forsythe  
Mr Johnson (substitute)  
Mr Kelly  
Mr Moppett  
Mr Primrose

### **2. Apologies**

Dr Wong

### **3. Confirmation of minutes**

Resolved, on motion of Ms Forsythe, that the minutes of meetings number 1 to 8 be confirmed.

\* \* \* \*

Anna McNicol  
Director

## **Minutes No. 10**

Friday 29 October 1999  
At Parliament House at 11.00am

### **1. Members Present**

Revd Nile (in the Chair)  
Mr Kelly  
Mr Moppett  
Mr Primrose  
Mr Ryan (Forsythe)  
Mr Tsang  
Dr Wong

### **2. Apologies**

Nil

\* \* \* \*

### **5. Appropriation and Expenditure reference**

The Committee deliberated.

Resolved, on motion of Mr Moppett, that the Committee hold an additional hearing in relation to the appropriation and expenditure reference on Monday, 6 December 1999 from 10am to 5pm.

Resolved, on motion of Mr Ryan, that the following individuals and organisations be invited to appear as witnesses at the hearing on 6 December:

Mr Tony Harris, former Auditor-General of New South Wales  
Mr John Pierce, Secretary, NSW Treasury  
Professor Bob Walker  
NSW Chamber of Commerce  
NSW Farmers' Association  
Mr Don Nicholls, former Deputy Secretary, NSW Treasury  
KPMG  
Mr Nick Greiner, former Premier of New South Wales

The Chair made a statement to Members about the broadcasting of proceedings.

The media and the public were admitted.

Mr Gary Moore, Director, NSW Council of Social Service, was sworn and examined.

Evidence concluded and the witness withdrew.

The Committee deliberated.

Resolved, on motion of Mr Ryan, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish all submissions received in relation to the inquiry, and the corrected transcript of the evidence provided by Mr Moore.

\* \* \* \*

**7. Adjournment**

The meeting adjourned at 1.00pm until 5.00pm on 8 November 1999.

Anna McNicol  
Director

## **Minutes No. 11**

Monday 8 November 1999  
At Parliament House at 4.30pm

### **1. Members Present**

Revd Nile (in the Chair)  
Mrs Forsythe  
Mr Johnson (Tsang)  
Mr Kelly  
Mr Moppett  
Mr Primrose  
Dr Wong

### **2. Apologies**

Nil

### **3. Confirmation of minutes**

Resolved, on motion of Mrs Forsythe, that the minutes of meeting number 10 be confirmed.

\* \* \* \*

Anna McNicol  
Director

## **Minutes No. 26**

Wednesday 2 February 2000  
At Parliament House at 10.41am

### **1. Members Present**

Rev Nile (in the Chair)  
Mr Kelly  
Mr Moppett  
Mr Primrose  
Mr Ryan (Forsythe)  
Mr Tsang  
Dr Wong

Ms Rhiannon (participating)

### **2. Apologies**

Nil.

### **3. Submissions**

The Chairman tabled submission no. 15, received from Mr Don Nicholls.

Resolved, on motion of Mr Moppett, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the submission received from Mr Don Nicholls.

### **4. Appropriation and Expenditure Reference**

The media and the public were admitted.

Mr John Pierce, Secretary, and Mr Ian Neale, Executive Director Financial Services, both of NSW Treasury, were sworn and examined.

Mr Pierce tendered a document to support his evidence.

Resolved, on motion of Mr Kelly, to accept the document.

Resolved, on motion of Mr Kelly, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the document tabled by Mr Pierce.

Mr Neale tendered three documents to support his evidence.

Resolved, on motion of Mr Ryan, to accept the documents.

Resolved, on motion of Mr Ryan, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the three documents tabled by Mr Neale.

Mr Neale tendered twenty-three documents to support his evidence.

Resolved, on motion of Mr Ryan, to accept the documents.

Evidence concluded and the witnesses withdrew.

Mr Don Nicholls was sworn and examined.

Evidence concluded and the witness withdrew.

Professor Robert Walker, Professor of Accounting, University of New South Wales, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr Tony Harris was sworn and examined.

Evidence concluded and the witness withdrew.

The Committee deliberated.

Resolved, on motion of Mr Ryan, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish today's transcript of evidence.

Resolved, on motion of Mr Ryan, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish all documents tendered by Mr Ian Neale today.

The Committee deliberated.

Resolved, on motion of Mr Kelly, that Treasury officials be invited to give the Committee a private briefing on Monday, 10 April 2000, from 10am to 1pm on the Office of Financial Management's Working Paper *Fundamental Review of NSW Financial and Annual Reporting Legislation*.

Resolved, on motion of Mr Kelly, that the Committee meet from 2pm until 5pm on Monday, 10 April 2000, to deliberate on the Chairman's draft interim report.

Resolved, on motion of Mr Kelly, that Audit Office officials be invited to give evidence to the Committee on Friday, 14 April 2000, from 10am to 1pm.

**5. Adjournment**

The meeting adjourned at 5.00pm until 5.01pm on Wednesday, 2 February 2000.

Anna McNicol  
Director

## **Minutes No. 28**

Monday 10 April 2000  
At Parliament House at 10.00am

### **1. Members Present**

Revd Nile (in the Chair)  
Mr Kelly  
Mr Moppett  
Mr Primrose  
Mr Ryan (Forsythe)  
Mr Tsang  
Dr Wong

### **2. Apologies**

Nil.

### **3. Confirmation of minutes**

Resolved, on motion of Mr Ryan, that the minutes of meeting number 26 be confirmed.

### **4. Tabled Documents**

#### 4.1 Submissions

The Chairman tabled the following submissions in relation to the Appropriation and Expenditure inquiry:

1. Catholic Commission for Justice, Development and Peace
2. Queensland Audit Office
3. Australian Senate
4. Nesmith Consulting
5. The Audit Office of New South Wales
6. Northern Territory Auditor-General's Office
7. NSW Treasury
8. NSW Council of Social Service
9. Government of Tasmania
10. Treasury (Western Australia)
11. Australasian Council of Auditors-General
12. Australian National Audit Office
13. ACT Legislative Assembly
14. South Australian Treasury

Resolved, on motion of Mr Primrose, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the

submissions tabled at today's meeting.

#### 4.2 Correspondence

The Chairman tabled 27 items of correspondence received:

Memo from the Hon John Jobling MLC, Opposition Whip, to Clerk, dated 7 June 1999, advising that the Hon John Ryan MLC will be representing the Hon Doug Moppett MLC, for the purpose of the meeting held on 7 June 1999.

Letter from Tamara Stenhouse, Personal Secretary, Office of the Hon Mike Read MLC, Treasurer, Northern Territory Government, to Chairman, dated 6 July 1999, acknowledging receipt of the Chairman's letter of 2 July 1999.

Letter from Kate Carnell MLC, Chief Minister, ACT Legislative Assembly, to Chairman, dated 7 July 1999, acknowledging receipt of the Chairman's letter of 2 July 1999.

Letter from Ron Rechner, Chief Administrative Officer to the Treasurer, (South Australia) Office of the Treasurer, to Chairman, dated 7 July 1999, acknowledging receipt of the Chairman's letter of 2 July 1999.

Letter from E A Evans, Secretary to the Treasury (ACT), to Chairman, dated 12 July 1999, advising that matters raised in the Chairman's letter of 2 July 1999 have been referred to the Department of Finance and Administration.

E-mail from Ross Addison, Department of Finance and Administration, to Director, dated 17 July 1999, suggesting that the Committee invite the Commonwealth Auditor-General to make a submission in relation to the appropriation and expenditure inquiry.

Memo from the Hon John Jobling MLC, Opposition Whip, to Clerk of the Parliaments, dated 19 July 1999, advising that the Hon John Ryan MLC will be representing the Hon Patricia Forsythe MLC, for the purpose of the appropriation and expenditure inquiry.

Letter from Ian Little, Secretary, (Victorian) Department of Treasury and Finance, to Chairman, dated 20 July 1999, providing information about relevant Victorian legislation.

Letter from Mike Reed, Deputy Chief Minister, Northern Territory Government, to Chairman, dated 20 July 1999, declining the Committee's invitation to make a submission and advising copies of Territory laws and procedures relating to appropriation on moneys will be forwarded to the Committee under separate cover.

Letter from Ian Neale, for Secretary, NSW Treasury, to Chairman, dated 21 July 1999, providing copies of the Treasury Working Paper *Fundamental Review of NSW Financial and Annual Reporting Legislation*, and advising that a more substantial submission will be provided by 30 July 1999.

Facsimile from John Rosier, Executive Director, Australasian Council of Auditors-General, to Director, dated 23 July 1999, seeking an extension of time to lodge a submission in relation to the appropriation and expenditure inquiry.

Facsimile from John Pierce, Secretary, NSW Treasury, to Director, dated 23 July 1999, providing details of a liaison officer to assist in relation to the inquiry.

Letter from Bernard Wright, Deputy Clerk, House of Representatives, to Chairman, dated 26 July 1999, declining the Committee's invitation to make a submission in relation to the appropriation and expenditure inquiry.

Letter from Anne Lynch, Deputy Clerk of the Senate, to Chairman, dated 26 July 1999, declining the Committee's invitation to make a submission in relation to the appropriation and expenditure inquiry.

Letter from KB Clarke, Under Treasurer, Northern Territory Treasury, to Chairman, dated 27 July 1999, declining the Committee's invitation to make a submission in relation to the appropriation and expenditure inquiry, and including information about relevant Northern Territory legislation.

Letter from Greg Gibson, Principal Auditor, NSW Audit Office, to Director, dated 30 July 1999, providing information relating to the inquiry into appropriation and expenditure.

Letter from I C Harris, Clerk of the House of Representatives, to Chairman, dated 4 August 1999, declining the Committee's invitation to make a submission in relation to the appropriation and expenditure inquiry.

Letter from Mark McRae, Clerk of the Legislative Assembly for the Australian Capital Territory, to Chairman, dated 6 August 1999, declining the Committee's invitation to make a submission in relation to the appropriation and expenditure inquiry, and enclosing information of relevance to the inquiry.

Letter from Richard Court MLC, Premier and Treasurer of Western Australia, dated 9 August 1999, advising that the Under Treasurer will be providing the Committee with a detailed response to the Chairman's letter of 2 July 1999.

Letter from G Bradley, Under Treasurer, Queensland Treasury, to Chairman, dated 9 August 1999, declining the Committee's invitation to make a submission in relation to the appropriation and expenditure inquiry, and enclosing information of relevance to the inquiry.

Letter from Rod Kemp, Assistant Treasurer, Parliament House, Canberra, to Chairman, dated 13 August 1999, thanking the Chairman for his letter of 2 July 1999 to the Treasurer, and advising that the Secretary to the Treasury has referred the matter to the Department of Finance and Administration.

Facsimile from Ian Neale, NSW Treasury, to Chairman, dated 28 October 1999, advising that John Pierce, Secretary of the Treasury is unable to attend the Committee hearing on 29 October due to injury.

Letter from John Pierce, Secretary, NSW Treasury, to Director, dated 29 February 2000, providing corrected transcript and information relating to consultative processes associated with the formulation of Treasury's Working Paper *Fundamental Review of NSW Financial and Annual Reporting Legislation*.

Letter from John Pierce, Secretary, NSW Treasury, to Director, dated 8 March 2000, providing responses to most questions placed on notice at the Committee hearing held on 2 February 2000.

Letter from John Pierce, Secretary, NSW Treasury, to Director, dated 13 March 2000, providing responses to all questions placed on notice at the Committee hearing held on 2 February 2000.

Letter from John Pierce, Secretary, NSW Treasury, to Director, dated 29 March 2000, advising the names of Treasury officials who will attend the briefing to be held on 10 April 2000.

Documentation from NSW Treasury, undated, including copies of all 78 submissions made to NSW Treasury in relation to the Working Paper *Fundamental Review of NSW Financial and Annual Reporting Legislation* and analysis of the submissions.

## **5. Appropriation and Expenditure Inquiry**

The Committee met with the following officers from NSW Treasury: Mr John Pierce, Secretary, Mr Ian Neale, Executive Director, Financial Management, Mr Martin Smith, Principal Policy Analyst, Mr Mark Pellowe, Principal Policy Advisor, Ms Dianne McHugh, Senior Policy Advisor, Ms Julie Bryson, Analyst. NSW Treasury officers provided an informal briefing to Members about the Working Paper *Fundamental Review of NSW Financial and Annual Reporting Legislation* and answered questions from Members.

Briefing concluded and the NSW Treasury officers withdrew.

The Chairman submitted his draft report entitled "Inquiry into the Current Provisions for the Appropriation of Moneys and Authorisation of Expenditure in New South Wales: Interim Report", which having been circulated to each Member of the Committee, was accepted as being read.

The Committee proceeded to consider the draft report.

Resolved, on motion of Mr Primrose, to insert the sentence “The Committee notes that the overall level of detail provided in the Appropriation (Budget Variations) Bill 2000 has increased compared to the Appropriation (1998-99 Budget Variations) Bill.” at the end of the fourth paragraph in section 2.1.

Resolved, on motion of Mr Kelly, to delete the second sentence “The Committee believes this view has some merit, particularly if Parliament is moving towards allowing agencies increased flexibility in spending of global appropriations.” in the fifth paragraph in section 3.2.

Resolved, on the motion of Mr Kelly, to delete the fourth and fifth sentences “By increasing flexibility for spending of ordinary appropriations, it follows that the Government would only require additional funds for a very limited range of purposes. Restriction of the Treasurer’s Advance to unforeseen and urgent purposes would have no detrimental effect on the operation of the government, and have the added advantage of improving parliamentary scrutiny of government expenditure.” in the fifth paragraph in section 3.2.

Resolved, on the motion of Mr Primrose, to add the word “However,” to the start of the fifth paragraph in section 3.3.

Resolved, on motion of Mr Kelly, to delete the sentence “It may be worth reviewing this concern once the pending federal tax reform measures are introduced, as costs may be reduced as a result of the reforms.” from the end of the fifth paragraph in section 3.3.

Resolved, on motion of Mr Moppett, that the last sentence of the first paragraph in section 3.4 be amended by deleting the words “but in most cases it is unlikely it can be reversed” and replacing them by “and has the power to disallow it. However, in practice, once monies have been spent it is unlikely they can be recovered.”

Resolved, on motion of Mr Moppett, to delete the word “inevitably” from the phrase “has inevitably led to” and replace the word “reduced” by the words “less specific” in the second sentence in the second paragraph in chapter 4.

Resolved, on motion of Mr Ryan to insert “The Committee notes that the Appropriation (Budget Variations) Bill 2000 adheres to this policy, in that the appropriation has been introduced prior to expenditure taking place. The Bill does, however, include retrospective commencement and validation of expenditure clauses (clauses 2 and 11). It would appear that these provisions are cautionary.” at the end of the fifth paragraph in chapter 4.

Resolved, on motion of Mr Ryan, that the report, as amended, be the report of the Committee.

**6. Adjournment**

The meeting adjourned at 3.15pm until 10.00am on Monday, 1 May 2000.

Anna McNicol  
Director

## REFERENCES

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- Moore, B. (Ed.), 1999. *The Australian Oxford Dictionary*, Melbourne, Oxford University Press.
- Nicholls, D., 1991. *Managing State Finance: The New South Wales Experience*, Sydney, NSW Treasury.
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