

General Purpose Standing Committee No. 1

Appropriation and Expenditure

Final Report

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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 House on the motion of the Hon John Ryan MLC, on 1 June 1999 (*Minutes of Proceedings No 7*, page 115).

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The Hon Tony Kelly, MLC Australian Labor Party (Deputy Chairman)

The Hon Doug Moppett, MLC National Party

The Hon Peter Primrose, MLC Australian Labor Party

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Chairman's Foreword

This is the second and final report of the Committee on its inquiry into current provisions for the appropriation of moneys and authorisation of expenditure in New South Wales. The working title of this inquiry, "Appropriation and Expenditure" has been adopted as the title of this report.

The interim report considered the past practices concerning expenditure of public funds, 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 commended 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.

In accordance with the intended progress of this inquiry, this final report has focussed on the powers of Parliament to oversight Government expenditure, and considered proposals to change financial and annual reporting legislation.

Until recently, the financial management and reporting regime in NSW extended very broad powers to the Treasurer to reallocate resources within government. A new regime is proposed by NSW Treasury, which aims to tighten these provisions. Certain measures have already been implemented to move towards better reporting and to a focus on outcomes. Both measures are anticipated to enhance the ability of Parliament to oversee Government expenditure.

The role of the Legislature especially the NSW Legislative Council, as the "House of Review", in overseeing the work of the Executive is a fundamental principle of our system of democracy and therefore, rather than focus on the manner in which monies are appropriated for the operations of Government, the Committee has considered broader issues. Accordingly, the Committee has examined the crucial roles of the Public Accounts Committee and the Auditor-General as the Parliament's "watchdogs" over the Executive.

I would like to thank my fellow Members of the Committee and the Committee secretariat for their involvement during the inquiry and in preparing this report. I particularly note the efforts of the Senior Project Officers Jacqui McManus and Robert Stefanic and Parliamentary Clerical Officer, Ashley Nguyen for their research, analysis and administrative support.

The Rev Hon Fred Nile MLC

Chairman

Summary of Recommendations

Recommendation 1 *Page 19*

That NSW Treasury continue its consultative and collaborative approach with public sector agencies not only to achieve comprehensive reform of current public sector reporting and accountability, but to also ensure that a continuous process of review and improvement is implemented.

Recommendation 2 *Page 19*

That the Government progress amendments to the Annual Reporting Act and Regulations in line with the proposals outlined by NSW Treasury in its 1998 document *Fundamental Review of NSW Financial and Annual Reporting Legislation*, which includes requiring agencies to obtain and produce comparative data to benchmark their operations.

Recommendation 3 *Page 19*

That the Government, in redrafting the legislation, consider requiring agencies and controlled entities (such as areas health services) that have important roles and functions, to produce annual reports to Parliament.

Recommendation 4 *Page 19*

That the Government progress recommendations from the earlier report by the Audit Office entitled *Key Performance Indicators* in relation to introducing legislative requirements for the validation of performance information reported by agencies.

Recommendation 5 *Page 26*

That the *Public Finance and Audit Act 1983* be amended to reinstate the allocation of funds to agencies by budget programs.

Recommendation 6 *Page 30*

That any changes to financial and annual reporting legislation of NSW require the reports of the Auditor-General be tabled in both Houses of Parliament.

Recommendation 7 *Page 34*

That the Government should be required by statute to formally respond to reports of the Public Accounts Committee within six months of the tabling of those reports and that the relevant Minister table the response in Parliament.

Recommendation 8 *Page 34*

That the *Public Finance and Audit Act 1983*, be amended to re-constitute the Public Accounts Committee from a committee of the Legislative Assembly to a joint committee of both Houses of Parliament.

Recommendation 9 *Page 38*

That no additional legislative changes be made which would increase the control of the Treasurer over the detail of government spending where it would further diminish parliamentary scrutiny of spending by government agencies.

Recommendation 10 *Page 38*

That the Treasurer be delegated the power to adjust the net cost of services between programs within an agency or portfolios limited to a percentage of the total budget for that agency or portfolio.

Glossary

Activity	A group of tasks which contributes towards the achievement of the objective of a program ² .
Agency	State department or body 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"> · Taxes, fines, fees collected; · Commonwealth grants; and · Financial distributions from non-General Government agencies such as dividends or dividend equivalents³.
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 ⁴ . 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 ⁵ .
Government Trading Enterprises	State bodies that generally provide self funded goods and services, ie they finance their operations mainly through their own activities.
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.

² D Nicholls, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, p 184.

³ *Budget 1999-2000 Budget Guide*, NSW Treasury, p 10.

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

⁵ 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.

Program	The principal building block where government policy objectives are set to be achieved through a series of activities ⁶
Public Accounts	The annual audited statements of the Consolidated Fund and the Special Deposits Accounts.
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.
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.

⁶ D Nicolls, *Managing State Finance: The NSW Experience*, NSW Treasury, 1991, p 184.

Chapter 1 **Review of Financial and Annual Reporting Legislation**

Introduction

Conduct of the inquiry

- 1.1** This is the second and final report of the inquiry by General Purpose Standing Committee No 1 into the current provisions for the appropriation of moneys and authorisation of expenditure. The interim report specifically addressed the first two points of the terms of reference, which are:
- the provisions of the Appropriation (1998-1999 Budget Variations) Bill, and
 - 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.
- 1.2** The final report was to address the last two points of the terms of reference, which are:
- any proposals for change to financial and annual reporting legislation, and
 - the powers of the Parliament to oversight Government expenditure.
- 1.3** On 10 April 2000, the Committee met with officers from NSW Treasury including, 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 and Ms Julie Bryson, Analyst. The NSW Treasury officers provided an informal briefing to the Committee about the Working Paper *Fundamental Review of NSW Financial and Annual Reporting Legislation* and answered questions from Members
- 1.4** An additional public hearing was conducted on 1 May 2000 to gather evidence from the office of the NSW Auditor-General, Mr Bob Sendt, specifically with respect to the terms of reference that are addressed in this final report.

Accountability and financial reporting

- 1.5** Financial and annual reporting is of significant importance in ensuring accountability of government. If governments are to be held accountable for the use of resources entrusted to them, there must be an authority which controls public sector finances and creates mechanisms to regulate the activities of government agencies and make them accountable. There must also be a general knowledge and acceptance of that authority.

- 1.6** The Constitutions of both the Commonwealth and New South Wales currently provide the broad structure that determines the relationship between government and parliament. Both Constitutions stipulate how revenue can be raised and under what circumstances government can spend the money raised. Other state legislation provides for the detail for control of finances and the reporting of expenditure. Parliament has also established certain committees such as the NSW Public Bodies Review Committee, the Public Accounts Committee and the General Purpose Standing Committees to assist it in scrutinising government expenditure.
- 1.7** This chapter first examines the current framework within which the NSW Government produces financial and annual reports. Several weaknesses have been identified, which result from gradual change in the way the public sector operates (over the past fifteen years).
- 1.8** A group of interested parties led by NSW Treasury ('Working Party') reviewed the current legislation and compiled a working paper entitled *Fundamental Review of NSW Financial and Annual Reporting Legislation* which outlines a new framework that it suggests will better suit the current operations of the NSW public sector. The Premier's Department has also been proactive in making proposals and initiating reviews and reports on public sector activity. The work has largely been undertaken by the Council on the Cost and Quality of Government⁷. These bodies have recommended a move towards output and outcome reporting. This follows recent national and international trends in both government and private sector reporting. Discussion of the Working Party's proposals and also the Premier's Department activities in terms of the New South Wales public sector reporting follows.

Current financial and annual reporting legislation

- 1.9** Over the last 15 years, the financial and resource management processes of the NSW Public Sector have undergone significant changes. These changes have arguably improved accountability and transparency. The Secretary of the NSW Treasury, Mr John Pierce offers some examples:

Originally the information provided ex-ante, before expenditures were incurred, was on the intended cash-based appropriations to departments to acquire some predetermined levels of inputs – number of staff, maintenance, and that sort of thing. Information was provided about what resources agencies were using but very little about what they were using them for...

In that case parliamentary oversight was necessarily constrained to focussing on all those inputs and setting prescriptive controls over those inputs. Following the move in 1982 to introduce program budgeting, by the late 1980's information was provided on department allocations and expenditures and staff in terms of the activities undertaken. That represented an important shift in focus from the resources that agencies were using to being able to help answer the question about what they needed resources for. This allowed Parliament to oversight the broad application as well as the use of the moneys.

⁷ Formerly known as the Council on the Cost of Government.

Supporting this shift, the budget papers have progressively provided details of outlooks and outcomes as we have been able to get that information together...

Coupled with this was the adoption of public finance standards referred to as government finance statistics for budget presentation... That means that changing a budget result by shifting an agency out of the scope of the budget and putting it elsewhere is not available to governments these days because the coverage of the budget is determined by an independent authority.

...The move to accrual presentation provided more accurate information about the financial position of agencies indeed of the general government sector as a whole, as well as providing the full cost of providing services...

The move to net appropriations...reinforced the need to shift the emphasis from inputs to outputs, since, varying degrees, agencies became less dependent on Consolidated Fund support to carry out their activities...⁸

1.10 The requirements relating to the financial and annual reporting of the NSW Government are principally included in the following New South Wales Acts:

- *Constitution Act 1902*;
- *Public Finance and Audit Act 1983*;
- *Annual Reports (Statutory Bodies) Act 1984*;
- *Annual Reports (Departments) Act 1985*;
- *Public Authorities (Financial Arrangements) Act 1987*;
- *State Owned Corporations Act 1989*; and
- *General Government Debt Elimination Act 1995*.

1.11 Some of these Acts reflect Treasury changes outlined above, however, many other legislative provisions are now outdated by the changes and the number of Acts involved is cumbersome. A brief analysis of some of the relevant legislation and a commentary on their limitations follows.

The NSW Constitution Act 1902

1.12 The New South Wales Constitution sets out the powers of Parliament, provides for the election of its members and includes a number of important financial provisions. In particular, it establishes the main government fund - the Consolidated Fund⁹. The State's main revenues attributable to that fund are taxes and Commonwealth grants. Revenues in the Consolidated Fund must be appropriated for specific purposes which must be provided

⁸ Evidence of Mr John Pierce, Secretary, NSW Treasury, 2 February 2000, pp 15-16.

⁹ Section 39, NSW *Constitution Act 1902*.

for in an Act of Parliament¹⁰. Typically, the costs of the traditional services of government met from this fund are outlined in an Appropriation Act which is usually enacted on an annual basis.

- 1.13** Unlike the Commonwealth Constitution, much of the NSW Constitution can be limited or amended by the Parliament itself¹¹. The State Constitution is not a Bill of Rights specifying the limitations of government powers.

Public Finance and Audit Act 1983

- 1.14** The *Public Finance and Audit Act 1983 (PFAA)* which came into operation in 1984, governs the financial activity of government and makes provisions with respect to the administration, accounting and auditing of public finances and the manner in which Parliament exercises control over the Executive Government's expenditure of public money.

- 1.15** Administrative matters such as deposit account management, expenditure controls and accounting methodologies are covered in Part 2 of this Act as are provisions regarding the appropriation of public moneys. These include the authority for the Treasurer (with the Governor's approval) to use Consolidated Funds for exigencies of Government in anticipation of the Parliament's approval¹². The former Auditor-General, Mr Tony Harris recommended that the use of this provision be tightened significantly¹³. The term 'exigencies' has in the past been interpreted very broadly by governments. The Treasury's *Fundamental Review of NSW Financial and Annual Reporting Legislation* addresses this matter (refer 1.29 below).

- 1.16** Part 3 of the *PFAA* covers audit matters including the appointment and duties of the Auditor-General. Schedules 2 and 3 to the *PFAA* require all statutory bodies and departments listed in those Schedules to produce financial statements and submit them to the Auditor-General. The Auditor-General is required to report the findings to the Legislative Assembly¹⁴. The requirements for annual reports are set out in the *Annual Reports (Statutory Bodies) Act 1984*, the *Annual Reports (Departments) Act 1985* and regulations under those Acts (refer below).

- 1.17** The Public Accounts Committee (PAC), is a Parliamentary Committee established under Part 4 of the Act. Its purpose is to exercise Parliament's review powers over the efficiency, effectiveness and accountability of the public sector. The Committee comprises five

¹⁰ Section 45, *NSW Constitution Act 1902*; note this section is not entrenched in the Act according to the Crown Solicitor and consequently merely acts as a guide to Parliament, which can be set aside if so decided.

¹¹ Section 7, *NSW Constitution Act 1902*.

¹² Section 22, *Public Finance and Audit Act 1983*.

¹³ NSWPD (Legislative Assembly), 10/11/99, p 9475.

¹⁴ Section 52A, *Public Finance and Audit Act 1983*.

members of the Legislative Assembly¹⁵, three of whom including the Chairman are traditionally Government members. The Committee examines and reports to the Legislative Assembly on any matter connected with the audited public accounts, the audited accounts of agencies and the Auditor-General's reports to Parliament¹⁶. Additionally, the PAC may report on any suggestions to improve the form and method of keeping records and methods of receipt and control related to expenditure of public money. The Committee also has the power to inquire into any aspect related to the State's accounts referred to it by the Legislative Assembly, a Minister or the Auditor-General and any expenditure made without parliamentary authority¹⁷. The Committee is however precluded from inquiring into government policy unless it has received a reference from the Legislative Assembly or a Minister¹⁸. The Committee has the power of veto over the appointment of an Auditor-General¹⁹.

1.18 The former Auditor-General pointed out the limited effectiveness of the Public Accounts Committee in his 1999 report to Parliament. He noted that there are:

- no legislative requirements (or practice) for the Government to respond to recommendations made in Committee reports;
- limitations on power to call for persons, papers and records (its powers being less than those of other parliamentary committees).²⁰

1.19 The issue of unlawful spending highlights the PAC's limitations resulting from the lack of any requirement for the Government to respond to its reports. Former PAC reports have on many occasions raised concerns about expenditures made without or before appropriation. Most of the recommendations of these reports have not received a response in Parliament despite Government majority and bi-partisan support.

1.20 The NSW Treasury Working Paper, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, has addressed this issue by proposing that the PAC has the same powers as other Parliamentary Committees (refer 1.35 below).

Annual Reports (Statutory Bodies) Act 1984 and the Annual Reports (Departments) Act 1985

1.21 The annual report of an agency is the primary medium by which an agency discharges its accountability to the Parliament and the general community. Public accountability is essential for the efficient and effective operation of Government agencies. Enhancing the transparency of transactions and the accountability of agencies is particularly important

¹⁵ Section 54(2), *Public Finance and Audit Act 1983*.

¹⁶ Sections 57(1)(a) to 57(1)(e), *Public Finance and Audit Act 1983*.

¹⁷ Sections 57(1)(f) and 57(1)(g), *Public Finance and Audit Act 1983*.

¹⁸ Section 57(2), *Public Finance and Audit Act 1983*.

¹⁹ Section 57A, *Public Finance and Audit Act 1983*.

²⁰ *New South Wales Auditor-General's Report to Parliament for 1999*, Vol 1, p 17.

given the increasing devolution of responsibility to managers at the agency level (by the Executive government).

1.22 The *Annual Reports (Statutory Bodies) Act 1984* and the *Annual Reports (Departments) Act 1985* require the board of a statutory body and the heads of a departments to submit an annual report to the relevant Minister and a copy to the Treasurer within 4 months after the end of each financial year. Under the legislation, the Minister is required to table the report in Parliament within one month after receipt.

1.23 The legislation provides guidelines for minimum information to be reported. It 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, review of operations and performance measures.

General Debt Elimination Act 1995

1.24 This Act applies to the general government sector. It establishes fiscal targets and principles as well as budgeting and reporting requirements for that sector.

1.25 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;
- (c) to provide for reports on departures from those fiscal principles to be prepared by the Treasurer;
- (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.²¹

1.26 The short term fiscal target set by the Act was to achieve a budget surplus by the end of the 1999 fiscal year²². The medium term fiscal target is to reduce the level of general government sector net debt to a sustainable level by 30 June 2005²³. By 2020, it is anticipated that State debt will be reduced to nil²⁴.

²¹ Section 3, *General Government Debt Elimination Act 1995*.

²² Section 6, *General Government Debt Elimination Act 1995*.

²³ Section 7, *General Government Debt Elimination Act 1995*.

²⁴ Section 8, *General Government Debt Elimination Act 1995*.

1.27 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 restraint²⁵.

1.28 The Act does not place any enforceable obligation on any person and does not intend to require compliance to be monitored. Consequently, no court or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance with the Act²⁶. The Act also does not alter in any way the operation of the *PFAA*²⁷.

Fundamental Review of NSW Financial and Annual Reporting Legislation

1.29 NSW Treasury formed a Working Party with representatives from central agencies, major line agencies and The Audit Office of NSW to consider changes to the structure of financial reporting legislation and deficiencies in the reporting regime.

1.30 The aim of the review was to introduce a new piece of legislation that reflects the modern principles and practices with respect to public money, public finance, financial management and accountability. The view expressed in the resultant Working Paper was that at present the State's legislation does not reflect the recent developments in the philosophy and direction of public finance which has taken place in New South Wales²⁸.

1.31 The Working Paper proposes a new single Act (to be named the *Financial Management and Accountability Act*) which will consolidate and replace the existing *Public Finance and Audit Act 1983*, *Annual Reports (Statutory Bodies) Act 1984*, *Annual Reports (Departments) Act 1985*, *Public Authorities (Financial Arrangements) Act 1987* and substantial parts of the *General Government Debt Elimination Act 1995*. It is proposed the new Act will consist of ten parts and that Regulations and Statements of Best Practice, issued by the Treasurer, will be used to stipulate finer details in support of the new Act.

²⁵ Part 3, *General Government Debt Elimination Act 1995*

²⁶ Section 27, *General Government Debt Elimination Act 1995*

²⁷ Section 28, *General Government Debt Elimination Act 1995*

²⁸ Working Paper, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, Executive Summary, p i.

- 1.32** In July 1998 the Working Paper was circulated for response to the proposals from all Ministers and Agencies. The Government received 74 submissions providing comments on the Working Paper. Amendments to the original proposal have been made in accordance with these submissions. Other suggestions made in the submissions will either be put to the Premier's Department, Cabinet or to the Working Party and Reference Panel before they are included in the proposed legislation.²⁹
- 1.33** The final proposal document will be released to Cabinet for in-principle approval and authority to prepare draft legislation after this inquiry's recommendations have been considered³⁰.
- 1.34** Some amendments to existing legislation have already been made in accordance with recommendations made in the Working Paper. For example, the deadline for submission of public accounts has been amended to avoid previous conflicts in reporting deadlines between agencies³¹.

Relevant Proposals

- 1.35** It is proposed that the new legislation will consolidate existing legislation and proposes significant improvements in certain areas. Some of the changes proposed by the *Fundamental Review of NSW Financial and Annual Reporting Legislation* include:
- the Treasurer will only be permitted to authorise emergency payments out of the Consolidated Fund in situations arising from a natural disaster, unforeseen Court Verdict against the State or unforeseen contractual obligations (Ch 3)³². This represents a significant tightening up of s 22 of the *PFAA* currently allowing expenditure without appropriations for exigencies;
 - capital expenditure is currently not permitted from the Treasurer's Advance. The proposal intends to set a limit, of 1% of the published estimate of current receipts for the next financial year, for both recurrent and capital purposes combined.
 - the amount of the Treasurer's Advance will be benchmarked in regard to the amount to be included in an annual Appropriation Bill, beyond which the Treasurer will be required to explain reasons for the size of the balance (Ch 3);
 - transfers of parliamentary appropriations between agencies will only be permitted where the agencies are in the same Ministerial Portfolio (Ch 3);

²⁹ see for example, *Summary of Issues Raised in Submissions on Treasury's Consultative Document - Fundamental Review of NSW Financial and Annual Reporting Legislation*: Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 1 March 2000.

³⁰ Evidence of Mr John Pierce, Secretary, New South Wales Treasury, 2 February 2000, pp 11 and 22.

³¹ *Public Finance and Audit Amendment (Consolidated Financial Statements) Act 1999*.

³² Note that draft legislation is not yet available, references are to relevant chapters of the Working Paper

- the Treasurer will be given the power to approve the transfer of appropriations from one agency to another following the restructuring of administrative functions (Ch 3);
- agencies are to establish strategic and business planning systems incorporating annual planning activities culminating, where applicable, in the preparation of a Statement of Financial Performance or a Statement of Corporate Intent (Ch 4);
- the new Act will override other State legislation (except the *State Owned Corporations Act 1989*) with regard to the determination of financial planning and control (Ch 4);
- the Treasurer is to prepare and publish annual consolidated financial statements for the State Public Sector and the General Government Sector (ie budget and non-budget dependent) as well as annual and monthly Government Finance Statistics statements on the budget results covering the General Government Sector. In addition, there will be a publication of six monthly accrual consolidated financial statements for the General Government Sector (Ch 5);
- the Treasurer is to present an annual Budget Policy Statement incorporating projections of variables and assessment of progress in achieving targets. A further assessment should be made in February each year (Ch 5);
- the Chief Executive Officer of each agency will be responsible for effective and efficient management of its resources. Provisions will be included in the new Act which complement the *Public Sector Management Act 1988*, focussing on outputs and outcomes (Ch 8);
- an officer who receives public money must promptly bank it into an account specified by the Treasurer within the Treasury Banking System and the money cannot be withdrawn without a proper authority (Ch 8);
- criminal and civil proceedings provisions will be included to cover the misapplication or improper use of public money or property (Ch 8);
- audit opinions on the financial statements of agencies are to state whether those statements present a true and fair view (Ch 9);
- policy objectives in the context of a performance audit are to be established by the relevant Minister prior to the commencement of the audit (Ch 9);
- the Audit Office is to be established as a Statutory Body to enhance its administrative independence from the Executive Government (Ch 9);
- the funding of The Audit Office is to be met by parliamentary appropriations through a separate annual Appropriations Bill (Ch 9). Several submissions addressed this change;

- the Treasurer will be given the power to allow departure from Accounting Standards (as currently exists) but only on the basis that to adhere to the standard would not produce reports reflecting a true and fair view of the agencies operations. This proposal has been the subject of many submissions;
- specific provisions will require a copy of the draft audit report to be given to the agency being audited for comment (Ch 9) (however, the Auditor-General has stated that this may undermine his independence as his client is Parliament and he does not support this proposal³³);
- the PAC is to be provided with an enhanced general role to oversee the Auditor-General and the Audit Office (although audit opinions are not to be reconsidered or overturned by the PAC) (Ch 9); and
- the PAC is to have the same powers as other parliamentary committees in relation to calling persons, papers and records in the course of an inquiry (Ch 11).

Submissions to the proposals

1.36

The Working Paper notes that the majority of the 74 submission received by the Working Party supported the recommendations or proposals contained in *Fundamental Review of NSW Financial and Annual Reporting Legislation*³⁴. Treasury has summarised the issues raised in the submissions. A detailed analysis of eight major issues raised is included in Appendix 3. In summary the issues are:

- “true and fair view” override – the Working Paper proposed the Treasurer’s power to allow departure from Accounting Standards remain but be tied to a true and fair view test so that departure will only be allowed in situations where following the standard would not produce a true and fair view of the agency’s activities³⁵. Twenty one respondents indicated that they do not support the tie. The former Auditor-General noted that ‘true and fair’ is subjective and it is now recommended that the power remain but without a tie to the true and fair test³⁶;
- differential reporting – the Working Paper proposes different reporting formats for different classes of agencies³⁷. Smaller agencies would have a lower number of reporting requirements imposed upon them. Some respondents did not support this proposal on the basis that reporting requirements should be as uniform as

³³ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 13.

³⁴ NSW Treasury, “Working Paper”, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, Executive Summary, p xii.

³⁵ NSW Treasury, “Working Paper”, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 36.

³⁶ NSW Treasury, Private Briefing to the Committee, 10 April 2000, p 27.

³⁷ NSW Treasury, “Working Paper”, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 39.

possible. The current degree of differentiation will be carried forward to the draft of the new legislation³⁸;

- funding of the Audit Office – the Working Paper proposes changing the current funding arrangements. Agencies are currently charged for financial statement audits, special audits and Auditor-General’s reports. The Working Paper proposes these services be funded from parliamentary appropriations³⁹. After discussion with agencies and the Auditor-General the proposal to change current arrangements has been withdrawn⁴⁰;
- Access by the Auditor-General to Cabinet documents and documents subject to legal professional privilege – the Working Paper suggests this access should be made available⁴¹ (documents subject to legal professional privilege are currently not made available). Restrictions on reporting of those documents is proposed;
- responses to Public Accounts Committee reports – that the Government be required to respond to PAC reports by law⁴². There is currently no requirement to do so although it has been the practice of successive Government’s. The suggestion is to be referred to Cabinet⁴³;
- Public Accounts Committee powers – that the PAC be given the power to compel the production of documents by agencies and Ministers in connection with its inquiries, a power it currently does not have⁴⁴. It is noted that the House already has those powers and if the House considered this necessary, it could order the production of relevant documents on behalf of the Committee;
- the Treasurer’s Advance – the former Auditor-General has suggested that the use of the Advance should be restricted. It is noted that there is no other jurisdiction other than the Commonwealth imposes restrictions. It was however suggested that the use of the Advance be reported in the current year’s Public Accounts; and
- development of key performance indicators (KPIs) for agencies – it has been suggested that the new legislation specify KPIs and they should be approved by the relevant Ministers. The NSW Treasury Working Paper proposes that the Auditor-General should only have the power to check arithmetic accuracy not its

³⁸ NSW Treasury, Private Briefing to the Committee, 10 April 2000, p 28.

³⁹ NSW Treasury, “Working Paper”, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 77 and 90.

⁴⁰ NSW Treasury, Private Briefing to the Committee, 10 April 2000, p 28.

⁴¹ NSW Treasury, “Working Paper”, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 99.

⁴² The Working Paper did not include this proposal.

⁴³ NSW Treasury, Private Briefing to the Committee, 10 April 2000, p 29.

⁴⁴ NSW Treasury, “Working Paper”, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 99.

relevance⁴⁵. This proposal is based on the premise that performance audits do not extend to reporting on the appropriateness of the government's policy objectives.

Key Performance Indicators and outputs and outcomes reporting

- 1.37** The Treasury concluded its submission to this Committee with the suggestion that Parliament should be focussed on monitoring performance rather than controlling inputs. Accountability of Government would then occur through the assessment of performance against the original accrual based budget, which justifies the cash appropriations from the Consolidated Fund⁴⁶.
- 1.38** The NSW Government has increasingly tended to focus on performance rather than profitability or expenditure. The shift has resulted from a better understanding of government's functions and its information needs. In particular, it has been acknowledged that government entities are not the same as private or commercial entities for the reason that the ongoing viability and solvency of government agencies is not dependent on its profits whether or not it delivers a particular service to the community. A program is likely to continue if it appears to meet policy objectives.
- 1.39** Monitoring performance requires management to account for their activities with timely and accurate reporting. The components of management accountability include regularity and legality (meeting requirements), economy (focusing on inputs), efficiency (relating inputs to outputs) and effectiveness (achieving policy outcomes). Effectiveness is the highest level of performance accountability which concurs with the recent shift in focus in New South Wales financial management. Specifically, this increased focus is on key performance indicators and the increasing requirement to report them in both current legislation and the proposed legislation.
- 1.40** The move to accrual budgeting has included a transfer of parliamentary focus from financial inputs to outputs and outcomes achieved with the use of performance indicators⁴⁷. The NSW Budget Papers currently include output and outcome benchmarks as a performance measure for various agencies⁴⁸. However, to make these benchmarks useful, they must be subject to the same auditing standards as, for example, applied to the financial information contained in Budget Paper 3.
- 1.41** Additionally, Service and Resource Allocation Agreements are currently being trialled. These agreements are intended to provide guidelines for financial, outcome and output measures⁴⁹. The agreements will be based in part on an agency's own performance

⁴⁵ NSW Treasury, "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 79.

⁴⁶ Submission No 7, NSW Treasury, p 14.

⁴⁷ *New South Wales Auditor-General's Report to Parliament for 1999*, Vol 1, p 18.

⁴⁸ Budget 1999-2000, *Budget Estimates*, Budget Paper 3.

⁴⁹ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 49.

indicators which are included in their Annual Report. This reporting and management approach has been adopted in the proposed Act⁵⁰.

1.42 The need to account for results achieved from resources allocated has taken precedence over the need to account for the use of public funds in accordance with the relevant provisions.

1.43 The Secretary of NSW Treasury outlined the benefits:

...greater focus on accountability for performance is evidenced in a number of ways, including greater reporting of financial and non-financial performance information. To provide greater insight into the outputs produced by government programs and the outcomes these contribute to, the New South Wales budget papers have progressively provided increasing details of program outputs and outcomes.

Outputs are the goods and services produced by agencies, such as the supply of policy advice, enforcement of regulations, and the provision of particular services to the community. Outcomes are the impact of these outputs on the community, which may be translated into things to give us a safer and more secure community, for example, in the law and order area.⁵¹

1.44 This focus on reporting (and ultimately accountability) transferred much of the responsibility from Ministers to agencies with the purpose of more effective and efficient management of the State's limited resources. The flexibility required to meet these new responsibilities has been extended to agency chief executives as a result of the abolition of program appropriations.

Problems with output and outcome reporting

1.45 The most significant problem with output and outcome reporting is the perceived loss of Parliamentary oversight of government spending as a result of greater management responsibility transfer to agencies (refer Chapter 2 for a detailed discussion).

1.46 More specifically, the difficulties now faced with outcome reporting include the tracking and assessing of outcomes. The Council for the Cost and Quality of Government has been working in this area over the past few years and has been encouragingly successful in the development of Service and Effort and Accomplishment reports.

1.47 Although outputs can be quantified, the measurement of outcome is more difficult. In their text on *Public Sector Accounting and Accountability in Australia*, Funnel and Cooper explain:

Whereas outputs can be quantified, preferably in financial terms, outcomes are most often assessed using qualitative measures...Quantification of outcomes may

⁵⁰ NSW Treasury, "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, p 64.

⁵¹ Evidence of Mr John Pierce, Secretary, NSW Treasury, 2 February 2000, p 4.

not, however, capture the essence of the results of government policies and spending...⁵²

1.48 Additionally, despite the increasing international use of output and outcome reporting many commentators have criticised the narrow focus adopted by governments in regard to economic efficiency and effectiveness⁵³. While this approach may be appropriate in commerce, governments need to recognise the different functions and purpose of the public sector. While many private sector initiatives can be applied to the public sector, the government's 'customer' is much more than a mere consumer of a good or service given they are also citizens. Furthermore return of profit is not the objective of the public sector but rather the provision of services.

1.49 Problems also arise with regard to developing KPIs to measure outcomes. For example, in a recent Performance Audit Report, The Audit Office noted that, how items are reported and measured varied considerably across agencies. Consequently, The Audit Office sees the need for independent validation of KPIs⁵⁴. The Audit Office recommended that guidelines be compiled to ensure consistency. It was noted that the Public Bodies Review Committee did release guidelines in 1995, however these are without legislative backing⁵⁵. By contrast the Premier's Department was of the view that:

...while there is value in a certain level of standardisation it is essential that agencies have flexibility to choose the most appropriate reporting methodology.⁵⁶

Connection between KPIs and appropriations

1.50 Effective reporting requires more than merely reporting variances to agreed outputs and outcomes and without some incentive to achieve targets they are meaningless. Where targets are consistently not achieved it must be possible to identify the reasons for not reaching targets so that changes can be implemented to ensure outcomes are met in the future. A financial penalty for non-compliance is not appropriate since it will be the quality of the public services provided that would be sacrificed. Where targets are consistently not achieved some tie to management review or remuneration may be more feasible, for example, where targets are not met by an agency for two consecutive years a special audit may be conducted and a full management review undertaken.

1.51 Additionally, the targets themselves need to be meaningful. Currently agencies set their own targets and report on them discriminately. Where targets are not met they may be omitted or redefined so that comparison over several years is not possible nor true assessment of the agency's performance. Consequently, the need for independent

⁵² W Funnell & K Cooper, *Public Sector Accounting and Accountability in Australia*, UNSW Press, 1998, pp 38-39.

⁵³ W Funnell & K Cooper, *Public Sector Accounting and Accountability in Australia*, UNSW Press, 1998, pp 294-301.

⁵⁴ The Audit Office of NSW, *Performance Audit Report: Key Performance Indicators*, August 1999, p 4.

⁵⁵ The Audit Office of NSW, *Performance Audit Report: Key Performance Indicators*, August 1999, pp 2-3 and 19.

⁵⁶ The Audit Office of NSW, *Performance Audit Report: Key Performance Indicators*, August 1999, p 21.

assessment and review of the targets and KPIs developed is paramount to the success of this approach. However, the Auditor-General will not have the power to consider the relevance of an indicator, merely its arithmetic accuracy (refer 1.36 above). The Committee also notes the following comments by the Audit Office of NSW in its recent Performance Audit Report:

In the 1999 performance audit, the Audit Office advocated that the independent valuation of performance information be made a legislative requirement. It was noted, for instance, that in Western Australia the Auditor-General has been given the mandate not only to audit the accuracy of the indicators, but also to attest to their relevance and that they reflect the agency's primary legislation.

The Audit Office considers that an independent validation of performance indicators is an essential component of accountability.⁵⁷

1.52 Although there is no proposal by Treasury to explicitly link appropriations with output and outcome measures, the relationship between the outputs and outcome of an agency and the appropriation it receives requires greater clarification. Appropriations are the only real control Parliament has over public sector spending. While accountability provides a form of control in the future it bears little relevance to current activities or meeting the set targets. The former Auditor-General raises the following questions regarding the utilisation of an output and or outcome targets. They are:

...merely a guide, goal or an aim and what is achieved does not really matter; they still get to spend the appropriation, or is there some restraint on the appropriation depending on the numerical achievement?⁵⁸

1.53 Such concern have been raised both nationally and internationally as there has been a growing focus on output and outcome measures to enable assessment of efficiency, effectiveness and appropriateness of government funded services. Service Resource and Allocation agreements are currently being developed by some agencies in conjunction with Treasury in an attempt to address this problem⁵⁹. At the time of writing this report, details regarding these agreements were not available, however the Committee notes that the Auditor-General has recently issued a series of reports addressing this issue.⁶⁰

⁵⁷ The Audit Office of NSW, *Performance Audit Report: Judging Performance from Annual Reports: Review of eight agencies' annual reports*, November 2000, p 5.

⁵⁸ Evidence of Mr Tony Harris, Writer for the *Australian Financial Review*, 2 February 2000, p 66. [former NSW Auditor General]

⁵⁹ The Audit Office of NSW, *Performance Audit Report: Key Performance Indicators*, August 1999, p 21.

⁶⁰ The Audit Office of NSW, *Performance Audit Report: Key Performance Indicators*, August 1999; The Audit Office of NSW, *Performance Audit Report: Judging Performance from Annual Reports: Review of eight agencies' annual reports*, November 2000; The Audit Office of NSW, *Better Practice Guide - Reporting Performance*, November 2000.

Council on the Cost and Quality of Government⁶¹

- 1.54** The Council on the Cost and Quality of Government was established in October 1995 under the *Public Sector Management Act 1988* for a three year period. The Council's original function was to review Public Sector financial management and its operational effectiveness and efficiency and identifying ways of improving it⁶². Since then it has developed into the Government's key management advisory body, reporting directly to the Premier.
- 1.55** The Council has given regard to the nature of accountability relationships within the NSW Public Sector. In particular it has considered the role accountability can serve in effectively linking policy, planning and resource allocation. In order to achieve effective accountability however, quality information is required about the cost of government and the services provided. The Council found a myriad of reports being produced by agencies. They found that line agencies estimated around 60% of information reportable was "avoidable" amounting to \$7.7 million for regular reports produced and \$7.3 million for additional 'ad hoc' reporting⁶³.
- 1.56** Additionally, the Council found that the accountability relationships at the time were,
...complex and cumbersome. It is not clear to whom a CEO reports and on what.⁶⁴
- 1.57** On this issue, the Council concluded:
There is a need to ensure clarity of accountabilities, and that a cost-effective approach is taken to accountability and other policy requirements on Ministers and agencies. One way of achieving this is to consolidate requirements in a single document which could be a performance agreement between CEOs and Ministers covering financial management, service performance and organisational health.⁶⁵
- 1.58** Further, the Council suggested:
There may be some value in developing a core set of indicators, appropriate to size and function of the agency, that would facilitate comparison across the sector.⁶⁶
- 1.59** The Council has reported on various ways public sector financial management can be improved, particularly by linking inputs to outputs. The Council reported the need for non-financial measures to be applied to government services (which would be matched against the cost of providing the service) in order to measure efficiency. As a result Service Efforts

⁶¹ Formerly known as the Council on the Cost of Government.

⁶² Section 45, *Public Sector Management Act 1988*

⁶³ Council on the Cost of Government, *Sixth Report*, December 1998, p 41.

⁶⁴ Council on the Cost of Government, *Sixth Report*, December 1998, p 41.

⁶⁵ Council on the Cost of Government, *Sixth Report*, December 1998, p iv.

⁶⁶ Council on the Cost of Government, *Sixth Report*, December 1998, p 41.

and Accomplishment (SEA) reports were developed. The Council believes that SEA reporting will lead to greater public accountability for services provided and better allocation of resources to and within agencies⁶⁷.

- 1.60** Indicators of service efforts and accomplishments have been compiled on 14 areas of NSW Government activity. The Council reported that in 1997-98, close to 4,500 performance indicators on 'outputs' and 'inputs' were published as a result of the SEA project⁶⁸. The focus of these reports is on broad areas of Government activity usually covering a number of agency contributions to a single policy area. The reasoning behind focusing on policy rather than agencies themselves is that the community is primarily concerned about the outcomes achieved and not the agency delivering them. Treasury acknowledges the value and increasing need to develop cross-agency performance management⁶⁹.
- 1.61** The Council reports that the active involvement of agencies in the development of these performance indicators has resulted in various other benefits:
- an overall framework for reporting on performance has been developed through the project;
 - the SEA reports have been used in Budget Committee deliberations and resource allocation decisions; and
 - the rationalisation of information collection and reporting processes ensuring only necessary data was collected⁷⁰.
- 1.62** The SEA Reports were also used in Program Reviews. The Council was requested to undertake a 'strategic review of programs' to ensure they had clear objectives that met community needs and to assess whether they were being met.
- 1.63** There are 204 Budget Programs for NSW, and of these the Council reported that 22 reviews were undertaken in December 1998.⁷¹ Confidential reports on each review are provided to the Budget Committee of Cabinet together with comments from the portfolio minister regarding any recommendations.⁷²
- 1.64** The shortcomings of the performance reviews are the lack of information and misaligned information systems. The Council has looked at system issues relating to identifying expenditure and identified difficulties in tracking trends in costs due to the generally poor

⁶⁷ Council on the Cost of Government, *Fifth Report*, June 1998; pp 9 and 13; Council on the Cost of Government *Sixth Report*, December 1998, Part 2.

⁶⁸ Council on the Cost of Government, *Sixth Report*, December 1998, p iii.

⁶⁹ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 5.

⁷⁰ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, pp 36-37.

⁷¹ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 39.

⁷² <http://www.occg.nsw.gov.au/cocog/whatwedo.html>

state of management information systems.⁷³ In its first report the Council reported that out of the 95 agencies surveyed, 82 were operating different financial information systems. Since that time Treasury established standardised accounting policy and detailed a standard chart of accounts⁷⁴. Treasury indicated that further standardisation of information systems is inappropriate⁷⁵. A new information management system standard is to be implemented by 2002⁷⁶.

- 1.65** The Council has reported that central agencies have been actively implementing reforms⁷⁷. The Premier's Department has released a document entitled *Reform and Redirection*, which reported that \$161 million in direct savings had been achieved since 1995.
- 1.66** The Council's recommendations were incorporated into the proposed reporting legislation.
- 1.67** The Council was to be dissolved on 1 May 1999⁷⁸ however, the Government extended the dissolution date to 13 October 2000⁷⁹. On 1 November 1999 the Council was incorporated into the Corporate Services Reform Unit to form the Review and Reform Division of the Premier's Department.

Conclusion

- 1.68** The work of Treasury together with various committees and the Council on the Cost and Quality of Government indicate a movement in New South Wales to produce the most effective legislative reporting framework. The reform process has been lengthy and continues to progress⁸⁰. A thorough and collaborative approach may achieve successful results.
- 1.69** However the task of maintaining effective legislation is a constantly evolving process and there is a need to ensure that any changes also allow for the flexibility and review required to accommodate future developments. The NSW Treasury Secretary stated:

The reforms to date and indeed the proposals, are not the end of the story. We are really engaged in a continuous process of trying to further improve the financial management of this State in line with the way in which it is being improved more

⁷³Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 21.

⁷⁴ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 51.

⁷⁵ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 37.

⁷⁶ Council on the Cost of Government, *Sixth Report*, December 1998; Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 51.

⁷⁷ Council on the Cost of Government, *Seventh Report*, June 1999, Executive Summary.

⁷⁸ s 47E, *Public Sector Management Act 1988*.

⁷⁹ Schedule 1 to the *Public Sector Management (Council on the Cost of Government) Act 1998*.

⁸⁰ It may be three or four years before new legislation is presented to the Parliament according to Treasury: Evidence of Mr John Pierce, Secretary, NSW Treasury, 2 February 2000, p 16.

generally within the community. The key challenge for us is really the development of better mechanisms and systems...⁸¹

- 1.70** Given the issues to be considered in constructing new legislation, the Committee notes the importance of careful drafting of the legislation. It is possible that difficulties may arise in practice in translating some of the concepts conveyed through the proposed legislation. With this in mind the Committee commends the past efforts undertaken in this area and encourages further consultation and education.

Recommendation 1

That NSW Treasury continue its consultative and collaborative approach with public sector agencies not only to achieve comprehensive reform of current public sector reporting and accountability, but to also ensure that a continuous process of review and improvement is implemented.

Recommendation 2

That the Government progress amendments to the Annual Reporting Act and Regulations in line with the proposals outlined by NSW Treasury in its 1998 document *Fundamental Review of NSW Financial and Annual Reporting Legislation*, which includes requiring agencies to obtain and produce comparative data to benchmark their operations.

Recommendation 3

That the Government, in redrafting the legislation, consider requiring agencies and controlled entities (such as areas health services) that have important roles and functions, to produce annual reports to Parliament.

Recommendation 4

That the Government progress recommendations from the earlier report by the Audit Office entitled *Key Performance Indicators* in relation to introducing legislative requirements for the validation of performance information reported by agencies.⁸²

⁸¹ Evidence of Mr John Pierce, Secretary, NSW Treasury, 2 February 2000, p 17.

⁸² Note, Recommendations 2, 3 and 4 are consistent with the report of the Audit Office of NSW entitled: Performance Audit Report: *Judging Performance from Annual Reports: Review of eight agencies' annual reports*, November 2000, p 6.

Chapter 2 Powers of the Parliament to oversee Government expenditure

The role of Parliament

- 2.1** The major revenue sources for New South Wales include taxes, fines and Commonwealth Government grants. Combined they form the main public purse which is referred to as the Consolidated Fund.⁸³ This fund is used by the elected government to provide goods and services back to the people of NSW. It is the responsibility of the Parliament to ensure that the elected government applies those funds in the best interests of the public. The only legislative power available to the Parliament to fulfil that responsibility is by way of allocating those funds to government agencies.
- 2.2** Section 45 of the New South Wales *Constitution Act 1902* provides that any expenditure of that Fund must be appropriated by an Act of Parliament⁸⁴. No guidance is otherwise provided to set outputs or outcomes. After Parliament has appropriated an amount of funds to a government agency within a ministerial portfolio, Parliament's power to direct how those funds will be used is relinquished. Although Ministers are individually accountable to Parliament for their decisions and actions the public and the Parliament on their behalf are obviously interested in how those funds are used and what outcomes are produced. Consequently, there are requirements to report to Parliament. Reporting requirements are the mechanism used to ensure there is accountability for public moneys. Accountability is often confused with the concept of parliamentary oversight. In fact accountability and transparency are the conduits for better parliamentary oversight. Accounting for the money and reporting the results of activities undertaken enhance the ability of parliaments to allocate funds in the future.
- 2.3** The final issue to be covered during this inquiry is the question of what powers the Parliament has to oversee government expenditure. The present Auditor-General of NSW, Mr Bob Sendt stated:
- The essential matter to be settled is where Parliament sees the boundary between its oversight role and the role of Executive Government in the delivery of government services.⁸⁵
- 2.4** This Chapter considers whether the balance of power between Parliament and the Executive has over time shifted too far in favour of executive control and whether recent legislative changes have further eroded the power of Parliament to scrutinise the expenditure of public funds.

⁸³ s 39, NSW *Constitution Act 1902*.

⁸⁴ s 45, NSW *Constitution Act 1902* and also refer s 21 of the *PFAA*.

⁸⁵ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 3.

Current powers of Parliament

2.5 Changes recently introduced to the *Public Finance and Audit Act 1983 (PFAA)* eliminated the concept of program budgeting. As a result, the budget now consists of one line appropriations to agencies. After the budget is passed, Ministers now have the power to move these amounts within their overall budget or move allocations from one program to another. They can also close programs. The former Auditor-General has noted the increased flexibility available to Government as a result and commented:

This increased flexibility to Government diminished the authority which Parliament has over the use of taxpayer's money and diminished the checks and balances important to a Parliamentary democracy.⁸⁶

2.6 In its submission to the inquiry NSW Treasury appears to refute this view on the basis that only Parliament can pass an Act appropriating money from the Consolidated Fund. Treasury concludes that the issue is more concerned with the ability Parliament has to scrutinise expenditure⁸⁷. This line of reasoning would have more force but for the fact that the Government typically controls the Legislative Assembly which has power over money bills and which the Legislative Assembly may pass with or without amendment.

2.7 Treasury has expressed the view that Parliament has an abundance of power to oversight Government expenditure. In their submission they cite the following available mechanisms:

- Annual reporting;
- Standards for preparation of the Budget and financial reports as well as fiscal responsibility principles;
- Public Accounts Committee;
- External Audit;
- Public Bodies Review Committee; and
- Estimates Committees⁸⁸.

2.8 While the extent to which Parliament should merely scrutinise expenditure or whether it takes up a more active oversight or supervisory role is debatable, it should be for Parliament, not Treasury, to determine.

2.9 It is notable that only the last of the mechanisms listed above permit the oversight of expenditure rather than just the scrutiny of Government expenditure after the money is spent. Estimates Committees involve detailed analysis of line items proposed in the Budget

⁸⁶ *New South Wales Auditor-General's Report to Parliament for 1998*, Volume 2, p 7.

⁸⁷ Submission No.7, NSW Treasury, p 11; also Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 22.

⁸⁸ Submission No.7, NSW Treasury, p 11.

Papers. However, this process again does not truly allow Parliament to monitor Government expenditure. Estimates committees convene each year to consider the Government's budget estimates for the current year. The Appropriation Act will normally have been passed prior to the estimates process. Additionally, since the concept of programs was abandoned, once Consolidated Funds are appropriated in accordance with the detail set out in the scrutinised Budget, the Government is given flexibility in application of those funds. The funds do not have to be spent in accordance with the Budget. The only restriction is the maximum amount of funds available to agencies.

- 2.10** As noted above, Treasury has expressed the view that Parliament's ability to oversight Government expenditure goes well beyond the ability to appropriate funds for specific purposes. Provisions of the relevant financial management and reporting legislation in New South Wales which affect Parliament's ability to oversight Government expenditure are outlined below.

NSW Constitution Act 1902

Sections 5 and 5A

- 2.11** Under s 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.⁸⁹ Given the Legislative Assembly is dominated by the Government of the day, the power to alter money bills or have any real input from Parliament is very limited.
- 2.12** Under s 5A of the *Constitution Act 1902*, the Legislative Council in New South Wales has no power to amend appropriations for the 'ordinary annual services' of the government. This term is so broadly defined that it includes most expenditure (including appropriations for Parliament itself⁹⁰). The Auditor-General was not able to identify an example of an appropriation required by a New South Wales Government that was not for the ordinary annual services of government⁹¹.
- 2.13** Section 5A of the *Constitution Act 1902*, provides for the Legislative Assembly to present the annual appropriation bills to the Governor for enactment without the concurrence of the Legislative Council. The Legislative Council can propose amendments but cannot insist on them and, in practise, this has generally constrained Members of the Council from moving amendments because any amendment, including rejection can be ignored by the Government of the day.
- 2.14** This section cannot be altered without an amendment by referendum. It is considered an entrenched part of the *Constitution Act 1902* and as a result, the Legislative Council is prevented from not passing the Government's budget under the NSW Constitution.

⁸⁹ s 5, *NSW Constitution Act 1902*.

⁹⁰ Crown Solicitor's advice 1996, reproduced in the *New South Wales Auditor-General's Report to Parliament for 1996*, Vol 2, p 431.

⁹¹ Submission No 5, The Audit Office of NSW, p 5.

2.15 Specific attention should be given to the limitation that s 5A imposes on the ability of the Parliament to determine or amend the allocation of Consolidated Funds provided to Parliament. In 1981 the Commonwealth State Select Committee inquired into this issue and recommended that Parliament regain or assert greater independence and autonomy in regard to its own internal arrangements. In fact, the Select Committee determined that Parliament is not an ordinary annual service of Government⁹². A separate Appropriation for Parliament which is not treated as ordinary annual services of the Government now occurs in the Commonwealth. In New South Wales a separate appropriation is also made in respect of Parliament however it is still regarded as an ordinary annual service. Consequently, the New South Wales Government with a majority in the Legislative Assembly:

...effectively controls the resourcing of the whole Parliament to which the Government is meant to be accountable or responsible.⁹³

2.16 As a result, it is possible for a government to impede Parliament's ability to not only oversight Government expenditure but to also hold it accountable generally. Funnell and Cooper comment that:

...without the ability to ensure that its wishes are carried out, parliamentary control over the appropriation process would mean little in the presence of an Executive determined to circumvent parliamentary control.⁹⁴

2.17 The Audit Office of NSW contended that s 5A in many ways mirrors s 53 of the Australian Constitution which provides:

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

2.18 Accordingly it noted that, despite the limitations imposed on the Commonwealth Senate:

...practice shows that this does not diminish the powers of the Senate to reject such proposed laws in their entirety and to suggest important amendments.⁹⁵

Section 45 – Appropriation for specific purposes

2.19 The Constitution provides that Consolidated Funds are appropriated for specific purposes. However, this provision is not entrenched in the Act, and can therefore be amended by the Parliament.⁹⁶

⁹² Report of the Senate Select Committee, *Parliament's Appropriations and Staffing* Parliament Paper 151/1981.

⁹³ *New South Wales Auditor-General's Report to Parliament for 1998*, Vol 2, p 1.

⁹⁴ W Funnell & K Cooper, *Public Sector Accounting and Accountability in Australia*, (Sydney, UNSW Press, 1998), p 76.

⁹⁵ Submission No 5, The Audit Office of NSW, p 4.

2.20 Appropriations historically have been made to programs identified or outlined by Government. This was considered a specific purpose in accordance with s 45 of the *Constitution Act 1902*. The spending associated with programs is typically scrutinised during Legislative Council Estimates Committees. However amendments made to the *PFAA* in July 1998 removed all references to programs, therefore allowing subsequent Appropriation Acts to appropriate to government agencies rather than any designated programs within those agencies. Although the former Auditor-General has raised the question as to whether appropriations to agencies is sufficiently specific for the purposes of s 45, the Crown Solicitor has reported that Government is not bound by this requirement. The Auditor General's report states:

The Crown Solicitor, in effect, advises that because section 45 of the *Constitution Act 1902* is not entrenched, it can validly be modified or, as in this case, validly ignored by Parliament, as Parliament sees fit. Thus the abolition of programs caused by the amendment to the *Public Finance and Audit Act 1983*...and the passage of the *Appropriation Act 1998* which was proclaimed on the same day, raises no legal concern.

There is a concern however, that the Parliament, seemingly without appreciating the matter, freely ceded to the Government further powers relating to Parliament's constitutional obligation to hold the Government accountable for its use of taxpayers' funds and resources.⁹⁷

2.21 As a result it would seem as though the Parliament's ability to oversight Government expenditure for specific purposes has been diminished.

Section 10 – Prorogation

2.22 Under s 10 the Governor can prorogue Parliament whenever it is deemed expedient. In effect, the Executive makes such a recommendation to the Governor, therefore the Government may request prorogation at a time that stops debate on a particular issue. This may occur where the Government wishes to adjourn Parliament for various reasons, such as an opening of Parliament by the Governor or the Crown. Consequently this stops any further debate on legislation, operation of some committees and debate on other issues. For example, a prorogation that occurs at the end of the budget session effectively stops debate on the budget and prevents Estimates Committees from considering that budget until much later in the year.

Public Finance and Audit Act 1983

2.23 More recently this Act was amended to remove any reference in it to programs. This has resulted in reduced unlawful spending, as detailed in this inquiry's interim report, and has also given rise to issues regarding the powers and responsibilities of certain government entities, as noted above. As amounts are allocated to agencies in blanket format, there is no

⁹⁶ Crown Solicitor's advice 1996, reproduced in the *New South Wales Auditor-General's Report to Parliament for 1996*, Vol 2, p 431.

⁹⁷ *New South Wales Auditor-General's Report to Parliament for 1998*, p 9.

clear guidance as to how that money can or should be utilised other than for purposes specified under the relevant portfolio. The former Auditor-General commented that this move, “opens up the flexibility and powers of government in a way that I have not seen before.”⁹⁸

Special Deposits Account

- 2.24** Section 13A allows the Treasurer to establish an account in addition to the Consolidated Funds account, referred to as the Special Deposits Account. This Fund gives the Treasurer authority to retain in the Special Deposits Account, money received for the provision of goods and services, money by way of donations and money from other sources as authorised by the Treasurer.
- 2.25** The Audit Office of NSW interprets this section as allowing the Treasurer the power to divert taxes from the control of Parliament so that they are not counted as Consolidated Fund moneys and therefore can be spent without appropriation⁹⁹. While this provision represents a legitimate mechanism for an agency to retain moneys such as user charges, it nevertheless does not permit Parliament to oversee the direction of expenditure of these funds.

Exigencies

- 2.26** Section 22 of the *PFAA* provides:
- (1) ...where, after an Act is passed in respect of a financial year appropriating money out of the Consolidated Fund to meet the requirements of that financial year, the exigencies of Government so require, the Treasurer may, with the approval of the Governor, determine that there shall be paid from the Consolidated Fund, in anticipation of appropriation by the 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.
 - (2) Details of the sums paid from the Consolidated Fund pursuant to the determination under subsection (1) shall be included in any Bill introduced with the object of appropriating sums of money for the ordinary annual services of the Government during the financial year next succeeding the financial year in respect of which the sums were paid from the Consolidated Fund pursuant to the determination.
- 2.27** Depending on the interpretation of ‘exigency’, this is a very broad power conveyed to the Government where Consolidated Funds can be appropriated without the power of Parliament. The Audit Office claims that the government’s interpretation of ‘exigencies’ has been very broad¹⁰⁰. This issue was addressed by the Working Paper (refer to 1.35) and proposed procedures have significantly tightened this mechanism under the new Act.

⁹⁸ NSWPD (Legislative Council) 10/11/98, p 9464.

⁹⁹ Submission No 5, The Audit Office of NSW, p 6.

¹⁰⁰ Submission No 5, The Audit Office of NSW, p 8.

Preservation of funds

- 2.28** Section 23A operates to preserve some of the appropriated funds which would otherwise lapse at year end in certain circumstances. These cover goods and services that could reasonably be expected (by the Treasurer) to be paid for by year end but were not. However, in any case the appropriation lapses if the funds are not spent by 30 September of that year. This mechanism is rarely utilised.

Recommendation 5

That the *Public Finance and Audit Act 1983* be amended to reinstate the allocation of funds to agencies by budget programs.

Appropriation Act 1999

- 2.29** The Audit Office of NSW notes that certain Ministers have not received an appropriation to fund the Minister's activities for 1999-2000. The Audit Office is unsure of the mechanisms used by Government to fund those Minister's costs¹⁰¹. Funding agencies and or Minister's activities indirectly (ie without direct appropriation) is another example of Government's ability to spend from the Consolidated Fund without Parliament's approval.
- 2.30** Additionally the use of net appropriations in New South Wales means that user charges collected by agencies are not included in the Consolidated Fund.¹⁰² This is another example of moneys outside Parliamentary control (refer above, s 13A of the *PFAA*).

Exigencies

- 2.31** Section 26 allows the Treasurer to transfer unused appropriations between agencies if exigencies require. This effectively reduces funds previously made available to an agency by an Act of Parliament and consequently could be characterised as a mechanism which dilutes parliamentary control. The former Auditor-General has questioned the Constitutional validity of this practice reducing appropriated amounts made available to agencies in his report to this Committee¹⁰³.

Treasurer's Advance

- 2.32** The purposes to which the Treasurer's Advance may be applied are very large in scope. There are no specific legislative provisions governing the use of the Advance. The Treasurer is able to spend these funds for any recurrent purpose within the power of the State. Since capital expenditure is currently not permitted from the Treasurer's Advance,

¹⁰¹ Submission No 5, The Audit Office of NSW, p 14.

¹⁰² Refer the Committees interim report for full explanation.

¹⁰³ Submission No 5, The Audit Office of NSW, p 9.

the Working Paper proposes a Treasurer's Advance with a limit of 1% of cash receipts for capital items.¹⁰⁴ The Auditor-General has expressed the view that this is too high, given a 1% limit would also apply to a Treasurer's Advance for recurrent expenditure. The Auditor-General has suggested 1% of capital outlays as a more reasonable limit.¹⁰⁵

- 2.33** The Auditor-General held the view that this sum should be applied to exigencies and unforeseen expenditures only. No other Australian jurisdictions impose any restrictions on such an Advance other than the Commonwealth does. The Treasury Working Paper includes a proposal to extend this flexibility by allowing for a similar Advance to be provided for capital expenditure.

Special appropriations

- 2.34** Spending under continuing, special appropriation legislation exists for a number of specific purposes such as election funding, salaries of the Governor and the Judiciary and unclaimed moneys. In these cases, there is no Parliamentary control over the extent or use of the Consolidated Fund for that specified purpose.¹⁰⁶ Special Appropriation Acts generally provide that appropriations under that Act will only take effect where funding from other sources (ie, working accounts or annual appropriations) are insufficient to meet specific liabilities. Such situations do not often arise.
- 2.35** In order to remove any discretionary spending without parliamentary approval, careful consideration should be given to enacting continuing appropriations only in circumstances where the required payments made accord with statutory criteria.

Annual Reports (Departments) Act 1985 and Annual Reports (Statutory Bodies) Act 1984

- 2.36** Legislation requires annual reports be produced by departments and statutory bodies. Under the relevant legislation, an agency is required to report to the Minister within four months of the end of the financial year. The report must be tabled in Parliament one month after the Minister receives it. However, neither Act contains remedies nor penalties for non-compliance. Recommendations have been made in the Auditor-General's report to Parliament regarding compliance¹⁰⁷. The new proposed Act also includes penalties for non-compliance.
- 2.37** Annual reporting is seen as a function of accountability as opposed to a power to oversight expenditure. Unless it enforces its powers relating to the expenditure of public funds, Parliament is limited to reviewing past expenditure and to making decisions on how funds

¹⁰⁴ Working Paper, *Fundamental Review of NSW Financial and Annual Reporting Legislation*, Executive Summary, pp 18 and 22.

¹⁰⁵ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, pp 20 and 21.

¹⁰⁶ Submission No 5, The Audit Office of NSW, Appendix 1.

¹⁰⁷ *New South Wales Auditor-General's Report for 1999*, Volume 2.

should be allocated in the future. A lack of timely reporting hinders Parliament's ability to oversight expenditure.

Budget Papers

2.38 Capital expenditure reported by project in Budget Paper 4 is not required to be audited. In correspondence received by the Committee, NSW Treasury explain that Budget Paper 4 outlines estimates only and this is why it is not audited. Realistically, differences between estimates and actuals will continue, particularly given the nature of capital projects which may experience delays for various reasons at which time spending may be redirected to other projects¹⁰⁸. Inaccuracies have nevertheless been reported in the Auditor-General's 1998 Report to Parliament¹⁰⁹.

Reporting by the Auditor-General

2.39 The Working Paper identifies that, the nature and scope of agency operations and the State's financial administration have undergone major changes in recent years, predominantly due to corporatisation and commercialisation of government trading enterprises and the increased focus on agency service delivery performance of agencies. As a result, these developments have:

...given rise to a need to reassess the accountability relationships between agencies, the Executive Government and Parliament. As the Auditor-General is an important link in the "accountability chain", his role and functions therefore also need to be reviewed.¹¹⁰

2.40 Notably, the Working Paper acknowledges the principal role of the Auditor-General under the Westminster system of democracy as being:

...to help Parliament hold the Executive Government accountable for the use of the community's resources. They assist in the accountability process in a number of ways including:

- Providing independent audit opinions on Government agencies' financial statements; and
- Reviewing and reporting to Parliament on the efficiency, effectiveness and economy of agencies' operations as well as on compliance matters.¹¹¹

2.41 Proposed changes to the Auditor-General's powers are intended to enhance the performance and confirm the independence of the Auditor-General.¹¹² However,

¹⁰⁸ Correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 13 March 2000, p 8.

¹⁰⁹ *New South Wales Auditor-General's Report for 1998*, Volume 3, p 223.

¹¹⁰ "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, July 1998, p 69.

¹¹¹ "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, July 1998, pp 69-70.

Treasury's Working Paper does not address review in terms of increasing the accountability of the Auditor-General to Parliament rather than only to the Legislative Assembly which, as has been noted before, is the House controlled by Executive Government.

2.42 The Committee notes that both the Audit Office of NSW and the Clerk of the Parliaments, made submissions in regards to Chapter 9 of the Working Paper entitled "External Auditing Approach". In particular, these submissions supported the tabling of Auditor-General's reports in both Houses of Parliament rather than only in the Legislative Assembly as is presently the case. In particular the submission by the Clerk of the Parliaments stated:

The traditional role of the Upper House is to review legislation from the Lower House, being the House of Government.... The review functions of the Auditor-General and the PAC are consistent with this function of the Legislative Council.

There is well established precedent at Federal and State level for requiring the Auditor-General to report to both Houses...¹¹³

2.43 Similarly, the submission from the then Auditor-General, Mr Tony Harris stated:

There is merit in requiring the Auditor-General also to report to the Legislative Council. It is not altogether clear why the "house of review" is not more closely involved in audit reports already. Accordingly, it is recommended that all Auditor-General's reports should be tabled in both Houses of Parliament.¹¹⁴

2.44 As with most issues raised in submissions to Treasury's consultative document, the matter of tabling Auditor-General's reports was categorised by Treasury as a response to Chapter 9 and identified as Issue 9.8 in a document entitled *Summary of Issues Raised in Submissions*.

2.45 The copy of the *Summary of Issues Raised in Submissions* document originally received by the Committee indicated Treasury's response to the issue as:

The new Act to require the Auditor-General's reports to be tabled in both Houses of Parliament. (At present New South Wales is the only State with two Houses, that does not require the audit reports to be tabled in both Houses).¹¹⁵

2.46 However, in a subsequent copy of the *Summary of Issues Raised in Submissions* document, later received by the Committee, Issue 9.8 was deleted. The issue was instead inserted, without explanation, as a response to Chapter 11 which concerned the Public Accounts Committee and labelled Issue 11.8. In addition, reference to the Clerk of the Parliaments as a

¹¹² "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, July 1998, p 70.

¹¹³ Submission No 72, Mr John Evans, Clerk of the Parliaments, Legislative Council, pp 1-2, to "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, July 1998.

¹¹⁴ Submission No 39, Mr Tony Harris, Auditor-General, The Audit Office of NSW, p 19, to "Working Paper" *Fundamental Review of NSW Financial and Annual Reporting Legislation*, July 1998.

¹¹⁵ Issue No 9.8, Chapter 9, "External Auditing Approach", *Summary of Issues Raised in Submissions on Treasury's Consultative Document "Fundamental Review of NSW Financial and Annual Reporting Legislation"*, Appendix F, p 14.

respondent to the call for submissions was omitted from the summary and Treasury's response to the issue changed character and instead stated:

To be considered by the Working Party and Reference Panel.¹¹⁶

- 2.47** The Committee is concerned that emphasis on the importance of tabling Auditor-General reports to Parliament in both Houses as part of the parliamentary review process has been diminished.
- 2.48** One of the purposes for the *Fundamental Review of NSW Financial and Annual Reporting Legislation* is to support the accountability framework now operating in New South Wales¹¹⁷. As one of the primary functions of the Auditor-General is to review the public accounts and accountability of government agencies, the Auditor-General is Parliament's principal instrument for direct scrutiny of the management of public funds. As noted earlier the Audit Office of NSW expressed support for legislative change which will also permit it to report to the Legislative Council. Accordingly, if the purpose of Treasury's review is to reinforce public accountability, then this process demands that Auditor-General's reports to be tabled with both Houses of Parliament.
- 2.49** Finally, the current NSW Treasurer (the Hon Michael Egan MLC), is a Member of the Upper House and has been Treasurer since April 1995. In the Committee's view, it would be appropriate that the Treasurer, as the relevant Minister, be permitted to table reports of the Auditor-General in the Upper House.

Recommendation 6

That any changes to financial and annual reporting legislation of NSW require the reports of the Auditor-General be tabled in both Houses of Parliament.

Estimates Committees

- 2.50** In addition to legislative provisions, Parliament has the ability to oversee government expenditure through various Parliamentary Committees. Most relevant here are the estimates committees of the Legislative Council, which scrutinise the Government's budget papers each year.
- 2.51** Estimates of receipts and payments by budget sector agency and program and net appropriations required from the Consolidated Fund are detailed in the Budget Papers. Information on outputs and outcomes and capital works items is also provided. These are subject to the detailed scrutiny of line items where Ministers are asked to answer any

¹¹⁶ Issue No 11.8, Chapter 11, "Public Accounts Committee", *Summary of Issues Raised in Submissions on Treasury's Consultative Document "Fundamental Review of NSW Financial and Annual Reporting Legislation"*, p 12: attached to correspondence form Mr John Pierce, Secretary, NSW Treasury, dated 1 March 2000.

¹¹⁷ "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation*, Preface.

questions on issues raised regarding their portfolio. This process occurs around September each year. Estimates Committees only consider Budget Estimates calculated for agencies dependent on public funds. The application of Consolidated Funds drawn indirectly by State agencies such as Government Trading Enterprises (eg, for the payment of social obligations) are not examined by these Committees. The question of whether the Legislative Council may wish to consider extending this function to non budget-dependent agencies has been raised by the Audit Office¹¹⁸.

2.52 The Budget Papers also contain the Appropriation Bills. These Bills summarise the total amounts required from the Consolidated Fund by the Ministry and agencies. Once these Bills are passed (usually early July), based on the approved budget, each Minister then has the power to change the focus of the Ministry by shifting funds between activities or programs, without the need to report to Parliament. The Government need not adhere to any of its plans as set out in the budget. Consequently, there is no detailed analysis of the plans for the next year before the amounts are appropriated. Even after a detailed questioning process there appears to be no real ability to oversee the expenditure as Government is not required to adhere to those plans.

2.53 Before financial year end, the next year's budget is being prepared. This again includes line item detail of programs set down for the next year together with last year's budget and a revised budget based on 10 month actuals (note that, actuals reported in the budget papers are not audited). At the end of the year, agencies are then required to report on their activities in the form of financial reports that are audited by the Audit Office of NSW. These reports detail the budget allocations and other appropriations made against actual expenditures. Once again, Parliament can bring Government to account for past expenditures but cannot truly oversee it as a result of this procedure.

Public Accounts Committee

2.54 The Working Paper on *Fundamental Review of NSW Financial and Annual Reporting Legislation* identified a number of areas where legislative changes may be required to the roles and functions of the Public Accounts Committee. These areas include:

- evidence gathering powers;
- self-referencing powers;
- oversight of The Audit Office;
- powers to conduct follow-up inquiries;
- confidentiality provisions;
- powers to self-reference examination of matters of government policy;

¹¹⁸ Submission No 5, The Audit Office of NSW, p 7.

- requirement for written Government responses to Committee reports; and
- establishment of the Committee as a joint house committee.¹¹⁹

2.55 Of these matters identified in the *Summary of Issues Raised in Submissions*, the latter two accountability related concerns appear to indicate an absence of decisive action.

Response by Government to Committee Reports

2.56 The Public Accounts Committee, the Audit Office of NSW and the Clerk of the Legislative Assembly submitted to the Working Paper, that the Government should be required to formally respond to reports of the PAC and that the responses should be tabled in Parliament.¹²⁰

2.57 The Working Paper's response to this issue indicated that the Premier has determined that a legislative requirement for Ministers to respond to PAC reports unnecessary. The Working Paper states:

The Premier has considered the PAC's proposal in regard to the provision of Government responses to the Committee's reports and has decided that it would be more appropriately dealt with by administrative means. In June 1996, a Memorandum (No 96-9) was issued to all Ministers indicating that it is the Government's policy to respond to the Committee's reports within 6 months from tabling in Parliament.¹²¹

2.58 The Committee acknowledges the Premier's 1996 actions in dealing with this matter administratively. However, it is not convinced that administrative action has been or is the means necessary to reinforce the requirement of accountability to Parliament. The fact that the PAC, the Audit Office of NSW and the Clerk of the Legislative Assembly, argued the need for a legislative base to the requirements for the Government to respond to PAC reports suggests that the administrative arrangements is not a sufficient form of accountability.

A joint committee of both Houses

2.59 Although the Working Paper acknowledges that the Statutory Committees on the Independent Commission Against Corruption and the Ombudsman are joint house

¹¹⁹ *Summary of Issues Raised in Submissions on Treasury's Consultative Document "Fundamental Review of NSW Financial and Annual Reporting Legislation"* attached to correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 1 March 2000.

¹²⁰ Submission No 40, Mr Joe Tripodi MP, Acting Chairman, Public Accounts Committee, p 1; Submission No 39, Mr Tony Harris, Auditor-General, The Audit Office of NSW, p 21; Submission No 68, Mr Russell Grove, Clerk of the Legislative Assembly, p 2; to "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation, July 1998*.

¹²¹ "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation, July 1998*, pp 99.

committees and that it supports modelling the PAC on those committees, the Working Paper makes no specific mention that the PAC should be a joint house committee rather than its present status as a committee of the Legislative Assembly (see Appendix 4 for example).¹²² Further, the *Summary of Issues Raised in Submissions* merely noted that:

The PAC has advised that it does not support this proposal.¹²³

2.60 The Committee cannot verify whether or not this was the official view of the PAC, nor can it verify the justifications for not supporting the proposal, as the issue of a joint house committee was not addressed in its submission to the Working Paper.¹²⁴

2.61 Both the Auditor-General and the Clerk of the Parliaments supported the role of the PAC as a joint house committee in their submissions to the Working Paper. In addressing the issue of the expanded role of the PAC, the Auditor-General, stated:

The extra role of the PAC under the proposed legislation is supported, but, as the Auditor-General's mandate is no longer limited to money matters, the composition of the PAC should reflect the additional skills required and should include Upper House members as well.¹²⁵

2.62 In his submission to the Working Paper, Mr John Evans, the Clerk of the Parliaments stated:

If the intent of achieving effectiveness of the Parliamentary "watchdog" role is to be fully met, a strong case may be put forward...to also establish a PAC of both Houses.¹²⁶

2.63 The Clerk's submission acknowledges that the Commonwealth and Victorian Parliaments are examples of jurisdictions with joint committees on public accounts.

2.64 The PAC was originally established by the *Audit Act 1902* and has historically been a committee of the Legislative Assembly being the House of Government. The Committee acknowledges that for much of its history, the PAC has informally carried status as the "flagship" committee of the NSW Parliament and the chairs of this Committee have often progressed to positions of higher standing within the government of the day. However, the

¹²² "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation, July 1998*, pp 97-100.

¹²³ *Summary of Issues Raised in Submissions on Treasury's Consultative Document "Fundamental Review of NSW Financial and Annual Reporting Legislation"*, p 13, attached to correspondence from Mr John Pierce, Secretary, NSW Treasury, dated 1 March 2000.

¹²⁴ Submission No 40, Mr Joe Tripodi MP, Acting Chairman, Public Accounts Committee, to "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation, July 1998*.

¹²⁵ Submission No 39, Mr Tony Harris, Auditor-General, The Audit Office of NSW, p.20, to "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation, July 1998*.

¹²⁶ Submission No 72, Mr John Evans, Clerk of the Parliaments, Legislative Council, p.1, to "Working Paper", *Fundamental Review of NSW Financial and Annual Reporting Legislation, July 1998*.

Committee believes that, in line with the fundamental review being conducted of the financial and reporting regime in New South Wales and the Auditor-General's powers to scrutinise public sector agencies, the PAC should also review its operations and undergo change consistent with these reforms.

- 2.65** The current membership structure of the PAC is six members including: three members from the Government, two members from the Opposition and one independent member. A joint house PAC could be structured to retain the existing membership within the Legislative Assembly and adding four members from the Legislative Council. The membership from the Legislative Council may include: two members from the Government, one member from the Opposition and one member from the Cross-Bench or Independents. This membership would maintain the current voting structure.

Recommendation 7

That the Government should be required by statute to formally respond to reports of the Public Accounts Committee within six months of the tabling of those reports and that the relevant Minister table the response in Parliament.

Recommendation 8

That the *Public Finance and Audit Act 1983*, be amended to re-constitute the Public Accounts Committee from a committee of the Legislative Assembly to a joint committee of both Houses of Parliament.

The influence of the private sector

- 2.66** Many of the changes implemented in New South Wales financial management and reporting legislation have resulted from applying private sector concepts within state and Commonwealth governments. In summary, recent governments have tended to conclude that public funds are best managed in a commercial manner as opposed to the once traditional public sector approach which resulted in an 'end of year spend up' of surplus funds.¹²⁷
- 2.67** Changes have included a corporate approach to staffing, spending and the focus to outputs achieved. This commercialisation has led to a greater responsibility and power conferred on agency heads and in some cases, the privatisation of certain enterprises (such as the NSW TAB). As a result higher salaries are offered to attract more skilled people to run motivated enterprises achieving targeted results. Many more services and goods typically provided by government are also gradually subject to user charges as this commercialisation spreads.

¹²⁷ Submission No 7, NSW Treasury, p.6.

2.68 Additionally, funds allocated to agencies are done so on a user pays basis. In essence the agencies incurring the expenses are responsible for it rather than a central service or control agency. This provides a financial incentive for agency or department managers to achieve economies and to examine whether the resources are being allocated in the most efficient way.

2.69 During debate in the Legislative Council, the Hon John Ryan MLC stated, that much of the power Parliament has surrendered over recent years with regard to expenditure and income generation has inadvertently resulted from the introduction of independent trading corporations¹²⁸. On the other hand, it has been expressed by the Hon Richard Jones MLC, that managers should be allowed to manage and that:

It is better to allow Ministers to move money within their portfolios from one area to another, especially in cases of emergency, than to have rigid line items which are sometimes impossible to manage.¹²⁹

2.70 A medium between the required flexibility in managing a substantial enterprise and the responsibility Parliament has to ensure funds are spent in the best interests of the people of New South Wales must be struck to ensure commercialisation is a successful one. The trend towards output and outcome reporting may be one of the solutions to this conflicting issue.

Improving Parliamentary Scrutiny

2.71 It has been demonstrated above that parliamentary control over cash drawn from the Consolidated Fund is not adequate if Parliament wishes to ensure efficient and effective use of taxpayer's money. The Auditor-General suggests, in addition to controls over the Consolidated Fund, that the Annual Appropriation Act should also specify a limit for the net cost of services, as presented in the budget papers¹³⁰.

Parliament may be inclined to agree that some flexibility be given to the Treasurer to adjust the net cost of services between programs within one agency or between agencies within the same portfolio. The extent of the delegated adjustment could itself be subject to limitation, for example, in dollar or percentage terms. The Consolidated Fund cash appropriation, at least for recurrent services, might then become a subsidiary more broadly set and perhaps with more flexible control.¹³¹

2.72 The net cost of services is calculated without regard for the source of funds. It is based on total outlays of the agency. A limit in this measure would impose a control over how government spends money reclaiming the lost power to oversee how special funds are expended. Additionally, there could be provision that, if the net cost of services is not reached on a program or agency level, the amount is carried forward. The Auditor-General

¹²⁸ NSWPD (Legislative Council), 1/6/99, p 652.

¹²⁹ NSWPD (Legislative Council) 1/6/99, p 666.

¹³⁰ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 4.

¹³¹ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 4.

points out that cash appropriations and net cost of services are two separate issues. They may not move in alignment. However systems can be developed and controls designed to track both¹³².

2.73 Another potential benefit of limiting net cost of services arises if the parliamentary approval mechanism is more closely aligned to outputs and outcomes.

If you are looking at the performance indicators, such as outputs and outcomes of an agency, it is much more relevant to look at the outflow side of its finances. You can then start examining outputs per dollars spent rather than outputs per dollar of Consolidated Fund input, which is meaningless if the agency has other sources of revenue.¹³³

2.74 The Committee notes that on 15 September 2000, NSW Treasury issued Treasury Circular TC 00/21 entitled *Budget Controls – Net Cost of Services*. (refer to Appendix 5) The main features of the new Net Cost of Services (NCS) framework are:

- Agencies will have a NCS limit for both the Budget year (which will be subject to a tolerance limit) and Forward Estimates years.
- Variations to agency NCS limits over a Budget cycle will require Treasurer and/or Budget Committee approval. Such variations would relate to maintenance of programs and enhancements. Some minor variations and the impact of savings will be approved within Treasury under delegation from the Treasurer.
- Control of Consolidated Fund allocations, while still important and required for legislative reasons, is essentially a funding issue and will be dealt with separately from the approval to incur additional expenses.
- NCS controls will be extended to non Budget dependent General Government agencies.

2.75 For Budget dependent agencies NCS controls will apply for the Budget cycle commencing 2001-02 and non Budget dependent General Government agencies will have a more phased in approach with Budget year controls.¹³⁴ The Committee commends NSW Treasury on its implementation of this control mechanism.

2.76 The re-introduction of appropriating on a program basis is one way Parliament could also reinstate some of their control over Government spending.¹³⁵ However, in order to alleviate problems previously encountered under program budgeting, it would appear

¹³² Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 21.

¹³³ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 24.

¹³⁴ NSW TC 00/21, Budget Controls – Net Cost of Services, 15 September 2000.

¹³⁵ Submission No 5, The Audit Office of NSW, p 12; also note support expressed by the Hon John Ryan MLC, NSWPD (Legislative Council), 10/11/99, p 9475; and the Hon Dr Arthur Chesterfield-Evans MLC, NSWPD (Legislative Council), 1/6/99, p 672.

necessary that any use of program budgeting in the future should be structured in such a way to match the management structure of the relevant agency.

2.77 As Mr John Pierce, Secretary, NSW Treasury cautions:

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 competing demands while requiring them to report the consequences of the decision that they have made.¹³⁶

2.78 Additionally, the Auditor-General points out that control is illusory under program budgeting in any case as a result of agencies access to user charges¹³⁷.

2.79 It was the view of the Auditor-General that appropriations are issued to the Treasurer, rather than, as now, issuing relevant appropriations to relevant Ministers so that when Treasury transfers money to agencies, the transfers are themselves considered to be expenditures from the Consolidated Fund.¹³⁸ Consequently it was argued that, if this view is upheld, only the Treasurer would be accountable for spending Consolidated Fund moneys. The Auditor-General commented:

The basis of the estimates committee hearings – considering each Minister's proposed spending from the Consolidated Fund – will no longer exist. Control over the detail of Government spending will move from the Parliament to the Treasurer.

...

No doubt the Bill proposed by Government is convenient to Government. It simplifies accountability; it avoids the need for further appropriation processes; it allows the Executive to get on with the job of government unimpeded by Parliamentary controls. It moves Parliament's oversight from ex ante to ex post.¹³⁹

2.80 The Committee of course, strongly agrees with the Auditor-General. This proposed approach by the Government cannot be supported by this Committee on the basis that it would substantially diminish Parliament's powers to oversee Government expenditure.

Conclusion

2.81 In evidence before the Committee, Professor Bob Walker reflected that:

It is true to say that the control over expenditure exercised by all parliaments has been reduced since the development of the nineteenth century Westminster model. That model started out with the proposition that no expenditure could be

¹³⁶ Evidence of Mr John Pierce, Secretary, NSW Treasury, 2 February 2000, p 9.

¹³⁷ Evidence of Mr Bob Sendt, Auditor-General, The Audit Office of NSW, 1 May 2000, p 23.

¹³⁸ NSWPD (Legislative Council) 1/6/99, p 660-661.

¹³⁹ The Hon Ian Cohen MLC, quoting the Auditor-General's letter to Mr Peter Debnam MP, Shadow Treasurer, NSWPD (Legislative Council) 1/6/99, p 661.

undertaken unless subject to prior authorisation by Parliament. At that time governments did not own public trading enterprises.¹⁴⁰

2.82 The current financial management and reporting regime extends very broad powers to the Treasurer in reallocating resources within government. The proposed regime however, aims to tighten the provisions for reallocation of resources by NSW Treasury. Public disclosure of how these powers are exercised is not required until the end of the financial year. Consequently, this system could allow the government to operate without scrutiny. However, the move towards better reporting and the focus on outcomes is seen as one that will enhance the ability of Parliament to oversee Government expenditure.

2.83 Of course the party that wins government should be given the flexibility to implement its policies. Ultimately it should be up to Parliament to determine the level of flexibility to be extended to the government of the day. Where little power already exists, that decision has been taken out of the hands of Parliament.

Recommendation 9

That no additional legislative changes be made which would increase the control of the Treasurer over the detail of government spending where it would further diminish parliamentary scrutiny of spending by government agencies.

Recommendation 10

That the Treasurer be delegated the power to adjust the net cost of services between programs within an agency or portfolios limited to a percentage of the total budget for that agency or portfolio.

¹⁴⁰ Evidence of Prof Bob Walker, University of New South Wales, 2 February 2000, p 36.

Statement of Dissent: Government Members

MINORITY REPORT BY GOVERNMENT MEMBERS

The Government Members of General Purpose Standing Committee No 1 of the Legislative Council do **not** support the following recommendations made in Chapter 2 of the Committee's Report:

Recommendation 5

That the *Public Finance and Audit Act 1983* be amended to reinstate the allocation of funds to agencies by budget programs.

Recommendation 6

That any changes to financial and annual reporting legislation of NSW require the reports of the Auditor-General to be tabled in both Houses of Parliament.

Recommendation 7

That the Government should be required to formally respond to reports of the Public Accounts Committee within six months of the tabling of those reports and that the relevant Minister table the response in Parliament.

Recommendation 8

That the *Public Finance and Audit Act 1983*, be amended to re-constitute the Public Accounts Committee from a committee of the Legislative Assembly to a joint committee of both Houses of Parliament.

Recommendation 10

That the Treasurer be delegated the power to adjust the net cost of services between programs within an agency or portfolio limited to a percentage of the total budget for that agency or portfolio.

Recommendations 5 & 10 Program Appropriations

The Committee's *Inquiry into Current Provisions for the Appropriation of Moneys and Authorisation of Expenditure in New South Wales* did not establish a case for re-introducing appropriations by budget programs and abolishing the current practice of making appropriations at an agency level.

Under the current regime, program information is still provided and is a valuable accountability tool. However, the main advantage of appropriating at agency level is that agencies can be held accountable for managing the changing demands upon them within their approved Budget allocations.

The estimate for each program provides an indication of what expense the Government believes the agency will need to incur in order to achieve desired outcomes in a policy area. However, because there may be demand shifts during the year, the agency has the flexibility and the responsibility to reallocate its resources, provided the outcomes are met. Under this approach, the agency can still be held accountable ex post for departures from the original estimates in the Budget presented to Parliament.

- 2 -

To balance the flexibility given to agencies, the capacity to hold agencies accountable for performance has been enhanced by the range of financial and non financial information that is now available on a program basis. The Budget Papers include an accrual based operating statement for each program and outputs to be provided under each program. The Treasury has also introduced a control over net cost of services at the agency level. This acknowledges that the Consolidated Fund represents only one funding source for a program.

This information is available for scrutiny by all interested parties. For example, Parliament would be concerned to ensure that material variances between Budget time estimates and actual performance are adequately explained by the Government.

In addition, it has been established through the Inquiry that there are inherent problems in appropriating at a program level and that there has been a strong move away from this form of budgeting across Australia. The Report suggests a return back to appropriating to programs without explaining why and how the inherent problems can be overcome.

There are a number of difficulties with appropriating to programs, including:

- Programs are sometimes split between different agencies and as a result no single agency has responsibility for the program
- Officers often work across several different programs. The time spent on each program may be difficult to estimate and record accurately.
- Appropriations to programs inhibit the flexibility agencies need to respond to changing circumstances.

Notwithstanding the above, program (and output/outcome) details provide valuable information to ensure agencies are held accountable for their performance. Therefore, while the provision of program information is supported, appropriating at a program level is not, for the reasons discussed above.

In addition, there is no practical evidence that scrutiny by Parliament has been reduced since the removal of appropriation by program. The Budget Papers continue to include financial and non-financial information for each program.

Recommendation 6 Tabling of Auditor-General's Reports

The Auditor-General has traditionally been accountable to Parliament through the Legislative Assembly. It is only appropriate, therefore, that the Auditor-General report to that House.

There is no prohibition on Members of the Legislative Council examining any matter raised in the Auditor-General's Reports, which are documents of public record.

- 3 -

Recommendation 7 Response to PAC Reports

The practice by the Government of responding to PAC Reports within six months is well entrenched. Moreover, there is nothing to stop Parliament pursuing issues raised in the PAC's Reports.

There is, therefore, no need to legislate on this matter.

Recommendation 8 Re-Constitution of Public Accounts Committee

The relationship of the PAC, the Auditor-General and the Parliament through the Legislative Assembly is well established and has been very effective since the passing of the *Public Finance and Audit Act 1983*.

This relationship reflects the pivotal role of the Legislative Assembly in the appropriation process, established under the *Constitution Act 1902*.

The fact that the Legislative Council is not represented on the PAC has not in the past inhibited the Council exercising its role as a House of review. There is, therefore, no compelling need to alter the existing constitution of the PAC.

Appendix 1

List of Submissions

Submissions

No	Author
1	Catholic Commission of 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

List of Witnesses

Mr Gary Moore	Director, Council of Social Service of New South Wales 29 October 1999
Mr Tony Harris	Former Auditor-General, Audit Office of New South Wales 2 February 2000
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
Professor Bob Walker	School of Accounting, Faculty of Commerce, University of New South Wales 2 February 2000
Mr Bob Sendt	Auditor-General, Audit Office of New South Wales 1 May 2000
Mr Eric Lumley	Assistant Auditor-General, Audit Office of New South Wales 1 May 2000
Mr Geoffrey White	Senior Audit Manager, Audit Office of New South Wales 1 May 2000

Appendix 3

Major Issues Raised in Submissions on Treasury's Consultative Document

Detailed Analysis of Major Issues
Raised in Submissions on Treasury's
Consultative Document on
“Fundamental Review of NSW
Financial and Annual Reporting
Legislation”

APPENDIX E

**Detailed Analysis of Major Issues Raised in Submissions on
Treasury's Consultative Document on "Fundamental Review of
NSW Financial and Annual Reporting Legislation"**

Set out below is a detailed analysis of 8 major issues raised in the 78 submissions received on the Treasury's Consultative Document titled "Fundamental Review of NSW Financial and Annual Reporting Legislation". This paper is to be read in conjunction with the Summary of Major Issues Raised in Submissions (Appendix F).

Issue 1

Removal of the application of the "true and fair view" overriding test in relation to the preparation of accrual-based financial statements and the audit of those statements.

Respondents' Comments

The Audit Office, the Public Sector Accounting Standards Board, the two major accounting bodies and 17 other respondents have indicated that they do not support the retention of the "true and fair view" override. Their main concerns basically can be summarised as follows:

- The concept of "true and fair view" is undefined and subjective and could result in different interpretations being applied by the preparers of financial statements, the Treasury, the Auditor-General and the accounting standard - setters.
- The retention of this overriding test as a let-out could lead to "selective" non-application of accounting standards by agencies thus jeopardising the quality of published financial reports and also comparability of those reports with other jurisdictions.
- The availability of the override is inconsistent with the approaches adopted under the Corporations Law and in other major overseas countries such as the U.S, Canada and New Zealand.
- The circumstances where compliance with a particular accounting standard would not result in the presentation of a "true and fair view" are expected to be rare.
- The retention of this concept is unnecessary as the Treasurer already has the power to grant exemptions to agencies from compliance with particular accounting standards and also to issue Directions on the adoption of specific accounting policies.

Treasury's Comments

The equivalents of the NSW Public Finance and Audit Act in the other jurisdictions generally require a strict compliance with accounting standards and any departures from those standards can only be approved by the Treasurer. In other words, agencies cannot unilaterally decide to depart from a particular accounting standard without the Treasurer's approval using the "true and fair view" test as a let-out.

If the “true and fair view” override is not to be retained in the new Act, the Treasurer should continue to have the power to issue Directions on accounting policies and to grant exemptions from compliance with particular accounting standards in appropriate cases following consultation with the Auditor-General. The exercise of the exemption power should be subject to the application of the three statutory tests as currently prescribed in the Public Finance and Audit Act i.e. compliance with the standards:

- would render the financial statements misleading; or
- would be inappropriate to the circumstances of the agency; or
- would impose an unreasonable burden.

The above statutory tests are similar to those required to be applied by the Australian Securities and Investments Commission under the Corporations Law.

Further, to ensure that all the necessary information is included in the financial statements to assist the readers in making an informed assessment about a reporting entity’s performance and discharge of accountability, it is proposed that an obligation be placed on the preparers of those statements to add such additional information as, in the opinion of the preparers, is required to enable the statements to accurately reflect the financial position, results of operation and cash flows of the reporting entity.

Recommendation

The new Act not to contain a “true and fair view” override but instead the following provisions are to be included:

- Treasurer to have the power to issue Directions to agencies on adoption of specific accounting policies.
- Treasurer to have the power to grant exemptions from compliance with particular accounting standards and to require the details of the exemptions to be publicly disclosed in the financial statements.
- An obligation be imposed on the preparers of financial statements to add such additional information as, in the opinion of the preparers, is required to enable the statements to accurately reflect the financial position, results of operation and cash flows of the reporting entity.

Issue 2

Deferral of the consideration of the adoption of an extended differential financial reporting regime.

Respondents’ Comments

In determining the form and content of agencies’ annual financial statements under the new Act, the Consultative Document proposes that the concept of “differential reporting” be adopted. “Differential reporting” involves prescribing different financial statement formats and disclosure requirements for different categories of agencies including limited note disclosures for small agencies and more extensive disclosures for the large commercial agencies.

The Public Bodies Review Committee, the Clerk of the Legislative Assembly, the Audit Office and two other agencies have indicated in their submissions that they do not support the kind of differentiation as proposed in the Consultative Document. Their view is that the reporting requirements should be as uniform as possible across the public sector.

Treasury's Comments

The Treasury considers that the small number of responses received and the limited comments offered in the submissions on this important issue are not sufficient to provide a proper basis for making any decisions regarding major changes to the existing reporting regime at this stage. It is therefore proposed that the present regime be carried forward to the new Act with some minor refinements only. A further and more extensive review will be conducted at a later date.

At present, there is already a degree of differentiation within the existing regime in that budget dependent agencies are subject to certain additional disclosure requirements because they are funded by Parliamentary appropriations and their operations are of a not-for-profit nature. State Owned Corporations and other Statutory Bodies that operate in competition with the private sector have been granted an exemption from disclosing certain commercially sensitive information.

The format of the financial statements of budget dependent agencies is currently fixed for both annual accounts and budget papers purposes. For non-budget General Government Sector agencies, the financial statement format is fixed for budget papers purposes only.

For the purpose of the new Act, it is proposed that the financial statement format not be fixed for non-budget General Government Sector agencies, Public Trading Enterprises and Public Financial Enterprises. This is in line with the approaches adopted in most of the other jurisdictions and is also consistent with the recently amended provisions in the Corporations Law dealing with the financial statements of companies in the private sector.

Recommendation

The present financial reporting regime for agencies be substantially carried forward to the new Act without further extending the current degree of differentiation at this stage.

Issue 3

Continuation of the current funding arrangements for the Audit Office whereby financial statement audits are funded by fees charged to agencies whereas performance audits and Auditor-General's reports to Parliament (Volumes 1 to 3) are funded by Parliamentary appropriations.

Respondents' Comments

The Public Accounts Committee, three Ministers, a Member of Parliament and three agencies have indicated that they prefer the current funding approach for the Audit Office and not the proposal to fund the entire operations by way of Parliamentary appropriations.

In addition, the Auditor-General has advised that he would also like to see the current funding arrangements being retained in view of the fact that the Public Accounts Committee has indicated that it does not wish to be obliged by legislation to assume the role of commenting on the proposed annual budgets and resource requirements of the Audit Office. Such a role, if adopted, would have the benefit of providing Parliament with a direct mechanism to determine or influence the extent to which the operations of the Executive Government are to be audited.

Treasury's Comments

Two of the other jurisdictions' Audit Office funding arrangements are similar to the current New South Wales approach. The main advantage of the present approach, where the audit fees for financial statement audits (which are close to 90% of the total budget) are negotiated directly with individual agencies, is that it provides agencies with an ability and incentive to control their audit costs as well as imposing a commercial discipline on the Audit Office. Further, it has been suggested that this arrangement has also helped to strengthen the relationships between the Audit Office and its clients.

At present, the Audit Office is having discussions with the Premier's Department and the Treasury in regard to the adoption of an operational model which involves rotating a large number of financial statement audits between private sector accounting firms and the Audit Office. The main aim is to enable the Auditor-General to benchmark the performance of the Audit Office against the cost and quality of the service provided by private sector auditors. A key element under this model is the ability to directly negotiate the audit fees based on the services agreed to be delivered.

Recommendation

The current funding arrangements for the Audit Office be retained.

Issue 4

Provision to the Auditor-General of a statutory right of access to Cabinet documents and documents the subject of legal professional privilege.

Respondents' Comments

The Auditor-General has put forward the following two alternative options in regard to access to, and use of, information for consideration by the Government:

- Option 1 - A statutory right of access to be provided, but where the Auditor-General wishes to use the information obtained for any Report to Parliament, the Auditor-General is to be required to consider the views of the Attorney General (for legal documents) or the Premier or a former Premier or his/her effective representative (for Cabinet documents) on that proposed use.
- Option 2 - A statutory right of access to be provided to the Auditor-General but for the proposed use of the information obtained, the Auditor-General is to be bound by the decision of the Attorney General, Premier etc on the proposed use. (The Auditor-General to be permitted to advise Parliament of the binding decision and any reasons therefor.)

In respect of Option 2, any decisions by the Premier, Attorney-General etc not to allow the disclosure of information obtained by the Auditor-General are subject to administrative review by the Supreme Court.

The Controller and Auditor-General of New Zealand and the Public Interest Advocacy Centre are of the view that the Auditor-General should have unrestricted access to Cabinet documents. This view is not shared by one of the Members of Parliament who has commented on this issue.

Treasury's Comments

The issue of providing the Auditor-General with an explicit statutory right of access to Cabinet documents and documents the subject of legal professional privilege has been the subject of discussions between the Government and the Auditor-General for some time. It has been the practice of the present and previous Governments to provide the Auditor-General with access to Cabinet documents, where it is considered appropriate by the Government. Access to these documents is provided on the basis that they are to be treated as confidential and no details are to be published.

The Auditor-General firmly believes that there should be a statutory right of access to the documents referred to above if they are considered to be relevant to audit rather than having to rely on the Government's discretion. The Public Finance and Audit Act (sections 36(5) and (6)) explicitly states that the Auditor-General is not entitled to have access to Cabinet documents and documents the subject of legal professional privilege. This is merely declaratory of the law at the present time.

The Auditor-General has argued that company auditors in the private sector are not subject to any restrictions in terms of their access to documents that are considered relevant to audit (including access to decisions of the board which are similar in nature to Cabinet decisions). He has also pointed out that the inability to access financially significant documents could, in certain circumstances, lead to the issue of an audit qualification as required by the auditing standards promulgated by the two major accounting bodies.

The Victorian Audit Act provides the Auditor-General with a right of access to Cabinet documents and there are no restrictions in terms of the use of the information obtained in the course of audits. The Commonwealth Audit Act states that the Auditor-General is not to include any information obtained from an audit in an audit report if the Auditor-General or the Attorney General believes that it is "contrary to public interest" (which has been defined to include public disclosure of Cabinet decisions.)

During the 1995 General Election campaign, the ALP's policy document "Labor Governing: Reviving and Improving Public Administration in NSW" stated that Labor would "restore the right of the Auditor-General to have access to Cabinet documents". However, as the Auditor-General never had such a right of access to Cabinet documents, there is no such right to restore.

The third Option is to maintain the status quo. The advantage of this Option is that it recognises the importance of maintaining Cabinet confidentiality. The Westminster system of Government, and particularly the principle of collective Ministerial responsibility for Government decisions, requires that Cabinet deliberations remain confidential. This Option would also ensure that the Auditor-General would continue to be in the same position as his counterparts in most of the other Australian jurisdictions as well as other watchdog bodies such as the Ombudsman.

Recommendation

This issue to be considered and decided by Cabinet.

Issue 5

Responses by the Government to Public Accounts Committee reports.

Respondents' Comments

The PAC has proposed that the Premier or the responsible Minister be required by legislation to forward directly to the Committee a written response within six months from the date of tabling of a report in Parliament.

Treasury's Comments

In the past, it has been the successive Governments' practice to provide the PAC with appropriate responses to the recommendations made in its reports. However, there is no explicit legislative requirement for the Government to do so. The Premier has previously considered the PAC's proposal in regard to the provision of Government responses to the Committee's reports and has decided that it would be more appropriately dealt with by the issue of an administrative policy rather than by legislation.

In June 1996, a Premier's Memorandum (No. 96-9) was issued to all Ministers indicating that it is the Government's policy to respond to the Committee's reports within 6 months from tabling in Parliament. A further Premier's Memorandum was issued in April 1998 (No. 98-11) referring to the earlier Memorandum and also the possibility of the PAC requesting a further follow-up response 18 months after the tabling of a report in certain cases. At present, the Cabinet Office is responsible for liaising with the relevant Minister(s) and co-ordinating the preparation of a draft response for the Premier's endorsement prior to transmittal of the final Government response to the Committee.

In the Commonwealth, Victoria and Queensland, the respective governments are required by legislation to provide the equivalents of the NSW PAC with responses to the Committees' reports after they have been tabled in Parliament. No such legislative requirement exists in the rest of the other jurisdictions.

Recommendation

The PAC's proposal to be considered and decided by Cabinet.

Issue 6

Public Accounts Committee to be given an additional power so that it can compel the production of documents by agencies and Ministers in connection with the conduct of its inquiries.

Respondent's Comments

The PAC has proposed that it be given the power to secure the production of documents by agencies and Ministers to assist in the conduct of its inquiries. Further the provisions are to stipulate that the documents provided must be complete and unadulterated (ie not whited out or blacked out in any way). The compulsory power is also to extend to information held in electronic form that has not been amended in any way.

In relation to sanctions for non-production of documents, the Committee has proposed that the sanctions for non-provision of information by witnesses and for false statements made by witnesses as provided for in the Parliamentary Evidence Act be adopted in the new Act.

Treasury's Comments

The advice of the Crown Solicitor has been sought in relation to the PAC's proposals. In essence, the views of the Crown Solicitor may be summarised as follows:

- At present, Parliament does not have any statutory power to compel the production of documents by government agencies and Ministers. The Parliamentary Evidence Act only confers power on the two Houses of Parliament and Parliamentary Committees to compel answers to questions. The Legislative Council has been held by the Court to have a common law power to order the production by the Executive Government of documents in the nature of "State papers" and it is likely that the Court will find that the same power is possessed by the Legislative Assembly.
- The question as to whether there are any exceptions to the documents which must be produced in response to the common law power of each House and who determines whether particular documents come within any exception are issues which will be determined by the Court of Appeal in *Egan v Chadwick* to be heard on 24 and 25 November 1998. The State has taken the position that there are a number of exceptions to the documents which must be produced, including documents which are the subject of public interest immunity and legal professional privilege. The State also holds the view that claims that documents come within an exception must be determined by a Court.
- There is no legislation or Parliamentary Standing Rules and Orders purporting to confer on committees of Parliament (including the Public Accounts Committee) generally powers in relation to the securing of the production of documents by agencies and Ministers for the purpose of assisting their inquiries. It is not settled whether a committee of either House of Parliament has a common law power to compel the production of documents. The fact that the House has the power may suggest that it is not reasonably necessary for committee to have it. Should a committee require a document and the House take the view the committee should have the document, the House could exercise its power and obtain the document for the committee.
- In relation to the proposed legislative prescription that the documents produced to the PAC must be "complete and unadulterated", the legal opinion is that, where a desired original document has been adulterated or rendered incomplete prior to the call for production, that document can only be produced in that form. However, appropriate sanctions should address conduct, after a call for a document, which result in an incomplete or adulterated document being produced to the Committee.

- The Crown Solicitor was specifically asked to comment on whether it is appropriate for the PAC to be granted the proposed additional powers. His view basically is that the issue of legislating to provide a power for a Parliamentary Committee to compel the production of documents is one that requires a consistent approach among all the committees. He believes that there is an argument that, in order to perform at least some of its functions effectively, the PAC should be able to compel or secure the production of documents and electronic information, if necessary.

Should it be decided that the proposed compulsory powers ought to be granted to the relevant Parliamentary committees by legislation, the Crown Solicitor has suggested that the following issues be considered along with others:

- Whether certain information should, having regard to its nature, be beyond call by the Committee (e.g. Cabinet documents and documents the subject of legal professional privilege). Some jurisdictions recognise protections and privileges that a witness would have in legal proceedings, and at least one jurisdiction recognises “just cause” for non-production of documents.
- What kind of provisions should be made to protect certain information which is produced to the Committee.
- What regime should be established to ensure compliance with the Committee’s call for production of documents.

Having regard to the above, it is proposed that a more appropriate course would be for a Parliamentary Committee to make a recommendation to the House that the House order the production of those documents that have been refused rather than giving such powers directly to a Committee. The High Court in *Egan v Willis* considered that the Legislative Council does have an implied power to order the production of documents (although it left open the issue of whether it could order the production of privileged documents, or documents of persons who are not members of the Legislative Council). By analogy, the Legislative Assembly would have the same powers. It is considered that these powers are of such importance that they should be exercised by the House itself, rather than delegated to its committees.

Recommendation

The PAC’s proposal to be considered and decided by Cabinet.

Issue 7

Whether the use of the Treasurer’s Advance should be subject to any conditions.

Respondent’s Comments

The Auditor-General has proposed that the Treasurer’s Advance should not be used for expenditures which were known to exist at the time the Annual Appropriation Bill was introduced into Parliament or where the expenditures are not urgent and could therefore be funded through a subsequent Appropriation Bill. It is the Auditor-General’s view that the use of the Advance should be restricted to for example:

- an unforeseen overrun of payments beyond an original appropriation;

- where an amount has been inadvertently omitted from the Principal Appropriation Bill; and
- a new purpose for which funding is urgently required before the passage of a subsequent Appropriation Bill.

Treasury's Comments

In all States (excluding Western Australia) and the Commonwealth, a small amount (generally known as "Treasurer's Advance") is approved under the Annual Appropriation Act to be used by the Treasurer in meeting the costs of expenditures not specifically allowed for in the Act. This is a recognition by Parliaments that the Executive Governments require a "contingency fund" to meet expenditure needs arising after the enactment of the Annual Appropriation Act.

In recent years, the Treasurer's Advance in New South Wales has been in the vicinity of \$100 million. On a per capita basis, this amount is generally less than other States. Indeed, in some cases, the New South Wales amount is less in absolute terms. It is proposed that, in future, the Treasurer's Advance be fixed at 1% of next year's total current receipts. On this basis, the 1998-99 amount would have been \$250 million as compared to the actual allocation of \$125 million.

None of the respondents to the Treasury's Consultative Document (including the Public Accounts Committee and the Public Bodies Review Committee) has suggested that specific conditions be attached to the use of the Treasurer's Advance. Further, it is also noted that no other jurisdictions has any specified restrictions in relation to the application of the Treasurer's Advance (with the exception of the Commonwealth). In the case of the Commonwealth, the Advance to the Minister for Finance and Administration can only be used for "urgent" and "unforeseen" services.

To ensure full transparency in relation to the use of the Treasurer's Advance, it is proposed that the details of all expenditures be required to be reported in the current year's Public Accounts which are tabled in Parliament. This should alleviate the Auditor-General's concern about the possibility of the Treasurer's Advance being used to pay for expenditures that were known when the Annual Appropriation Bill was proposed without Parliamentary scrutiny. In the normal course of events, it is expected that the Treasurer would only use the Advance where an expenditure is urgent and therefore cannot wait for a subsequent Appropriation Bill to avoid depleting the balance in the "contingency fund" unnecessarily in any case.

Recommendation

No specific conditions be attached to the use of the Treasurer's Advance.

Issue 8

Development of key performance indicators (KPIs) of agencies.

Respondent's Comments

In its initial submission, the PAC expressed the view that, in the interest of impartiality and accountability, the new legislation should stipulate that agencies are required to develop their KPIs in consultation with an independent source. The Committee subsequently advised in writing that it now only wishes to have a provision stipulating that an agency is to seek external advice in developing its KPIs, where considered appropriate.

Treasury's Comments

The Public Bodies Review Committee's view is that the objectives and KPIs of agencies should be authoritative and endorsed at a senior level (ie by Ministers).

The whole issue of the development and reporting of KPIs has been considered by the Working Party and the Reference Panel taking into account the views of the PAC and the Public Bodies Review Committee.

Recommendation

The new legislation to specify that agencies' KPIs should be:

- approved by their responsible Ministers;
- developed with external advice, where considered appropriate; and
- aligned with comparable indicators of similar bodies as well as with nationally agreed indicators (where available).

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Appendix 4

Model for Parliamentary Joint Committee

Constitution provisions - Joint
Committee on the Office of the
Ombudsman and the Police Integrity
Commission

As established under Part 4A of the *Ombudsman Act 1974*

Constitution provisions - Joint Committee on the Office of the Ombudsman and the Police Integrity Commission

Relevant sections pertaining to constitution and membership:

Part 4A Parliamentary Joint Committee

31A Constitution of Joint Committee

- (1) As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Office of the Ombudsman and the Police Integrity Commission, is to be appointed.
- (2) The Joint Committee has and may exercise the functions conferred or imposed on it by or under this Act, the Police Integrity Commission Act 1996, or any other Act.

31B Functions

- (1) The Joint Committee has the following functions under this Act:
 - (a) to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
 - (c) to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
 - (d) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman,
 - (e) to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee:
 - (a) to investigate a matter relating to particular conduct, or
 - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or

- (c) to exercise any function referred to in subsection (1) in relation to any report under section 27, or
 - (d) to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27, or
 - (e) to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the Telecommunications (Interception) (New South Wales) Act 1987.
- (3) The functions of the Joint Committee may be exercised in respect of matters occurring before or after the commencement of this section.

...

31C Membership

- (1) The Joint Committee is to consist of 7 members, of whom:
 - (a) 3 are to be members of, and appointed by, the Legislative Council, and
 - (b) 4 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

31I Application of certain Acts etc

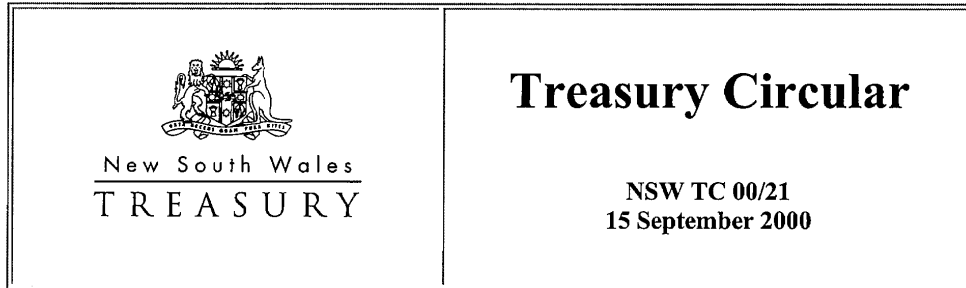
For the purposes of the Parliamentary Evidence Act 1901 and the Parliamentary Papers (Supplementary Provisions) Act 1975 and for any other purposes:

- (a) the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly.

Appendix 5

Treasury Circular TC 00/21

Budget Controls – Net Cost of
Services



BUDGET CONTROLS - NET COST OF SERVICES

Summary:

With the move to managing the State's finances on an accrual basis there also needs to be a move from the control of Budget aggregates based largely on the approval of cash Consolidated Fund allocations.

The agency budget control measure that is consistent with the accrual presentation of the State's Budget is the Net Cost of Services (NCS). NCS is an accrual measure (broadly equal to expenses less retained revenues) and provides a Budget target at the agency level that better reflects aggregate fiscal targets under the new Budget reporting format.

The main features of the new NCS framework are:

- Agencies will have a NCS limit for both the Budget year (which will be subject to a tolerance limit) and Forward Estimates years.
- Variations to agency NCS limits over a Budget cycle will require Treasurer and/or Budget Committee approval. Such variations would relate to maintenance of programs and enhancements. Some minor variations and the impact of savings will be approved within Treasury under delegation from the Treasurer.
- Control of Consolidated Fund allocations, while still important and required for legislative reasons, is essentially a funding issue and will be dealt with separately from the approval to incur additional expenses.
- NCS controls will be extended to non Budget dependent General Government agencies.

For Budget dependent agencies NCS controls will apply for the Budget cycle commencing 2001-02 with effect from the issue of the first allocation letter in October 2000. Within year NCS controls will also operate in the monitoring of the 2001-02 Budget result.

Non Budget dependent General Government agencies will have a more phased in approach with Budget year controls commencing with the issue of the February 2001 allocation letter.

A more detailed outline of the new system is contained in the attached information paper.

Ian Neale
Acting Secretary

Further Information: Ross Edwards (9228 4406)
NSW Treasury Internet: www.treasury.nsw.gov.au

BUDGET CONTROLS BASED ON NET COST OF SERVICES (NCS)

Introduction

The key issues concerning the control of Budget aggregates and the approval of cash Consolidated Fund allocations are:

- Consolidated Fund recurrent allocations represent only one funding source for proposed expenses. Agencies are also able to increase expenses and affect the Budget result by the use of cash balances or changes in creditors. It is the actual level of expenses that impacts the Budget result, not the level of Consolidated Fund support.
- Cash controls are inconsistent with, and therefore effectively undermine, the move to managing the State's finances on an accrual basis and the development of accrual fiscal targets.
- Consolidated Fund controls are ineffective for agencies that are in the Budget sector but are in fact self funded.

A more effective approach to managing the State's finances is to control agency Net Cost of Services (NCS) aggregates. This is an accrual measure (broadly equal to expenses less retained revenues) and establishes Budget targets at the agency level that better reflect aggregate fiscal targets under the new Budget reporting format.

Outline of NCS Controls

The main features of the new NCS framework are:

- Agencies will have a NCS limit for both the Budget year (subject to a tolerance limit) and Forward Estimates years.
- Variations to agency NCS limits over a Budget cycle will require Treasurer and/or Budget Committee approval. Such variations would relate to maintenance of programs and enhancements. Some minor variations and the impact of savings will be approved within Treasury under delegation from the Treasurer.
- Control of Consolidated Fund allocations, while still important and required for legislative reasons, is essentially a funding issue and will be dealt with separately from the approval to incur additional expenses.
- NCS will be clearly and unambiguously defined to ensure all agencies have a clear understanding about what is to be controlled.
- NCS controls will be extended to non Budget dependent agencies.

Definition of Controlled NCS

The controlled NCS aggregate will be defined as follows:

	Accounting NCS
Deduct	Depreciation expense
Deduct	Superannuation expenses
Deduct	Long service leave expenses
Deduct	Protected items (and expenditure based on in year Commonwealth receipts)
EQUALS	Controlled NCS

Accounting NCS is equal to total expenses less retained revenues and gains (or losses) on the disposal of non current assets.

The controlled NCS outcome reflects the impact an individual agency has on the overall Budget aggregates and excludes items where an agency has little control over outcomes.

Implementation Timetable

Budget Dependent Agencies

For Budget dependent agencies NCS controls will apply for the Budget cycle commencing 2001-02 with effect from the issue of the first allocation letter in October 2000. Within year NCS controls will also operate in the monitoring of the 2001-02 Budget result.

Non Budget Dependent General Government Agencies

Implementation of the new system will begin with the February 2001 allocation letter. The February allocation letter will inform agencies that the adjusted NCS, established by their FIS forward estimates data at that time, must not be varied between then and the Budget without prior approval. This letter will also provide further details of agency requirements under the new arrangements.

How the process will work over the Budget cycle for Budget Dependent Agencies

- Over the coming Budget cycle the new arrangement will work as follows (also refer to Attachment A:)
 - The October allocation letter will advise Budget dependent agencies of their NCS cap. In practical terms agencies will be provided with a new schedule detailing the controlled NCS aggregate for the Budget and forward estimates period based on Budget time data plus any subsequent adjustments.
 - Financial data returned via the October FIS disk will not be allowed to result in increases in an agency's NCS for the Budget and forward estimates period (apart from approved Budget adjustments).
 - Agency proposals for maintenance of programs, enhancements and savings will be reviewed as in the past but from the perspective of their impact on NCS. Nevertheless, Consolidated Fund impacts will also need to be considered, as this is the primary funding source.
 - Approved expenditure proposals will be incorporated in agency FIS data by Treasury analysts and appropriate adjustments made to the approved level of NCS and Consolidated Fund allocation for each agency.
 - The March allocation letter will detail an agency's new NCS limit for the Budget

and forward estimates period and corresponding Consolidated Fund allocations. No increases in either are permitted between this date and the Budget without the Treasurer's approval.

- Within Budget year monitoring will allow minor unapproved variations in the NCS for the Budget year provided these do not have a forward estimates impact or result in the need for additional Consolidated Fund support.
- The allowable variations for Budget year monitoring will be based on an agency's controlled NCS.

NCS Band	Allowable NCS Variation (\$ or % of NCS)
0- \$10m	\$200,000
\$10m - \$50m	Greater of \$200,000 or 1.5%
\$50m - \$100m	Greater of \$750,000 or 1.0%
\$100m - \$200m	Greater of \$1 million or 0.75%
Over \$200m	Greater of \$1.5 million or 0.5%

- If the end of year NCS outcome is lower than the approved limit an agency would have the opportunity of seeking approval to carry forward the saving by increasing the NCS limit for the following year. Treasury will however critically review such applications and approval will depend on the State's aggregate financial position, and the ability of an agency to demonstrate that the savings are related to initiatives to achieve efficiencies or arise from the deferment of expenditure as a result of circumstances beyond the agency's control.
- It is conceivable that agencies may encounter expenditure moving from non cash to cash items with no impact on their NCS limit. If there is a requirement for additional Consolidated Fund support in either the Budget or Forward Estimates period, the Treasurer's approval will be required. Funding approval will be based on a review of the underlying nature of the transactions.
- It should be emphasised that under the proposed new system there is still the requirement for moneys from the Consolidated Fund to be appropriated by Parliament.

How the process will work over the Budget cycle for Non Budget Dependent General Government Agencies

Non Budget dependent agencies will be required to seek approval for variations from NCS limits established in the February 2001 allocation letter.

Further details of the requirements to be observed by non Budget dependent General Government agencies (including the basis of tolerance limits for Budget year monitoring) will be advised at that time.

Appendix 6

Minutes of the Proceedings

Minutes

Minutes No. 29

Monday 1 May 2000

At Parliament House, at 2.00pm

1. Members Present

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

2. Apologies

Mr Primrose

3. Confirmation of minutes

Resolved, on motion of Dr Wong, that the minutes of meeting number 28 be confirmed.

4. Appropriation and Expenditure Inquiry

The media and the public were admitted.

Mr Bob Sendt, Auditor-General, Mr Eric Lumley, Assistant Auditor-General, and Mr Geoffrey White, Senior Audit Manager, were sworn and examined.

Mr Sendt tendered one document to support his evidence.

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

Evidence concluded and the witnesses withdrew.

The media and public withdrew.

The Committee deliberated.

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 today's transcript of evidence.

Resolved, on motion of Kelly, that the Committee Director be asked to consult with all Members and identify two half days in July and/or August 2000, convenient to all Members, to deliberate on the Chairman's draft report.

Resolved, on motion of Mr Ryan, that Members forward suggestions for information / recommendations to include in the Chairman's draft report to the Chairman by Monday, 22 May 2000.

5. Adjournment

The meeting adjourned at 4.07pm until 4.10pm on Monday, 1 May 2000.

Anna McNicol
Director

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Minutes No. 49

Wednesday 20 December 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

2. Apologies

Mr Wong

3. Confirmation of minutes

Resolved, on the motion of Mr Kelly: That the minutes of meeting number 28 be confirmed.

4. Correspondence

The Chairman tabled 2 items of correspondence received:

Letter from John Pierce, Secretary, NSW Treasury, to Director, dated 3 May 2000, providing written comments on the major issues addressed as a result of the Treasury Working Paper.

Memo from the Hon John Jobling MLC, Opposition Whip, to Clerk, dated 19 December 2000, advising that the Hon John Jobling MLC will be representing the Hon Doug Moppett MLC, for the purpose of the meeting held on 19 December 2000.

5. Appropriation and Expenditure Inquiry

The Chairman submitted his draft report entitled "Appropriation and Expenditure: Final Report", which having been circulated to each Member of the Committee, was accepted as being read.

The Committee proceeded to consider the draft report.

Chapter 1 read.

Resolved, on the motion of Mr Kelly: That the Committee Secretariat be permitted to correct grammatical errors and make necessary clerical amendments in the report.

Resolved, on the motion of Mr Jobling: That paragraph 1.26 be amended by deleting the first sentence and inserting instead:

“The Act does not place any enforceable obligation on any person and does not intend to require compliance to be monitored”.

Resolved, on the motion of Mr Ryan: That paragraph 1.34, last dot point, be amended by deleting the words “However it is agreed” and inserting instead “The NSW Treasury Working Paper proposes”.

Resolved, on the motion of Mr Ryan: That paragraph 1.38 be amended by inserting at the end:

“However, to make these benchmarks useful, they must be subject to the same auditing standards as, for example, applied to the financial information contained in Budget Paper 3.”

Resolved, on the motion of Mr Ryan: That after paragraph 1.49 insert the following paragraph:

“The Committee also notes the following comments by the Audit Office of NSW in its recent Performance Audit Report:

In the 1999 performance audit, the Audit Office advocated that the independent valuation of performance information be made a legislative requirement. It was noted, for instance, that in Western Australia the Auditor-General has been given the mandate not only to audit the accuracy of the indicators, but also to attest to their relevance and that they reflect the agency’s primary legislation.

The Audit Office considers that an independent validation of performance indicators is an essential component of accountability.

Resolved, on the motion of Mr Ryan: That paragraph 1.51 be amended by inserting at the end:

“At the time of writing this report, details regarding these agreements were not available, however the Committee notes that the Auditor-General has recently issued a series of reports addressing this issue.”

Resolved, on the motion of Mr Ryan: That paragraph 1.51 be amended by inserting at the end a footnote including the following report titles:

“The Audit Office of NSW, Performance Audit Report: Key Performance Indicators, August 1999; The Audit Office of NSW, Performance Audit Report: Judging Performance from Annual Reports: Review of eight agencies’ annual reports, November 2000; The Audit Office of NSW, Better Practice Guide - Reporting Performance, November 2000.”

Resolved, on the motion of Mr Jobling: That paragraph 1.67, first sentence, be amended by deleting the word “strong” and all words after “framework”.

Resolved, on the motion of Mr Ryan: That after Recommendation 1, insert the following recommendations:

“Recommendation 2

That the Government progress amendments to the Annual Reporting Act and Regulations in line with the proposals outlined by NSW Treasury in its 1998 document *Fundamental Review of NSW Financial and Annual Reporting Legislation*, which includes requiring agencies to obtain and produce comparative data to benchmark their operations.

Recommendation 3

That the Government, in redrafting the legislation, consider requiring agencies and controlled entities (such as areas health services) that have important roles and functions, to produce annual reports to Parliament.

Recommendation 4

That the Government progress recommendations from the earlier report by the Audit Office entitled *Key Performance Indicators* in relation to introducing legislative requirements for the validation of performance information reported by agencies.”

Chapter 1, as amended, agreed to.

Chapter 2 read.

Resolved, on the motion of Mr Jobling: That paragraph 2.1, be amended by deleting all words after “grants” in line 2 up to the end of the second sentence, and inserting instead:

“Combined they form the main public purse which is referred to as the Consolidated Fund. This fund is used by the elected government to provide goods and services back to the people of NSW.”

Resolved, on the motion of Mr Jobling: That paragraph 2.2 be amended by deleting the second sentence and inserting instead:

“After Parliament has appropriated an amount of funds to a government agency within a ministerial portfolio, Parliament’s power to direct how those funds will be used is relinquished. Although Minister’s are individually accountable to Parliament for their decisions and actions ”

Resolved, on the motion of Mr Jobling: That paragraph 2.4 be amended by deleting all words and inserting instead:

“This Chapter considers whether the balance of power between Parliament and the Executive has over time shifted too far in favour of executive control and whether recent legislative changes have further eroded the power of Parliament to scrutinise the expenditure of public funds.”

Resolved, on the motion of Mr Tsang: That paragraph 2.6, line 1, be amended by deleting the word “refute” and inserting instead “question the validity”.

Resolved, on the motion of Mr Tsang: That paragraph 2.6, second sentence, be amended by deleting all words after “reasoning” and inserting instead:

“would have more force but for the fact that the Government typically controls the Legislative Assembly which has power over money bills and which the Legislative Assembly may pass with or without amendment.”

Resolved, on the motion of Mr Tsang: That paragraph 2.8 be amended by deleting all words and inserting instead:

“While the extent to which Parliament should merely scrutinise expenditure or whether it takes up a more active oversight or supervisory role is debatable, it should be for Parliament, not Treasury to determine.”

Resolved, on the motion of Mr Ryan: That paragraph 2.9, line 6, be amended by deleting the words “ie in September 1999 the Estimates Committees consider the 1999-2000 Budget”.

Resolved, on the motion of Mr Ryan: That paragraph 2.9, fifth sentence, be amended by deleting all words after “Act” and inserting instead “will normally have been passed prior to the completion of the Estimates process”.

Resolved, on the motion of Mr Jobling: That after paragraph 2.13 insert the following paragraph:

“Section 5A of the *Constitution Act 1902*, provides for the Legislative Assembly to present the annual appropriation bills to the Governor for enactment without the concurrence of the Legislative Council. The Legislative Council can propose amendments but cannot insist on them and, in practise, this has generally constrained Members of the Council from moving amendments because any amendment, including rejection can be ignored by the Government of the day.”

Resolved, on the motion of Mr Jobling: That the title before paragraph 2.18 be amended by inserting at the end “- Appropriation for specific purposes”.

Resolved, on the motion of Mr Jobling: That the title before paragraph 2.21 be amended by inserting at the end “- Prorogation”.

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Resolved, on the motion of Mr Ryan: That paragraph 2.21 be amended by deleting the second sentence and inserting instead:

“This may occur where the government wishes to adjourn Parliament for various reasons, such as an opening of Parliament by the Governor or the Crown. Consequently this stops any further debate on legislation, operation of some committees and debate on other issues.”

Resolved, on the motion of Mr Jobling: That paragraph 2.25 be amended by deleting all words after “nevertheless” and inserting instead “removes the powers of Parliament to oversee the direction of expenditure of these funds”.

Resolved, on the motion of Mr Ryan: That paragraph 2.32 be amended by inserting at the end:

“The Treasury Working Paper includes a proposal to extend this flexibility by allowing for a similar Advance to be provided for capital expenditure”.

Resolved, on the motion of Mr Jobling: That after paragraph 2.33, delete the title “Recommendation 2”.

Resolved, on the motion of Mr Jobling: That after paragraph 2.53 insert the following paragraph:

“Members serving on Estimates Committees have reported to the Committee that the current presentation of appropriations make them difficult, if not impossible to correlate with everyday experiences. For example, the NSW Health Department appropriations are set out in cost headings which apply to an identified service in all hospitals such as “outpatient services” or “overnight stays”. It is not possible to identify the allocation to individual area health services let alone individual base or district hospitals despite the obvious public interest in these expenditure aggregations.”

Resolved, on the motion of Mr Ryan: That Recommendation 4 be amended by inserting after the word “required” the words “by statute”.

Resolved, on the motion of Mr Jobling: That paragraph 2.70 be amended by deleting the words “fund raising” and inserting instead “income generation”.

Resolved, on the motion of Mr Jobling: That paragraph 2.80, second sentence, be amended by inserting after the word “that”, the words “if this view is upheld,”.

Resolved, on the motion of Mr Jobling: That paragraph 2.83 be amended by deleting the words “a regime exists whereby the government can” and inserting instead, “this system could allow the government to operate without scrutiny”.

Chapter 2, as amended, agreed to.

Resolved, on the motion of Mr Kelly: That any dissenting statement relating to the report be provided to the Committee Secretariat no later than 5.00pm, Wednesday 20 December 2000.

Resolved, on the motion of Mr Ryan: That the draft report as amended, be the report of the Committee and that it be signed by the Chairman and presented to the House.

Resolved, on the motion of Mr Jobling: That in accordance with the consent of NSW Treasury, the Committee authorises the Secretariat to publish the NSW Treasury document entitled “Speech Notes for Presentation to the Appropriations Inquiry on Review of Financial and Annual reporting Legislation, dated April 2000, received by the Committee on 10 April 2000.

Resolved, on the motion of Mr Kelly: That pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the committee authorises the Clerk of the Committee to publish the report, submissions, correspondence and related material with the exception of documents and material identified as “private and confidential” or “not publicly available”.

6. Adjournment

The meeting adjourned at 11.49 pm, *sine die*.

Rob Stefanic
Senior Project Officer