

INQUIRY INTO CONSULTATION ON HIGHLY CONTENTIOUS BILLS

Organisation: NSW Parliamentary Library, Department of Parliamentary
Services

Date Received: 8 November 2019



DEPARTMENT OF PARLIAMENTARY SERVICES
DPS Branch

**Submission to the NSW Legislative Council Procedure Committee
Consultation on highly contentious bills**

The Director,
Procedure Committee,
Parliament House,
Macquarie Street, Sydney NSW 2000.

Dear Procedure Committee,

On behalf of the Department of Parliamentary Services (DPS), the NSW Parliamentary Library is pleased to respond to the NSW Legislative Council's Procedure Committee's *inquiry into consultation on highly contentious bills*. This submission responds to paragraph (b) of the inquiry terms of reference which requires the committee to inquire into and report on:

the parliamentary modernisation proposal that:

(b) a modified research and deliberative process be available for highly contentious private members' bills to ensure that the intent and possible ramifications of the draft legislation are fully explored.

The submission draws on the NSW Parliamentary Research Service's recent experience in preparing an issues paper for the Standing Committee on State Development's inquiry into the Uranium Mining and Nuclear Facilities (Prohibitions) Repeal Bill 2019. It also addresses the final question raised in the Procedure Committee's discussion paper (p. 16):

What are the financial and resourcing implications for the Department of Parliamentary Services for incorporating these processes?

Introduction

A key principle underpinning DPS' submission is our support for any initiative to modernise the Parliament. In an environment of continuous change, DPS is committed to future planning to ensure that our services remain relevant to an evolving 21st century Parliament. As evidenced by the development of the Parliament of NSW Master Plan¹, DPS understands that planning for the future is critical to meeting the opportunities and challenges which lie ahead. The Parliamentary Library has also been planning for the future. In recent months, the DPS executive team and library management have developed a paper on the Parliamentary Library of the Future.² This paper presents DPS' vision to guide the library's investment in its collection, research services, technology, physical and digital space and people over the next ten years and beyond. The Master Plan and the Library of the Future paper are examples of how DPS is responding to the

¹ The Parliament of NSW Master Plan provides a strategic outlook for the Parliament and determines what will be needed to support the Legislature, its members, staff and the community over the next 10 years. The Plan was developed by the three parliamentary departments, receiving the endorsement of the department heads and the Presiding Officers in July 2018.

² Current draft is available on request.

challenge of how to provide relevant services to the NSW Parliaments of the future. As such, DPS welcomes the opportunity to provide a submission to the committee, as the issues raised by the discussion paper are relevant to our strategic planning.

This planning has been undertaken against the background of a reduced operating budget arising from a number of factors, including the application of ongoing efficiency dividends. The cumulative impact of these dividends on the operation of the Parliament has also been well documented, most recently during the examination of the Legislature at the Tuesday 10 September 2019 [Budget Estimates session](#).

Under our current financial settings, this submission contends that the NSW Parliamentary Library is not resourced to undertake the 'modified research' and/or 'deliberative process' outlined in the committee discussion paper. A future of reduced budget allocations and continuing efficiency dividends will only exacerbate the current situation – where the library does not have sufficient resources to provide research on highly contentious bills and maintain the delivery of its existing core services to members. If the 'modified research' were to consist solely of an issues paper, then this may be achieved under certain conditions, one of which would result in reducing the research service's output of publications for general release. However, this submission outlines a DPS proposal to attract additional funding for a new service model that may be applied to the consideration of these bills.

NSW Parliamentary Library – Role of the research service

The Parliamentary Research Service in the NSW Parliamentary Library is a small team of seven FTE³ staff members who conduct impartial, evidence-based research for Members of the NSW Parliament. The research service was originally established in late 1992⁴ to provide all members with equitable access to non-partisan research services. As such, it works independently of both Houses of Parliament.

The aim of the research service is to provide members and their staff with:

- An independent, impartial and evidence-based source of research and analysis on legislation and/or policy issues.

The research service has subject matter expertise in the areas of law, social issues, health, media, politics, environment and planning. It enhances the library's research capacity by providing analysis and interpretation of information, statistical data and other reference material. The research service also produces around 30-32 publications each year. These publications are developed independently by the service. They are provided to all members and made available to the NSW public through the [Parliament's website](#).

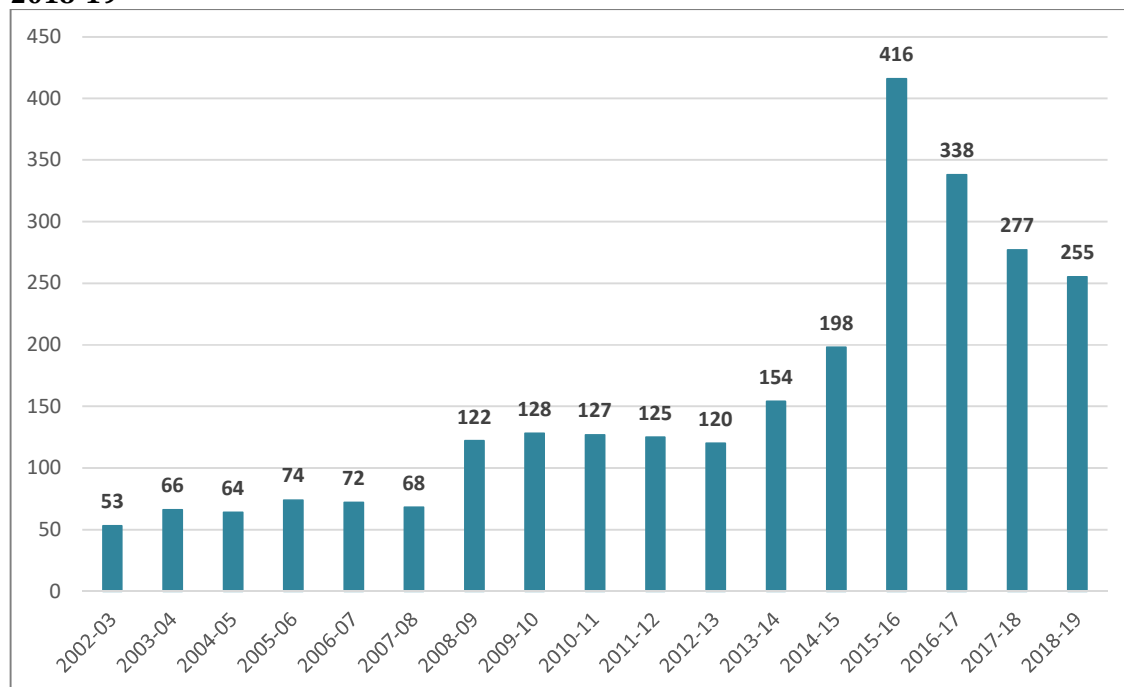
Increased demand for Parliamentary research services

Figure 1 shows the number of research papers and notes produced by the research service for the 2002-03 to 2018-19 period. It reveals the significant increase in the number of papers and notes provided by the service from the 2015-16 financial year onwards. In the first quarter of 2019-20, the research service completed 106 research papers and notes, with the number of research papers (66) a record high for a new Parliament.

³ As at October 2019, the Research Service comprises six members: 1 Senior Manager; 2 Senior Research Officers; 2 Research Officers and 1 Graduate Research Officer.

⁴ David Clune (1996) [Research Services and Parliamentary Libraries: Some Lessons from the New South Wales Experience](#), Australian Academic & Research Libraries, 27:3, 200-203

Figure 1: Parliamentary Research Service - Total research papers and notes, 2002-03 to 2018-19



Further information on the Parliamentary Library's research and reference services is presented in the submission [appendix](#).

In the research service, there is an inevitable tension between responding quickly to member requests (the majority of which have pressing deadlines) and the efficient allocation of resources to writing publications and other research tasks. As Figure 1 shows, the research service is dealing with an increased volume of requests over time and must respond to this demand from our clients. As a result, publications are completed in between responding to member requests.

Due to the small size of the research service (currently six staff), this can lead to inefficiencies in the drafting of publications as staff will need to regularly divide their time and concentration across multiple, complex subject areas. In some cases, the time taken to complete a research request or publication will increase significantly as staff are called upon to write about multiple complex policies or issues that are outside their area of expertise, training or even knowledge. While this environment offers opportunities for staff learning and development, the time needed to learn about a new and/or complex topic is for the most part, limited, given the request deadlines that the service is expected to meet.

Since 2015-16, the trend of increasing numbers of member requests has meant that the research service has not been able to release as many publications as in previous years. This has had an impact on the work of the library's reference team who would use these publications in their response to clients. Without these publications, the reference team has had to spend additional time undertaking research on areas that would usually be covered by research service's publication program.

In effect, responding to member research requests is, by definition, reactive. DPS envisages that the Parliaments of the future will increasingly depend on the library and the research service to move away from a reactive service model and embrace the challenge of leading a Parliamentary

research program focused on the future information needs of Parliamentarians. One way of doing this is for the research service to provide increasingly greater amounts of 'original research'. DPS is aware of this and understands that an effective research service needs to reinvent itself for each new Parliament. The success of this reinvention will determine the service's relevance into the future. Part of this continuous reinvention involves being proactive in monitoring the political environment and providing members with original analysis before others in the marketplace. This requires anticipating topics that members will be interested in and then providing independent, impartial and timely analysis tailored to the future needs of members.

Uranium Mining and Nuclear Facilities (Prohibitions) Repeal Bill 2019 Issues Paper

This issues paper was prepared by the Parliamentary Research Service after conducting independent desktop-based research into relevant literature, reports, statistics, legislation and case law. Due to the broad scope of the topic, and the need to respond to an increasing number of member research requests, the research service took approximately three months (17 June to 27 September) to produce the issues paper. A total of six authors were involved in its production. The use of this number of authors, with varying levels of writing skill and subject matter experience, on one written publication generates considerable inefficiency in the writing process. The decision to use this many authors reflected the resourcing challenges that the research service faced in trying to balance the needs of the Standing Committee for a comprehensive issues paper, respond to incoming Member requests and complete its own publications.

In responding to the committee's request for an evidence-based review of the issues relating to the repeal bill, the research service produced an issues paper comprising five chapters, supported by over 400 references and which generated 17 questions for further comment. The research service is monitoring the impact of its issues paper on the submissions received by the Standing Committee on State Development's inquiry into the Bill. The committee is expected to report in early 2020.

Based on our experience with the issues paper and the quality of work requested by the committee, adequate resourcing would require one dedicated senior research officer throughout the duration of the project. As part of the research service, this officer would be expected to complete member requests, but at least 80 to 90% of their time would focus on researching and writing the issues paper. As the research service currently employs two senior research officers, this limits our capacity to produce issues papers on highly contentious bills without an impact on our core services of responding to member requests and producing publications for general release

Financial and resourcing implications

A new resourcing model

DPS is currently working on a proposal for a new model of research and reference services to enhance the library's capacity to respond in an agile, flexible way to short-term surges in demand for its research services. This model may represent one way in which the library can provide a timely response to the challenge of producing research on highly contentious bills.

In brief, the model proposes to add additional research resources which would be shared across DPS, the Legislative Council (LC) and the Legislative Assembly (LA). It is anticipated that these resources would act in a 'surge capacity' to provide an immediate response to the urgent research needs of all Departments. In initial DPS planning, it is proposed that these resources

would be allocated to the Research Service. It is expected that these researchers either have experience working on parliamentary committees (of either House) or have an equivalent level of training. Under this model, resources would be allocated to where they are needed at peak periods. In these 'surge situations', a request would be made to the Chief Executive Officer, DPS from the relevant Clerk.

Funding would also be set aside to source subject matter experts on an 'as needed' basis. This would occur through the development of a database of subject matter experts who could be called upon at short notice to work on Parliamentary research matters. In addition to working on highly contentious bills, these subject matter experts would be available to other committees and to assist with other research required by the Parliament. All experts would be vetted, taught the principles of Parliamentary research practice and receive a formal induction into the Parliament. All experts who are recruited to undertake research for the Parliament would be expected to adhere to the principles of independence, impartiality and the use of authoritative evidence in analysis. It is anticipated that the database would include a diverse range of researchers such as (but not limited to) policy analysts, economists, academics, PhD students and any other researchers who meet the selection criteria. The model would be reviewed at the end of the first 12 months of operation.

This proposal will be submitted to NSW Treasury for funding in the next budget round. Unfortunately, the lead times for the consideration of this type of funding proposal are significant. As a result, such enhancements should only be considered a long term prospect and will not address the resourcing implications associated with responding to highly contentious bills in the next 12-18 months.

Financial implications

The [data](#) on Private Members' Bills in Legislative Council shows that from 1999 to 2018 between 3 to 17 Bills have been introduced each year. Over the 2015-2018 period (approximating the term of the 56th Parliament), this figure averaged over 12 per year.

In order to estimate the financial and resourcing implications for the library, two scenarios are provided below based on different assumptions of the number of highly contentious bills that will require research each year. The cost estimates generated by these scenarios are shown in Table 1. These scenarios differ according to the number of research staff required and the amount of funding for the expert panel.

Table 1: Resource cost estimates by number of Bill inquiries

<i>Number of Bill inquiries</i>	<i>Staff costs⁵</i>	<i>Expert panel</i>	<i>Total cost</i>
4	\$333,370	\$280,000	\$613,370
7	\$476,244	\$400,000	\$876,244

Based on a scenario of **four** highly contentious bills a year, the initial cost estimate is approximately \$613,370 per annum. This figure estimates the cost of recruiting three (two full-time; one part-time) senior researchers, with the part time position being an economist (the rationale for this will be discussed later). This is the equivalent of 2.8 FTE positions. These positions would mean that the research service would have a sufficient number of senior staff

⁵ The staff costs figure is based on the recruitment of senior research officers (9/10 level) and includes salary and overheads.

to produce at least four issues papers a year and undertake any other 'modified research' required for a highly contentious bill. As is current practice, all researcher positions would complete member requests and any other work relevant to the operation of the Parliamentary Library. The increase to a total of four senior research officers also provides the service with sufficient mass at the senior level so that future increases in demand for the service can be managed using part-time or temporary arrangements. As part of their duties, one of the new senior officers would administer the expert panel. This would involve the establishment of the panel through a formal recruitment process involving the vetting of candidates to determine their suitability to provide expert advice to the Parliament. Panel members would be inducted into the organisation, understand their professional responsibilities to the Parliament and be subject to an annual review of their suitability to remain on the panel. The new senior officer position would also consult and liaise with committee researchers and members in their efforts to access the appropriate subject matter expertise from the panel.

The funding figures for the expert panel in Table 1 are based on:

- an estimate of \$40,000 per inquiry to access subject matter experts for highly contentious bills; and
- an additional pool of \$120,000 per annum for the use of experts in the research activities of the Parliament.

While the value of accessing subject matter experts for highly contentious bills is undisputed, the availability of an expert panel will enhance the ongoing research activities of the Parliament. These include the work of existing Standing committees and House inquiries. Furthermore, the expert panel could be called upon to contribute the budget analysis expertise often required by the Parliament's Twinning program. Based on this, an additional \$120,000 has been included in the cost estimate for the expert panel. This amount will ensure that DPS, the LC and the Legislative Assembly have access to a maximum of \$40,000 in additional funding per annum for subject matter experts. As noted, the model will be reviewed and as part of this, expenditure on the expert panel will be tracked throughout its first year. Funding adjustments will be made on a quarterly basis if the usage pattern of the expert panel is not in keeping with DPS' original projections.

Under a scenario where the number of highly contentious bills increases to **seven**, the cost estimate will increase to \$876,244 per annum. The main cost drivers would be the recruitment of three *part-time* researchers and the increased cost of using more experts due to the increased number and diversity of bills under consideration.

None of the cost estimate scenarios presented here include the cost of undertaking a deliberative process as part of the research into a highly contentious bill. Aside from these unknown research costs, this submission does not provide any estimates of the costs incurred by other DPS sections in providing the necessary infrastructure to accommodate new and temporary staff (Facilities and IT Services).

By definition, highly contentious bills may be characterised by their economic implications for the State. Due to resourcing constraints, the service does not currently employ an economist. It is suggested that the recruitment of this skill set be a priority when considering the value add of new staffing resources. Further, the recruitment of expert economists should be prioritised in the new model of library research and reference services outlined above.

An alternative position might argue that there are no financial implications to the library or DPS if the research service simply absorbs the issues papers into its existing publication program. The major implication of this position, is that given current staffing levels and increased service demand, the research service would produce fewer of its own publications each year.

But, consider for a moment, the true cost of this approach. If the research service commits a significant proportion of its publication resources to servicing one area of inquiry, then what other areas of significance to the State are not being covered? In a strategic sense, if we pursue one area of inquiry, then the true cost is the loss of the opportunity to pursue another. In an environment of diminishing resources, decisions about the allocation of resources must also consider the value of opportunities that are *not* being supported.

Conclusion

In conclusion, while DPS are committed to being an active player in the process of modernising the Parliament, we recognise that the necessary change inherent in this process will not meet its objectives if it is not properly planned and funded. The goal of pursuing reforms that rapidly modernise the Parliament and in turn, benefit the citizens of NSW is a worthy one. However, it is important that time be taken to ensure that the Parliamentary framework that holds our democracy together is healthy. A critical element of this is the allocation of sufficient resources to allow for the necessary scrutiny of highly contentious bills by Parliament.

To ensure that these resources are available, DPS is currently developing a new funding proposal to enhance the delivery of our research services in the 2020/21 budget round. The development of DPS's proposal will be informed by the recommendations of the Procedure Committee's inquiry report. This bid will allow for a new model of research service delivery by increasing our existing senior researcher capacity and enabling ongoing access to a panel of external subject matter experts. In combination, with our existing research services, this model represents one way in which the DPS can flexibly response to the challenge of producing research on highly contentious bills and other research inquiries that come before the Parliament.

Thank you for the opportunity to make this submission.

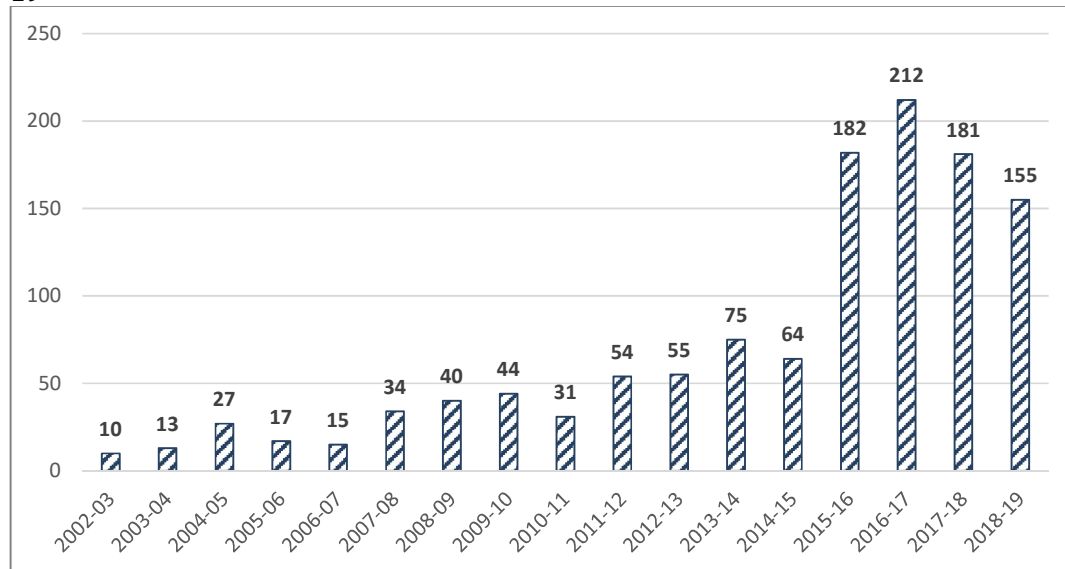
Sincerely,

NSW Parliamentary Library
Department of Parliamentary Services
8 November 2019

Appendix: Highly Contentious Bills Submission

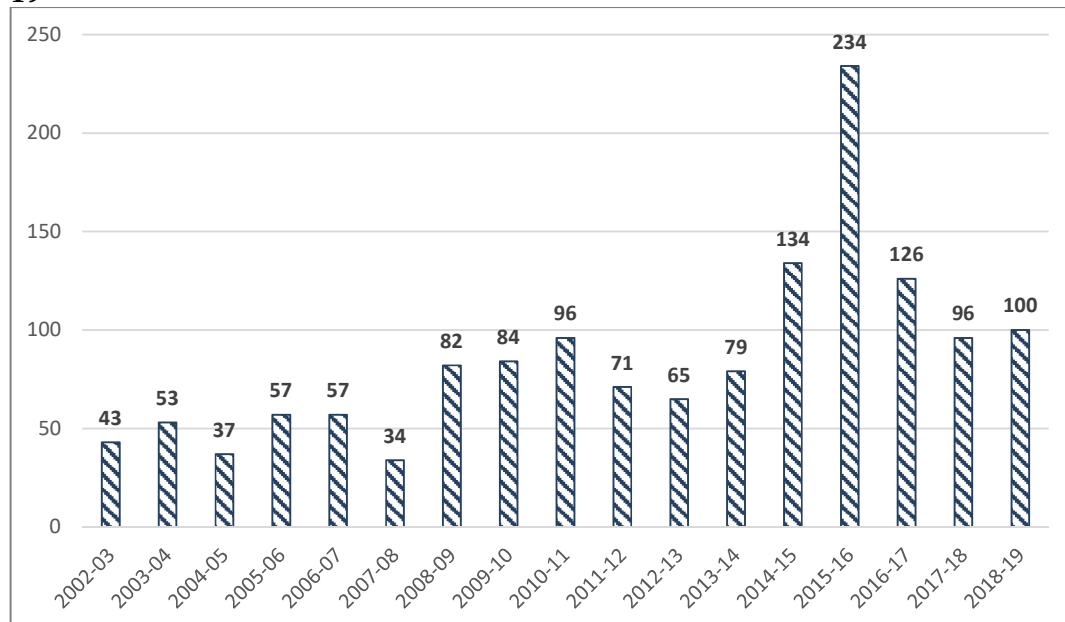
In response to Member's confidential research requests, the research service produces two types of research responses: papers (Figure A1) and notes (Figure A2). Responses are categorised as papers or notes according to the complexity of the work involved and the length of time taken to complete the request.

Figure A1: Parliamentary Research Service - Research papers by financial year, 2002-03 to 2018-19*



*Note: In the first quarter of 2019-20, the Parliamentary Research Service completed 66 research papers for members.

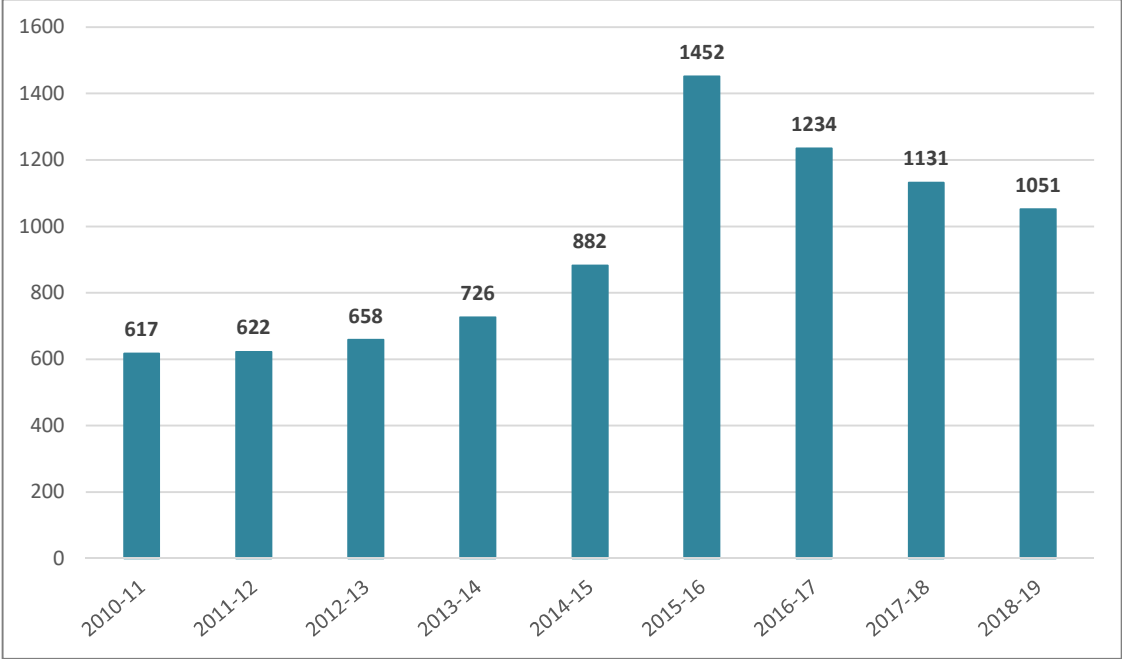
Figure A2: Parliamentary Research Service - Research notes by financial year, 2002-03 to 2018-19*



*Note: In the first quarter of 2019-20, the Parliamentary Research Service completed 40 research notes for members.

The Parliamentary Library reference team also responds to confidential research requests from Members (Figure A3).

Figure A3: Parliamentary Library Reference team – Member requests by financial year, 2010-11 to 2018-19*



*Note: In the first quarter of 2019-20, the library reference team completed 407 member requests.