

Submission
No 4

**INQUIRY INTO BUDGET PROCESS FOR INDEPENDENT
OVERSIGHT BODIES AND THE PARLIAMENT OF NEW
SOUTH WALES**

Organisation: Legislative Council of Western Australia

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SUBMISSION TO THE INQUIRY INTO THE BUDGET PROCESS FOR INDEPENDENT OVERSIGHT BODIES AND THE PARLIAMENT OF NEW SOUTH WALES

1 Background

- 1.1 The New South Wales Legislative Council Public Accountability Committee is inquiring into the budget process for independent oversight bodies and the Parliament of New South Wales. The inquiry will focus on options for ‘enhancing the process for determining the quantum of funding [for those bodies] ... including the transparency of this process’.¹ This submission will provide an overview of the processes that apply in Western Australia for funding parliamentary departments² and certain independent oversight bodies.³
- 1.2 The terms of reference to the inquiry listed a number of independent oversight bodies. The following table lists the Western Australian-equivalent bodies.

Table 1. *Equivalent institutions*

New South Wales	Western Australia
Independent Commission Against Corruption	Corruption and Crime Commission
Law Enforcement Conduct Commission	Corruption and Crime Commission
Audit Office of New South Wales	Office of the Auditor General
NSW Electoral Commission	Western Australian Electoral Commission
NSW Ombudsman	Parliamentary Commissioner for Administrative Investigations (Ombudsman)
Department of Parliamentary Services	Parliamentary Services Department (PSD)

2 Key points

- The parliamentary departments and independent oversight bodies are subject to the same budget process as public sector agencies.
- The parliamentary departments and independent oversight bodies are included in the annual appropriation bills and are not differentiated from public sector agencies for which the Parliament appropriates annual funding from the Consolidated Account.
- The Department of the Legislative Council and the Department of the Legislative Assembly receive significant funding from outside the annual appropriation bills, owing to the standing appropriation for Members’ salaries and allowances contained in s 6 of the *Salaries and Allowances Act 1972*. This ‘special act’ funding also provides the salary and benefits to the Clerks and Deputy Clerks of both Houses of Parliament. It does not fund the salary and benefits for the two equivalent positions in the PSD. Determinations of the Salaries and Allowances Tribunal have no material impact upon the services appropriation

¹ Term of reference 1(a).

² For the purposes of this inquiry, parliamentary departments refer to the Department of the Legislative Council, the Department of the Legislative Assembly and the Parliamentary Services Department. The Department of the Legislative Council and the Department of the Legislative Assembly provide administrative support to their respective Houses of the Parliament. The Parliamentary Services Department provides services to Members, the two departments and staff, and manages Parliament House.

³ The independent oversight bodies comprise the Corruption and Crime Commission, the Office of the Auditor General, the Western Australian Electoral Commission, the Parliamentary Commissioner for Administrative Investigations and the Parliamentary Inspector of the Corruption and Crime Commission.

to the parliamentary departments for delivering services to Members or for maintaining infrastructure.

- Determinations of the Salaries and Allowances Tribunal set the salary and entitlements for the Auditor General and Deputy Auditor General⁴; the Commissioner of the Corruption and Crime Commission⁵; the Electoral Commissioner and Deputy Electoral Commissioner⁶; and the Ombudsman and Deputy Ombudsman.⁷ These special appropriations to meet the salary and entitlements of the holders of these offices comprise a relatively small proportion of each oversight body's total annual budget.
- The budget process is managed by the Expenditure Review Committee of Cabinet (ERC) and supported by Department of Treasury. The ERC considers all policy issues with financial implications and recommends a course of action to Cabinet. Funding requests from the parliamentary departments and independent oversight bodies compete with funding requests by government agencies.
- Government allocates funds to agencies that participate in the budget process consistent with its whole-of-government financial objectives and service delivery priorities. These Government priorities do not necessarily align with the needs of parliamentary departments or independent oversight bodies. Limited resources and the often-negative public perception arising when public funds are spent on services and facilities for Members of Parliament can result in a reluctance by Government to adequately resource the Parliament. Independent oversight bodies may draw unwelcome attention through their scrutiny of government activity. As a result, there may be a political incentive to limit funding to some oversight bodies.
- The PSD has repeatedly expressed concerns about the adequacy of funding available to it for maintaining Parliament House and its facilities.

3 The financial management framework

3.1 There are a number of key Acts that underpin the financial management framework in Western Australia. The Acts most relevant to this inquiry are the:

- *Constitution Act 1889*, which requires government revenue to be credited to the Consolidated Account and expenditure from the Consolidated Account to be approved by Parliament.
- *Constitution Acts Amendment Act 1899*, which sets out the different powers between the two Houses of Parliament in legislating.
- *Financial Management Act 2006*, which provides the framework for financial management and reporting for agencies covered by the Act, and the administration of appropriated funds.

3.2 The Parliament approves spending from the Consolidated Account through the annual appropriation bills. Since 2015, these bills have been labelled Appropriation (Recurrent <financial year>) Bill and Appropriation (Capital <financial year>) Bill. The bills are similar in structure, with the total amount of funds requested in the main body of the bill and the allocation of those funds to agencies contained in the Schedule. The information supporting the request for funds is contained in the Budget Statements (Budget Paper No. 2).

⁴ *Auditor General Act 2006*, s 11, Schedule 2, item 1.

⁵ *Corruption, Crime and Misconduct Act 2003*, s 11, Schedule 2, item 3

⁶ *Electoral Act 1907*, s 5B(7).

⁷ *Parliamentary Commissioner Act 1971*, s 5(5).

3.3 Agencies are grouped into categories⁸ in the Schedule to the Appropriation Bills and the Budget Papers (see Table 2).

Table 2. *Grouping of the parliamentary departments and the independent oversight bodies*

Agency	Group
Department of the Legislative Council	Parliament
Department of the Legislative Assembly	Parliament
PSD	Parliament
Ombudsman	Parliament
Western Australian Electoral Commission	Government administration
Office of the Auditor General	Financial administration
Corruption and Crime Commission	Community safety
Parliamentary Inspector for the Corruption and Crime Commission	Community safety

3.4 The Legislative Council may not amend Bills that appropriate revenue or moneys for the 'ordinary annual services of the Government'.⁹ The appropriation bills do not explicitly identify which services should be considered an ordinary annual service of the Government. In the absence of information that would identify an item as not being for the ordinary annual services of the Government, the current practice is to treat the Appropriation (Recurrent) Bills as unamendable by the Legislative Council. This contrasts with the Appropriation (Capital) Bills which are amendable but not so as to increase any proposed charge or burden on the people.¹⁰ This prevents the Legislative Council from amending any bill so as to increase any charge or appropriation contained in a bill. Consequently, the Legislative Council has no power to amend the appropriation bills to increase proposed funding to parliamentary departments or independent oversight bodies.

3.5 The Parliament may pass bills that include standing appropriations, which appropriate funds from the Consolidated Account for specific purposes without further recourse to Parliament. For example, the Department of Finance automatically receive funds for the First Home Owner Grant. Funding from these sources are disclosed in the budget papers under 'amounts authorised by other statutes'.

3.6 The majority of spending from the Consolidated Account is authorised by the Parliament through the appropriation bills. Of the \$24.4 billion spent from the Consolidated Account in 2018-19:¹¹

- \$19.0 billion was authorised under the *Appropriation (Recurrent 2018-19) Act 2018*;
- \$1.7 billion was authorised under the *Appropriation (Capital 2018-19) Act 2018*;

⁸ These are not portfolio-based groupings. Portfolio-based groupings are not practical as many agencies have more than one portfolio responsibility and may report to more than one Minister. For example, the Department of Communities reports to the Minister for Seniors and Ageing; Volunteering, the Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services, the Minister for Housing; Veterans Issues; Youth, and the Minister for Disability Services (Public Sector Commission, *Chart of the Western Australian Government*, 6 August 2019).

⁹ *Constitution Acts Amendment Act 1899* s 46(2).

¹⁰ *Constitution Acts Amendment Act 1899* s 46(3).

¹¹ Government of Western Australia, *2018-19 Annual Report on State Finances*, September 2019, p 237.

- \$3.4 billion was authorised by other statutes; and
- \$386 million was authorised under the Treasurer's Advance.¹²

4 The budget process

- 4.1 The budget process generally commences in October/November prior to the upcoming budget year and culminates with the introduction of the appropriation bills and the budget papers in the following May. The parliamentary approval process for the appropriations bills commences thereafter.
- 4.2 Early in the budget process, the ERC sets out the key processes and dates for the budget, including when Ministers¹³ are to submit budget bids and other related documents. It also sets out parameters for budget bids that it will consider as part of this process. These directions are communicated to agencies, including the parliamentary departments and independent oversight bodies, by the Department of Treasury.
- 4.3 The accountable authority of the agency may submit Ministerially-endorsed budget bids to the Treasurer for ERC's consideration.¹⁴ The ERC will consider whether those bids are consistent with its parameters for the budget (among other things) and make recommendations accordingly. The ERC recommendations are then presented to Cabinet for approval. The Government allocates funds to agencies that participate in the budget process consistent with its whole-of-government financial objectives and service delivery priorities.
- 4.4 Eligible agencies may opt out of the budget process as part of the 'streamlined budget process' and receive a 1% increase in their service appropriation funding for the budget year. Agencies that opt-out may not bid for funding in the budget process or over the budget year. If these agencies bid for funds during the year, they are required to repay the increment and are subject to whole-of-government savings initiatives, regardless of whether the bid for funds was successful.
- 4.5 The budget process, including the streamlined budget process, is typically a bilateral process between the Minister (or Presiding Officers) and the Treasurer. There is limited scope for the Parliament itself to be involved in the process. However, in the case of the Office of the Auditor General (OAG), the Joint Audit Committee¹⁵ may make recommendations on the budget of the OAG and the Treasurer is to have regard to those recommendations.¹⁶
- 4.6 Since the commencement of the *Auditor General Act 2006* on 1 February 2007, a parliamentary committee has reported to the Parliament on the resourcing of the OAG on five occasions.¹⁷

¹² The Treasurer and the Governor, on the recommendation of the Treasurer, are authorised to 'make payments in respect of extraordinary or unforeseen matters' that were not factored into the Appropriation Acts. The Parliament approves this spending in future appropriation bills (*Financial Management Act 2006* s 27).

¹³ The Presiding Officers are the 'Minister' for the purposes of authorising a budget bid for their respective departments and they jointly authorise bids for the PSD.

¹⁴ The Department of Treasury may approve certain adjustments to agency budgets without recourse to the Expenditure Review Committee.

¹⁵ The Joint Audit Committee comprises the members of the Legislative Assembly Public Accounts Committee and the Legislative Council Standing Committee on Estimates and Financial Operations.

¹⁶ *Auditor General Act 2006* s 44(1).

¹⁷ The previous Joint Audit Committee reported on one occasion (March 2016). The Legislative Council Standing Committee on Estimates and Financial Operations, which undertook the role in the years prior to the establishment of the Joint Audit Committee, reported on four occasions (February 2008, May 2009, April 2010 and August 2011).

The Auditor General considered committee representation contributed to greater funding for the OAG on at least one occasion.¹⁸

- 4.7 Government allocates funds to agencies that participate in the budget process consistent with its whole-of-government financial objectives and service delivery priorities. These Government priorities do not necessarily align with the needs of parliamentary departments or independent oversight bodies. Limited resources and the often-negative public perception arising when public funds are spent on services and facilities for Members of Parliament can result in a reluctance by Government to adequately resource the Parliament. Independent oversight bodies may draw unwelcome attention through their scrutiny of government activity. As a result, there may be a political incentive to limit funding to some oversight bodies.

5 Funding parliamentary departments and independent oversight bodies

- 5.1 The parliamentary departments and independent oversight bodies receive funding from the Consolidated Account authorised by Parliament passing the annual appropriation bills and from standing appropriations (usually to cover the remuneration for the head of the organisation) authorised by Parliament in special Acts. Agencies may also receive funding from other sources. For example:
- the Department of the Legislative Council and the Department of the Legislative Assembly receive 'resources free of charge', reflecting the services provided to those departments by the PSD.
 - the Western Australian Electoral Commission may recoup costs associated with running local government elections.
 - the Office of the Auditor General charges fees for financial audits on a cost recovery basis.
- 5.2 The parliamentary departments and independent oversight bodies have generally opted out of the budget process, and received incremental increases to its appropriation. Since the streamlined budget process commenced in the 2015-16 Budget, these bodies have participated in the full budget process on eight occasions (out of a possible 40). Further, there is only one instance when these bodies have sought funds after opting out of the budget process.¹⁹
- 5.3 The Department of the Legislative Council and the Department of the Legislative Assembly receive significant funding from the *Salaries and Allowances Act 1975* to cover remuneration for Members of Parliament.²⁰ Funding from the *Salaries and Allowances Act 1975*, which also includes remuneration for the Clerk and Deputy Clerk of each House of Parliament, averaged around 70% of total appropriation funding for the Department of the Legislative Council over the last ten years. The Department of the Legislative Assembly had a higher average at over 75% over the same period. Excepting the remuneration of the Clerks and Deputy Clerks of the Houses of Parliament, funding by the standing appropriation contained in the *Salaries and Allowances Act 1975* does not contribute to the budgets available to the parliamentary departments to provide services to members or maintain infrastructure.

¹⁸ Western Australia, Legislative Council, Standing Committee on Estimates and Financial Operations, Report 32, *Report on the budget of the Office of the Auditor General and Review of Auditor General's Audit Results Report – Annual 2009/10 Assurance Audits*, August 2011, p 2.

¹⁹ In 2015-16, the Ombudsman was required to return the increment he received as part of the 2015-16 Budget (Government of Western Australia, *2016-17 Budget, Budget Paper No. 2 – Budget Statements (Volume 1)*, May 2016, p 58).

²⁰ *Salaries and Allowances Act 1975* s 6(1)(b).

- 5.4 It is difficult to determine whether an agency is funded appropriately from information contained in the financial statements. For example, the surplus or deficit on the income statement indicates that funding covers recurrent costs (or not); it provides no indication if there is a shortfall in the quality and/or quantity of services relative to the demand for those services. An increase or decrease in the cash assets indicates that cash inflows²¹ exceed outflows²² (or not); it provides no qualitative indication of service delivery or whether assets are being maintained appropriately. Additional indicators or oversight mechanisms may be necessary.

Case study – Funding for the Parliamentary Services Department

In recent Budget Estimates hearings, the PSD advised Members that it is experiencing significant funding pressures from maintaining an ageing and overcrowded²³ building (Parliament House) and equipment. In 2018-19, the Department estimated the shortfall in funding at \$13 million over ten years. It has highlighted leaking roofs, broken air-conditioning and deficiencies in key security infrastructure as some of the areas that need rectification.

Each year, the PSD is provided with a capital appropriation of \$1 million for capital projects. It has advised that these funds are used for maintenance projects as 'we don't have enough money in our recurrent budget to deal with maintenance'.²⁴ In recent years, the Department of Legislative Council and the Department of the Legislative Assembly has provided funds to the PSD to undertake projects that benefit the chamber departments, which have the effect of supplementing funds PSD may otherwise have had to commit to those projects. This has allowed PSD to direct funds to other areas within its responsibility.

The PSD sought additional funds through the budget process to address funding shortfalls. In the 2018-19 Budget, it for 21 projects supported by detailed business cases. None of the 21 bids was successful.²⁵ In the 2019-20 Budget, it bid for six projects, with one of those bids being successful. The PSD received \$366 000 to remediate the roof of the eastern wing of Parliament House.²⁶ As a result of participating in the budget process, it forfeited its increments from the streamlined budget process, valued at \$161 000 in 2018-19 and \$162 000 in 2019-20.

6 Other – Services to the Parliament

- 6.1 The Legislative Council Standing Committee on Estimates and Financial Operations (Committee) has sought to improve the level of information disclosed to the Parliament on Members' services. The Department of the Premier and Cabinet is responsible for providing services to the Parliament, including:
- administering some of the entitlements of Members and former Members of Parliament;
 - printing services and some data entry processing for Chamber documents for both Houses of Parliament

²¹ Cash inflows are receipts from the State Government, receipts from operating activities, sales of non-financial assets and proceeds from financing activities.

²² Cash outflows are payments to the State Government, payments for operating activities, purchases of non-financial assets and repayments of borrowings and leases.

²³ It was not noted in the testimony that many members share offices in Parliament House and staff are located in three separate building outside Parliament Houses.

²⁴ Mr R Hunter, Executive Manager, Parliamentary Services Department, *Transcript of evidence*, 20 June 2018, p 8.

²⁵ Parliamentary Services Department, Answer to question on notice A2 asked at hearing held 21 May 2019, dated 23 May 2019, p 2.

²⁶ Mr R Hunter, Executive Manager, Parliamentary Services Department, *Transcript of evidence (Assembly Estimates Committee A)*, 21 May 2019, p 3.

- managing the Parliamentary questions, Bills and Tabled Papers databases.²⁷
- 6.2 These services were incorporated into the 'Administration of Executive Government Services' service, which also includes administrative support to the Premier, support for Executive Council, and other such Executive Government functions.²⁸
- 6.3 The Committee expressed concerns that this practice may confuse the responsibilities associated with the Legislative and Executive branches of Government. Similar concerns have been raised about including the administration of entitlements for Members and former Members of Parliament under this service.²⁹ The Committee suggested that the services to the Parliament could be separately identified.
- 6.4 In the 2019-20 Budget, the Department of the Premier and Cabinet commenced reporting on the administration of Parliamentary support separately to those support services provided to the Executive branches of Government.

²⁷ Department of the Premier and Cabinet, *Annual report 2016-2017*, September 2017, pp 39-40.

²⁸ Government of Western Australia, *2017-18 Budget, Budget Paper No. 2, Budget Statements*, 17 October 2017, p 65.

²⁹ Hon M Aldridge, *Transcript of evidence (Department of the Premier and Cabinet)*, 17 October 2017, p 17.