

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

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DPS)

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Submission to the Inquiry into Budget process for independent oversight bodies and the Parliament of New South Wales

Made of behalf of the Department of the Legislative Council and Department of Parliamentary Services of the Parliament of New South Wales

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1. Introductory Comments on the Scope of this Submission

In recognition of the comity between the Houses of Parliament in NSW, this submission has been prepared from the perspectives of the Department of the Legislature Council and Department of Parliamentary Services. Whilst there are references to the Parliament of NSW, which includes the Legislative Assembly, the submission does not purport to represent the views of the Department of the Legislative Assembly and does not address its specific funding needs.

2. Independence of Parliament

2.1. Separation of powers and independence of the legislature, executive and judiciary

A foundational principle of parliamentary democracy is the doctrine of separation of powers; namely, where the legislature, executive and judiciary are divided into independent branches to prevent centralisation of power, and to maintain effective checks and balances upon one another. Under the Westminster system of responsible government in NSW, the Premier and members of the executive government are also members of the legislature. They are therefore responsible to Parliament and, through Parliament, responsible to the electorate.¹

However, the reality of the Westminster system is that the executive government can ‘dominate’ one or both Houses of Parliament through the mechanism of strict party control.² In NSW, while the ability of the executive to control the Parliament has varied throughout its history,³ tension between these two branches endures. For example, concerns have been raised about the Parliament’s ability to effectively scrutinise executive government as a function of the use of delegated legislation,⁴ and the withholding of certain documents from the Legislative Council on the basis they are “cabinet” documents.⁵

2.2. Parliament’s fundamental role of holding the executive to account

An executive leveraging control over parliament is countered by the convention of responsible government, entrenched in the Westminster system, which results in the executive being responsible and accountable to the parliament. The concept of accountability of the executive government to parliament rests on two well-established principles central to the Westminster system of parliamentary government—ministerial responsibility and financial accountability.⁶

¹ Lovelock L, Evans J, *New South Wales Legislative Council Practice*, 2008, p 453; Bruekel J et al, [Independence of Parliament](#), Victorian Parliamentary Library & Information Service, Research Paper No 3, May 2017, p 4.

² Lovelock and Evans, note 1, p 450; Angus C, [Delegated legislation: Flexibility at the cost of scrutiny?](#), NSW Parliamentary Research Service, e-brief 5/2019, July 2019, p 18.

³ Clune D, Griffith G, *Decision and Deliberation: The Parliament of New South Wales 1856-2003*, 2006, p 540.

⁴ Angus, note 2.

⁵ Ohnesorge S, Duffy B, [‘Evading Scrutiny: Orders for Papers and Access to Cabinet Information by the New South Wales Legislative Council’](#) (2018) 29 *Public Law Review* 118.

⁶ J. Chalmers & G. Davis (2000) *Power: relation between the parliament and the executive*, Department of the Parliamentary Library, p. ii; Bruekel et al, note 1, p 9.

Ministerial responsibility

Ministerial responsibility refers to the obligation of ministers to answer to parliament for actions within their assigned responsibilities. As stated by the 1976 report of the Royal Commission on Australian Government Administration, 'It is through ministers that the whole of the administration—departments, statutory bodies and agencies of one kind and another—is responsible to the parliament and thus, ultimately, to the people'.⁷

This issue of ministerial responsibility was addressed extensively in the *Egan* cases, with the statement by Justice Kirby being indicative:

The reason why the accountability of ministers in the Council is not spelt out in terms in the Constitution Act itself, or in the Standing Orders, may be that it is so fundamental to the existence of a legislative chamber in our system of government and necessary to the performance of that chamber's functions as such, that it was accepted as axiomatic that, if a house of the parliament insists and there is no lawful reason for resistance, a member, including a minister, must obey the house's demand.⁸

Financial accountability

The provisions of the English Bill of Rights 1689 prevented the executive from raising taxes or expending funds without the authority of parliament. To be financially accountable the executive is expected to provide parliament with details of how funds appropriated have been spent. Parliamentary committees take a role of scrutinising the expenditure of the executive with this being more effective if the chamber where the committee operates does not have a government majority. Auditor-generals' offices audit government agencies and report to parliament providing further parliamentary oversight of government finances.⁹

Holding the government financially accountable is crucial, as 'the bedrock of parliamentary autonomy hinges on financial independence. Autonomy in this context is simply defined as non-dependence and non-subordination of parliaments in relation to the executive'.¹⁰ Where the executive is able to interfere with the funding and financial procedures of the legislature is a clear spillover of executive power into parliament, endangering the separation of powers doctrine.¹¹

Accordingly, a financially independent parliament is key to maintaining the separation of powers, whilst also ensuring that the executive does not interfere with or control parliament's scrutiny role. Compelling and successful arguments have been made for the necessity of an adequately resourced legislature and judiciary in accordance with the need for a separation of powers.¹²

⁷ H. Coombs et al. (1976) *Royal Commission into Australian Government Administration*, final report, Canberra, AGPS, p. 59; Bruekel et al, note 1, p 10.

⁸ *Egan v Willis* (1998) 195 CLR 424 at 155

⁹ Bruekel et al, note 1, p 10.

¹⁰ Maseko, L. (2013) *Financial independence as a means towards effective oversight*, paper presented to the CPA Post Election seminar for the Parliament of Lesotho, Maseru, 15-19 September, p. 4; Bruekel et al, note 1, p 10.

¹¹ S. Kennedy (2012) 'The Executive and the Parliament: how the framework for determining the legislature's funding can weaken the separation of powers', *Parliamentary Law, Practice and Procedure Course - Research Papers*, ANZACATT, p. 3; Bruekel et al, note 1, p 10.

¹² *Ibid* p11.

2.3. Parliamentary privilege

Parliamentary privilege is essential to understanding the independence of the New South Wales Parliament and the separation of powers.

Parliamentary privilege is the sum of certain immunities, rights and powers enjoyed by the individual Houses of the Parliament of New South Wales, together with their members and committees.

The current privileges of the Houses of the NSW Parliament and their members may be summarised as follows:

- The immunities that attach to parliamentary action are the immunities of freedom of ‘speech and debates’ and the immunity that attaches to participation in certain other ‘proceedings in parliament’ such as voting in the House, without external review in the courts.
- The rights of the House are the right to control its own proceedings and the right to the attendance and service of its members. The powers of the House include certain residual powers to determine its membership, notably through the expulsion of members, the power to maintain order, including suspending members and removing and excluding visitors.
- the power to order the production of State papers, and
- the power to conduct inquiries and call and compel evidence from witnesses.

The purpose of these immunities, rights and powers is to enable the House and its members to carry out their legislative, representative and scrutiny functions in the interests of the public they represent.

Privilege is also central to preserving the autonomy of Parliament. It sits within the doctrine of the separation of powers that operates in Westminster parliamentary systems, ensuring the independence of Parliament from the other branches of government: the executive and the judiciary.¹³

This basis of the law of privilege in New South Wales differs somewhat from other Australian jurisdictions. In all other Australian jurisdictions, with the partial exception of Tasmania, the immunities, rights and powers of the Houses of Parliament are determined by reference either to those of the British House of Commons at a certain date, by the enactment of subsequent privileges legislation such as the Parliamentary Privileges Act 1987 (Cth), or by the passage of constitutional provisions conferring wide-ranging powers on their Houses. Certain jurisdictions combine these approaches. There is however no general statute which establishes the immunities, rights and powers of the Houses of Parliament in New South Wales. Rather, they derive from three sources:

- common law powers founded on the test of “reasonable necessity”
- certain statutes such as the *Parliamentary Evidence Act 1901*, and
- privileges arising from the statutory adoption of Article 9 of the English *Bill of Rights 1689*:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

¹³ See *Mees v Road Corporation* (2003) 128 FLR 418 at [76] per Gray J.

Article 9 applies in New South Wales by virtue of its adoption in New South Wales by s6 and schedule 2 of the *Imperial Acts Application Act 1969* (NSW). This provision protects members of Parliament, witnesses at parliamentary hearings and other participants in parliamentary proceedings from being subject to civil or criminal proceedings as a result of their participation, or from having their words questioned or criticised in such proceedings. The immunity extends beyond the courts to include executive inquiries such as those made by the ICAC. It is essential to the separation of powers, and this privilege can only be abrogated by express words in legislation.

The other foundation of parliamentary privilege in New South Wales lies in the common law, arising from the long struggle battle between the Parliament and the Crown in the UK. The main boundaries were settled largely by the constitutional arrangements in the 17th century and by later key cases in the 19th century. The common law now recognises that UK Houses of Parliament possess inherent powers established by ancient usage and practice.

For New South Wales though the common law position is not a simple matter of looking to Westminster. The colony evolved by stages into the beginnings of responsible government with the *Constitution Act 1855* (NSW). However the Parliament did not inherit all the powers of the House of Commons, even then. *Keilley v Carson*¹⁴ held that in the absence of legislation, colonial legislatures possess such powers as are

‘necessary to the existence of such a body, and the proper exercise of the functions it is intended to execute’.

The power to regulate its own affairs, the power to deal with contempts, the power to discipline members, to conduct inquiries and order the production of state papers all derive in New South Wales from “necessity” as variously articulated in *Kielly v Carson* and similar decisions.¹⁵ As was stated in the seminal case of *Stockdale and Hansard*:

If the necessity can be made out, no more need be said: it is the foundation of every privilege of Parliament, and justifies all that it requires.¹⁶

While the principle of reasonable necessity may have at times appeared to be a limitation, the *Egan* decisions in the 1990s established that this is a very flexible source of power. The cases began as a result of a dispute between the Legislative Council and the Leader of the Government in the Council, the Honourable Michael Egan as to the power of the House to order the Executive to produce state papers. The House was challenged by the NSW Government, unsuccessfully in the Court of Appeal¹⁷ with the decision upheld in the High Court in *Egan v Willis*.¹⁸ It was conclusively determined that a power to order the production of documents by the executive government is “reasonably necessary” for the exercise of the Council’s functions, and as such suspending the Leader of the Government from the House was also necessary as a protective but also coercive measure, given the Leader of the Government’s refusal to respond to the will of the House. The key statement as to the source of parliamentary privilege in New South Wales was made by Justices Gaudron, Gummow and Hayne:

¹⁴ (1842) 12 ER 225.

¹⁵ See for instance *Barton v Taylor*(1986) 11 AC 197 and *Willis and Christie v Perry* (1912) 13 CLR 592.

¹⁶ (1839) 112ER 1112 at 1169.

¹⁷ *Egan v Willis and Cahill* (1996) 40 NSWLR 650.

¹⁸ 11 *Egan v Willis* (1998) 195 CLR 424.

What is reasonably necessary at any time for the proper exercise of the functions of the Legislative Council is to be understood by reference to what, at the time in question, have come to be conventional practices established and maintained by the Legislative Council.¹⁹

In the final instalment, *Egan v Chadwick*,²⁰ the Court of Appeal went on to hold that the power to order papers extends to documents which at common law would be protected from disclosure by legal professional privilege or public interest immunity, and these needed to be provided to the House. There was a limitation - the majority took the view that the power did not extend to certain categories of Cabinet documents, the disclosure of which would conflict with the principle of ministerial responsibility.²¹

The final source of privileges and immunities is an ad hoc collection of statutes which have over time been brought in to address specific gaps or problems. By far the most significant of these is the *Parliamentary Evidence Act 1901*, introduced initially because of difficulties experienced by committees in compelling witnesses to attend. Under the Act, a person who fails to comply with a summons to attend and give evidence before a House or committee may be apprehended, retained in custody and brought before the committee from time to time for the purpose of giving evidence (ss 7-9), while a person who, having attended, fails to answer a 'lawful question' may be committed to gaol for up to one month (s 11). The punitive sanctions in the Act have never been applied and there is debate as to whether in their current form they accord with contemporary notions of the Parliament's role.²² However the provisions provide a very strong incentive for witnesses to comply with committee proceedings and help underpin the strength and effectiveness of the Legislative Council committee system.

Taken together, these rights, immunities and protections provide a very strong basis for the Legislative Council to undertake the vital role of an upper house in a bicameral parliament, as a house of review. As Gleeson CJ in the Court of Appeal observed:

The capacity of both Houses of Parliament, including the House less likely to be 'controlled' by the government, to scrutinise the workings of the executive government, by asking questions and demanding the production of State papers, is an important aspect of modern parliamentary democracy. It provides an essential safeguard against abuse of executive power.²³

This safeguard is undermined if there is insufficient funding to support the exercise of its powers and privileges.

¹⁹ Ibid at 454.

²⁰ *Egan v Chadwick* (1999) 46 NSWLR 563.

²¹ There are different views held by the Legislative Council and the Executive as to how the judgement should be interpreted to determine what is a "Cabinet document" – see Duffy B and Ohnesorge S "Evading Scrutiny: Orders for Papers and Access to Cabinet Information by the NSW Legislative Council" (2018) 29 PLR 188.

²² Duffy B and Ohnesorge S, "Out of Step? The New South Wales Parliamentary Evidence Act 1901", (2016) 27 Public Law Review.

²³ *Egan v Willis and Cahill* (1996) 40 NSWLR 650 at 667.

2.4. Latimer House Principles

The need for legislatures to maintain control over their finances have been most clearly articulated in the [Latimer House Principles](#) endorsed by the Commonwealth Heads of Government in 2003.

According to these principles:

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.²⁴

In order to satisfy the Latimer House Principles, a follow-up review in 2008 known as the *Edinburgh Plan of Action*, called for the following actions:

- Remuneration packages for parliamentarians should be determined by an independent process;
- Parliamentarians should have equitable access to resources commensurate with their responsibilities; and
- Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.²⁵

Such financial independence would help maintain the separation of powers, while preventing the executive from interfering with or controlling a parliament's scrutiny role.²⁶ Crucially, rather than exacerbating existing tensions between the legislature and executive, the Commonwealth Parliamentary Association and World Bank Institute contend that budgetary independence:

... should not be seen as an aggressive action, but a necessary prerequisite to good parliamentary governance. Also operational autonomy should not act as a barrier to the fostering of good relations with the executive, which is essential if legislation and public sector policies are to be fit for purpose.²⁷

While no Australian parliament controls its own budget, parliaments in some other Westminster jurisdictions do maintain levels of budget autonomy. Additionally, some other Australian parliaments have achieved small but important steps towards greater financial independence. In this context, the Department of Parliamentary Services (DPS) and the Department of the Legislative Council (DLC) submit that the existing funding model for the Parliament of NSW impedes the legislature from a full and unfettered exercise of its constitutionally and legally recognised democratic functions.

3. How the Parliament of NSW is Funded

3.1. The current budget process for the Parliament of NSW

Currently, neither the Parliament of NSW nor any other Australian Parliament fully controls its own budget. The Parliament of NSW probably has the least financial independence of any Australian parliament.

²⁴ Commonwealth Parliamentary Association, [Commonwealth \(Latimer House\) Principles on the Three Branches of Government](#), 2009, p 10.

²⁵ Ibid p 42.

²⁶ Bruekel et al, note 1, p 11.

²⁷ Commonwealth Parliamentary Association, World Bank Institute, [Administration and Financing of Parliament](#), Study Group Report, 2005, p 2.

Although the Parliament's budget allocation is set out in a separate Appropriations Bill²⁸, the Appropriation (Parliament) Bill, the amount allocated is determined by Treasury and the Expenditure Review Committee (ERC) in the same way as executive government agencies. In fact, the Parliament is probably in a weaker position than executive government agencies to influence the quantum of funding allocated, as there is no guarantee of a hearing for the Presiding Officers before the ERC and it is not possible or appropriate for the Parliament to formulate its budget submissions in terms of government or Premier's priorities.

The budget process for the Parliament of NSW follows the same process as that of executive government agencies in the NSW public sector. The Parliament's recurrent appropriations are set for the Budget year and three forward years at the handing down of each annual Budget. The process for capital appropriations is identical, except that they are determined over a ten-year period. Around the second quarter of each financial year the Parliament enters the State Budget Process for the next financial year (currently 2020-21).

If the Parliament seeks to increase its funding, it must submit funding proposals in accordance with the timeframes (and ever changing rules) announced by NSW Treasury. These proposals are assessed by NSW Treasury and advice of support or non-support is then provided to the Expenditure Review Committee (ERC) of Cabinet. The ERC determines whether or not to follow Treasury's advice, and its decision determines what is included in the Parliament's final appropriation for the year.

The Parliament, like NSW government agencies, is also required to fit into the outcome budgeting framework that covers the entire State Budget spend. All expenditure needs to be tied to a State Outcome, which describe what the Government is seeking to achieve for the people of New South Wales. The Parliament's State Outcome is 'effective Parliament and accountable government' along with a group of outcome indicators required to be reported on to Treasury on a quarterly basis.²⁹

3.2. Impact of current budget process on the Parliament

The Parliament's priorities are not executive government priorities. The Parliament does not neatly fit into the Premier's priorities, the Government's priorities or election commitments. Accordingly, any funding initiatives put forward by the Parliament are going to be considered as a low priority and are less likely to be funded.

²⁸ For further information on the *Appropriations (Parliament) Bill*, including background to the establishment of this practice and the question of whether it is a bill appropriating revenue or moneys for the ordinary annual services of government under Section 5A of the *Constitution Act*, see *New South Wales Legislative Council Practice*, chapter 17 pages 15-18 (forthcoming second edition).

²⁹ State of New South Wales (NSW Treasury), (2018), *The NSW Budget 2019-20 Budget Paper No 3*, p ii.

Parliament's Recurrent Budget

The Parliament's Appropriation (including capital and recurrent) totalled \$164.242 million for 2019-20, representing 0.19 percent of the total amount appropriated for the year for the state as a whole. The Parliament's Appropriation is allocated to the Legislature as a single sum and then is allocated across the three Departments by the Presiding Officers, on the recommendation of the Department Heads and the Director Financial Services.

The Parliament's Recurrent Budget comprises the salaries and allowances of Members, including Ministers, and all entitlements conferred by the independent Parliamentary Remuneration Tribunal. This includes Members' staff, offices at Parliament House and the 98 electorate offices across the state. These costs equate to approximately 78 percent of the Parliament's Recurrent Appropriation (\$114.208 million in 2019-20) and must be met.

The remaining 22 percent of the Recurrent Appropriation (\$32.213 million in 2019-20) is to fund all functions of Parliament and services provided to Members. This latter portion (representing 0.04% of the State's budget) is subject to efficiency dividends and other savings measures applied by executive Government.

Efficiency dividends have been applied to the Parliament' since 2004-05 (called global budget savings from 2004-05 to 2006-07). The total amount of the efficiency dividends applied to the Parliament from 2004-05 to 2021-22 is \$12.448 million. Efficiency dividends are applied on a percentage basis and have ranged from 1 percent through to 4 percent, the amount applied to the Parliament's budget for 2019-20. The amounts of efficiency dividends over this period is illustrated in Figure 1 and the cumulative effect over the period in Figure 2. As can be seen from both graphs, the percentages applied from 2015-16 through to 2021-22 have increased significantly. The Parliament's recurrent budget today is over 20% lower than it would have been if efficiency dividends had not been levied. That percentage will rise to almost 30% with the currently projected efficiency dividends.

In addition to this, program savings of \$553,000 were applied across 2012-13 and 2014-15 and labour cap savings of \$1.438 million from 2012-13 to 2015-16.

The Department of the Legislative Council and the Department of the Parliamentary Services are committed to the efficient use of the funds appropriated, and as the figures above indicate we have found ways to implement efficiency measures for well over a decade. However, the cumulative impact of all these savings measures has now got to the point where core functions of the Parliament will have to be curtailed, services provided to Members cut and a greater degree of risk taken on.

Figure 1 - Annual Efficiency Dividends Applied to the Parliament of NSW

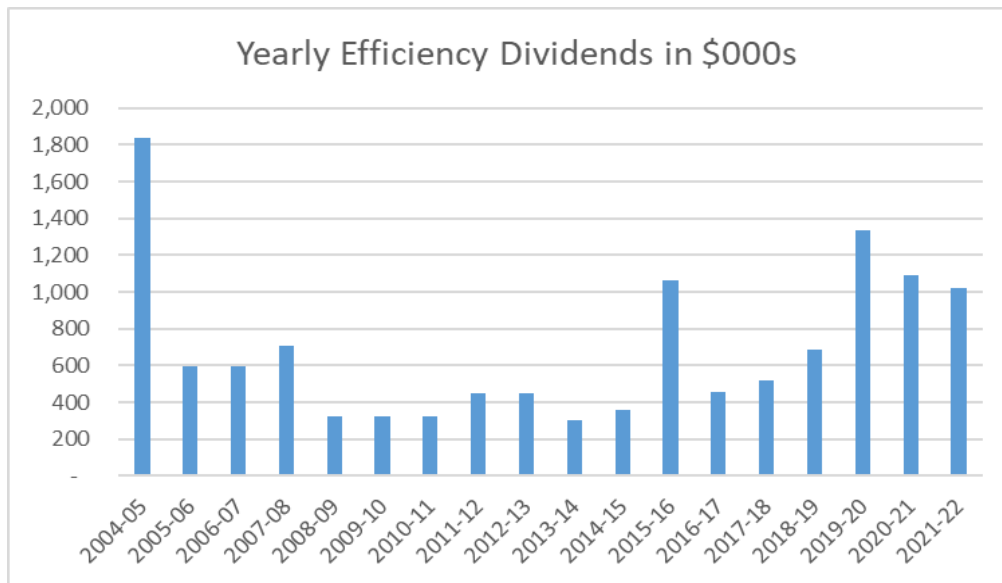
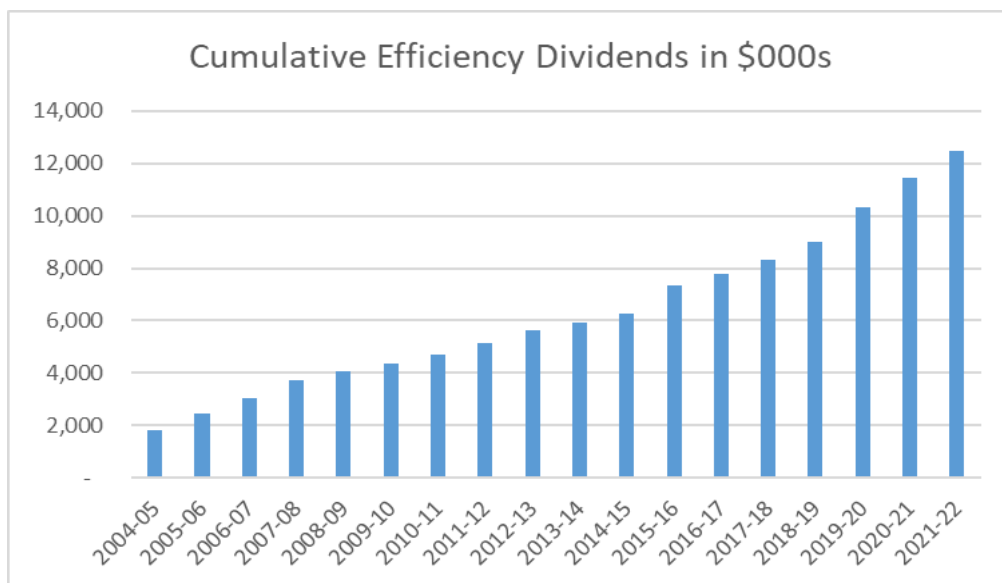


Figure 2 – Cumulative Effect of Efficiency Dividend Applied to the Parliament of NSW



There have not been any recurrent budget new policy initiatives funded for the Parliament in the last seven budgets. Funding for items that the Parliament has no control over, such as the provision of additional entitlements to members, have been supported in most cases in prior years. In the Recurrent Risks and Opportunities Return provided to Treasury, the following table highlights the fiscal risks in the Legislature budget over the forward estimates period.

Table 1 – Recurrent Risks and Opportunities Summary for 2019-20

The Legislature	Agency Advised						Risk Impact*	Risk Likelihood	Risk Rating	Proposed Remedial Actions
	Potential Budget operating result impact (-ve worsens) (\$'000)									
Description of Risk	2019-20	2020-21	2021-22	2022-23	2023-24	4 year total				
Special Constables at Parliament House Underfunding	(2,234)	(2,290)	(2,347)	(2,406)	(2,466)	(9,509)	Major	Almost Certain	Critical	Current security arrangements must be maintained unless advised otherwise by NSW Police Counter-terrorism specialists.
Unfunded Members' Entitlements	(3,349)	(3,433)	(3,519)	(3,607)	(3,697)	(14,254)	Very High	Likely	Critical	No options available to mitigate
Unfunded Members' staff separations	(1,000)	(1,000)	(1,000)	(4,000)	(1,000)	(7,000)	Medium	Almost Certain	High	No options available to mitigate
Unable to meet efficiency dividends	(1,337)	(1,093)	(1,019)			(2,112)	Medium	Almost Certain	High	No options available to mitigate
Joint Select Committee on Sydney Night Time Economy	(249)					0	Minor	Almost Certain	Moderate	No options available to mitigate
Additional Ministerial, Parliamentary Secretary and Committee Chair appointment since Election	(563)	(577)	(592)	(606)	(621)	(2,396)	Minor	Almost Certain	Moderate	No options available to mitigate
Additional Legislative Council Estimate Committee hearings, additional inquiries and extended sitting times	(271)	(278)	(285)	(292)	(299)	(1,153)	Minor	Almost Certain	Moderate	No options available to mitigate
External review of Legislature's Master Plan at Treasurer's Direction	(155)					0	Minor	Almost Certain	Moderate	No options available to mitigate
Additional ongoing recurrent costs associated with implementation of e-petitions	(132)	(135)	(139)	(142)	(146)	(562)	Minor	Almost Certain	Moderate	No options available to mitigate
Maintenance support agreement for SAP	(400)	(410)	(420)	(431)	(442)	(1,703)	Minor	Almost Certain	Moderate	No options available to mitigate
TOTAL	(9,690)	(9,216)	(9,320)	(11,483)	(8,670)	(38,689)				

Of note in Table 1 are the two critical risks. The Special Constables provide all physical security for the Parliament and the level of security they provide was increased after the terror threat level was raised to probable back in 2014. The Parliament has had to seek additional funding for that increase each budget since via a Parameter and Technical Adjustment (PTA) which has been approved. However, for the 2019-20 budget the funding request of \$2.234 million was not approved creating a situation where the Parliament had to choose between maintaining security levels at their current level, or creating a significant budget black hole. In the absence of advice from counter-terrorism agencies that the general threat level had reduced, the Parliament chose to maintain security levels.

The second critical risk relates to Members' additional entitlements, which are not fully funded in the Parliament's budget. Funding has been provided on the basis that not all Members spend their additional entitlements budgets. The funding gap for the 2019-20 financial year is \$3.349 million. An overspend of that amount would occur if all Members fully spend their entitlements budgets, a situation the Parliament obviously cannot control. The Parliament has tried to remedy this situation over the last two budget cycles by proposing a Protected Item be established in its budget for Members' additional entitlements fully funding the value of them and then drawing down funding for what ends up being spent during the financial year. The proposals were not approved.

Parliament's Capital Budget

The gross value of the Parliament's property, plant and equipment was \$526.614 million at the end of June 2019. Of this, the land under the parliamentary building complex had a value of \$64.340 million leaving \$462.274 million for the buildings, plant and equipment (including the fit out and other assets installed in the 98 electorate offices) and the collection assets. Depreciation expense for the Parliament was \$13.757 million for 2019-20.

The Parliament only has \$2.947 million in ongoing minor capital works funding each year to offset this \$13.757m in asset degradation. Any additional funding required must be sought via specific project proposals to the annual budget process. The cumulative impact of this systematic underfunding has resulted in a significant backlog of work.

The Parliament has undertaken significant effort in developing a 10-year Capital Investment Plan. This work has identified that the Parliament requires an investment of \$447.971 million over the next 10 years, due to a large backlog of asset replacement and the need for new investment to modernise the Parliament. The 10 year-plan mapped to the related risks is included in Table 2 below.

Table 2 – Capital Risks and Opportunities Summary for the 2020-21 Budget

The Legislature	Agency Advised							Risk Impact*	Risk Likelihood	Risk Rating	Proposed Remedial Actions
	Potential Net Lending impact (-ve worsens) (\$'000)										
Description of Risk	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26 to 2029-30	10 Year Total				
Broadcasting of Parliament Failure#	(4,724)	(6,844)	(4,618)		(244)	(9,193)	(25,623)	Very High	Almost Certain	Critical	Audio Visual System replacement only option to mitigate risk.
Outdated business systems#	(9,011)	(11,630)	(6,391)	(2,365)	(3,148)	(21,233)	(53,778)	Very High	Likely	Critical	Upgrade of Parliament's business systems to align with State Digital Strategy
Falling infrastructure at Parliament House#	(8,057)	(16,908)	(17,223)	(23,187)	(1,407)	(49,553)	(116,335)	Very High	Almost Certain	Critical	Upgrade Parliament House Infrastructure to meet current building standards
Building and Plant & Equipment Asset Failure#	(4,063)	(15,498)	(18,739)	(34,805)	(4,137)	(106,247)	(183,489)	Very High	Almost Certain	Critical	Catch up asset replacement program
ICT Assets Failure#	(6,446)	(10,516)	(4,705)	(3,995)	(2,334)	(22,384)	(50,380)	Very High	Likely	Critical	Catch up asset replacement program
Electorate Office Urgent WH&S Works#	(4,269)	(1,845)	(1,589)	(1,201)	(675)	(5,460)	(15,039)	Very High	Almost Certain	Critical	Address Members
Compliance with Auditor General's Recommendation for Detailed Public Reporting of Members' Entitlements Expenditure#		(1,348)	(1,979)				(3,327)	Very High	Almost Certain	Critical	System acquisition and resources to facilitate reporting
TOTAL	(36,570)	(64,589)	(55,244)	(65,553)	(11,945)	(214,070)	(447,971)				

* Risk Impact for the Legislature has been assessed based on its ongoing Minor Works Funding of \$2.927 million.
Figures taken from CIP for 2020-21.

Capital funding proposals submitted since 2015-16 have only been considered if they were urgent and unavoidable and would result in extreme risk to the state if not funded. For the 2019-20 Budget year, the Parliament had \$37.187 million high priority works for funding, this was stripped down to \$20.782 million to meet the urgent and unavoidable criteria and in the end only \$6.438 million in additional funding was provided over two years. Underfunding of the Parliament's capital budget has been an ongoing problem as highlighted in Figure 3 showing capital investment over the last 20 years and only in recent years has there been some catch up but not at the pace required to address the current critical risks.

Supplementary Funding

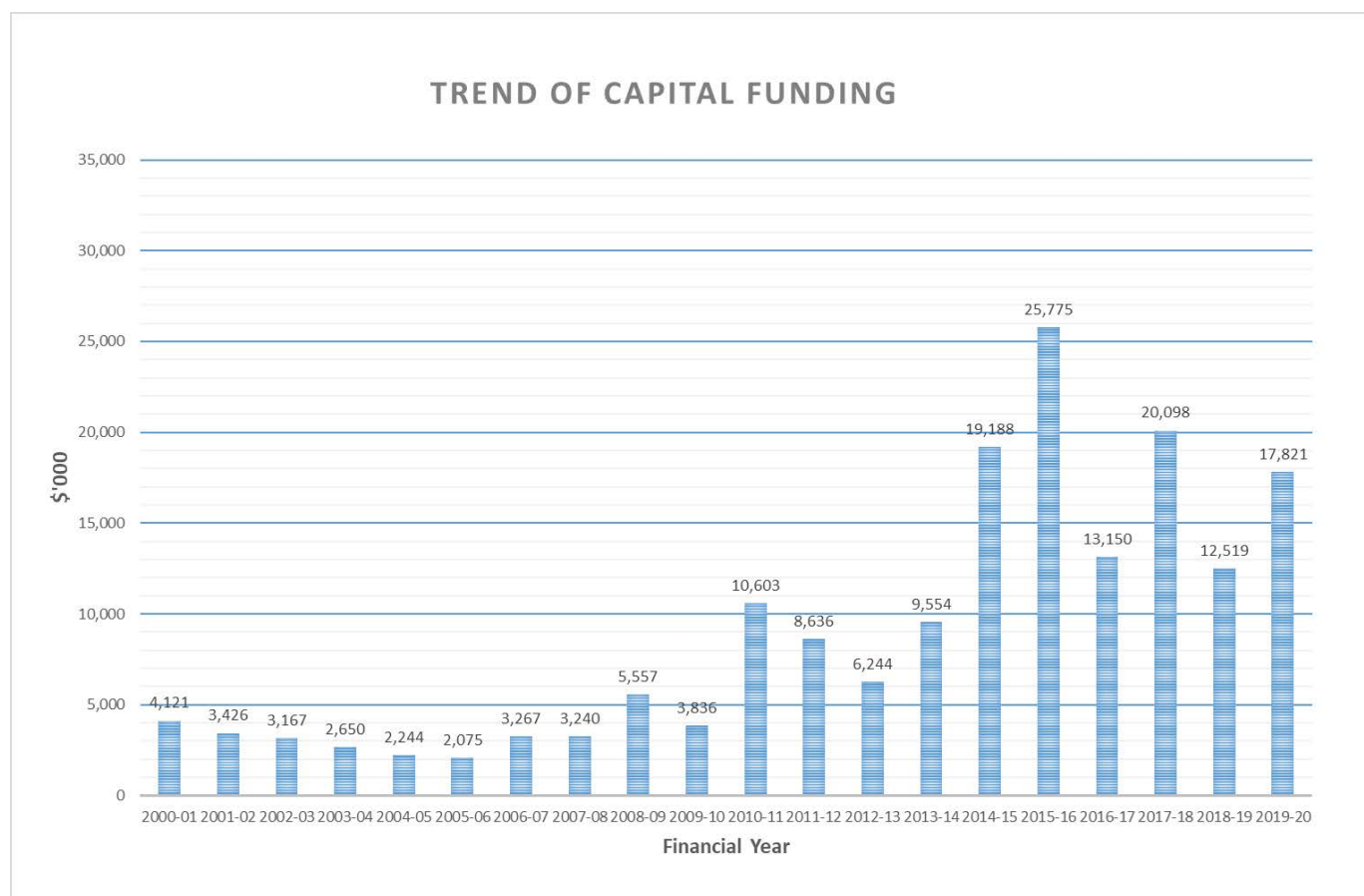
After repeated communications from the Clerks and the Chief Executive of DPS over many years, Treasury and DPC eventually recognised that the Parliament does not fit within cluster arrangements, and in recent years Parliament has more or less been regarded by Treasury as a cluster of its own. However, even this is not entirely satisfactory as it suggests that the Parliament is subject to the same rules and arrangements as executive government 'clusters'.

As a consequence of Treasury regarding Parliament as a cluster of its own and by virtue of having its own appropriation bill, the only source of supplementary funding is the Treasurer's Advance. This means that even if there are budget savings from elsewhere in the State Budget, they cannot be readily allocated to the Parliament in the same way savings are redirected within executive government clusters.

The last in-year supplementation received by the Parliament was in the 2013-14 financial year. Treasury introduced a new Cash Management Policy from July 2015 whereby the cash reserves of all entities was centralised under its management and agencies only held cash sufficient for cash flow purposes. Under this policy approach cash balances were reviewed annually during the Budget

process and adjusted up or down based on its funding profile. Positive cash buffer adjustments have represented the only supplementary budget adjustments the Parliament has received since.

Figure 3 – Parliament of NSW Capital Funding 2000-01 to 2019-20



4. How the Parliament of NSW Should be Funded

The Department of the Legislative Council and the Department of Parliamentary Services have had the opportunity to read the submissions of the Ombudsman, ICAC, LECC and the Electoral Commission and note the comments made regarding the need for independence and transparency in budget setting. Specifically, the “budget process design considerations” included in the submission from the NSW Ombudsman are noted. A number of those budget process design considerations are also applicable to the Department of the Legislative Council and Department of Parliamentary Services. Drawing upon those design considerations, relevant literature, and information from other comparable jurisdictions, the following criteria are recommended to move the Department of the Legislative Council and Department of Parliamentary Services to a more appropriate process for the determination of its funding.

1. An agreed institutional mechanism needs to be established to ensure a greater level of independence in the determination of the quantum of funding to be included in the annual Appropriations (Parliament) Bill.

2. The quantum of funding to be included in the annual Appropriations (Parliament) Bill should be set in advance of the Government's budget setting process for Executive Government agencies, so that Treasury and the ERC then know the funding envelope available for budget determinations for the Executive Government.
3. Treasury must have the capacity to provide input to the institutional mechanism established (see point 1 above) on prevailing economic and fiscal conditions that must be taken into account in determining the quantum of funding. It should be presumed that any such advice will be provided openly and transparently.
4. (a) The NSW Parliament should be exempted from New South Wales Government efficiency dividends, or

(b) the amounts saved through any efficiency dividends must be retained by Parliament for redeployment to parliamentary priorities, rather than being allocated to New South Wales Government priorities.
5. The Department of the Legislative Council and Department of Parliamentary Services should be held to account for their financial management and performance and be subject to a rigorous and transparent budget process by the institutional mechanism established (see point 1 above).
6. The NSW Parliament should not be represented as forming part of any executive government "cluster", or part of the "cluster arrangements".

Institutional mechanism for budget setting

Set out at Appendix 1 are details of a literature review and institutional mechanisms established in the United Kingdom Parliament, the Canadian Parliament and the Ontario Assembly for budget setting, based around the establishment of "parliamentary corporate bodies (PCB's)". Also included in Appendix 1 is a brief account of the attempt to establish a PCB model in the NSW Parliament during the 50th Parliament (1991-1995).

In some ways a PCB model represents the most robustly independent mechanism for setting a parliament's budget. However, as the attempt to establish such a model in New South Wales during the 1990's demonstrates, there are a number of complex matters that would need to be given very careful consideration before such an approach settled upon. In any case, given the comity between the two Houses of the NSW Parliament, and the fact that this submission is made by only two of the three parliamentary departments, it would not be appropriate to express a final position on such a model at this point in time.

5. A Way Forward to Financial Independence for the Parliament of NSW

5.1. Initial steps to enhance the process for determining the quantum of funding and improving transparency

While the work to determine the right long-term model for the NSW Parliament's budget setting is complex, there are some immediate steps that could be taken to improve budget transparency. These recommendations have been prepared from the perspective of the Department of the Legislative Council and the Department of Parliamentary Services only. Before proceeding, any arrangements would need to be reviewed to ensure they could be extended to work for the Parliament as a whole. Ultimately it is the security of funding and transparency of the budget setting process for the Parliament as a whole, and all three parliamentary departments equally, that is critical.

Initial Recommendations

1. *Establish a committee of the Legislative Council to review the Department of the Legislative Council's annual budget submissions. The committee could be an existing committee. For example, the Legislative Council could utilise either the Public Accountability Committee or Portfolio Committee 1.*
2. *Establish a joint committee to review the annual budget submission of Department of Parliamentary Services.*
3. *Establish a Budget Protocol with the Executive government setting out the budget process.*

Taking recommendations 1 and 2, an example of the role of how such a committee structure in a bicameral Parliament could operate in reviewing and approving a budget can be drawn from the Australian Parliament in a case study – see Appendix 2.

An example of the Budget Protocol referred to in recommendation 3 is provided at Appendix 3 providing a case study of the model used by the ACT Assembly and ACT Government.

6. Relationship between the Parliament of NSW and Independent Offices

The Department of the Legislative Council and the Department of the Parliamentary Services have had the opportunity to read the submissions of the Ombudsman, ICAC, LECC and Electoral Commission and concur with the comments made regarding issues with independence and transparency in budget setting. To the extent that they put forward a suggested pathway forward around being defined as “parliamentary offices” and such a model would enhance the parliamentary institution and responsible government, that position is supported and we would be pleased to work together with them to progress this matter.

Given the comity between the two Houses in the NSW Parliament and the need for any changes to the status of these bodies to become parliamentary offices to be considered by both Houses, it is not appropriate for this submission to comment further.

It is noted that the Department of the Legislative Assembly currently administers the following joint oversight committees and it is assumed these committees will also take an active interest in any such proposed changes in this area.

The current independent oversight committees include:

- Children and Young People (statutory committee)
- Health Care Complaints (statutory committee)
- ICAC (statutory committee)
- Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (statutory committee)
- Electoral Matters (standing committee).

Appendix 1: Parliamentary Corporate Body (PCB) Model

1. Brief literature review

Many Westminster parliaments have found that their funding has been at the expense of a growing imbalance between the parliament and the executive.³⁰ The Latimer House Principles which were endorsed by nations including Australia in 2003, were initiated and agreed to by the executive arms of governments. These Principles, among other things, formally set down the notion that an all-party committee of parliament should review and administer parliament's budget and should not be subject to amendment by the executive.³¹

Deputy President of the Senate (later President), Stephen Parry, noted in his 2013 paper on the financial independence of parliament that, in practice, this presents a challenge for parliaments to ensure that they are 'more than just fine sentiments'.³² Parry suggests three options for parliaments to secure the necessary resources to maintain their independence against executive domination:

- Parliament should be funded under a separate appropriation bill, not included in the government's bill for the ordinary annual services of the government ... [as this] was inconsistent with the separation of powers and the supremacy of Parliament;
- each House should establish a committee, with executive representation, to examine and, if necessary, modify parliamentary estimates, a measure which would achieve both a level of autonomy for the Parliament and which would maintain executive input; and
- a separate parliamentary service should be considered—similar to the UK Commission model.³³

Many parliaments have constitutional or legislative constraints and are effectively at the mercy of executive financial initiative. The literature surveyed suggests the establishment of *parliamentary corporate bodies* (PCB), similar to the House of Commons Commission, Scottish Parliamentary Corporate Body (SPCB), Canadian Board of Internal Economy or ACT's Office of the Legislative Assembly. PCBs can play an integral role, not only in determining and managing the parliamentary budget, but also in drafting the parliamentary appropriation Bill, outside of executive control, based on an assessment of the overall parliamentary funding requirements. This could feasibly include ancillary operations, often funded by the executive, such as independent officers of parliament and the Office of the Leader of the Opposition.³⁴

The CPA/WBI study group found evidence, reinforced over a number of reviews, that the establishment of such PCBs to improve the resourcing and financial management of parliaments, has in fact enhanced their independence from the executive.³⁵ The CPA/WBI Report made the following recommendations:

³⁰ S. Prasser (2012) 'Executive growth and the takeover of Australian parliaments', *Australasian Parliamentary Review*, 27(1), p. 48; Bruekel et al, note 1, p 28.

³¹ Commonwealth Parliamentary Association (2009) op. cit., p. 8; Bruekel et al, note 1, p 28.

³² S. Parry (2013) *Financial Independence of Parliament: recent developments in the Commonwealth*, Presiding Officers and Clerks Conference, Canberra, 30 June-4 July, p. 1; Bruekel et al, note 1, p 28.

³³ Ibid, p. 5.

³⁴ Bruekel et al, note 1, p 32.

³⁵ Commonwealth Parliamentary Association (2005) op. cit., p. 3; Bruekel et al, note 1, p 32.

- Parliaments should, either by legislation or resolution, establish corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service;
- There should be an unambiguous relationship between the Speaker [Presiding Officers], the corporate body and the head of the parliamentary service;
- Members of corporate bodies should act on behalf of all Members of the Legislature and not on a partisan or governmental basis;
- The corporate body should determine the range and standards of service to be provided to Parliament, e.g. accommodation, staff, financial and research services;
- Corporate bodies should promote responsible governance that balances the unique needs of Parliament with general legal requirements, e.g. employment law, freedom of information and occupational health and safety.³⁶

June Verrier, from the Democratic Audit of Australia, has reviewed corporate governance of parliaments in the UK, Canada, New Zealand and Australia. She found that the introduction of partial corporate governance in these parliaments enabled them to assert greater independence, but had not yet delivered full budgetary control. The UK Parliament came closest to delivering the most effective corporate governance model through its Commission. Her study found that, ‘a statutory underpinning is a necessary but not a sufficient condition to ensure the independence of a parliament in the absence of ongoing, consistent stakeholder interest in parliamentary administration’.³⁷

Verrier concluded that there needs to be ‘effective machinery for the routine—meaningful— independent evaluation of corporate governance structures’, and that the Latimer House Principles and the prescriptions from the CPA/WBI Report, ‘hold up an ideal model of an independent parliament whose budget is determined independently of government intervention which is able, effectively, to hold that government to account’.³⁸ She added that they also provide standards and a blueprint for parliaments seeking to progress from a ‘rubber stamp’ parliament towards an ‘independent legislature’.³⁹

While the CPA/WBI study found that it was not easy to identify best practice for parliamentary administration, because corporate management regimes across parliaments were so diverse, it offered *corporate bodies* (PCBs) the following criteria to gauge their level of autonomy:

- the ability to identify and gain the financial resources it requires;
 - the independence of staff from external control—particularly from the executive;
 - the authority of parliament to ensure the security of its Members and infrastructure;
 - the inclusivity of membership of the corporate body that sets it aside from party politics;
- and

³⁶ *ibid.*, p.13.

³⁷ Verrier (2007) *op. cit.*, p. 73; Bruekel et al, note 1, p 32.

³⁸ *ibid.*, p.79.

³⁹ *ibid.*, p.50.

- the capacity to win public confidence through the involvement of independent assessment, the delivery of ethics compliance and the transparent reporting of progress (including costs) in meeting objectives.⁴⁰

A review of the above literature relating to parliamentary independence reveals that the establishment of *parliamentary corporate bodies* (PCBs) can assist parliaments in withstanding the ‘executive creep’ which has occurred over time, and improve their financial independence and management of their budgets. However, this requires stakeholder commitment by the *corporate body* membership—the presiding officers, government (including the executive) and non-government members, the clerks and the secretaries of parliamentary services.⁴¹

2. Budget processes of Parliaments with greater funding independence

Of the other Westminster parliaments with PCBs, the United Kingdom (UK) and the Canadian parliaments are bicameral and therefore most useful for comparison for the Parliament of NSW. The PCB for the Ontario parliament, whilst unicameral, is also very useful for comparison.

United Kingdom

The UK House of Commons has a significant degree of financial independence through its PCB, the House of Commons Commission. The Commission, under the *House of Commons (Administration) Act 1978* and employer of House staff, recommends the amount to be appropriated for the House, with that figure incorporated into the government’s appropriation bill without the involvement of Treasury. An overview of the Commission and associated bodies is provided in a 2017 paper by the Victorian Parliamentary Library & Information Service described the UK Parliament’s model as follows:

- *House of Commons Commission* – The Commission is responsible for the administration and services of the House of Commons, including the maintenance of the Palace of Westminster and the rest of the Parliamentary Estate. Once a year, the Commission presents to the House for its approval the ‘Estimate for House of Commons: Administration’, covering spending on the administration and services of the House for the financial year. The Commission meets approximately once a month in Speaker’s House. The Commission has 11 members and consists of the Speaker, six other Members, two officials and two independent members.
- *The Independent Parliamentary Standards Authority* – IPSA is the body created by Parliament to independently oversee and regulate Members’ business costs and expenses.
- *The Finance Committee* – The Finance Committee is established under Standing Order No. 144. It considers expenditure on services for the House of Commons and has particular responsibility for the preparation and detailed scrutiny of the House’s budgets.⁴²

The main agencies involved in the funding process of the House of Lords are the following:

⁴⁰ Commonwealth Parliamentary Association (2005) op. cit., p 26; Bruekel et al, note 1, p 33.

⁴¹ Bruekel et al, note 1, p 33.

⁴² Ibid., p 48.

- *House Commission* – The House Commission is the main domestic select committee of the House of Lords. It provides non-executive guidance to the Management Board, and has particular responsibility for financial matters.
- *Management Board* – The Management Board is the body responsible for decisions about the delivery of services in the House of Lords. The directors of the main functions in the House of Lords make up the Management Board.
- *Clerk of the Parliaments* – As chair of the Management Board, Accounting Officer, Corporate Officer, as well the House’s chief procedural adviser, the Clerk of the Parliaments heads the administration in the House of Lords – carrying out the responsibilities of the chief executive of the House.⁴³

Canada

The Canadian Parliament’s House of Commons manages its funding through a PCB: the Board of Internal Economy.

The Board of Internal Economy is the governing body of the House of Commons. Under the *Parliament of Canada Act*, the Board has the legal authority to ‘act on all financial and administrative matters respecting (a) House of Commons, its premises, its services and its staff; and (b) the Members of the House of Commons’. The Board prepares an estimate of the sums required for the House of Commons each fiscal year. This estimate is then transmitted by the Speaker to the President of the Treasury Board who lays it before the House along with the Government Estimates for that fiscal year. The powers and authority of the Board flow from provisions of the *Parliament of Canada Act*, the *Parliamentary Employment and Staff Relations Act* and the Standing Orders of the House of Commons. The Board is presided over by the Speaker of the House of Commons.⁴⁴

The Canadian Senate manages its funding through a Standing Committee with legal recognition and legal powers under the *Parliament of Canada Act* to act between sessions of Parliament.

The Standing Committee on Internal Economy, Budgets and Administration has the authority to consider all matters of a financial or administrative nature relating to the internal management of the Senate. It reviews and authorises the budget applications of committees and sets guidelines and policies on items such as senators’ travel and office and research expenditures. It should be noted that, unlike most Senate committees, the Internal Economy Committee is authorised to carry out its mandate on its own initiative rather than being dependent on an order of reference from the Senate.

The Senate will make an estimate to the Committee on the amount of money required. The Committee will then review the sum, in regards to the needs of the Senate and the prevailing financial circumstances, and either approve or modify the proposal. Notably, the Committee is unlikely to reject or modify funding proposals from Parliament.⁴⁵

⁴³ Ibid., p 49.

⁴⁴ Ibid., p 51-52.

⁴⁵ Ibid., p 52.

Unlike Australian Parliaments, the Canadian House of Commons and Senate prepare their budgets independently, giving each House a greater degree of financial independence from the executive government.⁴⁶

Ontario

Similar to the Canadian Parliament, the Canadian province of Ontario has a PCB called the Board of Internal Economy that is the governing body for the Office of the Assembly. As outlined in the Governance Document for the Board of Internal Economy, 'the establishment of the Board also - served to reaffirm the independence of the legislative branch from the executive and judicial branches of government'.⁴⁷

The Board of Internal Economy is chaired by the Speaker of the House and comprises six Commissioners (of whom three are ministers). According to its governance document, the Board functions as a non-partisan body, with each member undertaking their role as a member of the legislature, not as a representative of the executive or their party.⁴⁸ As listed in Section 90 of the *Legislative Assembly Act 1990*, the Board of Internal Economy has the power and duty:

- to review estimates and forecasts, analyses of revenues, expenditures, commitments and other data pertaining to the Office of the Assembly and to assess the results thereof;
- to approve the organisation and staff establishment for the Office of the Assembly;
- to approve and review administrative policies and procedures in relation to the operation of the Office of the Assembly;
- to advise upon all matters related to the management, administration, accounting and collection and disbursement of money associated with the Legislative Assembly Fund;
- to advise upon the retention and disposal of records except cancelled cheques; and
- to advise upon and give directions in relation to any matter the Board considers necessary for the efficient and effective operation of the Office of the Assembly, and if considered desirable, it may report on any of such matters to the Assembly.⁴⁹

The Board also has significant power in that it can establish and vary the estimates of those offices which require its authorisation: the Ombudsman; the Provincial Auditor; the Election Office; the Commission on Election Finances; and the Information and Privacy Commission.⁵⁰ This ensures that these agencies remain independent and are not under the financial control of the executive. The annual budgets of the legislative committees must also be approved by the Board, which are then forwarded to the treasurer for inclusion in the budget and in the printed estimates books.

Ontario's Board of Internal Economy is able to enhance the financial independence of its legislature as it is responsible for reviewing and approving the annual estimates (the funding for the Legislative

⁴⁶ Ibid p 52.

⁴⁷ Legislative Assembly of Ontario (2008) *Governance Document for the Board of Internal Economy*, Ontario, Legislative Assembly, March, p.3; Bruekel et al, note 1, p 52.

⁴⁸ *ibid.*, p. 4.

⁴⁹ *Legislative Assembly Act 1990* (Ontario); Bruekel et al, note1, p53.

⁵⁰ G. White (1989) *The Ontario Legislature: A Political Analysis*, Toronto, University of Toronto Press, p. 200; Bruekel et al, note1, p53.

Assembly of Ontario).⁵¹ This arrangement has been called ‘the best model available’ for the financial management of parliaments under the Westminster system of government.⁵²

3. Past Proposals for a NSW PCB

A PCB model was recommended in a 1992 NSW Government discussion paper, *Managing the Parliament*, which arose as a result of the 1991-95 Memorandum of Understanding (MOU) between the Greiner Coalition Government and three independent members of the Legislative Assembly. Under this proposal, a ‘Parliament Commission’ formed through legislation “would be tasked with managing the departments of the Parliament and be responsible for negotiating the budget of the Parliament with the Treasury within the state budget framework, on a rolling triennial basis.”⁵³

As the members and the Clerks were not consulted on the associated legislation, the matter was referred to a Joint Select Committee.⁵⁴ The Committee made a number of recommendations about the creation of a PCB:⁵⁵

- **Legislative or non-legislative model:** A legislative approach would provide a firm guarantee of reform and the capacity to attract public interest and accountability through greater visibility. However, enshrining a PCB in legislation would leave Parliament open to judicial scrutiny; use of Standing Orders to create a PCB, though less enduring than legislation, would prevent this problem.⁵⁶
- **Composition of PCB:** The Committee recommended the inclusion of the presiding officers as members of the PCB, and balanced representation between government, non-government and crossbench members.⁵⁷
- **Administrative oversight:** The Committee recommended that the PCB exercise the powers of a Standing Committee, including the power to sit during the life of the Parliament and report from time to time, send orders for papers and examine witnesses under oath.⁵⁸
- **Public accountability:** The PCB should have appropriate measures in order to be accountable to the NSW public. This should include adopting the principles of the *Public Finance and Audit Act*, publication of annual reports and regular efficiency reviews.⁵⁹

The Committee noted NSW Treasury’s concern that an independent parliamentary budget could be presented without consideration of the overall State budget. Nevertheless, by giving NSW Treasury control of Parliament’s budget allocation, members had little control over their own budgetary framework. The Committee made three recommendations regarding appropriations for the Parliament:

⁵¹ Legislative Assembly of Ontario (2008) op. cit. p. 12; Bruekel et al, note1, p53.

⁵² White (1989) op. cit; Bruekel et al, note1, p53.

⁵³ Bruekel et al, note 1, p 41-42.

⁵⁴ Parliament of NSW, *Report of the Joint Select Committee on the Management of the Parliament*, November 1992. See also: Lovelock and Evans, note 1, p 418.

⁵⁵ Or ‘Parliamentary Board’ as named by the Committee.

⁵⁶ Parliament of NSW, *Report of the Joint Select Committee on the Management of the Parliament*, November 1992, p 10-11.

⁵⁷ Ibid p 14.

⁵⁸ Ibid p 16.

⁵⁹ Ibid p 22-23.

- a. A separate appropriation bill for the Parliament, negotiated between the PCB and Treasury; or
- b. A separate appropriation bill for the Parliament, prepared by the PCB and presented to each House by the respective Presiding Officer; or
- c. A separate appropriation bill for the Parliament, cognate with the ordinary appropriation bill, and introduced as a government measure following consultation with the PCB. However, there would be specific provision for an Advance to the Presiding Officers and, upon recommendation by the PCB, a supplementary appropriation bill. This supplementary bill would be subject to report by the PCB in its annual report.⁶⁰

In response, the only recommendation taken up by the NSW Government was the creation of a separate appropriation bill for Parliament (discussed above), which is a government measure and cognate with the ordinary appropriation bill.⁶¹

Although not readily apparent from the 1992 report of the Joint Select Committee, it is understood that the fact a Parliament Commission was not established before the expiration of the 50th Parliament in late 1994, was due to ongoing misgivings about the proposal. These included concerns about the risk of executive government capture depending on the numbers of government members versus non-government members on the Commission, and the risk of the interests of the Legislative Council being sub-ordinated to those of the Assembly and the numbers of members from the respective Houses reflected those on a typical parliamentary joint committee. Depending on the remit of such a Commission, the authority and now constitutionally enshrined independence of the Presiding Officers could also be constrained by such a body.

⁶⁰ Ibid p 27; Lovelock and Evans, note 1, p 418.

⁶¹ Lovelock and Evans, note 1, p 418.

Appendix 2: Senate Appropriations, Staffing and Security Committee Model

Case Study - Australian Senate Appropriations, Staffing and Security Committee

The Senate in the Federal Parliament has its annual appropriation determined in the first instance by a Committee of Senators appointed by the House, known as the Appropriations, Staffing and Security Committee. The House of Representatives has a similar committee. The Committee is chaired by the President of the Senate, and includes the Senate Leaders of the Government and Opposition. The history of this Committee since 1981, with various disputes with the Minister for Finance over the extent to which the Executive should vary the appropriation recommended by the Committee, is detailed in *Odgers' Australian Senate Practice*⁶².

The Committee is appointed under standing order 19:

1. The committee shall inquire into:
 - (a) proposals for the annual estimates and the additional estimates for the Senate;
 - (b) proposals to vary the staff structure of the Senate, and staffing and recruitment policies; and
 - (c) such other matters as are referred to it by the Senate.
2. The committee shall:
 - (a) in relation to the estimates —
 - (i) determine the amounts for inclusion in the parliamentary appropriation bills for the annual and the additional appropriations, and
 - (ii) report to the Senate upon its determinations prior to the consideration by the Senate of the relevant parliamentary appropriation bill;
 - (b) in relation to staffing—
 - (i) make recommendations to the President, and
 - (ii) report to the Senate on any matter;
 - (c) make an annual report to the Senate on the operations of the Senate's appropriations and staffing, and related matters;
 - (d) consider the administration, operation and funding of security measures affecting the Senate and advise the President and the Senate as appropriate; and
 - (e) when conferring with a similar committee of the House of Representatives, consider the administration and funding of information and communications technology services for the Parliament, and advise the President and the Senate as appropriate.

⁶² 13 Edition (2012), p149- 155.

The method of operation of the committee has remained relatively stable for many years, described at the time of the committee's establishment in the following terms:

In relation to the estimates, both Budget and Additional, the proposals of the Clerk of the Senate for the Senate and its Committees would be submitted to the proposed Committee through the President as Chairman.

A programme of deliberative meetings of the Committee would then follow, open to all interested Senators, during which the Clerk's estimates would be examined, added to, deleted or reduced, as thought necessary. In addition, other proposals from Senators or groups of Senators could be considered for inclusion in the Estimates of the Senate.

The Estimates, as finally agreed upon by the Committee would then be submitted by the President to the Minister for Finance for inclusion, without modification, in a separate Parliamentary Appropriation Bill.

The Committee would then prepare a report covering its deliberations concerning the Estimates for use by the Senate when considering the Parliamentary Appropriation Bill, after its receipt from the House of Representatives.⁶³

In its reports the Committee each year makes a statement in the following terms:

“appropriations have been calculated in accordance with current Commonwealth funding policy”⁶⁴.

In recent years, consideration of the overall Federal fiscal context has not impacted on the ability of the Committee to recommend increases in recurrent funding, particularly for committee staff, and for specific capital enhancements, particularly for technology and security works. There was, however concern expressed in the report on the 2014-15 report on the impact of efficiency dividends on Senate operations:

The committee views with concern the cumulative effect, over time, of a succession of efficiency and additional efficiency dividends on relatively small organisations such as the Department of the Senate, which must allocate approximately 80 percent of its annual appropriation to staff costs. While the Senate remained within its budget during the 2013-14 financial year, and was not forced to seek additional appropriations, that year included an election period, which traditionally sees a reduction in departmental expenditure, particularly in relation to the servicing of committees and their inquiries. The 2014-15 financial year is likely to see a return to a more conventional level of expenditure.

The committee also views with concern the process by which proposed changes in efficiency dividends are notified to the Department. The Senate is not an Executive Department and it is appropriate that any proposed changes to its appropriation be communicated directly to this committee rather than by communications between departmental officers.

⁶³ Ibid, pg 151.

⁶⁴ See for instance Appropriations, Staffing and Security Committee, *Estimates for the Department of the Senate 2018-19*, 60th report, June 2018, p1.

The committee intends to continue to pursue a more appropriate means for determining budgets for the Parliament, and notes that, in correspondence dated 14 April 2014, the Minister for Finance states that he would be happy to meet with the Committee to discuss issues such as this.⁶⁵

This approach appeared to have some success, as the following year the Committee reported a one off funding allocation of \$1.5m for additional committee resources to cover the elevated level of committee activity then occurring.⁶⁶

The Senate Committee is not a model in which the Parliament sets its budget autonomously, with the final level of appropriation being determined by the Minister for Finance. However it is a considerable advance from that currently in place in New South Wales. The Committee involves the key senior leadership of the Senate in a bipartisan assessment of the funding needs of the House, and publicly reports this prior to receiving the appropriations bill from the House of Representatives. It is transparent, and allows all Senators an opportunity to participate in identifying variations in funding needs.

⁶⁵ Appropriations, Staffing and Security Committee, Estimates for the Department of the Senate 2014-15, 56th report, June 2014 p2-3.

⁶⁶ Appropriations, Staffing and Security Committee, Estimates for the Department of the Senate 2015-16, 57th report, May 2015 p2.

Appendix 3: ACT Assembly Budget Protocol with the ACT Government

Establishing a Budget Protocol with the Executive – a Case Study of the ACT Parliament

As a way of ensuring the legislature's independence, the ACT Legislative Assembly has statutory mechanisms and agreements with the executive that allow for improved budgetary consultation and accountability.

Under the Territory's *Financial Management Act 1996*, the Speaker must advise the Treasurer of the appropriation needed for the Assembly and give the Treasurer a draft budget for the financial year.⁶⁷ If the Treasurer presents an appropriation that is less than the recommended amount, the Treasurer must immediately present a statement of reasons to the Assembly for the difference in the appropriation.⁶⁸

The *Budget Protocols Agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly* details the rationale for this process:

[The Agreement] gives further effect to the 'separation of powers doctrine' while at the same time acknowledging and supporting the exclusive right of the Executive to develop and frame appropriations for consideration by the Legislature.

...

The parties [the ACT Government and Assembly] acknowledge that, while the executive government is entitled to frame a budget appropriation bill as it sees fit, the recommended appropriation for the Office of the Legislative Assembly and/or Officers of the Legislative Assembly will, as a matter of fundamental principle, be regarded as a statement of the Legislature's resource requirements and priorities. The Office of the Legislative Assembly and Officers of the Legislative Assembly will be guided by the budget process, particularly when it relates to acquiring additional funds.⁶⁹

⁶⁷ [Financial Management Act 1996](#) (ACT) s 20.

⁶⁸ *Ibid* s 20AA(2), 20AC(2).

⁶⁹ ACT Parliament, [Budget Protocols Agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly](#), 2018, cl 1.2, 5.4.