Independence of Parliament

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Notes
In this paper the term ‘parliament’ is used to describe parliament(s) generally, while ‘Parliament’ refers either to a specific jurisdiction, or is used with the phrase ‘House(s) of Parliament’.

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<tr>
<td>ANZACATT</td>
<td>Australia and New Zealand Association of Clerks-at-the-Table</td>
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<tr>
<td>ARC</td>
<td>Appropriations Review Committee</td>
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<tr>
<td>BERC</td>
<td>Budget and Expenditure Review Committee</td>
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<td>CPA</td>
<td>Commonwealth Parliamentary Association</td>
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<td>CHLP</td>
<td>Commonwealth Latimer House Principles</td>
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<tr>
<td>CLA</td>
<td>Committee of the Legislative Assembly</td>
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<td>CSV</td>
<td>Court Services Victoria</td>
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<tr>
<td>Cth</td>
<td>Commonwealth</td>
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<tr>
<td>DPS</td>
<td>Department of Parliamentary Services</td>
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<tr>
<td>DTF</td>
<td>Department of Treasury and Finance</td>
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<tr>
<td>EERC</td>
<td>Economic Expenditure Reform Committee</td>
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<tr>
<td>ESRC</td>
<td>Expenditure Review Sub Committee</td>
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<tr>
<td>FMA</td>
<td>Financial Management Act</td>
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<tr>
<td>FMCF</td>
<td>Financial Management Compliance Framework</td>
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<td>GED</td>
<td>General Efficiency Dividend</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<td>IBAC</td>
<td>Independent Broad-based Anti-corruption Commission</td>
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<td>IPSA</td>
<td>Independent Parliamentary Standards Authority</td>
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<tr>
<td>NSW</td>
<td>New South Wales</td>
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<tr>
<td>NT</td>
<td>Northern Territory</td>
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<td>NZ</td>
<td>New Zealand</td>
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<tr>
<td>OoC</td>
<td>Office of the Clerk</td>
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<td>PS</td>
<td>Parliamentary Service</td>
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<td>PAEC</td>
<td>Public Accounts and Estimates Committee</td>
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<tr>
<td>PCB</td>
<td>Parliamentary Corporate Body</td>
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<td>PSBC</td>
<td>Policy, Strategy and Budget Committee</td>
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<tr>
<td>QLD</td>
<td>Queensland</td>
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<tr>
<td>SA</td>
<td>South Australia</td>
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<tr>
<td>SPCB</td>
<td>Scottish Parliamentary Corporate Body</td>
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<tr>
<td>TAS</td>
<td>Tasmania</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>VAGO</td>
<td>Victorian Auditor-General’s Office</td>
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<td>VCAT</td>
<td>Victorian Civil and Administrative Tribunal</td>
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<tr>
<td>VEC</td>
<td>Victorian Electoral Commission</td>
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<tr>
<td>VPS</td>
<td>Victorian Public Service</td>
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<tr>
<td>WA</td>
<td>Western Australia</td>
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<td>WBI</td>
<td>World Bank Institute</td>
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Executive Summary

Much of the discussion on the ‘independence of parliament’ has focused on the importance of the separation of the legislature, executive and judiciary. This is in order to limit the arbitrary excesses of executive power to protect democratic systems. Where did this notion come from and why has it been so well-guarded and staunchly preserved within our Westminster system over the past few hundred years? What motivated the founders of the United States of America in the 1700’s to enshrine similar checks and balances into their newly created democracy to clearly separate their legislature from the executive and the judiciary?

To answer these questions, one must gain some understanding of the essential meaning of democracy and the importance of good governance and the balance of powers which underpin democratic systems. This paper provides some background in this area and examines how modern parliaments in the Westminster system, including the Victorian Parliament, are faring in their attempt at preserving and maintaining a degree of independence from the executive.

This paper starts by looking at where these democratic principles came from and examines some of the key political theories surrounding the separation of powers: the independence of the executive; legislature and judiciary in Westminster systems; Latimer House Principles; and parliament’s fundamental role of holding the executive to account.

Judicial independence and the importance it plays in strengthening democracy through retaining independence from both the legislature and executive are outlined in Part 2 of the paper, along with a brief discussion on court funding and whether this should be controlled by the executive.

A deeper examination of the level of independence that the Victorian Parliament has from the Executive, has led the authors to assess where Victoria’s Independent Officers of Parliament are placed in this area. Part 3 of the paper examines Victoria’s five Independent Officers and the important roles they perform to assist Parliament in strengthening democracy. Their role is to keep a check on the Government and report back to Parliament; however, the paper raises concerns about their ability to operate independently, free from executive control, whilst being funded and appointed by the Government. The paper suggests a review of these Officers and their relationship with Parliament and the Executive should be undertaken in order to strengthen their capacity to enhance the independence of Parliament.

Part 4 of the paper reviews some of the key literature and reports published over the past twenty years in relation to parliamentary independence. It focuses mostly on Victoria and Australia, but also includes references to research overseas, such as the Commonwealth Parliamentary Association’s (CPA) discussions on parliamentary corporate bodies (PCBs), including the Latimer House Principles. Much of the focus has been on parliamentary funding and the need for more independence and control by parliaments over their appropriation. The literature suggests that the executive has perhaps encroached too far in this area, resulting over time in what could be described as executive creep—leading to a weakening of parliamentary independence, as we have documented has occurred in Victoria.

Part 5 of the paper provides a jurisdictional comparison of how Australian parliaments are faring, specifically in the area of parliamentary funding. It provides a detailed discussion of the Victorian Parliament and briefly examines the Commonwealth, state and territory parliaments. The ACT Parliament is of particular interest as it has instituted a PCB which provides its Parliament with greater financial independence from the Executive. The Victorian analysis also raises important issues
regarding the current *purchaser-provider* funding regime, the Financial Management Compliance Framework (FMCF) and the Office of the Opposition.

The Victorian Parliament has made several attempts over the past 25 years to address the issue of *financial independence*, yet little progress has been made. Two Joint Select Committee reports (1991 and 1992) and the Russell Review (1991) sought to strengthen parliamentary independence from the executive, yet the only result was a separate *Parliamentary Appropriation Bill*, which has not led to any significant strengthening of Parliament’s financial independence. What is interesting to note is that out of all the Westminster parliaments which have opted to institute a PCB, none of these have found the need for a separate Parliamentary Appropriation Bill.

Part 6 of the paper examines parliaments in the United Kingdom, Canada, Ontario and New Zealand, specifically in the area of parliamentary funding and the functions of their PCBs. These models of parliamentary funding are successful and provide useful models for the Parliament of Victoria to consider. They are the *House of Commons Commission*, the *Scottish Parliamentary Corporate Body* (SPCB), both Canada and Ontario’s *Board of Internal Economy* and New Zealand’s *Appropriations Review Committee*. These are all models of *best practice* in Westminster parliaments and the Victorian Parliament should assess them if it wants to achieve greater financial independence from the executive.

The paper concludes with a summation of where the Parliament of Victoria is positioned in relation to its independence from the Government. The paper takes the view that independence from the executive is a good thing for Parliament, as this leads to a more robust democracy. The paper finishes by making three suggestions for the Victorian Parliament and, importantly, the Victorian Government to consider in order to strengthen parliamentary independence and democracy in this state.
INTRODUCTION

In order to gain a clearer understanding of how modern parliamentary systems of governance function, in the context of why parliaments should be independent and remain free from external interference, it is important to shed some light on the historical origins of democracy.

Democracy

Modern democratic systems of government are based on several essential elements: representative government; rule of the majority; free and fair elections; citizen participation; protection of human rights and minorities; rule of law; and the separation of powers—a system whereby checks and balances are in place to ensure that power is not vested in any single person, institution or branch of government. In order to guarantee this balance, it is essential that the parliament or legislature remains independent and does not become a tool or appendage controlled by the government.

An important principle underpinning all democracies is the separation of powers. This is to reduce the abuse of power and prevent tyranny or oppression from occurring, as might be the case under a dictatorship or when undemocratically elected governments hold power. According to this principle, the three main institutions of government: the legislature, executive and judiciary, are maintained as separate entities in order to provide effective checks and balances upon each other, thus preventing power from becoming centralised in any one entity. To protect and preserve the democratic system, these three bodies must remain separate and independent and be respected for their independent status. Any incursions of power by one body over another diminishes the fabric of democracy. An independent parliament is considered a necessity for the protection of democracy, just as an independent judiciary is needed to apply a check upon the powers of the executive and the legislature.

Having its origin in Ancient Greece, Athenian democracy took the form of direct democracy in which eligible citizens could have a voice and cast their vote on issues in an assembly comprising over 6,000 adult male citizens. This system rested on three main institutions or ‘pillars of democracy’—these were the Assembly of the Demos, the Council of 500, and the People’s Court. The Assembly voted on issues affecting all aspects of Athenian life; the Council issued decrees and prepared the agenda for meetings of the Assembly; whilst the People’s Court was comprised of citizens’ juries who listened to cases, voted on the guilt or innocence of accused parties and issued suitable punishments for their crimes. Checks existed between each of these institutions and the Athenian constitution, attributed largely to Aristotle in the fourth century BC, who provided a framework for society to function for the benefit and welfare of its citizens. In his Treatise on Government, Aristotle describes how the three agencies of government—the general assembly, the public officials and the judiciary—should remain separate from one another in order to create the most democratic state.

Many modern democracies have grown and developed into what is known as the Westminster system of government, originating in the United Kingdom, and adopted by many countries around the world as a safe and effective means for maintaining a representative form of government. Under this system, members of the executive government are also members of the parliament (legislature),

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1 The three branches of government—the legislature, executive and judiciary—act as separate checks and balances on each other to prevent one branch of government overreaching its power or infringing on the rights of citizens. In the Australian system, these checks and balances exist between the executive and legislature, for example, ministers are subject to the scrutiny of members of parliament and the opposition, and the executive is not always able to control both Houses of Parliament.


elected by the people (except in cases such as the House of Lords and Canadian Senate). In this system of responsible government, members of the executive are assigned portfolio responsibilities for which they are accountable to parliament. This is the central feature of a Westminster system of government, as is the case in Australia at both federal and state levels—in contrast to some polities where the executive remains separate and not directly answerable to the legislature—as in the United States of America.

**Early political theorists**

The doctrine of the separation of powers has been examined by several political theorists. John Locke (1632-1704) defined the three powers as ‘legislative, executive and federative’ and considered the legislative branch to be the supreme branch, while the executive branch was left to administer the affairs of the state. Locke contended that an effective legislature was essential in the execution of the nation’s laws as these needed to be constantly updated to suit the changing conditions of society. As the legislature was not always in session, it was necessary to have an independent executive to oversee the administration of laws at all times. In *Two Treatises of Government* (1690), Locke wrote:

...because it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage.¹

Locke was acutely aware that a separation of powers was required in order to safeguard democracy and not give too much power to one agency. In Locke’s view, the executive must respect the legislature’s role in creating the necessary laws to safely govern society and the legislature must respect the executive’s role in administering those laws. If the administration should ever exceed its powers, the legislature has the power, and in Locke’s mind, a responsibility to change the laws to ensure executive power is not abused. His views were timely, as he was writing just after the Glorious Revolution of 1688, which saw a reduction in the power of the monarch and the Declaration of Rights (later passed as an Act of Parliament known as the Bill of Rights) which resulted in a greater recognition of the sovereignty of parliament.

Another political theorist, Baron de Montesquieu (1689-1755) expanded on the doctrine of the separation of powers in his *De l’esprit des lois* (The Spirit of Laws, 1748). Montesquieu asserted that our liberties are based on the separation and balance of power between parliament and the governing body. He contended that our liberty is lost if these powers are not separated.⁴ In discussing the importance of the separation of powers among the three tiers of government, Montesquieu wrote:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.⁷

¹ J. Locke, *Two Treatises of Government* (1689) Chapter 12, Sec.143, Of the Legislative, Executive, and Federative Power of the Commonwealth.


A further important political theorist, David Hume (1711-1776) in his *Essays Moral, Political, Literary* (1742) wrote in his chapter titled, *Of the Independence of Parliament*, that 'the principal weight of the crown lies in the executive power. But besides that the executive power in every government is altogether subordinate to the legislative'.

What drew Hume to make this bold statement? Hume considered the legislature to have immense power by the fact that it assumes the 'sole right of granting money', that it has the power of making every grant conditional and most importantly, that it can refuse supply. Hume stated:

> ... the exercise of this power requires an immense expense, and the commons have assumed to themselves the sole right of granting money. How easy, therefore, would it be for that house to wrest from the crown all these powers, one after another; by making every grant conditional and choosing their time so well that their refusal of supply should only distress the government, without giving foreign powers any advantage over us?

These political theorists all saw the value in espousing the doctrine of the separation of powers in order to protect and strengthen democracy. Their views helped shape our present Westminster system and the evolution of other democratic systems of governance. As one commentator has noted:

> This theory was to develop in very different ways in Britain, in America, and on the continent of Europe, but from this time on, the doctrine of the separation of powers was no longer an English theory; it had become a universal criterion of a constitutional government.

What is remarkable is that the Westminster system of parliamentary democracy, which has existed for hundreds of years, has remained so resilient in the face of a rapidly changing world. This system of government has survived revolutions, a gunpowder plot, hung parliaments, executive dismissals and a host of other threats and yet the essential elements which have ensured its continuation have remained steadfast and strong. The separation of powers which has been maintained between the legislature, executive and judiciary has undoubtedly played a significant role in preserving parliamentary democracies.

This paper is an attempt to investigate how shifts in power, by one branch of government over the other, can impact upon this important balance needed in a parliamentary democracy—and threaten parliament’s ability to remain independent.

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9 ibid.

10 ibid.

1. DEMOCRATIC PRINCIPLES

Key principles
Modern democratic systems have stemmed from the classical understanding of democracy, which evolved from the works of Plato and Aristotle and their reflection on political arrangements in Greek city-states. The developmental vision of democracy was participatory, in which the polity participated in procedures for forming legislation. In modern democracies, citizen participation is exercised through the right to vote for members who represent constituents within the parliament and government. This is complemented by citizens’ involvement in policy formulation, such as public submissions and hearings on legislative proposals.

The following are some of the key principles underpinning parliamentary democracy:

- **Liberalism** – defined by its concern for individual liberty. The understanding of liberal democracy tends to be associated with political systems that followed the French and American revolutions. Liberal democracy developed from the rejection of monarchical regimes and with the implementation of constitutional democratic institutions such as parliament.

- **Egalitarianism** – refers to the doctrine or condition of the equality of humankind. Throughout modern times, worldwide and in Australia, governments have been seen as the most important instruments of egalitarian reform. As such, egalitarian politics have generally focused on the pursuit of equality between citizens of individual states, with limited tangible efforts to further equality on a global scale.

- **Participation** – refers to participation in the political process, through electing representatives to parliament, joining a political party, protesting, signing a petition, involvement in public hearings, etc.

- **Protection** – the responsibility of the parliament and government to protect the rights of individual citizens.

- **Pluralism** – outlines a political system which encompasses multiple groups and interests who compete for power and influence; where no single group or interest is dominant. Successful outcomes of pluralism in a political system are the result of compromise, negotiation and peaceful resolution of conflicting interests that reflect the relative strengths of interest groups. Also refers to recognising the diversity within a parliament or political body and allowing a peaceful coexistence of differing interest. Involves having more than one centre of power within the political system, inherently present in democratic parliamentary systems.

- **Accountability** – refers to the ways in which elected representatives have an associated responsibility as public officers entrusted with the public trust—they are accountable to the public whom they serve and must adhere to ethical standards of integrity and fairness. It also entails ways in which parliaments, the public and other democratic actors can provide feedback, reward or sanction to elected representatives. Developed and well-functioning accountability mechanisms provide incentives for governments to work in the best interest of the public.

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Separation of powers

The *separation of powers* doctrine contends that liberty can only be preserved in a political system which observes the principles of the doctrine. Under these principles our democracies are offered protection against governmental power being overly concentrated in any one branch of government.

At Federation, the Australian constitution incorporated tripartite separation of governmental power as the basis of our political system. The doctrine depends on the three branches of government—the legislature, executive and judiciary—understanding their respective responsibilities, and not exceeding them in a continuous or overt manner.

Each of the three branches is assigned differing tasks and the system ensures that institutions are able to conduct checks and balances on one another, thus stopping one branch becoming too powerful and in turn undermining, damaging or destroying the democratic fabric of governance.

James Madison, who became the fourth President of the United States (1809-17), contemplated the inherent dangers of not having a *separation of powers* in his address to the first American Congress by stating:

> Perhaps there was no argument urged with more success, or more plausibly grounded against the Constitution, under which we are now deliberating, that founded on the mingling of the Executive and Legislative branches of the Government in one body.

Rights of mutual control and influence are put into place to allow equality between the three branches. The purpose of the doctrine is not to avoid inevitable friction, but rather to distribute powers across the three levels of government and preclude the exercise of arbitrary power.

The balancing of the relationship between the three arms of government is essential to successfully embed the rule of law and ensure greater accountability. The separation of powers provides a limitation on the arbitrary excesses of governments, as all three branches are required in order to make, execute and administer the laws.

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Independence of executive, legislature and judiciary

The aim of having an independent executive, legislature and judiciary does not mean each branch must exist in isolation but rather they should complement each other’s functions to bring about the effective rule of law, good government and protection of citizens’ rights.  

The acceptance of and respect for the responsibilities and duties of each branch by the other branches is fundamental to ensuring a democratic system of governance. The inherent tensions built into political systems founded on the Westminster model—based on the ability of the government of the day to maintain the support of a majority in the lower house and exercise control of the legislature—places further importance on ensuring the independence of each branch. Moreover, the ability of parliament to scrutinise the actions of government without interference is crucial to the continuing success of Westminster principles, the most commonly recognised of which are:

- the fusion of the executive and the legislature, in that all ministers must be members of parliament and answerable to it;
- bicameralism (or, in some cases, unicameralism);
- single-member or multi-member electorates;
- first-past-the-post, proportional or preferential voting systems;
- parliamentary sovereignty;
- collective cabinet decision making;
- a designated recognisable opposition; and
- a professional non-partisan public service.

Parliament’s fundamental role of holding the executive to account

The relationship that governs interactions between the executive and the legislature is critical as it determines the character of politics in the jurisdiction, the role of key public institutions and the balance between government and the broader political system. Within the Australian model, with its disciplined political parties, an increasing trend towards executive dominance has emerged. It has been observed that increased party consolidation and a more disciplined two-party system, has created a tendency for the executive to control and dominate the parliament. This has tended to skew power in the executive’s favour, with the ‘party room’ replacing parliament as the primary forum for decision making. However, this has been challenged at times by the rise of minor parties and independents holding the balance of power in one or both houses.

The paradigm of a dominant executive leveraging control over parliament is counteracted 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 (or checks and balances) central to the Westminster system of parliamentary government—ministerial responsibility and financial accountability.

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20 Ibid, p. 15.  
23 Ibid.  
24 Ibid., p. 12.
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’.\(^{25}\) There is an expectation that ministers will provide parliament with any relevant information related to their activities along with those of their department. Moreover, ministers have a responsibility to remedy any wrongdoings exposed by parliament. Ministerial responsibility does not imply that ministers must take personal responsibility for all actions of their departments; however, they must still be held to account for them. Frequently, in cases where ministers are not personally liable, they are simply able to make relevant information public and apply appropriate remedies.\(^{26}\)

Financial accountability
Founded in the provisions of the Bill of Rights—that the executive cannot raise taxes or expend funds without the authority of parliament—financial accountability entails the expectation that the executive will provide parliament with routine accounts of how funds have been spent. In turn, all government agencies publish annual financial accounts which are put under scrutiny by parliamentary committees, such as public accounts committees. Parliamentary committees have taken on a more interrogative role, as witnessed in recent years by upper house or Senate committees—active in the chamber where governments can often lack a majority—forcing their government agencies and officials to be more directly accountable to the parliament. This has resulted in higher levels of parliamentary scrutiny of the executive by parliament, resulting in greater transparency of government. Additionally, all government agencies are subject to regular audits reported directly to the parliament by the auditor-general’s office, further strengthening parliamentary oversight of government finances.

The ability to hold 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’.\(^{27}\) Any actions in which the executive is able to interfere with the funding and financial procedures of the legislature marks a spillover of executive power into parliament, endangering the separation of powers doctrine.\(^{28}\) According to UK law academics, White and Hollingsworth:

> In the British constitutional tradition, the ‘power of the purse’ is central to the ability of Parliament to call government to account. The power of the purse flows from the basic constitutional principle that government expenditure must be authorised by legislation. This forms the basis of requirements of financial control and accountability.\(^{29}\)

Thus, parliament holds decisive control over government finances but is unable to direct resources into its own operations. The only form of financial control that parliament is able to exercise over


\(^{28}\) Kennedy (2012) op. cit., p. 3.

\(^{29}\) F. White & K. Hollingsworth (1999) *Audit, Accountability and Government*, Oxford, Oxford University Press, p. 1.; see also HM Treasury (date unknown) *Financial reporting - Parliamentary Supply Estimates* [now on the National Archives' website], which states ‘under long-established constitutional practice it is for the Crown (the Government) to demand money, the House of Commons to grant it and the House of Lords to assent to the Grant.’
government is inherently reactive in nature, with the government having exclusive financial initiative. According to Erskine May’s Treatise on the law, privileges, proceedings and usage of Parliament, the key authority on parliamentary procedure, this arrangement is outlined as follows:

It was a central factor in the historical development of parliamentary influence and power that the Sovereign was obliged to obtain the consent of Parliament (and particularly the House of Commons as representatives of the people) to the levying of taxes to meet the expenditure of the State. But the role of Parliament in respect of the State expenditure and taxation has never been one of initiation: it was for the Sovereign to request money and for the Commons to respond to the request. The development of responsible government and the assumption by the Government of the day of the traditional roles and powers of the Crown in relation to public finance have not altered this basic constitutional principle: the Crown requests money, the Commons grants it, and the Lords assent to the grant.30

Inevitably, the ‘power of the purse’ flows in both directions—parliament is able to maintain ultimate control over government finances by way of what is essentially a veto power on appropriations, and the government in turn holds effective authority to initiate appropriations, including those related to the parliament itself.31

Having a financially independent parliament would certainly aid in 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.32 These arguments can likewise be applied to the issue of the independence of parliament, particularly from a financial perspective, which will be explored further in Section 4.

Parliamentary privilege and exclusive cognisance

Any discussion on the independence of parliament must address the issue of ‘parliamentary privilege’—which refers to the powers, privileges and immunities enjoyed by Houses of Parliament and their Members in the performance of their duties. These privileges are an exception to ordinary law and are intended to allow parliamentarians to perform their duties without fear of intimidation or punishment. In the Westminster system, parliamentary privilege lies at the heart of the freedom of the Houses of Parliament to conduct proceedings without interference from the executive or the judiciary. This privilege, ‘developed in the context of the Parliament’s need to assert its integrity, independence and authority against outside influence’.33

A 2013 report by the UK Joint Committee on Parliamentary Privilege observed:

Privilege refers to the range of freedoms and protections each House needs to function effectively: in brief, it comprises the right of each House to control its own proceedings and precincts, and the right

of those participating in parliamentary proceedings, whether or not they are Members, to speak freely without fear of legal liability or other reprisal.  

As parliamentary privilege applies to ‘proceedings in Parliament’, it extends to witnesses appearing before a parliamentary committee.  

Parliamentary privilege entails the following two functions:

- freedom of speech for participants in parliamentary proceedings; and
- ‘exclusive cognisance’ to regulate proceedings without interference from the courts.  

Freedom of speech has its foundation in the English Bill of Rights 1689. Article 9 states, ‘that the freedom of speech, and debates or proceedings in Parliament, ought not be impeached or questioned in any court or place out of Parliament’. The proper functioning of democracy requires that people’s elected representatives are free to raise any matter. Accordingly, freedom of speech is the most fundamental parliamentary privilege. Freedom of speech acts as an immunity from civil and criminal liability for anything said or done in the course of parliamentary proceedings. The principle of ‘exclusive cognisance’ refers to the independence of each House of Parliament from the other, as well as the independence of parliament from the government and the judiciary. Exclusive cognisance refers to parliament’s sole jurisdiction over all matters relating to parliamentary privilege. In his Commentaries on the Laws of England, Sir William Blackstone noted that, ‘whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that house to which it relates, and not elsewhere’. This principle is reflected in section 43 of Constitution Act 1975 (Vic), which states that each House has authority to order its own affairs. The corresponding provision at the federal level is section 50 of the Commonwealth of Australia Constitution Act 1900 (Cth), which states that:

Each House of the Parliament may make rules and orders with respect to:

(i) The mode in which its powers, privileges, and immunities may be exercised and upheld
(ii) The order and conduct of its business and proceedings either separately or jointly with the other House. Exclusive cognisance confers immunity from legal liability from things said or done during the course of parliamentary proceedings. As those affected by things said or done during parliamentary proceedings have no recourse to justice, parliamentary privilege is at odds with the rule of law. Persons claiming to be unjustly maligned do, however, have a ‘right of reply’ and can request that

37 Joint Committee on Parliamentary Privilege (2013) op. cit., p.7.
39 Bill of Rights 1688 (UK), Article 9, applied in Australia by virtue of section 49 of the Commonwealth of Australia Constitution Act (Cth).
41 Constitution Act 1975 (Vic).
42 Commonwealth of Australia Constitution Act (Cth), s 50.
43 Joint Committee on Parliamentary Privilege (2013) op. cit., p.7.
44 Ibid.
their rebuttal be incorporated into the parliamentary record. Defining the parameters of what is ‘necessary’ to protect parliamentary proceedings from interference has been the subject of litigation in various jurisdictions within the Westminster system of government. As a result of the tension between these two fundamental democratic principles, parliament’s claim to exclusive cognisance should be strictly limited to those areas where immunity from normal legal oversight is necessary to safeguard the effective functioning of parliament.

Parliamentary privilege and exclusive cognisance play an essential role in enabling parliament to effectively perform its duties and functions of representation, legislation and scrutiny of government—while maintaining its authority and independence from the executive and judiciary.

Latimer House Principles
In June 1998 a group of distinguished parliamentarians, judges, lawyers and legal academics joined together at Latimer House in Buckinghamshire, England, at a Colloquium on Parliamentary Sovereignty and Judicial Independence within the Commonwealth. The Colloquium endorsed what is known as the Latimer House Principles on Parliamentary Supremacy and Judicial Independence. After substantial debate by Commonwealth law ministers, legal experts and judges, the Principles were endorsed by Commonwealth Heads of Government in 2003 which recognised a balance of power between the executive, legislative and judiciary as being an integral part of the Commonwealth’s fundamental political values.

The Latimer House Principles are a set of ‘agreed Commonwealth of Nations principles on the accountability of, and relationship between, the three branches of government’. They underline the fundamental values which should govern the relationship between the three branches of government. The objective of the principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth’s fundamental values. The Principles state that:

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.

The principles reiterate the importance of separate yet equal branches of government which are accountable to one another. The principles aim to ensure that any one branch of government does not become dominant and undermine the separation of powers. They also state that:

- it is essential a State’s democratic institutions reinforce one another, are accountable for their decisions, have the confidence of their people and are transparent;
- although the judiciary may be constructive and purposive in the interpretation of legislation, it may not encroach on parliament’s legislative function, as it remains the primary responsibility of parliament;

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47 ibid.
49 ibid., p. 10.
50 ibid., p. 12.
dialogue between the judiciary and the government may be appropriate and even desirable, however, it must not compromise judicial independence; and,
parliamentary procedures are to provide adequate mechanisms to enforce the accountability of the executive to parliament.\footnote{51}

The principles play an important role in defining how the legislature can hold the executive to account. Executive accountability is described in the Latimer House Principles for the Commonwealth—in that parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to parliament. These should include:

- a committee structure appropriate to the size of parliament, adequately resourced and with the power to summon witnesses, including ministers. Governments should be required to announce publicly, within a defined time period, their responses to committee reports;
- standing orders should provide appropriate opportunities for members to question ministers and full debate on legislative proposals;
- the Public Accounts should be independently audited by the Auditor-General, who is responsible to and must report directly to Parliament;
- the chair of the Public Accounts Committee should normally be an opposition member; and,
- offices of the Ombudsman, Human Rights Commissions and Access to Information Commissioners should report regularly to Parliament.\footnote{52}

In July 2008, an important follow-up to the Latimer House Principles came in the form of the Edinburgh Plan of Action, which sought to give more practical guidance and meaning to the Latimer House Principles. The Edinburgh Plan included a significant resolution on the Independence of Parliamentarians, which called for the following actions:

Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

Action:

- 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.\footnote{53}

This final action reinforced the importance of parliaments managing and controlling their own fiscal arrangements and opens the door to parliaments introducing their own appropriation Bill, as is the case in the House of Commons (see Section 6 below), rather than having their appropriation presented to them by the executive.

The Latimer House Principles and Edinburgh Plan of Action are extremely important in upholding the independence of parliament. They provide a set of specific guidelines which allow for Westminster governments to function effectively and responsibly. Importantly, the principles set in place mechanisms of accountability which are an attempt to ensure that no branch of government can dominate or apply disproportionate pressure within the governance system.

\footnote{52} ibid., p. 24.
\footnote{53} Commonwealth Parliamentary Association (2009) op cit., p. 42.
2. INDEPENDENCE OF THE JUDICIARY

An independent judiciary is essential to guarantee a free and fair society in which democratic principles can flourish. The term ‘judicial independence’ is used to describe the requirement under the doctrine of the separation of powers for a judiciary, which is independent from the legislature and the executive. In this way, courts can apply checks and balances to executive and legislative powers. The advent of judicial independence in the English constitutional system began in the early 17th century, through the introduction of the Bill of Rights of 1689 and the enactment of the Act of Settlement (UK) in 1701, which formalised the requirement for judicial tenure and for appropriate procedures to remove a judge when required.54

Practices and principles designed to support judicial independence in Australia are established through the Australian Constitution, state constitutions, case law, legislation regulating the courts and convention.

Judicial independence and the separation of powers
The Australian Constitution establishes the separation of powers at the federal level, by conferring federal legislative, executive and judicial powers in separate bodies under Chapter III of the Constitution.55 The Constitution further protects federal judges against arbitrary interference by the executive and the legislature.56 The Constitution cannot be altered without a referendum and requires an absolute majority in both Houses of Parliament or, if one house refuses to pass a Constitution alteration Bill passed by the other house, the Bill may be submitted to a referendum if the first house passes the Bill a second time.57 This ensures that the separate arms of government established under the Constitution remain stable and provides a check on their power over each other.

The Constitution directly establishes the High Court of Australia and envisages that a further system of federal courts will be created by ordinary Commonwealth legislation.58 For example, the Family Court, the Federal Court and the Federal Circuit Court (formerly the Federal Magistrates Court) are created by ordinary Commonwealth legislation.59

In some situations, convention supports the separation of powers and judicial independence at a state level.60 In addition, Chief Justice French of the High Court quoted Professor Carney’s observations that the separation of powers is a political doctrine which can be used to question government practices.61 High Court decisions have also used the provisions in Chapter III of the Australian Constitution to strengthen the independence of the courts from the executive at a state

56 op. cit.
57 Commonwealth of Australia Constitution Act (Cth), s 128.
58 op. cit1.
59 Federal Court of Australia Act 1976 (Cth); Family Law Act 1975 (Cth); Federal Circuit Court of Australia Act 1999 (Cth).
60 French (2009) op. cit., p. 5.
61 ibid., p. 8.
Independence of Parliament

For example, the High Court in *Kable v Director of Public Prosecutions (NSW)* held that a state Act that claimed to grant non-judicial functions in the Supreme Court of New South Wales was invalid on the grounds that the legislation undermined, or appeared to undermine, the institutional integrity of the court system established by Chapter III of the Constitution.

Independence from the legislature

The doctrine of separation of powers requires courts to act independently without interference from parliament. It is the role of courts to impartially interpret and apply the law, which consists of both common law principles and laws passed by parliament. Societal recognition of the courts’ role as the ultimate independent arbiter of legislative validity and application is an important aspect of the Australian constitutional system.

The High Court provides a check and balance on the legislature’s powers to make particular laws, through its power to interpret and nullify legislative provisions that it considers are not consistent with the Australian Constitution.

Judicial independence is important in cases where legislation is ambiguous. A court will apply both statutory and common law rules to interpret legislation. The overarching principle applied is for the court to determine parliament’s intention in drafting the legislation. It is not the role of the court, for example, to discover and adopt the interpretation endorsed by a minister at a particular time.

An independent judiciary has also played a pivotal role in the development of common law in Australia. For example, the case of *Mabo and others v Queensland (No 2)* profoundly changed understanding of the law surrounding native title. While High Court judges were previously reluctant to acknowledge that courts played a role in law-making through common law decisions, a number of High Court judges have since made statements to that effect.

Sometimes, the parliament passes legislation which directly impacts on the courts’ exercise of its judicial functions. In these circumstances, the courts may be called upon to determine whether this legislation is constitutionally valid. Examples of such legislation include:

- legislation passed which may affect the outcome of a pending case. In these instances, legislation which is a proper exercise of legislative power, i.e. a change to the law, is valid;

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62 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51; *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531.

63 *Kable v Director of Public Prosecutions (NSW)* op. cit.; Office of the Queensland Parliamentary Counsel (2014) *Principles of good legislation: OQPC guide to FLPs, Institutional integrity of courts and judicial independence*, 30 June, p. 5.

64 Attorney-General’s Department (date unknown) ‘The Courts’, AG website.


in early legal history, Bills of Attainder were sometimes passed by a legislature to convict and sentence an individual without trial.\textsuperscript{71} In modern times, the legislative requirement of mandatory sentences for certain offences (for example, ‘one punch laws’) means that parliament determines an offender’s sentence rather than the courts. This removes a court’s discretion to take any mitigating circumstances into account;\textsuperscript{72} and

- legislation which seeks to require a court to exercise its powers in a way inconsistent with judicial power or its nature as a court has been held constitutionally invalid. For example, in the aforementioned Kable case, legislation which tasked courts with exercising non-judicial functions was held invalid.\textsuperscript{73}

**Court funding**

Court funding is a key issue affecting the operational independence of the courts and has been discussed by a number of judges and academic commentators in Australia. In all jurisdictions in Australia, levels of court funding are set by the executive, as appropriation bills are initiated by the government which controls the lower house.\textsuperscript{74} Most of the discussion surrounding court funding revolves around not whether the executive should determine the level of funding, but whether it should be the courts or the executive that control how the money is spent. In Australia, two models of court administration have developed at the state level, which are outlined as follows.\textsuperscript{75}

**Executive model**

The administration of most state courts (with the exception of South Australia and Victoria) continues to be undertaken by the executive.\textsuperscript{76} The executive decides the level of funding for the courts and is responsible for the administration of each court, including staffing and how monies are allocated.\textsuperscript{77} The courts may constitute a business unit within a state government Justice or Attorney-General’s department\textsuperscript{78} and the relevant state Treasury Department advises the Treasurer on the budget to be provided in the Appropriation Bill for the courts.\textsuperscript{79} In a variation of this model, some states have established a separate department which specifically handles court administration.

In practice, under the traditional executive model, the relevant government minister, usually either the attorney-general or the minister for justice, prepares a budget proposal, possibly after consultation with the judiciary.\textsuperscript{80} The minister then presents the budget proposal to cabinet or cabinet’s expenditure review committee, after which it is incorporated into the Appropriation Bill.\textsuperscript{81}

The Chief Justice of the Supreme Court of Victoria, Marilyn Warren, criticised this model of court funding before significant changes to the Victorian system took place in 2014.\textsuperscript{82} Justice Warren pointed out that the courts are dependent on receiving a budget allocation from the secretary of the

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\textsuperscript{72} Gerangelos (2002) op. cit., p. 1; Rule of Law Institute of Australia (2014) op. cit.
\textsuperscript{73} Gerangelos (2002) op. cit., p. 1; Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51.
\textsuperscript{76} ibid.
\textsuperscript{78} Warren (2012) op. cit., p. 3.
\textsuperscript{79} ibid., pp. 3, 9.
\textsuperscript{80} R. S. French (2009) ‘Boundary conditions-the funding of courts within a constitutional framework’, paper presented to the Australian Court Administrators’ Group Conference, Melbourne, 15 May, p. 22.
\textsuperscript{81} ibid, p. 22.
\textsuperscript{82} M. Warren (2012) op. cit., p. 22.
Justice department, who might also be a frequent litigator in some cases.\textsuperscript{83} Warren also pointed out that court costs can increase following a legislative change or change in executive policy (for example, changes to the serious sex offenders’ legislation or increases in police numbers leading to more court cases) or where an unexpected increase in litigation occurs. In these cases, the courts have to appeal to the Department of Justice for extra funding.\textsuperscript{84}

Justice Warren highlighted one particular instance where executive systems impinged on judicial independence. At the time of her speech in 2012, the Victorian Supreme Court was using the same IT system as the Department of Justice, allowing IT workers in the Department, which was a litigator in the Court, to potentially read judges’ judgements before they were made public. As a result, when the proposal was made to centralise IT resources through CenITex, the Supreme Court refused to participate.\textsuperscript{85}

**Judicial Council model**

South Australia was the first Australian jurisdiction to introduce a judicial council in 1993 and Victoria followed in 2014. Both states have implemented systems of centralised funding to minimise the executive’s role in the courts’ financial and administrative arrangements. Essentially, a judicial council is established by legislation, comprised of representatives from a number of state courts and tribunals. The executive determines an amount of funding which is paid to the judicial council, which then has autonomous powers to administer and fund the courts which are part of the scheme. The South Australian Government established the State Courts Administration Council, under the *Courts Administration Act 1993*,\textsuperscript{86} as a statutory authority.

In Victoria, the *Court Services Victoria Act 2014*\textsuperscript{87} established Court Services Victoria (CSV) from 1 July 2014, as an independent statutory body corporate to provide administrative services to Victoria’s courts and the Victorian Civil and Administrative Tribunal (VCAT), and to enable the Judicial College of Victoria to perform its functions.\textsuperscript{88} The object of the Court Services Victoria Act 2014 is to:

- support judicial independence in the administration of justice in Victoria by establishing a body (Court Services Victoria) to provide the administrative services and facilities necessary for the Victorian courts and VCAT to operate independently of the direction of the executive branch of government.\textsuperscript{89}

Under the Act, Victoria’s courts and tribunals became independent of the executive arm of government and became directly accountable to Parliament,\textsuperscript{90} for their appropriation and operations. With the establishment of CSV, control and responsibility for the funding and administration of courts and VCAT was transferred from the Department of Justice and Regulation and given to the Courts Council, the governing body of CSV. The relationship between CSV and the Parliament is guided by a memorandum of understanding between the Executive and the Courts Council, signed in May 2015.\textsuperscript{91}

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\textsuperscript{84} M. Warren (2012) op. cit., pp. 10–11.
\textsuperscript{85} ibid., p. 14.
\textsuperscript{86} *Courts Administration Act 1993* (SA).
\textsuperscript{87} *Court Services Victoria Act 2014* (Vic).
\textsuperscript{88} Public Accounts and Estimates Committee [2015] *2015–16 Budget Estimates Questionnaire* [Court Services Victoria], Parliament of Victoria, p. 2.
\textsuperscript{89} *Court Services Victoria Act 2014*, s 4.
\textsuperscript{90} Court Services Victoria (2016) ‘*About CSV*’, CSV website.
\end{flushleft}
3. INDEPENDENT OFFICERS OF PARLIAMENT

Independent Officers of Parliament are entities established by statute, which are independent of the executive government and which assist parliament in carrying out its responsibilities to scrutinise the actions of the government. In other jurisdictions, these independent officers may be known as Officers of Parliament, Independent Statutory Officers or Officers of the House.

Officers of the House, such as the Speaker, Clerk of the House and Serjeant-at-Arms, have operated in the United Kingdom Parliament for centuries, however in more recent years the term has been used to refer to a specific group of office holders with more specific scrutiny roles. As described by the House of Commons Library in 2013:

The concept of Officers of the House was developed in the twentieth century, well beyond its earlier usage, to apply to new types of constitutional watchdogs. The term has come to denote a special relationship of accountability to Parliament and such designation implies independence of the executive. Formal mechanisms, such as restrictions on dismissal of Officers and direct appointment of staff as non civil servants assist in upholding this independence. A similar development has occurred in a number of other Westminster style Parliaments, which have adopted the term from Westminster.

The officers are generally known as ombudsmen (also called parliamentary commissioners) and auditors-general, although in recent years, electoral commissioners and a number of other statutory office holders have also been designated by statute as Independent Officers of Parliament. For example, in Victoria, the Auditor-General, the Ombudsman, the Electoral Commissioner, the Victorian Inspector and the Independent Broad-based Anti-corruption Commission (IBAC) Commissioner are currently all designated Independent Officers of Parliament under various pieces of legislation.

Table 1 below, provides a snapshot of the statutory and operational nature of Victoria’s five Independent Officers of Parliament. Each agency is deemed by statute to be independent from the executive and accountable to the Parliament of Victoria. However, it should be noted that each independent officer is currently appointed by the Governor in Council—effectively the executive—and most are funded directly by the executive. Being appointed in this manner and being funded by the executive however, lessens their status as ‘independent’ officers. One solution to help offset this, would be for all Independent Officers to be funded under the Parliamentary Appropriation Bill (as is the case currently with the Auditor-General and the pending Parliamentary Budget Office) and for their appointments to be made by Parliament through its Presiding Officers, rather than by the government. This would separate them from the executive and delineate their functions more clearly under Parliament. Although, being funded through the Parliamentary Appropriation Bill still relies upon Treasury allocating funding to each entity—as it remains the prerogative of the executive to ultimately decide on how much is to be allocated—not the Parliament. In order for these entities to

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94 Gay (2013) op. cit., p. 3.
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<thead>
<tr>
<th></th>
<th>Auditor-General</th>
<th>Electoral Commissioner</th>
<th>IBAC Commissioner</th>
<th>Victorian Inspector</th>
<th>Victorian Ombudsman</th>
</tr>
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<tbody>
<tr>
<td><strong>Statutory appointment by</strong></td>
<td>Governor in Council on recommendation of PAEC</td>
<td>Governor in Council</td>
<td>Governor in Council on recommendation of the Minister subject to veto by IBAC Committee</td>
<td>Governor in Council on recommendation of the Minister subject to veto by IBAC Committee</td>
<td>Governor in Council</td>
</tr>
<tr>
<td><strong>Term of office</strong></td>
<td>7 years</td>
<td>10 years</td>
<td>5 years</td>
<td>5 years</td>
<td>10 years</td>
</tr>
<tr>
<td><strong>Dismissal</strong></td>
<td>Resolution of both Houses of Parliament</td>
<td>Governor in Council or resolution of both Houses of Parliament</td>
<td>Resolution of both Houses of Parliament</td>
<td>Resolution of both Houses of Parliament</td>
<td>Resolution of both Houses of Parliament</td>
</tr>
</tbody>
</table>
| **Accountability** | • Annual report to Parliament  
  • PAEC  
  • Victorian Inspectorate * | • Annual report to Parliament  
  • Report to Parliament after each state election, including by-elections | • Annual report to Parliament  
  • Victorian Inspectorate  
  • IBAC Committee | • Annual or bi-annual reports to Parliament  
  • IBAC Committee  
  • Accountability & Oversight Committee  
  • PAEC * | • Annual report to Parliament  
  • Accountability & Oversight Committee  
  • Victorian Inspectorate |
| **Annual budget** | $41.4m                               | $25.26m                              | $32.6m                          | $2.7m               | $14.1m               |
| **Source of funding** | Parliamentary Appropriation  
  (and Government Special Appropriations) | Executive                            | Executive                        | Executive            | Executive            |
| **Staff**        | 199                                  | 92                                   | 134                             | 9                   | 82                   |
| **Executive powers of discretion over agency** | Minister for Finance **  
  | Minister for Finance **  
  | Minister for Finance **  
  | Minister for Finance **  
  | Minister for Finance **  |

Source: Victorian Parliamentary Library & Information Service

* Victorian Inspectorate and PAEC are listed here with reference to their oversight legislative functions, as detailed in the Victorian Inspectorate section below on p. 23.
** Subject to Standing Directions of the Minister for Finance under the Financial Management Act 1994 s. 8.

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97 Information in this table was sourced from: Constitution Act 1975 (Vic); relevant legislation for each agency; Auditor-General, Electoral Commissioner, IBAC Commissioner, Victorian Ombudsman and Victorian Inspectorate annual reports and websites.
be truly independent, the Parliamentary Appropriation Bill would need to be determined in consultation with each entity and delivered not by the Government, but by the Speaker to Parliament.

In a joint submission in May 2016 to the Victorian Government’s Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General, the Victorian Auditor-General, the Victorian Ombudsman and Victoria’s Independent Broad-based Anti-Corruption Commissioner, strengthened their position by stating the importance of their independence from the executive and the need for a closer relationship with Parliament, particularly with regards to their funding:

As independent officers of the Parliament, it is essential that we are, and are seen to be, independent, of the Executive, over whom we have jurisdiction. We propose consistency in provisions governing the appointment, tenure, immunity, removal and remuneration of our roles and seek to maximise the involvement of the Parliament rather than the Executive in these areas. This is particularly important for the process for allocating budgets: the Parliament, not the Government, should determine funding and other resources for independent officers.  

Auditor-General

The role of an Auditor-General is to scrutinise the management of resources within the public sector by performing financial and performance audits. Auditors-general should operate free of direction and control from both parliament and the government. The importance of having an independent auditor to monitor the financial operations of government was highlighted by former Victorian Speaker, Dr Ken Coghill, in his 1997 submission to the Review of the Audit Act, when he stated that the Victorian Audit Act:

should be maintained and enhanced in accordance with world best practice which provides for strict separation of auditor and auditee and strong, effective protection of the independence of a single Auditor General in reporting to the Parliament and the citizens of Victoria on the effectiveness, efficiency and economy of the conduct of executive government.

In Victoria, the Auditor-General was made an independent officer of Parliament in 1997, as a result of amendments to the Audit Act 1994. The position was also embedded in the Constitution Act, which provided for the following:

- enshrined provisions relating to the appointment, independence and tenure of the Auditor-General in the Victorian Constitution Act;
- discretionary power of the Auditor-General to carry out any audits in any way it considers appropriate; and

The Auditor-General in Victoria is appointed by the Governor in Council on the recommendation of the PAEC and remains accountable to Parliament via the PAEC.

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98 Victorian Auditor-General et al. (2016) Joint submission from the Auditor-General, the Victorian Ombudsman and IBAC.
101 Public Accounts and Estimates Committee (2006) op. cit., p. 25; Audit Act 1994, s 15(1)
102 Constitution Act 1975 (Vic), ss 94A-94C.
103 ibid.
Prior to 1997, the Auditor-General’s Office had received funding and administrative support through the Department of Premier and Cabinet; however, since then the Victorian Auditor-General’s Office (VAGO) has received an annual appropriation within Parliament’s annual Appropriation Act.\footnote{ibid.; D. Pearson, Victorian Auditor-General’s Office (2011) ‘Introduction to the Victorian Auditor-General’s Office’ (Powerpoint), presentation at Parliament House of Victoria, Melbourne, 7 February.} The Auditor-General is currently the only independent officer of Parliament who receives funding through the Parliamentary Appropriation Bill. Although, as outlined earlier, this does not necessarily mean that it is Parliament which determines or provides the funding, as the Bill comes directly from Treasury. All the other independent officers receive their funding directly from the Government, yet they all remain accountable to Parliament.

In 2010, the then Auditor-General Des Pearson described the delivery of VAGO’s budget through the Parliamentary Appropriation Bill as ‘… a significant weakness and gives a means for the Executive to exercise control over the Auditor-General’s program’.\footnote{ibid.} He went on to say:

As the Auditor-General is Parliament’s auditor, Parliament rather than the Executive should determine the level of funding, free of Executive influence.

The lack of financial autonomy is all the more stark when coupled with the ability for the Executive to influence staff terms, conditions and obligations through their status as public servants.\footnote{ibid.}

In order to preserve its independence from the executive, the Auditor-General has proposed legislative changes which would allow VAGO to have its funding determined by Parliament, free from executive influence.

**Ombudsman**

The role of an Ombudsman is to investigate and report to Parliament in relation to complaints about administrative actions taken by Victorian Government authorities, statutory bodies and local government.\footnote{Victorian Ombudsman (2016) ‘What We Can and Cannot Investigate’, Victorian Ombudsman website.}

In Victoria, the Ombudsman’s Office is established under the *Ombudsman Act 1973* and the Ombudsman is appointed by the Governor in Council.\footnote{Ombudsman Act 1973, s 3(2).} As the 2006 PAEC report stated: ‘although the *Constitution Act 1975* provides that the Ombudsman is an independent officer of Parliament, no aspects of the selection or appointment process are the responsibility of Parliament’.\footnote{op. cit., p. 28.}

The Office of the Ombudsman is funded directly by the executive. This has raised issues of whether the Ombudsman can be truly independent. According to the Victorian Ombudsman’s *Annual Report 2015*:

The Office is predominantly funded by accrual based Parliamentary appropriations for the provision of outputs. These appropriations are received by the Department of Premier and Cabinet and on-forwarded to the Office in the form of grants.\footnote{Victorian Ombudsman (2015) *Annual Report 2015*, Melbourne, p. 75.}

The Victorian Ombudsman, Deborah Glass, has expressed concern that her Office could not investigate issues involving the Government in a truly independent manner, whilst being reliant upon...
funding from the Department of Premier and Cabinet.\footnote{Donaldson, D. (2015) Victorian Ombudsman seeks independence from executive, \textit{The Mandarin}, 9 October; Tom Minear (2016) 'Watchdog conflicted on funding', \textit{Herald Sun}, 7 October, p. 14.} As an independent officer of Parliament, she has stated that her funding should be from the Parliament and not from the Executive, as is the case with other independent agencies which are accountable to Parliament. This issue was highlighted in the Ombudsman’s 2015 \textit{Annual Report}:

As an independent officer of Parliament, however, I believe that my budget should not be reliant on the executive—over whom I have jurisdiction. Budgets must always be subject to appropriate independent scrutiny and there are independent agencies receiving an appropriation direct from the Parliament to which they are accountable. This arrangement would be in the best long-term interests of my office, Parliament and the public.\footnote{ibid., p. 7.}

The PAEC, as early as 2006, highlighted the need for the Ombudsman and Electoral Commissioner not to ‘lag behind’ and for them to be brought into line with that of VAGO, as reflected in the Constitution Act, in order to ensure the ‘accountability and independence’ of these officers.\footnote{Public Accounts and Estimates Committee (2006) op. cit., pp. 85-86.}

**Electoral Commissioner**

The Electoral Commissioner is responsible for conducting Victorian Parliamentary elections and is the head of the Victorian Electoral Commission (VEC), the administrative agency through which the Electoral Commissioner’s statutory obligations are carried out. In 1989, the Electoral Commission was made an independent statutory office reporting to Parliament instead of to a Minister.\footnote{The Constitution Act Amendment (Electoral Reform) Act 1988 came into operation on 1 January 1989; \textit{Constitution Act 1975}, s 94F(1).} Prior to that, its precursor, the State Electoral Office, had existed as a public service department for 70 years, but it became increasingly apparent that it was inappropriate for the conduct of elections to be subject to ministerial direction.\footnote{Victorian Electoral Commission (2016) \textit{Annual Report 2015–16}, Melbourne, VEC, p. 6.}

\textit{The Electoral Act 2002}\footnote{Electoral Act 2002} defines the functions of the Electoral Commissioner and the VEC, which are to: conduct Victorian state elections, referendums, local council elections, certain statutory elections and commercial and community elections; report to each House of Parliament within 12 months of the conduct of each election on the administration of that election; review the registration of political parties; produce and maintain voters rolls for each election; and, assist the Electoral Boundaries Commission in maintaining and creating redivisions (or redistributions) for Victorian electoral areas, based upon approximate equal enrolment.

The VEC is not subject to the direction or control of the executive in respect of the performance of its responsibilities and functions and the exercise of its powers, and reports to Parliament.\footnote{ibid., s 8,2(h).} However, the Special Minister of State may refer certain electoral matters of ‘general public interest’ to the VEC, which will then be reported directly back to the Minister.\footnote{ibid., s 10.} The VEC receives its funding from \textit{special appropriations} from the Department of Premier and Cabinet with substantial increases allocated in election years. Revenue collected by the VEC is forwarded to the Department of Treasury and Finance as consolidated revenue.\footnote{Victorian Electoral Commission (2016) op. cit., p. 14.}
IBAC Commissioner
The Independent Broad-based Anti-corruption Commission (IBAC) Commissioner was established by the Independent Broad-based Anti-corruption Commission Act 2011 to identify, investigate, prevent and expose public sector corruption and police misconduct.\(^\text{122}\)

The IBAC also has a responsibility to inform the public sector and the community more broadly about the risks and impacts of corruption.\(^\text{123}\) Whistleblower complaints about improper conduct can also be heard by IBAC under the Protected Disclosure Act 2012.

The IBAC has the power to table a special report in each House of Parliament on any matter relating to its functions and, if necessary, make recommendations on how to better prevent corruption.\(^\text{124}\) IBAC is subject to scrutiny by the IBAC Committee and the Victorian Inspectorate.

Amendments to the Independent Broad-based Anti-corruption Commission Act in May 2016 enhanced IBAC’s investigative functions and abilities through the introduction of provisions for preliminary inquiries and further protection of the identity and rights of witnesses and others involved in investigations.\(^\text{125}\)

The Commissioner is an independent officer of Parliament and is not subject to the control or direction of the Minister with respect to the exercise of the Commissioner’s powers, duties or functions.\(^\text{126}\) IBAC is funded through appropriation in the form of grants from the Department of Premier and Cabinet. Although accountable to Parliament, IBAC’s performance outputs are measured in the Budget Papers, not under Parliament, but rather under the Department of Premier and Cabinet from where it gets its funding, as are the other ‘independent’ officers, who also report their performance either to that same Department or the Department of Treasury & Finance.

Victorian Inspectorate
The Victorian Inspectorate is the key oversight body in Victoria’s integrity system. It was established by the Victorian Inspectorate Act 2011 to monitor the following:\(^\text{127}\)

- the IBAC and its officers;
- the Chief Examiner and examiners appointed under the Major Crime (Investigative Powers) Act 2004;
- the Ombudsman and their officers;
- the Auditor-General and VAGO officers; and
- Victorian Information Commissioner (pending passing of legislation)\(^\text{128}\)

The Victorian Inspectorate:

has a central role in assisting the Parliament to ensure that a proper balance is maintained between the exercise of those investigative powers and the protection of the rights of Victorians,

\(^{123}\) Independent Broad-based Anti-corruption Commission Act 2011, s 9.
\(^{125}\) Independent Broad-based Anti-corruption Commission (2016) op. cit., p. 11.
\(^{128}\) Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016
complementing the role of the IBAC Parliamentary Committee and the Accountability and Oversight Committee.\textsuperscript{129}

It reviews and assesses the use of coercive powers by the abovementioned agencies to ensure that they are exercised appropriately, proportionately and in accordance with the law. Accordingly, the Victorian Inspectorate can recommend to these agencies that they take action and request for a written report in response.

In addition to monitoring the use of coercive powers, other functions include receiving complaints and enquires about the abovementioned agencies which may require the Inspectorate to undertake a formal investigation.

Three Parliamentary Committees have functions allowing scrutiny over the Inspectorate:

- the IBAC Committee (apart from its oversight in respect to Ombudsman or VAGO officers);
- the Accountability and Oversight Committee (for its oversight of Ombudsman officers); and
- the PAEC (for its oversight of VAGO officers).\textsuperscript{130}

The Victorian Inspectorate is an independent body not subject to direction or control by the executive.\textsuperscript{131} It reports to Parliament through the Special Minister of State. The Inspectorate is funded from accrual-based grants from the Department of Premier and Cabinet with all its expenses made through the Department of Treasury and Finance.\textsuperscript{132}

Parliamentary Budget Officer

At the time of publishing this paper, the Victorian Parliamentary Budget Officer Bill 2016,\textsuperscript{133} had passed the Legislative Assembly and the Legislative Council, where it was passed with amendments and was awaiting the Legislative Assembly’s consideration of these amendments.

If passed, the Bill will create a Parliamentary Budget Officer (PBO) whose task is to prepare election policy costings and fiscal and economic analysis and advice for Members of Parliament. The PBO will compile and release a report on the aggregate costs of the election commitments of each party within two months after an election.\textsuperscript{134} It must set out the material net financial impact of the policy on the forward budget estimates and key financial indicators contained in the most recent financial report or budget update issued by the Government. The PBO would also contribute to longer term policy development outside election periods.\textsuperscript{135}

The Bill intends to safeguard the independence of the PBO by allowing it to employ permanent staff, instead of relying solely on seconded departmental employees from Treasury.

The PBO’s functions would be to:

- facilitate policy development;

\begin{flushright}
\textsuperscript{129} Victorian Inspectorate (2016) \textit{Annual Report 2015–16}, Melbourne, p. 9.  \\
\textsuperscript{131} Victorian Inspectorate (2016) op. cit., p. 8.  \\
\textsuperscript{132} Victorian Inspectorate (2016) op. cit., pp. 21, 40.  \\
\textsuperscript{133} \textit{Parliamentary Budget Officer Bill 2016} (Vic)  \\
\textsuperscript{134} ibid.  \\
\end{flushright}
- prepare election costings at the request of parliamentary leaders and to prepare general costings and advice at the request of Members of Parliament;
- publicly disclose costings and advice, at the request of relevant Members of Parliament;
- correct a public misrepresentation of its costings or advice; and
- provide the community with credible, independent and timely information to help inform their voting decisions.\textsuperscript{136}

The Bill provides for the PBO to report annually to Parliament on its operations and, after each state election, to report on its activities during the election costing period.\textsuperscript{137}

The PBO would be an independent officer of Parliament, overseen by the PAEC.\textsuperscript{138} Appointment of the PBO would be made upon recommendation by the PAEC to the Minister [Treasurer], who then advises the Governor in Council.\textsuperscript{139} This process of appointment is unlike some other Australian jurisdictions, notably the Commonwealth and NSW, where their PBO is appointed directly by the Presiding Officers of Parliament and remains independent from the executive.\textsuperscript{140}

\begin{footnotesize}
\begin{enumerate}
\item[136] ibid.
\item[137] ibid.
\item[138] Parliamentary Budget Officer Bill 2016 (Vic) s 54; T. Pallas, Treasurer, (2016) op. cit.
\item[139] Parliamentary Budget Officer Bill 2016, (Vic) s 6(3) and s 54(1)(a).
\item[140] Parliamentary Service Act 1999 (Cth) s 64X; Parliamentary Budget Officer Act 2010 (NSW), s 6.
\end{enumerate}
\end{footnotesize}
4. FINANCIAL INDEPENDENCE OF PARLIAMENT - REVIEW OF THE LITERATURE

This section of the paper examines some of the key commentaries written in recent years, relating to parliamentary independence and issues of financial independence from the executive. It highlights criticisms which have been raised and some of the recommendations put forward in support of greater parliamentary independence from the executive, particularly in the area of parliamentary funding.

Parliamentary funding

Many studies and papers have been written in recent years discussing the financial arrangements of parliaments. Concerns have often been raised that the separation of powers is diminished because parliaments do not have control over their own appropriation.[141]

In 1991 for example, the Strategic Management Review of the Parliament of Victoria concluded that, ‘the independence of parliament has been compromised by requiring detailed approval of its budget by public servants’. [142] In 2005 the Commonwealth Parliamentary Association and the World Bank Institute (CPA/WBI) organised a study group in Tanzania, on the financing and administration of parliament. They stated, ‘when parliament does not have financial independence there is always the danger that the executive will be encouraged to exercise undue control over expenditure to the detriment of the parliamentary process’. [143]

In 2010, Ian Lienert of the International Monetary Fund, proposed that good practice should be that parliaments’ budgets are prepared independently from the executive. However, he argued that parliaments should still be subject to the same reporting procedures and that they should not abuse their powers by increasing their expenses such that they are out of step with other constitutional entities, such as the judiciary or audit office.[144]

Sandra Kennedy, in her 2012 paper for the Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT), regarded the parliament’s inability to retain control of its budget as, ‘the most serious threat to the separation of powers’. Kennedy considered financial independence of the parliament to be an essential element in enabling parliament to be free from executive control and thus uphold the important principle of the separation of powers. [145] While Bruce Atkinson, President of the Legislative Council in the Parliament of Victoria, stated in his paper at the 2012 Conference of Presiding Officers and Clerks, that the relative equality of the branches of government was required, rather than merely the separation of powers. [146] He stated that:

the [Victorian] Parliament was treated, not as a separate and equal branch of government, but just another cost centre within an increasingly large government bureaucracy. Parliament, required to monitor and scrutinise the executive, was at the mercy of that same executive for funding to carry out these functions. A view quite rightly developed that the power imbalance was untenable.147

In July 2016, the President and Speaker of the Victorian Parliament, delivered their strongest rebuke of the Victorian Parliament’s funding model to the PAEC’s Inquiry into the 2016–17 Budget Estimates. Some of their criticisms were that:

- the Executive, by purchasing outputs from Parliament, was acting inappropriately as this was contrary to the Westminster principle of the separation of powers;
- Parliament was being forced to fit into the state funding model and its proxy output measures were unrelated to the core business of Parliament (making the law);
- section 40 of the Financial Management Act (FMA) requires the Treasurer to prepare annual budget estimates in estimation of the annual appropriation Bills, but separate budget papers are never tabled for the Parliamentary Budget;
- Treasury had no regard for the fact that the Appropriation (Parliament) Bill was a separate Bill for constitutional reasons;
- parliamentary departments are not government service delivery departments, yet they are treated in the same manner—for example, Section 29 of the FMA is not applicable to the parliamentary departments as these are not departments within the meaning of the Public Administration Act 2004—as parliamentary departments are statutorily prescribed departments of the Parliament;
- section 3 of the Appropriation (Parliament) Bill states, ‘The Treasurer may issue out of Consolidated fund in respect of the financial year 2016–17 the sum of …’, the use of the word ‘may’ is frequently taken to mean that the allocation of the amount appropriated is entirely at the Treasurer’s discretion ‘up to’ the amount specified. This has led to circumstances where Parliament’s funding has been reduced after the appropriation has been passed by both Houses and assented to as law.148

This situation reflected in Victoria is not an isolated one. Many Westminster parliaments have found that their funding has been at the expense of a growing imbalance between the parliament and the executive.149 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.150

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’.151 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;

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147 ibid, p. 2.
- 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.  

**Parliamentary committees**

According to Parry, the Australian Parliament’s share of resources had been under threat by having to compete in a whole-of-government environment. He discussed changes to the governance of the Australian Senate over the last 30 years. Parry described how the cost of parliamentary administration grew in the 1970s with the growth of the committee system and the introduction of technology, but that parliament’s share of resources was competing in a whole-of-government environment to its detriment.

Parry said that during the mid-1990s, when the committee system was ‘bursting at the seams … all parties appreciated the fact that it was in everyone’s interests for committees to be adequately resourced’. He explained that a third of all Bills were referred to committees, which he said governments came to appreciate as a process that could achieve compromise on contentious legislation, notably in a Senate where government majorities were uncommon. He said that eventually, the Government itself began to refer Bills to committees and that a significant proportion of amendments in both Houses, particularly Government amendments, were recommendations made by Senate committees. According to Parry, ‘…good committee scrutiny ensures a better outcome from which everyone benefits, governments included’.

Kennedy’s ANZACATT paper in 2012 also discussed funding of the Australian Senate. She noted that during the period in which funding for the Senate decreased, there was also a reduction in the number of regional hearings and the number of amendments to legislation. She made the point that the Senate’s lack of control over its funding is leading to a reduction in its scrutiny of the executive and the weakening of its role as the primary house of review.

In Victoria, the funding of parliamentary committees has also been an issue for the Parliament. The FMA allows for Parliament’s unspent money at the end of the financial year to be used the next year, pending the Treasurer’s approval. Parliament can only access this unspent surplus by presenting a case to the Treasurer, and only for a non-recurrent, one-off expense. This arrangement makes it difficult for Parliament to function effectively, and in 2012, the Executive allowed Parliament to access its unspent surplus to fund its parliamentary committee inquiries. If the Government had not done so, this would have resulted in a situation where the parliamentary committees could not effectively function, as they would have been unfunded.

Atkinson remarked, ‘Nowhere is the continued imbalance in the parliament-executive relationship more apparent than in the procedure for unspent … funds’. He further explained that parliamentary committees often inquire into specific matters of public importance which may pose a political danger to the executive:

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152 Ibid, p. 5
153 ibid.
154 Parry (2013) op. cit., p. 6.
155 ibid., p. 7.
156 ibid.
157 Kennedy (2012) op. cit., p. 11.
158 ibid.
159 Financial Management Act 1994, s 32.
It is often considered by the executive to be in its best interest to limit and restrict this scrutiny, whether to hide deliberate misconduct, avoid political embarrassment or simply to circumvent procedural inconvenience. The work of parliamentary committees has been severely compromised. In the face of limited (or simply uncertain) funding, committees must restrict the number of references they take on and commit far fewer resources to those they do. Whether by deliberate strategy or simply unintended consequences, the current funding system allows the executive to determine the degree of scrutiny to which it is subjected. This danger is particularly acute, or perhaps simply more apparent, in the Legislative Council, both in its capacity as a House of Review and because the government often does not have a majority in the Council.\textsuperscript{161}

These sentiments were echoed by Stephen Redenbach in his 2014 article in the \textit{Australasian Parliamentary Review}.\textsuperscript{162} He said that there needed to be an ongoing commitment by Treasury to fund the Victorian Legislative Council’s standing committees [rather than on an annual basis] if the upper house is to perform its scrutiny function adequately.\textsuperscript{163}

\textbf{Financial independence}

Several papers have compared jurisdictions in order to determine which parliaments have achieved the greatest financial independence and what legislation or budgetary processes were in place to accomplish that.

A Joint Select Committee on the Victorian Parliament was established in 1991 and its progress reports made several recommendations relating to budgetary independence, notably the establishment of a separate appropriation Bill for the Parliament. The Select Committee, comprising eight Members from both houses, stated that it ‘strongly believes the Parliament should endorse this proposed new convention to ensure the independence of the Parliament’.\textsuperscript{164} Apart from the establishment of this separate appropriation Bill for the Victorian Parliament, which was also one of the recommendations of the \textit{Strategic Management Review}, little else has progressed in the Victorian Parliament to ensure a greater independence from the executive.\textsuperscript{165}

Young and Lochert’s 2013 ANZACATT paper, \textit{Parliamentary budgets: securing greater funds and greater independence from the executive},\textsuperscript{166} explores the funding process in the Victorian Parliament and how it compares to other jurisdictions. Their paper highlights the point made in President Atkinson’s paper that even the separate appropriation Bill is simply one of the Government’s four appropriation Bills, all based on a purchaser-provider model—a model that is inappropriate for the Parliament. Atkinson goes on to state:

\begin{quote}
The purchaser-provider model, in which the Government ‘buys’ policy outcomes from its various departments, is radically unsuited to the funding of a separate and equal democratic institution: the Parliament is not a service-provider with the ability to guarantee outcomes; nor should the Parliament contribute—or even be seen to be contributing—to the policy successes and failures of the executive it holds to account.\textsuperscript{167}
\end{quote}

\begin{itemize}
\item \textsuperscript{161} ibid., p. 5.
\item \textsuperscript{163} ibid., p. 107.
\item \textsuperscript{165} A. Young & P. Lochert (2013) \textit{Parliamentary budgets: securing greater funds and greater independence from the executive}, ANZACATT Professional Development Seminar, 22–24 January 2013, Canberra.
\item \textsuperscript{166} Young & Lochert (2013) op. cit., pp. 5–6.
\item \textsuperscript{167} Atkinson (2012) op. cit., p.4.
\end{itemize}
According to Atkinson, the current funding arrangement in the Victorian Parliament, ‘leads to an unintended reversal of the lines of accountability, in which the Department of Treasury and Finance audits the functions and ‘performance’ of the Parliament to ensure adequate returns on its budgetary ‘investment’’. 168 This is considered an inappropriate condition to place upon the institution of Parliament, which should not be held accountable to the executive. Parliament should be left to pursue its important role of passing legislation and scrutinising the executive, without outside interference or financial constraints placed upon it, which might restrict its ability to fully perform its operations.

This ‘reversal of the lines of accountability’ was also referred to by the 2005 CPA/WBI Report on the financing and administration of parliament. The CPA/WBI Report described it as a ‘substantial shift in power’ such that the cabinet was no longer responsible to the House, but instead the House had become responsible to the cabinet, in a majority parliament. 169 The study group also noted that even in parliaments where there was a separate appropriation Bill, ‘it can still be difficult to link this formal appearance of independence with actual effective budgetary independence’. 170 The reason being that parliaments, such as the Victorian Parliament, do not enjoy financial autonomy, nor do they have any formal mechanisms with authority to mandate on their funding requirements—as their budgets are drawn up and controlled by the executive.

Michael Sloane’s article in the 2014 Australasian Parliamentary Review identified that there has been some progress in presenting parliamentary budgets as a distinct area of appropriation to that of the ordinary annual services of government, and that, in some cases, such as the ACT, the Commonwealth and Queensland, parliamentary committees have become involved in formulating and recommending a parliamentary budget to the executive. However, Sloane noted that, ‘in cases where the executive and the parliament disagree on an appropriate budget, it will still be the executive’s preferred budget that is put before the parliament’. 171

Sloane explained that it is commonly argued that the executive’s control over the parliamentary budget represents a contravention of the doctrine of the separation of powers. He states, however, that at the Commonwealth level, the doctrine ‘as it is actually embedded in Australia’s constitutional framework’ and as supported by High Court rulings, ‘provides very little support to advocates for greater parliamentary independence’. 172 According to Sloane:

A review of the provisions of the Constitution and High Court decisions relevant to this issue showed that the system of government in Australia exhibits a strong separation of judicial from executive and legislative branches, but a very weak separation of executive and legislative branches. 173

As such, reform requires a change to a fundamental principle of the system of responsible government as it operates in Australia—the distribution of powers over public finances between the parliament and the executive. 174

The situation varies across Australian parliaments and their constitutions. With regard to the Victorian Parliament, Young and Lochert disclosed a legal opinion obtained by the Secretary of Parliamentary Services in 2011, which states, ‘there is no provision in the appropriation Acts or elsewhere that authorises the executive to purchase outputs that contribute to government (i.e.

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168 ibid., p. 6.
170 ibid., p. 18.
171 Sloane (2014) op. cit., p. 142.
172 ibid.
173 ibid., p. 156.
174 ibid.
Independence of Parliament, and ‘it is not appropriate or acceptable that Department of Treasury and Finance officials take any steps that interfere with the Parliament’s control of its appropriation’. This legal opinion has informed discussions between Parliament, the PAEC, Government ministers and bureaucrats in relation to the annual funding of Parliament.

Parliamentary corporate bodies

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 (see Section 6). 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 Opposition.

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. The CPA/WBI Report made the following recommendations:

- 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, 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.

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 delivered full budgetary control to them. The UK Parliament came closest to delivering the most effective corporate governance model though 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’.

Verrier concluded that there needs to be ‘effective machinery for the routine—meaningful—indeed 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,

175 Young & Lochert (2013) op. cit., p. 9.
176 Commonwealth Parliamentary Association (2005) op. cit., p. 3.
177 ibid., p. 13.
178 Verrier (2007) op. cit., p. 73.
effectively, to hold that government to account’.\textsuperscript{179} She added that they also provide standards and a blueprint for parliaments seeking to progress from a ‘rubber stamp’ parliament towards an ‘independent legislature’\textsuperscript{180}

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 \textit{corporate bodies} (PCBs) the following criteria to gauge their level of autonomy:

- the ability to identify and gain the financial resource 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
- 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.\textsuperscript{181}

A review of the above literature relating to parliamentary independence, reveals that the establishment of \textit{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 \textit{corporate body} membership—the presiding officers, government (including the executive) and non-government members, the clerks and the secretaries of parliamentary services.

\textsuperscript{179} ibid., p. 79.
\textsuperscript{180} ibid., p. 50.
5. AUSTRALIAN JURISDICTIONS

Much interest has been expressed in Australia by both political and academic communities about the sovereignty afforded to parliament due to the influence governments have on legislatures. One of the vital issues related to parliament’s independence is ensuring it has the necessary resources to uphold such independence. When analysing the financial relationship and level of independence of parliament from the executive, Australian parliaments tend to be disadvantaged compared to their counterparts in other Commonwealth jurisdictions. This section explores this situation by providing an overview of funding models which exist in Victoria and other Australian parliaments and raises further issues impacting upon the independence of parliament.

Parliamentary funding in Australia is structured through annual appropriation Bills, which need to be passed by parliament before they are implemented. Parliaments are funded with appropriations from the Consolidated Revenue Fund in the form of:

- annual appropriations, which are contained in annual appropriation Acts that provide annual funding to entities to undertake government operations and programmes; and
- special appropriations, which are appropriations established in Acts other than those in annual appropriation Acts, noting that some aspects may also appear in specific legislative instruments.

Victoria

The current funding mechanisms for the Parliament of Victoria were implemented following the recommendations of a Joint Select Committee in 1991, to inquire and report upon the administration and funding of the Parliament, as discussed in Section 4.

The Joint Select Committee considered that the most effective method for Parliament to achieve independence was to assert its financial independence from the executive. The Committee endorsed the findings of the 1991 Strategic Management Review of the Parliament of Victoria (Russell Review), which recommended that ‘Parliament should re-assert the importance of its role as a substantially separate arm of government, which must function effectively if the constitutional framework is to work’.

In his 1991 review, Russell had concluded:

In Victoria, there are many signs that our arms of government are seriously out of balance, and that a weakening of the institution of Parliament has occurred, which permits a more unfettered application of executive power. Regrettably, this trend has occurred under successive governments, regardless of their political hue. The following are in our view manifestations of the trend which has led to the weakening of the institution of Parliament over recent years:

- the independence of Parliament has been compromised by requiring detailed approval of its budget by public servants; and
- the requirement for government approval of parliamentary committee inquiries and their proposed budgets significantly compromises Parliament’s ability to independently scrutinise the
executive ... one might well argue that such practices make a mockery of the notion of independent parliamentary scrutiny.¹⁸⁶

The only result of these two reviews was the introduction and implementation of a separate Appropriation (Parliament) Bill for the Parliament, which has been in effect since 1992.¹⁸⁷

However, it is arguable whether a separate parliamentary appropriation Bill has made Parliament more financially independent. Although the Bill appears to have been a concession made to Parliament, it has had no real substantive effect, nor has it served to control the ‘executive creep’ which has occurred in Victoria. This point was reinforced by the Presiding Officers who, in the PAEC Inquiry into the 2016–17 Budget Estimates, stated that ‘separate budget papers have not been tabled for the Parliamentary Budget thus, enacting a separate Parliament Appropriation Act is nothing more than symbolic’.¹⁸⁸

To understand why this change has been largely symbolic in effect, one first needs to understand how the Parliament of Victoria is funded. This funding is provided through two separate mechanisms—annual output and special appropriation funding. Output funding is approved through annual appropriation Bills, while special appropriation funding is approved through special appropriation Bills.¹⁸⁹ Annual appropriations are currently divided into six separate outputs for each department: Legislative Council; Legislative Assembly; Parliamentary Investigatory Committees; Parliamentary Services; Auditor-General; and Parliamentary Budget Office.¹⁹⁰ For funding purposes, the Parliament of Victoria is treated by the Department of Treasury and Finance (DTF) as a government department, meaning it must follow the same funding protocols as government departments. The appropriations process follows a purchaser-provider model: the government ‘buys’ outputs from public service agencies—including the Parliament—and aggregates these outputs to achieve the government’s political objectives. Parliament thus falls under the ‘government’s political objectives’ in delivering its fiscal outcomes for the state.¹⁹¹

**Purchaser-provider model**

Furthermore, the Victorian Parliament is required to set performance measures and performance targets for each year and it receives DTF funding upon meeting those performance targets. As highlighted in the previous section, this is an inappropriate extension of executive control over the legislature and treats Parliament as a government agency, which it is not. The current funding model has prompted the Parliament’s Presiding Officers to highlight the inappropriateness of this situation, in their response to PAEC’s 2016 hearings:

In this context, the Executive purchasing outputs from Parliament is plainly contrary to the Westminster principle of Separation of Powers, particularly as the core purpose of Parliament includes making the Law and scrutinising the executive.

However, in order for Parliament to fit into the state funding model, a series of proxy output measures unrelated to the core business of Parliament (making the law) were adopted as a pragmatic solution to an illogical situation. On that basis Parliament outputs funded by Executive are:

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¹⁸⁷ The first act passed was the *Appropriation (Interim Provision, Parliament 1992-93) Act 1992* (Vic); Joint Select Committee on the Parliament of Victoria (1991) op. cit.
¹⁸⁸ PAEC (2016) *Attachment 1: Parliamentary departments*, answers supplied to questions taken on notice at PAEC hearings, Parliament of Victoria, July, p. 4
¹⁸⁹ For examples of special appropriations see, Victorian Auditor-General (2013) *Parliamentary control and management of appropriations*, VAGO, Melbourne, 29 April, p. 41.
Indexes, records and speeches and transcripts provided within agreed timeframes; Payroll processing completed accurately and within agreed timeframes; Monthly management reports to MPs and departments within 5 business days after the end of the month to include variance information against budgets; Parliamentary audio system transmission availability; Inquiries conducted and reports produced in compliance with procedural and legislative requirements; and Reports tabled in compliance with procedural and legislative deadlines.192

The process of funding the Parliament through annual appropriations is based on a pre-approved level of funding for each ‘output’.193 This base funding carries over from one year to the next with an escalation (increase of 2.5 per cent). However, in 2014 a General Efficiency Dividend (GED) of 2.5 per cent was introduced for all government departments, including Parliament.194 In response to growing concern from the Parliament, the Treasurer exempted the Parliament from the GED up until 2016–17, from which point the GED will once again apply to Parliament. The CPI increase of 2.5 per cent and GED decrease of 2.5 per cent mean essentially that base funding of Parliament will not increase on an annual basis in 2017-18 and for future years. Any additional funding on top of base output funding, including the use of Parliament’s prior year surpluses, must be approved by the Treasurer separately.

It is unclear whether the implementation of the purchaser-provider model and application of GED to Parliament was a deliberate attempt by the Government to assert financial control over Parliament or simply a form of *managerial hubris*—whereby Parliament’s reporting of its output measures was considered by DTF to work in the same way as applied to other government departments and agencies. However, in the attempt to extend this same model to Parliament, DTF has breached the ‘separation of powers’ by lessening Parliament’s independence from the executive.

As the Parliament is bound by the same funding procedures as government departments, if it requires additional funding it must apply to and be examined by the Budget and Expenditure Review Committee (BERC). The process begins when DTF sends out a request for submissions for funding to all government departments, as well as the Parliament. The departments are then able to provide their submissions for consideration by BERC. In certain years, preliminary submissions are required to be endorsed by the Policy, Strategy and Budget Committee (PSBC) in order to determine the viability of their request for funding. The rate of approval for funding submissions from Parliament does not follow a trend and can fluctuate according to Government priorities and availability of funds. Over the past ten years approximately 50 per cent of Parliament’s funding submissions have been rejected by the executive, on advice from DTF.195

Unspent money at the end of the financial year is not drawn down and remain as unspent surplus. Once a prior year surplus is under the administration of DTF, Parliament must make an additional submission and/or a business case in order to access it. The Treasurer, on recommendation of DTF, considers the viability of these funding requests and rules on granting the funds to Parliament.

Parliament’s treatment by the executive as another ‘government agency’, subject to whole-of-government measures, has resulted in regular reporting mechanisms being put in place, which

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192 PAEC (2016) op. cit.
193 Outputs are defined in the Financial Management Act 1994 (FMA) as meaning ‘goods produced or services provided by or on behalf of an authority or public body’, both of which are also defined in the FMA and neither of which includes the Parliament; PAEC (2016) op. cit. p. 5.
further challenge Parliamentary independence—forcing the legislature to be *accountable* to the executive. These include:\(^{196}\)

- reporting daily to DTF for all monies drawn;
- reporting monthly to DTF on balances and spending;
- reporting monthly to DTF outlining cash flow forecasts;
- reporting quarterly to DTF on all capital projects;
- reporting quarterly to DTF in regard to the State Administration Unit (SAU) account;
- reporting half-yearly to DTF in regard to output measures;
- providing complete financial statements to DTF annually; and
- invoicing DTF for the funds spent in a year based on meeting the output targets.

**Financial Management Compliance Framework**

The Financial Management Compliance Framework (FMCF)\(^ {197}\) is a structured plan issued by the Minister for Finance to enable Victorian Public Service (VPS) agencies to meet government requirements for the purposes of accountability and as a framework for best practices for financial governance and business management. The FMCF outlines protocols for oversight, structure, operation, function, budget risk management, IT management and administration of agency departments and committees. Protocols and requirements of the FMCF directly affect the administration of the Victorian Parliament, particularly the Audit Committee, which is an advisory committee appointed by the Presiding Officers.

The Audit Committee’s role is to assist the Presiding Officers in reviewing the performance of Parliament in the fields of financial compliance and risk management. The duties of the Committee include oversight of internal and external audit functions, corporate governance, review of risk management, and review of annual financial statements on behalf of the Parliament.\(^ {198}\) The Audit Committee consists of the following members:

- Speaker of the Legislative Assembly as Chair;
- President of the Legislative Council as Deputy Chair;
- Secretary, Department of Parliamentary Services;
- Clerk of the Legislative Council;
- Clerk of the Legislative Assembly; and,
- two independent members who are not members of the parliamentary service, of which one external committee member must hold relevant qualifications in the financial/audit sector.\(^ {199}\)

There is currently a disparity in the composition of the Parliament’s Audit Committee and the requirements set out by the FMCF, which requires the Committee to be completely independent and does not allow heads of Parliamentary departments to be members of the Committee. In order for the Committee to be independent from Parliament and follow FMCF requirements, membership of the Committee would need to be composed of independent members not related to Parliament. Therefore, the arrangement is not compliant with FMCF requirements, which apply to all government agencies, placing the onus on the Parliament to either conform, as a ‘government agency’, or reject the requirements and assert its independence. A further complicating factor is the newly implemented Ministerial Standing Directions,\(^ {200}\) issued by the Finance Minister, which requires public

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196 Department of Parliamentary Services: Accounting and Administration, personal communication with I. Dosen, 28 June 2016.
199 ibid., p. 11.
attestation, meaning that for the first time, non-compliance will be published and made available to the public.

As the recent financial difficulties of Parliament demonstrate, such a rigid funding model, in which Parliament is beholden to the Treasury (Executive), is both unsustainable and detrimental to Parliament performing its democratic functions within a framework of independence from the executive. This is evidenced by Parliament’s inability to adequately fund parliamentary committee inquiries, thereby undermining the scrutiny function of Parliament. One solution would be for the Parliament of Victoria to examine alternatives to its current funding model, through the establishment of a corporate body, similar to the House of Commons Commission; the Scottish Parliamentary Corporate Body (SPCB); the Canadian Board of Internal Economy; and, the ACT’s Office of the Legislative Assembly (see Section 6 for more on PCBs).

Some further suggestions made by the Presiding Officers for longer term solutions in Victoria are, ‘to reflect on the issues identified by the Russell Review and the Joint Select Committee in 1991-92, and examine to what extent those issues have actually been addressed.’ Prior to this, the Presiding Officers have suggested, in the short term, that:

- regular discussions be held between the Treasurer and Presiding Officers to determine Parliament’s budget;
- the budget be drawn up based on Parliament’s constitutional role and not within public service delivery assessment criteria;
- constitutional independence of the Parliament be recognised, by removing the requirement to report to DTF on a quarterly basis;
- PAEC or a joint select committee be tasked with reporting to the Houses on a model for an independent parliamentary budget and corporate body to better manage the budget; and
- party leaders/nominees and or parliamentary secretaries (e.g. Parliamentary Secretary to the Treasurer) be involved in discussions to create a new corporate body to deal with future parliamentary budgets.

Victoria is the only jurisdiction in Australia and New Zealand where Parliament is mandated to report on its finances to the Government on a daily and monthly basis, as well as on its performance, financial outcomes and achievement of outputs, on a quarterly basis. Parliament may also be requested to provide financial forecasts for the period up until the end of the financial year. It appears evident that, for the Parliament to withstand this level of ‘executive creep’ from occurring and retain a reasonable degree of independence from the executive, it should not be fiscally managed in the same manner as a ‘government agency’. Nor should it be bound by such fiscal arrangements which might limit its ability to perform its democratic functions adequately.

Office of the Opposition

A further issue concerning the Victorian Parliament is the placement and funding of the Office of the Leader of the Opposition. At present, the Office of the Opposition is located outside the parliamentary precinct and is funded by the executive, through the Department of Premier & Cabinet. This is problematic as its role is clearly within the Parliament—a view supported by the Federal Parliament, which states:

The opposition is considered to be essential for the proper working of Australia’s democratic system of government and it is an essential component of the structure of the House. The House depends on an effective opposition to carry out its functions in respect of government accountability ...

201 PAEC (2016) op. cit. p. 8.
202 ibid.
203 PAEC (2016) op. cit. p. 6.
Opposition Members can be expected to criticise and to offer alternative views. The rules and procedures of the House enable the opposition to perform this role.\textsuperscript{204}

This separation of the Office of the Opposition in both location and funding from the Parliament has resulted in the Victorian Opposition not having access to the parliamentary intranet or the library’s online resources, which impacts upon its ability to adequately perform its role of scrutinising the Government. A strong and vibrant opposition is a critical component of any parliamentary democracy. As the government has a dominant role, certainly in the lower house, the role of any opposition is to hold that government to account—therefore playing an important role in strengthening the independence of parliament from the executive.

There is a strong case for the Office of the Opposition to be included within the parliamentary precinct, as is the case in other Westminster parliaments, and for it to be funded through the annual Parliamentary Appropriation Bill rather than directly by the executive. The establishment of a \textit{parliamentary corporate body} to oversee these allocations as well as the funding of the whole of Parliament, along with its Independent Officers, is an option for the Parliament to explore. These options currently exist as models of best practice in other Westminster parliaments and are examined further in Section 6 below.

\textbf{Australian Capital Territory}

The ACT presents an interesting model of how financial relationships have developed between the government and the legislature. Before 2012, there was an acknowledgement of the Assembly’s inability to control its own funding and consequently a push to bring about a degree of financial independence occurred. The funding procedures of the ACT Parliament, which is unicameral, had lagged behind processes implemented in Australian States.

The push for financial independence came in the form of the \textit{Legislative Assembly (Office of the Legislative Assembly) Act 2012},\textsuperscript{205} which brought several key concepts that strengthened the independence of Parliament and preserved the Latimer House Principles. This was done primarily through the introduction of the Office of the Legislative Assembly. Section 8 of the Act established the independence of the new office, providing that ‘the clerk and the office’s staff are not subject to direction by the executive or any minister in the exercise of their functions’. The office is established as an ‘autonomous instrumentality’ within the territory, meaning it is insulated from a number of potential areas of government interference—for example, it cannot be restructured or reorganized at the demand of the executive.\textsuperscript{206}

The Act also enhanced the accountability of the executive to the legislature for funding decisions, essentially providing a greater degree of transparency in budget appropriation processes for the office. Former Speaker of the Legislative Assembly, Wayne Berry, presented a paper at the 38\textsuperscript{th} Presiding Officers and Clerk’s conference, providing the following outline:

\begin{quote}
Drawing on the fundamental separation of powers doctrine and the more explicit Latimer House Principles, I have advanced the view on behalf of the Assembly that it is up to the legislature to develop its own budget without any interference from the executive. Conversely, the executive government has maintained that the Assembly should be subject to the normal budget submission processes that apply to government agencies under the control of the executive, arguing that the development of business cases which are vetted by the Treasury and approved by the Cabinet will lead to improved
\end{quote}


\textsuperscript{205} \textit{Legislative Assembly (Office of the Legislative Assembly) Act 2012} (ACT)

\textsuperscript{206} T. Duncan (2012) \textit{Enshrining Independence – The Establishment of the Office of the Legislative Assembly}, 43\textsuperscript{rd} Presiding Officers and Clerks conference, Solomon Islands.
efficiency outcomes and take into account the particular macroeconomic constraints and demands encountered by the government of the day. While there has been some move towards a more consultative approach, there is still no recognition that the Assembly is independent not only in terms of the unique and separate roles it performs in the democratic form of government but also in terms of how it makes decisions about how to best resource and acquit its responsibilities in this system.  

The budget protocols for the Office of the Legislative Assembly establish detailed processes for the development and consideration of budget appropriations for the Office. They improve the position of the ACT legislature in regards to the executive, but in essence bring the ACT to the same level of most state parliamentary funding procedures without any new benefits granted to the Legislative Assembly. The following are the budget protocols which are to be observed in developing and considering budget appropriations for the Office of the Legislative Assembly. These were endorsed by the Speaker and Chief Minister in June 2014.

**ACT Budget protocols**

- The parties commit to advance the separation of powers doctrine as it relates to the mutually independent status of the legislative and executive branches of government in the ACT’s form of parliamentary democracy. The parties recognise that each branch has distinct roles and responsibilities that will not be encroached by one another.
- The parties agree that the doctrine will be given due recognition at all stages of the development and consideration of the annual budget and appropriation Bill for the Office of the Legislative Assembly and any additional appropriation.
- The parties acknowledge and support the principle of the financial initiative of the executive—the exclusive right of executive arm of government to develop and frame appropriation Bills for consideration by the legislative arm of government.
- The parties 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 will, as a matter of fundamental principle, be regarded as a statement of the legislature’s resource requirements and priorities.
- The parties acknowledge that there will be occasions in which the demands of government policy have the potential to conflict with the roles and functions of an effective legislature. Where these conflicts—potential or otherwise—arise, the parties agree to ensure that the legislature can perform its accountability, representative and legislative roles effectively.
- The parties recognise and support the independent status of the Legislative Assembly and the Office of the Legislative Assembly in its capacity as the legislature’s primary source of administrative and procedural advice and support.
- The parties acknowledge that the Office of the Assembly is not subject to the direction of the executive and is not, therefore, bound by policies, procedures and other governance arrangements promulgated by the executive or its officers in the ACT public service, unless otherwise provided for by law.

**New South Wales**

Prior to 1993, appropriations for the NSW Parliament were included in the general Appropriation Bill. This changed in 1993 with the passing of a separate, but cognate, Parliamentary Appropriation Bill 1993, specifically for Parliament. This Bill appropriates sums of money out of the Consolidated Fund each financial year, for the recurrent services and capital works and services of the Legislature.

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207 ibid., p. 6.
The impetus for this separate Appropriation Bill was contained in the 1991 Memorandum of Understanding for Stable Government in New South Wales.\(^{210}\) This Memorandum was agreed upon between the Greiner Coalition Government and three independent members of the Legislative Assembly who held the balance of power. The agreement included several elements of parliamentary and constitutional reform relating to the resourcing of Parliament. One important element of reform was making the annual appropriation for the legislature a separate Bill and another was the creation of a Management Board for the Parliament, which determines ‘all matters pertaining to the running and finances of the Parliament subject to the Budget’.\(^{211}\) The Memorandum also stated that the budget for Parliament should provide for:

- a more equitable distribution of resources among Members of Parliament;
- improved funding for information technology for Members of Parliament;
- adequate funding for all Parliamentary Committees, including staff, resources and accommodation outside Parliament House; and
- improved resources for the Parliamentary Library, including the establishment of a research service which is available to all Members.\(^{212}\)

A further impetus for the separate Appropriation Bill was the unsuccessful attempt by the NSW Government to establish a Parliament Commission, an extension of the Management Board proposed in the Memorandum. In March 1992, the NSW Government released a discussion paper entitled Managing the Parliament. The main recommendation to come out of this paper was that a Parliament Commission be established, which 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.\(^{213}\)

A Joint Select Committee on the Management of the Parliament was appointed in 1992 to further examine this proposal. The Committee made three alternative recommendations regarding appropriations for the Parliament, for the establishment of:

(a) a separate appropriation bill for the Parliament, negotiated between a Board of Management and the Treasury;
(b) a separate appropriation bill for the Parliament, prepared by a Board of Management and presented to each House by the respective Presiding Officer; and,
(c) a separate appropriation bill for the Parliament, cognate with the ordinary appropriation bill, and introduced as a government measure, with specific provision for an Advance to the Presiding Officers and a supplementary appropriation bill which the Board of Management would be required to report upon the use of in its annual report.\(^{214}\)

Only the first part of the final recommendation was adopted by the Government—a separate appropriation bill for the Parliament, cognate with the ordinary appropriation bill, introduced as a Government measure. The first separate appropriation Act to pass the NSW Parliament was the Parliamentary Appropriation Act 1993.\(^{215}\) Since then, a separate Appropriation Bill for the Parliament has been passed each year. However, it should be noted that the NSW Government was not prepared

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\(^{210}\) N. Greiner et al. (1991) Memorandum of Understanding between the Hon Nicholas Greiner MP, Mr John Hatton MP, Ms Clover Moore MP and Dr Peter Macdonald MP, Addendum to Debates, NSW, Legislative Assembly, 31 October, pp. 4005–4019.

\(^{211}\) R. Grove (2002) op. cit.

\(^{212}\) ibid.


\(^{214}\) ibid.

\(^{215}\) Parliamentary Appropriation Act 1993 (NSW).
to allow its Parliament any greater financial independence in initiating its own appropriation bill—
this still had to come from Treasury, as is the case in other jurisdictions around Australia.

Queensland

The Queensland Parliament, like the ACT, is unicameral. The annual budget for the Legislative
Assembly and the Parliamentary Service is presented to the Parliament each year in the form of an
Appropriation (Parliament) Bill. The Bill outlines the total amount required for Members’
ettitudes and the Parliamentary Service.\(^\text{216}\) In accordance with protocol, the Appropriation
(Parliament) Act 2015\(^\text{217}\) authorises the Treasurer to transfer funds from the Consolidated Fund to
the Legislative Assembly and Parliamentary Service each financial year.

Since 1994, as part of the estimates process, parliamentary committees have examined and reported
on the expenditure proposed in the Appropriation (Parliament) Bill. In 2016, the Appropriation
(Parliament) Bill\(^\text{218}\) will be examined by the Parliament’s Finance and Administration Committee
(FAC), which is chaired by a member of the Government. During the estimates process, the FAC will
hold a public hearing at which the Speaker and ministers will be questioned about the proposed
expenditure contained in the Appropriation Bill and the Appropriation (Parliament) Bill. Members of
Parliament who are not members of the committee also have the right to ask questions. Upon the
completion of the FAC hearings, a final report is compiled and tabled in Parliament, which is then
used in the parliamentary debate on the Appropriation Bills.

In 2011, the independence of the Queensland Parliament came under threat after the Government
introduced a new Committee of the Legislative Assembly (CLA) which excluded the Speaker, John
Mickel, from the running of Parliament. His administrative role and duties were transferred to the
new CLA which included the two most senior members of the Executive—the Premier and Deputy
Premier. The official reason behind the CLA was to consider how parliamentary oversight of
legislation could be enhanced and how the existing parliamentary committee system could be
strengthened to enhance accountability.\(^\text{219}\) However, controversy surrounded the establishment of
the CLA which was to act as a governance and business committee for the whole Parliament,
responsible for budget resourcing and facilities for a restructured system of parliamentary
committees.\(^\text{220}\)

The CLA allowed for the Government to substantially expand its role within Parliament, while
diminishing the Speaker’s administrative responsibilities. Although the explanatory notes for the Bill
introducing the CLA stated otherwise, the provisions to be implemented were different from the
practices that exist in Australia and international jurisdictions regarding the role of the Speaker and
the involvement of the executive in the administration of Parliament. Several responses were
received from parliamentary speakers in other jurisdictions; notably, the Speaker of the Legislative
Assembly of Saskatchewan, who stated ‘in essence the executive branch would be running the
legislative branch which destroys the separation of powers and effectively eliminates the
independent office of the Speaker. This would be a significant step back for the institution of
parliament’.\(^\text{221}\)

\(^\text{217}\) Appropriation (Parliament) Act 2015 (Qld)
\(^\text{218}\) Appropriation (Parliament) Bill 2016 (Qld)
2011 annual conference, Melbourne, 6-8 October 2011, p. 2.
\(^\text{220}\) ibid. pp. 4-5.
\(^\text{221}\) ibid., p. 22.
Although the CLA was in operation for just a few years—as responsibility for the management of parliamentary services reverted back to the Speaker in March 2015—this intrusion by the executive to administer the legislature reveals how easily the separation of powers can be transgressed.

**South Australia**

The Parliament of South Australia is not funded through a separate appropriation Bill and receives its base funding from the Department of Treasury and Finance (DTF) through a general Appropriation Bill. The House of Assembly, Legislative Council and Joint Parliamentary Services appear as separate line entries in the Appropriation Act, alongside other government departments. For any additional projects requiring funding over and above the base figure, Parliament must submit a bid to Treasury which is assessed on a competitive basis against other bids.

For budgetary purposes, the House of Assembly, Legislative Council and Joint Parliamentary Services are all listed by DTF in South Australian Budget Paper No. 3, under, ‘South Australian state public sector organisations’ and classified as ‘General Government Sector’. In the preamble to this section, above the table in Budget Paper 3, it states that, the entities listed below are ‘controlled by the government’—an inference of executive control over the legislature which could be construed as a blatant disregard for the separation of powers.

Scrutiny of the budget is undertaken by the Estimates Committee, which meets each year for the purpose of examining the SA Appropriation Bill. The Estimates Committee provide an opportunity for a more detailed examination of public expenditure than would be possible under the normal procedure of the Committee Stage of a Bill. In 2007, the Legislative Council also appointed a Budget and Finance Committee, whose terms of reference included monitoring and scrutinising all matters relating to the state budget and the financial administration of SA. The Committee can also initiate inquiries relating to any aspect of financial administration of the State.

**Western Australia**

The Parliament in Western Australia is categorised by the Government as a small agency, and as such, has recently had its funding set in advance over three years, as per forward estimates of budget expenses, currently up to the year 2019/20. Parliament does not receive funding from a separate appropriation Bill, but rather from the Appropriation (Consolidated Account) Capital Bill, as do other government agencies. For budgetary purposes, the WA Parliament is considered by the Treasury, in its Budget Paper No. 3, as a government department under ‘General Government Expenses’.

Normally, if a change to funding is required by the Parliament, a request must be made through the mid-year budget review, in which Parliament provides the Treasury with a written request. Based on this request, Treasury may seek further information and make a recommendation to the Economic Expenditure Reform Committee (EERC). Within this process there is also an opportunity for Presiding Officers, the Chief Financial Officer and related accountable authorities to present their case to the EERC.

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223 South Australia Appropriation Act 2016, p. 3.
225 ibid., p. 157.
228 Government of Western Australia (2015) Economic and Expenditure Reform Committee – Handbook, Department of the Premier and Cabinet.
In the 2014–15 financial year, Treasury implemented a streamlined budget process in which the WA Parliament, considered a small agency, is able to opt out of the mid-year review process, meaning there is no submission made for any additional funding, in return for an additional lump sum of funding. Such a process invariably costs the Government less when small agencies, including Parliament, are not pushed through the mid-year administrative framework.

Tasmania

In line with most Australian States, Tasmania has a separate Appropriation Bill which is used for financing its Parliament. The Consolidated Fund Appropriation Bill (No. 2) 2016 appropriates funds for the services of the Parliament and Statutory Offices for the 2016–17 financial year, whilst the Consolidated Fund Appropriation Bill (No. 1) 2016 appropriates funds for the Government. Although specific elements related to the annual budget development process can change from year to year, a typical budget development process adheres to the following steps:

- Departmental Forward Estimate allocations form the basis for the development of the budget. During the budget year, the Forward Estimates are continually reviewed by departments, Treasury and Budget Committee to ensure they reflect current circumstances and government policy decisions;
- Cabinet, based on recommendations provided by the Budget Committee, determines the overall framework for the development of the budget for the following year;
- During the course of the budget development process, ministers meet with community groups to discuss budget submissions or key budget issues. Information received during this community consultation process is considered by departments during the budget development process;
- Agencies prepare budget submissions for the Budget Committee’s consideration. These submissions include qualitative information, such as the department’s operating environment and major issues, which could be expected to impact on the delivery of the department’s outputs over the forthcoming budget year;
- Based on these submissions and deliberations by the Budget Committee, the Treasurer provides a Budget submission to Cabinet;
- Once the budget is finalised by Cabinet, Heads of Agency are advised of the proposed budget allocation for their department for the budget year and Forward Estimates for the subsequent three years; and
- Departmental information for inclusion in Government Services Budget Paper No. 2, is provided to Treasury by departments. Treasury then prepares the budget papers and related documents for presentation to Parliament by the Treasurer.

For budgetary purposes, the Tasmanian House of Assembly, Legislative Council and Legislature-General are classified by DTF in Budget Paper No. 2, under Part 2, as ‘Agencies’. Performance outputs and measures are specified for each Parliamentary Department, indicating a service-provider model, similar to Victoria, in which funding is linked to annual performance targets.

The Parliament of Tasmania does not fall under the category of government agency. However, in the Financial Bill, the following definition of agency is included: ‘...a government department, state authority, body, organisation or office, that is specified in Column 1 of Part 1 or 2 of Schedule 1’.

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230 *Consolidated Fund Appropriation Bill (No.2) 2016 (Tas).*


This definition includes the parliamentary departments. The implementation of this Bill would mean a change from the current legislation in which Parliament is excluded from the definition of agency. Such a change would effectively make Parliament subject to directions of the Government, such as Treasurer’s instructions: ‘The Treasurer is to issue instructions in respect of the principles, practices and procedures to be observed in the financial management of all Agencies’.  

Presently the Parliament of Tasmania follows the majority of Treasurer’s instructions; however, there is no legislative requirement to do so.

Northern Territory
The Northern Territory Parliament, like its counterparts in the ACT and Queensland, is unicameral; however, it does not receive funding from a separate appropriation Bill, like the other parliaments. Within the Northern Territory, the Speaker also takes on an administrative role as ‘Minister’ for the Legislative Assembly, but does not sit in Cabinet or the Budget Cabinet. In Budget Cabinet, the Legislative Assembly is theoretically represented by the Chief Minister.

For budgetary purposes, the NT Legislative Assembly is classified by DTF in Budget Paper No. 3, under Part 1, ‘Agencies’. As is the case in some other Australian parliaments, the NT Parliament is required to present output groups and KPIs, measuring its performance against items such as, ‘Member satisfaction with Chamber support and advice’ and ‘Parliamentary committee reports completed’. In this regard, the NT Parliament is treated as a government department, accountable to the government, rather than displaying a level of independence from the government.

The Department of the Legislative Assembly, like other government agencies, is called upon each financial year to make submissions to Treasury for the forthcoming year’s budget. The Department of the Legislative Assembly is subject to whole-of-government arrangements such as the efficiency dividend, which trims a given percentage from the budget each year in an effort to encourage greater efficiency.

Australian Parliament
The Commonwealth of Australia enshrines in its Constitution that while Parliament has exclusive authority to appropriate money, the initiation of expenditure proposals and drafting of the appropriation bill, lies with the executive:

- Section 83 provides that no money shall be drawn from the Treasury except under appropriation made by law, that is, by the parliament.
- Section 56 provides that a proposed law for the appropriation of revenue or moneys shall not be passed unless its purpose has been recommended by message from the Governor-General; that is, upon the advice of the executive government.

The current budgetary framework of the Commonwealth Parliament was influenced by the 1981 report of the Senate Select Committee on Parliament’s Appropriations and Staffing, which recommended that parliamentary staffing and appropriations be determined independent of the executive. Accordingly, since the financial year 1982-83, appropriations for the Parliament have been provided separately from appropriations for operations of the government.

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234 ibid., p. 59.
236 Commonwealth of Australia Constitution Act (Cth), s 83.
237 ibid., s 56.
The budget for the Parliament is drawn up in three separate sections, one for each parliamentary department. Along with the Presiding Officers, who have a formal role in proposing the budget, a Portfolio Budget Statement is developed to assist in explaining the budget measures. Parliamentary departments are required to follow the same funding guidelines and policies as government departments. A base level of funding is agreed to by parliamentary officials and the Department of Finance, which is annually adjusted downward by an efficiency dividend and upward for inflation.

However, it is the Government that effectively controls most of the Parliament’s budget. In other jurisdictions it has been noted that ‘Australian parliaments are generally subject to the dictate by the executive of their budget, whereas the UK and Canada accept that parliament will exercise independence in relation to its budget’. Funding structures tend to be similar throughout most jurisdictions within Australia, although there are degrees of difference in some specific arrangements.

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Comparative table of parliaments

Table 2 shows parliaments which have a separate appropriation Bill and those which have a parliamentary corporate body (PCB) in place to manage their budgets.

- Out of the six parliaments in Australia with a separate appropriation Bill, only the ACT has a PCB.
- UK, Scotland, Canada, Ontario and New Zealand—all have a PCB—but do not have a separate appropriation Bill.

Table 2: Separate Appropriation Bill & Parliamentary Corporate Bodies (PCB’s)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Separate Appropriation Bill</th>
<th>Parliamentary Corporate Body (PCB) to manage Parliament’s budget</th>
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<tr>
<td>Australia</td>
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<td>Tasmania</td>
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<td>No</td>
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Source: Victorian Parliamentary Library & Information Service
6. COMMONWEALTH JURISDICTIONS

Throughout Commonwealth jurisdictions there are notable differences in the structure of government, but there are also similarities which allow for a comparison of the financial arrangements that the legislatures have with the executive. In terms of their relative financial independence from government and ability to exercise self-administration, Australian legislatures generally occupy the middle ground when compared with other Commonwealth parliaments.

United Kingdom

The UK House of Commons, unlike parliaments in Australia, has a large degree of financial independence through the House of Commons Commission, which signs off on the annual budget of the House. The Commission recommends the amount to be appropriated and that figure is incorporated in the Government’s Appropriation Bill. All money used to fund Parliament is drawn from the Consolidated Revenue Fund—a practice which is used in most Commonwealth countries, including Australia. The following bodies are involved in the funding structures and arrangements of the Parliament:

- **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. 241
- **The Independent Parliamentary Standards Authority** – IPSA is the body created by Parliament to independently oversee and regulate Members’ business costs and expenses. 242
- **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. 243

Under the **House of Commons (Administration) Act 1978** 244 the House of Commons Commission, as the employer of House Staff, has the responsibility to lay an estimate as a request for the finance necessary to fund the House Service for the following year. Section 3 of the Act outlines the provisions:

1. For each financial year the Commission shall prepare and lay before the House of Commons an estimate for that year of the use of resources for the service of the House of Commons.
2. The Commission may appoint a member of the staff in the House Departments, to be known as the accounting officer, to be responsible for accounting for the use of resources for the service of the House of Commons.
3. All fees and other sums payable to the House of Commons shall be paid into the Consolidated Fund.
4. The Commission may, subject to any relevant limit set by an Appropriation Act—
   (a) direct resources to a specified value may be applied as an appropriation in aid of resources authorised by Parliament to be used for the service of a particular year, and

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242 Independent Parliamentary Standards Authority website.
244 House of Commons (Administration) Act 1978 (UK).
(b) make provision similar to section 2(3) to (5) of the Government Resources and Accounts Act 2000 about money received in connection with an appropriation in aid.

(5) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.245

The estimate is submitted to the House of Commons for approval alongside similar estimates for government services. In practice the House approves all estimates without debate. The Treasury is not involved in the preparation of the Commons Estimate.

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

- **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.246

According to the Resource Accounts for the House of Lords, the House is funded by Supply Estimates. The 2016–17 House of Lords budget was agreed by the House Committee in December 2015. The Vote on Account, published in April 2016, provides authority for spending on continuing services until the legislation authorising the Main Estimates obtain Royal Assent. Normally the Main Estimate is authorised by Parliament in July, when the Appropriation Act is passed.247 As noted in the Central Government Supply Estimates for 2016–17, ‘under long-established constitutional practice it is for the Crown (the government) to demand money, the House of Commons to grant it and the House of Lords to assent to the grant’.248

Although the legislature in the United Kingdom possesses a greater degree of financial independence than found in Australia, there remain concerns that the executive can still exert its influence over the House. As one researcher in the field of parliamentary affairs in the UK has noted:

> ... governmental dominance can extend to internal parliamentary matters such as finances through the party’s majority, not only in the House itself, but also on its committees ... Government is [likewise] able to exert much influence on the internal workings of the Parliament through the Leader of the House who is directly involved in determining administrative matters.249

**Scotland**

The UK Government has outlined several principles for allocating funding between the countries of the United Kingdom. The principles have changed to reflect the additional powers transferred to devolved administrations. These principles outline that:

- UK Government tax revenues and other income are passed to the Consolidated Fund of the UK;

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245 ibid., s. 3.
tax revenue from the Scottish income tax will be passed to the UK before being passed on to the Scottish Consolidated Fund; revenues from fully devolved taxes are passed directly to the relevant Consolidated Fund; and linking funding for devolved administrations in relation to devolved taxation removes the need to negotiate allocations.\(^{250}\)

The *Scotland Act 2012*,\(^{251}\) passed by the UK Parliament, gives the Scottish Parliament the power to set the Scottish rate of income tax. The Act gives extra financial powers to the Scottish Parliament, most notably:

- the ability to raise or lower the income tax rate;
- control of stamp duty and landfill tax; and
- the ability to borrow money of up to £2.2 billion (A$3.5 billion) a year.

Subsequently, the Scottish rate of income tax came into effect from 6 April 2016. Although the Scottish Parliament has the power to set the Scottish rate of income tax, HM Revenue and Customs will continue to be responsible for the collection and management of all taxes.

The first phase of funding the Scottish Parliament is initiated by the Westminster Parliament, which provides a sum of money annually to administer a budget and fund the operation of the Scottish Parliament. Following the transfer of funds from the British Consolidated Revenue Fund to the Scottish Consolidated Revenue Fund, financing of the Scottish Parliament is carried out through the Scottish Parliamentary Corporate Body (SPCB). As noted on the Scottish Parliament website:

> The [Scottish Parliamentary] Corporate Body considers and makes decisions on a wide range of issues to do with the running of the Parliament including the financing of the Parliament and allocation of the budget, the staffing of the Parliament, accommodation and the use and security of Parliamentary facilities at Holyrood.\(^{252}\)

The *Written Agreement* between the Finance Committee and the SPCB\(^{253}\) lays out how the SPCB will present its budget to Parliament for scrutiny. Key points of the agreement are that:

- the SPCB has agreed that it will provide a draft budget to the Committee and to the Scottish Government, no later than the end of the first week in November;
- the SPCB has also agreed to keep both the Committee and the Scottish Government informed of any substantive changes to the Scottish Parliament’s budget in recognition of the fact that these would affect the Scottish Government’s expenditure plans and the Parliament’s consideration of them;
- the SPCB also agrees that, in order to assist the Committee’s understanding of the expenditure plans, Members of the SPCB, the Clerk and parliamentary staff will provide information and give evidence to the Committee when requested;
- the Finance Committee will consider and report on the SPCB’s draft budget as part of its wider budget scrutiny; and
- the SPCB’s final expenditure proposals will appear in the annual Budget Bill which will be voted upon by the Parliament.


\(^{251}\) *The Scotland Act 2012* (UK)


The funding mechanism used by the SPCB allows the Parliament to vote on its own budget. There is also a provision for the Parliament to scrutinise its own budget. Ministers are able to challenge the budget proposed by the SPCB by an amendment to the Budget Bill, allowing debate on the issue. The SPCB’s budget also includes the budgets for the various parliamentary commissioners and the Scottish Public Services Ombudsman.

The Scottish Parliament’s Finance Committee conducted a review of the budget process for the Scottish Parliament and reported in June 2009. There were no recommendations suggesting changes to procedures relating to setting the SPCB’s resources, suggesting that the arrangements are considered to be reasonably effective.

The SPCB budget submission to the Finance Committee is a financial statement of what is required for the successful operations of the Scottish Parliament. This proposal is then scrutinised, reported on by the Finance Committee and the required funds are then allocated from the Scottish Budget by the Scottish Government in their Budget Bill. The SPCB has adopted a self-imposed Budget policy, since Budget reductions came in after the 2008 financial crash of mirroring the changes in the Scottish budget. This has resulted in the SPCB budget being squeezed in real terms in recent years.

Technically, the SPCB’s budget is not constrained by funding pressures in the Scottish Consolidated Fund. However, for the past five years, the SPCB has consistently set its budget at a level which is in line with, or a reducing proportion of, the overall Scottish Budget. The SPCB has delivered a significant reduction in its resources in line with real term reduction in the overall Scottish Budget over the period of the UK Comprehensive Spending Review. Because the Scottish Parliament is not restricted by the executive to determine its funding, it is considered to have greater powers to manage its finances compared to parliaments in Australia.

Canada

Similar to the legislature of the United Kingdom, the federal Canadian Parliament is bicameral and holds a relatively strong position in terms of financial independence from the executive. The Parliament’s funding is decided by two separate bodies for each respective chamber. As in Australia and the UK, funding for the Canadian Parliament is sourced from the Consolidated Revenue Fund.

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

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255 ibid., p. 10.
259 Parliament of Canada Act (1985)
261 Parliament of Canada Act (1985) s.52.4.
262 Parliamentary Employment and Staff Relations Act (1985) (Canada).
the House of Commons. The Board is presided over by the Speaker of the House of Commons. The Parliament of Canada website states that the Board:

- examines and approves the annual budget estimates of the House;
- approves and controls the budget expenditures of the committees of the House of Commons, and tables an annual financial report outlining the expenses incurred by each committee; and,
- approves salary scales for non-unionized employees and authorizes officials of the House to negotiate the renewal of the collective agreements of unionized employees and ratifies such agreements. (The Board is deemed to be the employer of the staff of the House of Commons, except for Members’ staff, who are deemed to be employed by the Members.)

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.

By virtue of their funding arrangements, the Canadian House of Commons and Senate have a greater degree of financial independence from the government, compared to upper and lower houses in Australia, as they can prepare their budgets independently.

**Ontario**

The Canadian province of Ontario began a process of legislative reform in 1974, primarily dealing with the administration of the Ontario Legislative Assembly (the Ontario Parliament is unicameral). One of the key reforms was the establishment of the Board of Internal Economy in December 1974. Ontario was the first Canadian province to establish such a Board, a model which has subsequently been followed in several other Canadian legislatures. Much like the Board of Internal Economy in the Canadian Parliament, the Board 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’.

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

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265 Parliament of Canada (date unknown) ‘Standing Committee on Internal Economy, Budgets and Administration’, Senate, Parliament of Canada website.
266 ibid.
267 Senate of Canada (2015) *Senate Procedure in Practice*.
legislature, not as a representative of the executive or their party\textsuperscript{269}. As listed in Section 90 of the \textit{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 organization 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.\textsuperscript{270}

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.\textsuperscript{271} 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 Assembly of Ontario).\textsuperscript{272} This arrangement has been called ‘the best model available’ for the financial management of parliaments under the Westminster system of government.\textsuperscript{273}

**New Zealand**

New Zealand parliamentary appropriations, which finance both funding allocations and support services to the Parliament are determined and approved through the same budget process as regular government departments. The annual budget process is guided by the \textit{Public Finance Act 1989}\textsuperscript{274} and related legislation and follows the same processes, accounting methodology, reporting requirements and accountability mechanisms as all government departments.\textsuperscript{275}

There are two main non-executive agencies supporting the New Zealand Parliament. The two agencies of Parliament which maintain independence from the wider public service and therefore the government are the Office of the Clerk (OoC) and the Parliamentary Service (PS). They are both explicitly defined in legislation as not being instruments of the executive government and are treated as non-public service departments operating in the wider state sector. However, for all appropriation purposes, both the OoC and PS are considered to be government departments under Section 2 of the Public Finance Act 1989. Much like the performance requirements related to the Victorian Parliament, the OoC and PS have performance measures on which they must report.

\textsuperscript{269} ibid., p. 4.
\textsuperscript{270} \textit{Legislative Assembly Act 1990} (Ontario).
\textsuperscript{271} G. White (1989) \textit{The Ontario Legislature: A Political Analysis}, Toronto, University of Toronto Press, p. 200.
\textsuperscript{272} Legislative Assembly of Ontario (2008) op. cit. p. 12.
\textsuperscript{273} White (1989) op. cit.
\textsuperscript{274} \textit{Public Finance Act 1989} (NZ).
\textsuperscript{275} New Zealand Parliamentary Library, personal communication with I. Dosen, 13 July 2016.
There is also a Parliamentary Service Commission which advises the Speaker on services to the House of Representatives and Members of Parliament; recommends criteria for funding entitlements and other matters; and considers and comments on draft reports prepared by review committees.  

Since its inception, the New Zealand Parliament has experienced a gradual shift of its powers in the direction of the executive government. It wasn’t until reforms were introduced in the 1980s and 1990s that the Parliament saw a measure of its power return. The reforms enhanced the role of select committees and gave the Speaker responsibility for expenditure on services to Parliament. However, before the implementation of such reforms, there was a shift towards greater executive dominance in three respects important to the functioning of Parliament: parliamentary expenditure, the impact of political parties and electoral politics, and increased government control over business in the House of Representatives.

Through an emergence of organised political parties, much like in the Australian example, greater political party discipline has played a role in allowing the executive to steadily increase its influence over the Parliament. The shift that occurred in New Zealand can be attributed to several factors:

- Party discipline became stronger, meaning Parliament was subjugated to the party system—voting became increasingly predictable and occurred along party lines on practically all measures;
- New Zealand’s two-party system was established quickly, resulting in party dominance in Cabinet. Within the relatively short time of four decades, New Zealand party organisation shifted from loose factional arrangements to a highly organised form of party politics in which the executive held sway over Parliament; and
- The Executive was able to effectively take control of parliamentary expenditure, Parliament lost its role in the formation of governments to the electoral process, and governments wielded stronger control over business in the House.

In a report published by the Appropriations Review Committee (ARC), which is responsible for reviewing the amount of money appropriated by Parliament for administrative and support services to the House and to Members and the funding entitlements for parliamentary purposes, it stated that:

Under current New Zealand legislation, the funding for Parliament is treated like other government departments. This makes it part of the fiscal policy of the time and reverses the lines of accountability: the Treasury ‘buys’ services and audits the results, rather than Parliament requiring accountability from the Executive Government. This means while the budget is ultimately voted by Parliament, there is a high degree of influence and direction from the Executive Government, which shapes and presents the budget to Parliament.

In its latest report the Appropriations Review Committee issued the following recommendation:

that Parliament and Parliamentary Service be funded independently, using a funding mechanism similar to that used for the Officers of Parliament. This mechanism involves a funding request put to the House from the Officers of Parliament Committee. This funding mechanism should include seeking advice from an independent third party such as the ARC, which will promote adequacy and fiscal responsibility.

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278 ibid., p. 15.
280 ibid, p. 10.
CONCLUSION

Victoria’s system of responsible government relies on the separation of powers and having an independent Parliament, where protocols ensure that the concentration of power is not in the hands of any single person, institution or branch of government. The Latimer House Principles clearly highlight the importance in maintaining these separate and equal branches of government.

This paper discusses the fundamental roles of the legislative, executive and judicial branches, and the need to contain—what can be described as an executive creep—that has occurred in Victoria. This imbalance must be reversed if the separation of powers is to perform its constitutional role, and Victoria is to avoid Parliament becoming a flawed branch of democracy.

But how can this be done? There are several examples of jurisdictions in which the independence of parliament has been well maintained—such as the United Kingdom, Scotland, Canada and the ACT. Yet in Victoria, and in other Australian jurisdictions, parliamentary independence does not seem to be working as effectively as it could. Only one parliament in Australia has a PCB and three parliaments do not have a separate Appropriation Bill. Also, there are no Australian jurisdictions where the parliament introduces its own Appropriation Bill—it is always introduced by the Executive.

Although Victoria has its own Parliament Appropriation Bill, it is still controlled by the Government and the amount of money allocated to the Parliament is determined by the Government, through Treasury. Granting this separate Parliament Appropriation Bill to Victoria in 1992 was nothing more than a symbolic concession to Parliament—as it has not resulted in any greater protection of its independence from the Executive.

There is also an expectation that the funding of the Parliament will be sufficient to discharge its functions, and while the efficiency dividend has not affected Parliament in recent years, it is likely to do so in the near future. These efficiencies may work for government departments and agencies, but they do not work for Parliament, whose role is to scrutinise the Government. The recent plethora of Upper House committees in Victoria and Parliament’s inability to adequately fund these, illustrates this point.

There is rarely, if any, ‘fat’ left in the parliamentary budget for the Victorian Parliament to scrutinise any of the Government activities that may lie outside this budget. Parliament is unable to roll over any surplus monies at the end of a financial year, unless approval is granted from the Government. If there is a short fall of funds during the year, Parliament must ask Treasury for additional funding.

It is clear that funding is instrumental for Parliament to be adequately resourced in order to fulfil its role of scrutinising government. However, the disproportionate growth of the executive branch, the relegation of Parliament to a government agency, seeking revenue and delivering its services as measurements tied to the government’s performance targets—is not only a reversal of the constitutional principle of responsible government—but also contributes towards a growing concern over the level of control the Executive now wields over Parliament.

Classified as a ‘government department’, the Victorian Parliament is the only parliament in Australia and New Zealand mandated to report its finances to the Government on both a daily and monthly basis, as well as report its performance measures, financial outcomes and achievement of outputs on a quarterly basis. It is also possibly, the only Parliament which receives requests directly from the Government requesting that it ‘review its objectives’ to ‘better reflect’ its achievements and provide
the Government with ‘greater clarity’ on what these objectives are.\textsuperscript{281} These are strong directives given to Parliament by the Executive, which should be challenged, if parliamentary independence and the separation of powers are to be upheld.

Some of these measures determined by the Government through the Department of Treasury and Finance (DTF), have little or no relevance to the work of the Parliament. Furthermore, DTF may at any time request that Parliament provide financial forecasts for the period up until the end of the year. These performance outputs tend to be related to government departments and agencies and are not appropriate for measuring the functions of Parliament. Parliament should not be treated the same as a government agency, responsible for executive government services. It clearly has a different role to play in strengthening democracy and holding the Executive to account.

While the separation of powers has played a significant role in preserving our parliamentary democracies, shifts in the power of the Executive place a great deal of pressure on Parliament to deliver good governance. These shifts have significantly reduced Parliament’s capacity to scrutinize the Executive.

Having said this, we offer some salient observations:

Perhaps it is time to review the legislation and practice pertaining to the Parliament’s appropriation and allocation of budgets.

Perhaps it is time for Parliament to establish and administer its own annual budget with forecasts to cover future needs such as new initiatives and rises in operating costs, accountable under an annual audit, guided by a parliamentary commission or corporate body, that would be tasked with the responsibility of managing Parliament’s departments and their budgets.

Perhaps it is time to consider a separate parliamentary service model (such as a PCB), as exists in the UK or Canada, with Latimer House Principles embedded in the legislation—where the Executive accepts that Parliament will exercise its independence regarding its own budget.

What is preventing Parliament from controlling and determining its own funding through a parliamentary corporate body (PCB) and initiating its own money bill through its Presiding Officers? This would require a majority support in Parliament for a Bill to establish the PCB and a constitutional amendment to the Bill to dispense with the need for a Governor’s message.

These issues all require further investigation if we are to improve the way responsible government operates in Victoria and Australia. A good starting point would be to address the distribution of powers between the Government and Parliament over parliamentary finances.

This paper has identified several issues and challenges which warrant further examination—and offers the following three suggestions and new funding model (see figure 2, page 58)—to encourage further consideration of how best to improve the independence of the Victorian Parliament:

1. Firstly, as detailed in Section 4 and in the Victorian chapter of Section 5, we believe the Parliament of Victoria is well positioned to re-examine the recommendations contained in the \textit{Progress Report of the Joint Select Committee on the Parliament of Victoria (1991)}\textsuperscript{282} which were never implemented. These recommendations include the establishment of a


parliamentary services committee (or PCB) to determine and oversee Parliament’s budget. This 1991 Report provides some useful guidance in this area.

2. Secondly, the Parliament could examine models of best practice for *parliamentary corporate bodies* (PCBs) currently operating in the UK, Scotland, Canada, Ontario and the ACT; with a view to assessing the feasibility for a similar PCB becoming operational in the Victorian Parliament—taking into account the following suggestions, that a PCB:

- be established as per the CPA/WBI Report and recommendations\(^{283}\) (acknowledging the bicameral nature of the Victorian Parliament);
- be chaired on a rotational basis by the Speaker and President (with the other being the Deputy Chair);
- membership reflect the aggregate membership of both Houses (by parties and independents) and to include the Premier (or nominee) and Leader of the Opposition (or nominee) and their equivalents in the Legislative Council;
- include the Clerks and Secretary, Department of Parliamentary Services;
- request the Executive to provide forward estimates of government revenues (as to be reported in Budget Papers) before the PCB makes recommendations;
- report its recommendations to each House on Budget Day;
- issue recommendations for Parliamentary appropriation which would be automatically appropriated unless rejected or amended (in the same way) by both Houses within 28 calendar days; and
- restore the Office of the Opposition within the Parliamentary precinct.\(^{284}\)

It is clear from this paper that the Victorian Parliament, or any democratic parliament, should not be subject to *control or direction* by the Executive. The Executive should not determine the level of funding and how monies are to be allocated to Parliament or its Independent Officers of Parliament.

3. Bearing this in mind, a third suggestion for consideration is that the Independent Officers of the Victorian Parliament require a review of their operations and funding in order to operate truly *independently* from the Executive. Their operations and funding needs to be more clearly delineated under Parliament rather than the Executive (possibly through legislation), as they remain wholly responsible to the Parliament.

Unless these three considerations to improve the independence of the Parliament are taken seriously by both the Parliament and the Government, the future independence of the Victorian Parliament will remain under threat. What is clearly required is a shift on behalf of the Executive to recognise and address these crucial issues facing the future of parliamentary democracy in Victoria.

\(^{283}\) Commonwealth Parliamentary Association (2005) *Administration and financing of parliament*, London, CPA.

\(^{284}\) This issue requires closer examination and the Victorian Parliament should assess whether its Opposition is part of Parliament or not. At present it is connected through its funding and infrastructure with the Executive, which seems problematic as its role is with Parliament. We suggest the Office of the Opposition be included in an assessment of a Victorian PCB which could also support its operations (see further commentary on pages 38–39 of this paper).
Figure 2. Victorian Parliament—PCB model for consideration

1. PCB manages the funding of Parliament through drafting the *Parliamentary Appropriation Bill* for the Legislative Assembly, Legislative Council, Parliamentary Services, Independent Officers and Office of the Opposition each financial year.

2. Presiding Officers present the *Parliamentary Appropriation Bill* to the Treasurer for tabling at the same time as the Government *Appropriation Bill*.

3. New *Parliamentary Corporate Body Act* drafted to define PCB’s constitutional arrangements, membership, functions and relationships.


Source: Victorian Parliamentary Library & Information Service
References

Legislation

Victoria

- Appropriation (Parliament 2017-2018) Bill 2017
- Audit Act 1994
- Constitution Act 1975
- Court Services Victoria Act 2014
- Electoral Act 2002
- Financial Management Act 1994
- Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016
- Independent Broad-based Anti-corruption Commission Act 2011
- Major Crime (Investigative Powers) Act
- Ombudsman Act 1973
- Parliamentary Budget Officer Bill 2016
- Parliamentary Committees Act 2003
- Protected Disclosure Act 2012
- The Constitution Act Amendment (Electoral Reform) Act 1988
- Victorian Inspectorate Act 2011

Other Jurisdictions

- Act of Settlement 1701 (UK)
- Appropriation (Parliament) Act 2015 (Qld)
- Appropriation (Parliament) Bill 2016 (Qld)
- Bill of Rights 1689 (UK)
- Commonwealth of Australia Constitution Act 1900 (Cth)
- Consolidated Fund Appropriation Bill (No.2) 2016 (Tas)
- Courts Administration Act 1993 (SA)
- Family Law Act 1975 (Cth)
- Federal Circuit Court of Australia Act 1999 (Cth)
- Federal Court of Australia Act 1976 (Cth)
- Financial Management Bill 2015 (Tas)
- House of Commons (Administration) Act 1978 (UK)
- Legislative Assembly (Office of the Legislative Assembly) Act 2012 (ACT)
- Legislative Assembly Act 1990 (Ontario)
- Parliament of Canada Act (1985) (Canada)
- Parliament of Queensland and Other Acts Amendment Bill 2015 (Qld)
- Parliamentary Appropriation Act 1993 (NSW)
- Parliamentary Budget Officer Act 2010 (NSW)
- Parliamentary Employment and Staff Relations Act (1985) (Canada)
- Parliamentary Service Act 1999 (Cth)
- Public Finance Act 1989 (NZ)
- South Australia Appropriation Act 2016 (SA)
- The Scotland Act 2012 (UK)
Independence of Parliament

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Works Cited


Coombs, H.C., P.H. Bailey, E. Campbell, J.E. Isaac, & P.R. Munro (1976) Royal Commission into Australian Government Administration, final report, Canberra, AGPS.


Government of Western Australia (2015) Economic and Expenditure Reform Committee – Handbook, Department of the Premier and Cabinet.

Government of Western Australia (2016) Budget Paper No. 2, Volume 1, Department of Treasury.


Public Accounts and Estimates Committee (date unknown) 2015–16 Budget Estimates Questionnaire [Court Services Victoria], Parliament of Victoria.


**Cases**

*Attorney General and Gow v Leigh* [2011] NSZC 106

*Canada (House of Commons) v Void* [2005] 1 SCR 667.

*Jennings v Buchanan* [2004] UKPC 36.

*Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

*Kirk v Industrial Court (NSW)* (2010) 239 CLR 531.

*Mabo and others v Queensland* (No 2) (1992) 175 CLR 1.


**Websites**

Attorney-General’s Department, (date unknown), *The Courts*, AG website.


Court Services Victoria (2016) *About CSV*, CSV website.


Parliament of Canada (date unknown) *Board of Internal Economy*, Parliament of Canada website.

Parliament of Canada (date unknown) *Standing Committee on Internal Economy, Budgets and Administration*, Senate, Parliament of Canada website.


Rule of Law Institute of Australia (2014) *Don’t attack the lawyers, Bills of Attainder and ASADA Investigations*, RLIA website.

The Scottish Parliament (date unknown) *SPCB Remit*, Scottish Parliament website


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