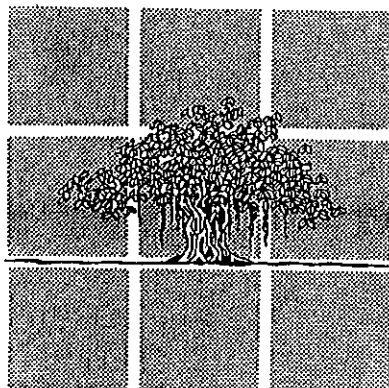


# NORTHERN TERRITORY LIBRARY



## PARLIAMENTARY APPROPRIATIONS AND THE SEPARATION OF POWERS

Research Paper No.18  
June 1997

NORTHERN TERRITORY LIBRARY

PARLIAMENTARY  
APPROPRIATIONS  
AND THE  
SEPARATION OF POWERS

Annie Bonney  
Research Officer, Reference Services

Darwin  
June 1997

Bonney, Annie.

Parliamentary appropriations and the separation of powers / Annie Bonney.  
Darwin: Northern Territory Library, 1997.

Research paper; no.18.

ISBN 0 7245 06144

ISSN 1324-2245

1. Finance, Public - Australia
2. Budget - Australia
3. Separation of powers - Australia

- i. Northern Territory Library
- ii. Title
- iii. Series: Research paper (Northern Territory Library) ; no.18

320.404

## 1. TABLE OF CONTENTS:

1. Table of Contents	1.
2. Introduction	1.
3. Definitions	1-2.
4. Comparisons Between the Separation of Powers in Different Countries	3-4.
5. Parliamentary Appropriations and the Separation of Powers in Australia	4-7.
6. Conclusion	8.
7. Reading List	9.

## 2. INTRODUCTION:

This paper concentrates on the doctrine of the separation of powers in the United States of America (USA), Canada, Britain, New Zealand and in Australia. The paper also discusses parliamentary appropriations and the separation of powers.

Because of the complicated nature of the topic a number of full text readings have been included rather than using excerpts or quotes out of context.

## 3. DEFINITIONS:

### (a) Appropriation

Is the setting apart, assigning or applying to a particular use or to a particular person a sum of money. In the budget context an appropriation usually refers to an authorisation by Parliament to draw on funds from the Consolidated Revenue Fund (CRF)<sup>1</sup>.

---

<sup>1</sup>Department of the Parliamentary Library. *Bills Digest No. 26 1996-97: Appropriation (Parliamentary Departments) Bill 1996-97*. <http://library.aph.gov.au/prs/pubs/bd/bd26-97.htm>

### **(b) The Separation of Powers**

The independence of the three 'arms of government', namely, the legislature, the executive and the judicature. The principle is to guard against tyranny and injustice. The Australian Constitution does not completely separate the three arms of government as it follows the precedent of the Westminster system and makes the executive answerable to the parliament.<sup>2</sup>

### **(c) The legislature**

An assembly of people empowered to make laws. In Australia, parliaments have this power based on the principle of responsible government, which requires that the laws should be made by representatives who are responsible to the people of the nation.<sup>3</sup>

### **(d) The executive**

The group of people who administer the law. This term can have numerous meanings, but can be interpreted as the executive consisting of the Prime Minister and the Ministry, operating in an administrative role rather than a legislative one. The Australian Constitution allows for power to be exercised by the Queen's representative, the Governor General, although this is rarely employed.<sup>4</sup>

### **(e) The judiciary**

The structure and operation of the system of justice in a country. Each State has its own separate judicial system in which the Supreme Court is the most senior court.<sup>5</sup>

---

<sup>2</sup> Corcoran, Robert. *The Collins Australian Dictionary of Political Terms*. North Blackburn, Vic: CollinsDove, 1994. p.195.

<sup>3</sup> Corcoran, Robert. *The Collins Australian Dictionary of Political Terms*. North Blackburn, Vic: CollinsDove, 1994. p.114.

<sup>4</sup> Corcoran, Robert. *The Collins Australian Dictionary of Political Terms*. North Blackburn, Vic: CollinsDove, 1994. p.71-72.

<sup>5</sup> Corcoran, Robert. *The Collins Australian Dictionary of Political Terms*. North Blackburn, Vic: CollinsDove, 1994. p.104.

#### 4. COMPARISONS BETWEEN THE SEPARATION OF POWERS IN DIFFERENT COUNTRIES:

The doctrine of the separation of powers originated from the French philosopher Montesquieu in the mid-eighteenth century, who defined the three essentially different powers of government as legislative, executive and judicial. Montesquieu believed that a country's liberty depended upon these three functions being exercised by separate bodies. This principle remains the cornerstone of the United States Constitution, but in Australia, the separation of powers is less distinct. One disadvantage is the tendency for the executive to dominate Parliament, not only through setting Parliament's legislative agenda but by exerting pressure on government party backbenchers to support the legislation. It is the role of the Opposition to ensure that Parliament does not become a "rubber stamp" in executive law making proposals. Parliamentary committees and other procedures also work towards the effective scrutiny of the executive and its administration of government.<sup>6</sup>

Sir Anthony Mason in his article "A New Perspective on Separation of Powers" notes that federal judges play an important part in Australian executive government such as conducting royal commissions or being appointed to administrative tribunals. Mason proposes:

The lesson of history is that the separation of powers doctrine serves a valuable purpose in providing safeguards against the emergence of arbitrary or totalitarian power. The lesson of experience is that the division of powers is artificial and confusing because the three powers of government do not lend themselves to definition in a way that leads readily to a classification of functions....The difficulty of precise definition arises from the impossibility of defining each of the three powers in a way that reveals them as mutually exclusive concepts.<sup>7</sup>

---

<sup>6</sup> Parliamentary Education Office. "Parliamentary Government in Australia: Part 3", [http://peo.aph.gov.au/secstud/peo4\\_1\\_3.html](http://peo.aph.gov.au/secstud/peo4_1_3.html)

<sup>7</sup> Mason, Sir Anthony. "A New Perspective on Separation of Powers", *Canberra Bulletin of Public Administration*. No.82, December 1996. p.2.

One representative model which is in direct contrast to other parliamentary systems operates in the USA. Features include:

- The legislature and the executive are separately elected.
- The executive is not dependent on the legislature for office - although co-operation between them is necessary for effective government.
- The categories of legislative and executive power are distinct.
- Fundamental rights are protected by the Constitution.
- The legislature plays some role in approving international arrangements and executive appointments.<sup>8</sup>

The *Line Item Veto Act* which permits the President to “cancel” individual items in appropriation bills, new entitlements and narrowly focused tax breaks after otherwise signing the bill into law, took effect on January 1, 1997. It was immediately challenged. (See reading no.1 for further history and debate)<sup>9</sup>

For a more detailed account of the separation of powers in the Britain, the USA, Canada and New Zealand see readings Carney (No.2), Stark (No.3) and Tunzelmann (No.4).

## 5. PARLIAMENTARY APPROPRIATIONS AND THE SEPARATION OF POWERS IN AUSTRALIA:

On August 18, 1981 a Senate Select Committee was appointed to “inquire into and report upon Parliament’s control of its own appropriations and staffing, and related matters.” The *Report of the Senate Select Committee on Parliamentary Appropriations and Staffing* was tabled and included the following recommendations:

---

<sup>8</sup> Saunders, Cheryl/Constitutional Centenary Foundation Inc. *Representing the People: The role of Parliament in Australian democracy. A discussion paper.* Carlton, Vic: Constitutional Centenary Foundation, Inc, 1993. p.49.

<sup>9</sup> Taylor, Andrew. “Administration Seeks to Kill Line-Item Veto Challenge”, *Congressional Quarterly Weekly Report.* Vol.55, No.3. January 18, 1997. p.167. 6

- As a first step, the Senate Committee recommends that the Senate establish a Standing Committee to be known as the Senate Appropriations and Staffing Committee.
- The Select Committee recommends that the appropriations for the Parliament be removed from the Bill for the ordinary annual services of the Government and be included in a separate Parliamentary Appropriation Bill.
- The Select Committee also recommends that all terms of expenditure administered by the Executive departments on behalf of the Parliament be brought together in the Parliamentary Appropriation Bill and that provision be made for an Advance to the President of the Senate on the same basis as the Advance to the Minister for Finance.
- The Select Committee recommends that the President arranges for discussions to be held with the appropriate Executive departments to review those functions which are currently administered by them, and subsequently to plan the transfer of functions suitable for administration by the Senate.
- The Select Committee recommends that section 9 of the *Public Service Act* 1922 be amended to vest in the Presiding Officers, separately or jointly as the case may be, the power of appointment, promotion, creation, abolition and reclassification of offices, and the determination of rates of pay and conditions of service.<sup>10</sup>

The early 1980s saw a degree of revitalisation of the legislative arm in the Commonwealth Government and the fall of the Queensland National Party Government brought about much continued debate throughout the 1980s over the many issues involved in the dominance of the executive branch of governments. The Fitzgerald inquiry in 1989 criticised the lack of appreciation of the doctrine of the separation of powers and looked closely at the corruption that is possible in a break down of any government or organisation if one particular group gains too much power.<sup>11</sup>

---

<sup>10</sup> The Parliament of the Commonwealth of Australia. *Parliament's Appropriations and Staffing: Report of the Senate Select Committee*. Canberra: AGPS, 1981. p.ix.

<sup>11</sup> Foley, Kevin & Russell, Edward. *Strategic Management Review of the Parliament of Victoria*. Melbourne: GP, 1991. pp.9-13.

In 1987 the Australian Constitutional Commission released the *Report of the Advisory Committee on Executive Government*. Chapter two of this report examines the relations between the executive and the legislature and addresses the following questions:

- Should the 'Westminster' system of government be preserved in Australia?
- Should the system of government be further written into the Constitution?
- Who should be the ministers?
- What checks should there be on executive government?<sup>12</sup>

For the the summary of recommendations see reading no.5.

In February 1991 the Foley-Russell report was released under the title *Strategic Management Review of the Parliament of Victoria*. This study was commissioned by the Parliament of Victoria to clearly indicate a strategic plan for the Parliament. In section 2.2 the study refers to the allocation of powers and emphasises that the three arms of government "must be reasonably independent of one another and capable of functioning in an effective manner".<sup>13</sup> For the full recommendations of the study see reading no.6 and for a critical analysis of the report see reading no.7.

Under the consideration of parliamentary procedures, the CCF listed proposals in 1993 which sought to return Parliament some distance towards what has been perceived as its traditional function. Proposals included:

- Control by Parliaments over their own budgets, through separate appropriation bills, including some autonomy in setting both the levels and allocations of parliamentary appropriations; and
- Greater independence for the Speaker and the President as the Presiding Officers of Parliament. In 1993, New South Wales for example, amended its

---

<sup>12</sup> Australia. Constitutional Commission. Advisory Committee on Executive Government. *Report of the Advisory Committee on Executive Government*. Sydney: The Commission, 1987. p. 11.

<sup>13</sup>Foley, Kevin & Russell, Edward. *Strategic Management Review of the Parliament of Victoria*. Melbourne" GP, 1991. p.9.

Constitution to protect their independence.<sup>14</sup>

The Senate Standing Committee on Appropriations and Staffing is established under standing order 19 and meets to determine the amounts for inclusion in the Appropriation (Parliamentary Departments) Bill for the estimates of the Department of the Senate. For the most recent report (25th) and 1995-96 Annual Report see readings no.8 and no.9.

The Department of the Commonwealth Parliamentary Library produced a Bills Digest (No. 26 1996-97) on the *Appropriation (Parliamentary Departments) Bill 1996-97*.<sup>15</sup> This publication charts the passage history, purpose, background and main provisions of the Bill. For the full text of Bills Digest refer to reading no.10.<sup>16</sup>

The Constitutional Centenary Foundation has considered many issues in regard to the role of Parliament in Australian democracy. In reference to legislative and executive power it noted:

Some actions can be done only with the authority of Parliament. They include changing statute law; creating or altering rights and duties of individuals; imposing taxation; authorising public expenditure. Other actions can be taken by governments without prior reference to Parliament. They include declaring war, making peace and entering into international agreements. Parliaments can legislate to control executive action but in practice they will not do so unless government wishes it.<sup>17</sup>

For further information see readings Rozzoli (No.11).

---

<sup>14</sup> Saunders, Cheryl/Constitutional Centenary Foundation Inc. *Representing the People: The role of Parliament in Australian democracy. A discussion paper*. Carlton, Vic: Constitutional Centenary Foundation, Inc, 1993. p.31.

<sup>15</sup> Department of the Parliamentary Library. *Bills Digest No. 26 1996-97: Appropriation (Parliamentary Departments) Bill 1996-97*. <http://library.aph.gov.au/prs/pubs/bd/bd26-97.htm>

<sup>16</sup> Senate Standing Committee on Appropriations and Staffing. *Annual Report 1995-96*. August 1996. p.2.

<sup>17</sup> Saunders, Cheryl/Constitutional Centenary Foundation Inc. *Representing the People: The role of Parliament in Australian democracy. A discussion paper*. Carlton, Vic: Constitutional Centenary Foundation, Inc, 1993. p.11.

## 6. CONCLUSION:

Issues for consideration within this topic have been put forward by the CCF as:

- Is the present division between legislative and executive functions satisfactory from the standpoint of Parliaments? Of governments? Of the public?
- Are the financial procedures of Parliaments suited to the financial management and planning activities of governments?
- What should be the role of Parliament in scrutinising and providing authority for the financial transactions of government?
- What changes, if any, are necessary to enable this role to be carried out?
- Should parliamentary authorisation be required to impose user charges, borrow, sell public assets and receive payments from other levels of government?
- To what extent should Parliament or its committees be entitled to seek information directly from public sector offices or agencies?
- Are the principles and practices of parliamentary privilege appropriate in their current form?<sup>18</sup>

---

<sup>18</sup> Saunders, Cheryl/Constitutional Centenary Foundation Inc. *Representing the People: The role of Parliament in Australian democracy. A discussion paper.* Carlton, Vic: Constitutional Centenary Foundation, Inc, 1993. pp.17-19.

## 7. READING LIST:

1. *Legislative Summary: History of the Line Item Veto Act of 1996.*  
[http://www.citizen.org/public\\_citizen/litigation/briefs/leg\\_his.html](http://www.citizen.org/public_citizen/litigation/briefs/leg_his.html)
2. Carney, Gerard.  
"Separation of powers in the Westminster system", *Legislative Studies*. Vol.8, No.2, Autumn 1994. pp.59-66.
3. Stark, Andrew.  
"Public Sector Conflict of Interest at the Federal Level in Canada and the U.S.: Differences in understanding and approach", *Public Administration Review*. Vol.52, No.5, Sep/Oct 1992. pp.427-437.
4. Tunzelmann, Adrienne von.  
"Parliamentary Reform in New Zealand", *Legislative Studies*. Vol.2, No.1, Autumn 1987. pp.5-11.
5. Australia. Constitutional Commission. Advisory Committee on Executive Government.  
*Report of the Advisory Committee on Executive Government*. Sydney: The Commission, 1987.
6. Foley, Kevin & Russell, Edward.  
*Strategic Management Review of the Parliament of Victoria*. Melbourne: GP, 1991.
7. Cope, R.L.  
"Myths and Realities of Administering Australian Parliaments: Comments on the Foley-Russell Report", *Legislative Studies*. Vol.7, No.1, Spring 1992. pp.42-52.
8. Senate Standing Committee on Appropriations and Staffing.  
*Twenty-Fifth Report*. February 1997.
9. Senate Standing Committee on Appropriations and Staffing.  
*Annual Report 1995-96*. August 1996.
10. Department of the Parliamentary Library.  
*Bills Digest No. 26 1996-97: Appropriation (Parliamentary Departments) Bill 1996-97.* <http://library.aph.gov.au/prs/pubs/bd/bd26-97.htm>
11. Rozzoli, Kevin.  
"A Seat Apart, Proposal: An independent continuing Speakership for New South Wales", *The Parliamentarian: Journal of the Parliaments of the Commonwealth*. Vol.72, No.3, July 1991. pp.182-185.

NORTHERN TERRITORY LIBRARY  
RESEARCH PUBLICATIONS

Title	No	Date
<i>Juvenile Justice in the Northern Territory: An overview of the 1990s</i> by Annie Bonney	1	April 1995
<i>Retirement Villages in the Northern Territory</i> by Annie Bonney	2	May 1995
<i>Consumer Credit in the Northern Territory</i> by Annie Bonney	3	June 1995
<i>The Northern Territory Sentencing Bill 1995</i> by Annie Bonney	4	June 1995
<i>Petroleum Mining in the Northern Territory : An overview of the 1990s</i> by Annie Bonney	5	August 1995
<i>Victory in the Pacific: Fiftieth anniversary commemorations in the Northern Territory</i> by Annie Bonney	6	August 1995
<i>Background to Registration of Bouncers in the Northern Territory</i> by Annie Bonney	7	September 1995
<i>Pay-TV in Australia: Implications for the Northern Territory</i> by Annie Bonney	8	October 1995
<i>Female Genital Mutilation: Legislative issues in the Northern Territory</i> by Annie Bonney	9	November 1995
<i>Public Drunkenness in the Northern Territory: An overview of the 1990s</i> by Annie Bonney	10	January 1996
<i>Responsible Serving of Alcohol in the Northern Territory: An overview of the 1990s</i> by Annie Bonney and Charles Brister	11	May 1996
<i>A Citizen's Right of Reply: A Northern Territory perspective</i> by Annie Bonney	12	July 1996

NORTHERN TERRITORY LIBRARY  
RESEARCH PUBLICATIONS

<b>Title</b>	<b>No.</b>	<b>Date</b>
<i>Corporal Punishment in Australian Schools: A Northern Territory perspective</i> by Charles Brister	13	July 1996
<i>Background to Mandatory Sentencing of Juvenile Offenders: A Northern Territory perspective</i> by Annie Bonney	14	October 1996
<i>Residential Tenancy Legislation in the Northern Territory: An overview of the 1990s</i> by Annie Bonney	15	November 1996
<i>X-rated Videos in the Northern Territory: An overview of the 1990s</i> by Annie Bonney	16	February 1997
<i>Prostitution in the Northern Territory: An overview of the 1990s</i> by Annie Bonney	17	April 1997
<i>Parliamentary Appropriations and the Separation of Powers</i> by Annie Bonney	18	June 1997