

Legislative Assembly for the Australian Capital Territory

**MEMBERS' STAFFING -
CONSULTANTS**

**Report of the Standing Committee
on Administration and Procedures
August 1994**

RESOLUTION OF APPOINTMENT

On 7 April 1992, the Legislative Assembly for the Australian Capital Territory adopted a temporary order which established the Standing Committee on Administration and Procedures with the following terms of reference:

- 16A (1) A Standing Committee on Administration and Procedures shall be appointed at the commencement of each Assembly to:
- (a) inquire into and report on, as appropriate:
 - (i) the Assembly's annual estimates of expenditure;
 - (ii) matters relating to the privileges of the Assembly which may be referred to it by the Assembly;
 - (iii) the practices and procedures of the Assembly; and
 - (iv) the standing orders of the Assembly;
 - (b) advise the Speaker on:
 - (i) Members' entitlements including facilities and services;
 - (ii) the operation of the transcription service (*Hansard*);
 - (iii) the availability to the public of Assembly documents;
 - (iv) the operation of the Assembly library; and
 - (c) arrange the order of Private Members' business;
- (2) The Committee shall consist of the Speaker and three other members;
- (3) The Speaker shall be the Presiding Member of the Committee;
- (4) The committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedures appointed during the previous Assembly; and
- (5) The foregoing provisions, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders."

Membership

The Speaker (Presiding Member)
Mr W Berry, MLA
Mr G Humphries, MLA
Mr M Moore, MLA

Secretary: Mr M McRae

MEMBERS' STAFFING REVIEW

Background

1. On 17 May 1994, in response to a question without notice the Chief Minister suggested that consideration be given to finding an arbitrator other than herself to decide matters in relation to Members' staffing allocations. In a letter to the Speaker of 12 May 1994, the Chief Minister suggested that such a role might usefully be played by the Standing Committee on Administration and Procedures. In response to this suggestion the Speaker, on behalf of the Committee, wrote to all Members on 10 June 1994, seeking their views on whether the Committee should undertake such a role. Three responses were received and considered by the Committee at its meeting of 19 July 1994.

2. The responses indicated that Members did have some concerns relating to staffing and that they did wish the Committee to address these concerns. As well as general concerns, the major issues raised are, briefly:

- . there should be no age restriction on who Members can hire;
- . Members should be permitted to carry over a proportion of their salary dollars to the next financial year;
- . Members should be permitted to hire consultants; and
- . Mr Humphries should have the same staffing allocation as Mr Berry on the basis that Mr Humphries performs similar duties for the Opposition as Mr Berry does for the Government.

3. The Committee was of the view that each of the issues merited consideration. However, it was of the view that two of the issues, those relating to the age restrictions placed on employees and the carry over of salary dollars to the next financial year, were not for the Committee determine. The Committee is aware of existing legislation that will prohibit in 1996 the restriction on employing persons over 65 years and considers that the concern has been addressed. The salary roll over to the next financial year is primarily a budgetary consideration and should be examined in that context.

4. The Committee has therefore focussed its consideration on the remaining two issues: the employment of consultants and the parity of staffing levels between the Opposition and Government Whip. The Committee examined the parity in staffing levels and the workloads of both the Opposition Whip and the Government Whip, Manager of Government Business and Secretary to Cabinet. It concluded that as the Chief Minister is responsible for staffing allocation, the Committee's conclusions and recommendation should be conveyed by the Speaker as Presiding Member of the Committee directly to the Chief Minister. This action has been taken. The report therefore only addresses the issue of Members' having the power to employ consultants.

5. The Committee also believes that there are a number of long term staffing issues that should be addressed and it is its intention to do so. These issues include the allocation of staff on the basis of committee membership, the possible need for electorate staff should Members' open electorate offices and the parity of staffing levels between the Speaker and the Leader of the Opposition.

CONSULTANTS

History

6. The staff employed by Members are employed under the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). The terms and conditions of employment are set down in separate provisions for the staff of Office Holders and staff of other Members. The staffing allocations to each non-Executive Member are made by the Chief Minister. The allocations are currently a total dollar amount, which includes and overtime allocation but not any allowance paid in lieu of Performance Based Pay and reimbursement of certain work related expenses. Non-Executive Members have a certain degree of discretion in how they use their salary dollar allocation. However, there is no provision in the LAMS Act for either non-Executive Members or indeed Office Holders to employ consultants.

7. The Bill, as introduced into the Assembly by the Chief Minister on 27 July 1989, made provision for the Executive to employ consultants and set down the terms and conditions of that employment. There was also a requirement for the Chief Minister to present to the Assembly at the end of each financial year an annual report listing certain details of each consultants' employment. No provisions were made for non-Executive Members to employ consultants. On 24 August of that year the Assembly agreed to a motion which stated, in part, that Members should be able to use their staff budget allocation to hire a consultancy until such matters were clarified by the passage of the Bill. The disparity between the Executive and non-Executive staffing provisions proposed in the Bill resulted in much dissension at the time the Bill was debated and a clear indication from non-Executive Members that the Bill would not be guaranteed passage in the original form. The Government of the day indicated that they were not prepared to accept the employment by non-Executive Members of consultants and as the employment of all staff for Members was on a tenuous basis without the legislation, the impasse was resolved by omitting the part on ministerial consultants during the detail stage of the Bill. A number of non-Executive Members indicated that in the immediate future they would be seeking to have the Act amended to included the provision of consultants to all Members. That scenario did not eventuate.

Issues

8. As the Second Assembly draws to a close its is beginning to come of age and the Committee believes it is an appropriate time to revisit the issue of the employment of consultants.

Accountability

9. It would appear that one of the major concerns held at the time of the original debate on the LAMS Act was that the provision of an option for non-Executive Members to employ consultants was the lack of accountability over the employment. The Committee accepts that there may well be problems in the use of such consultants if it were to go unchecked and considers that their use should be limited to those duties that a Member has on behalf of the Assembly and not for those that are political in nature.

10. The Committee considers that the problem of accountability is not insurmountable. An element of accountability could be established if drafting of any such provisions of the amending Bill were to require that Members employing consultants furnish such details as the Act requires in a report to the Assembly. If the Committee itself was to act as an approving authority for any proposal a Member might wish to make for the employment of a consultant, a further element of accountability is provided. Finally, as it is proposed by the Committee that funding for the employment of consultants come from the existing allocation made by the Chief Minister there should be some internal constraints upon the Members themselves not to use their funds for tasks that are not Assembly oriented.

Need

11. The need for non-Executive Members to have access to the services that consultants provide was another of the issues raised in the debate over non-Executive Members' having the power to employ consultants. It could be argued that such Members do not need to have access to such specialised services and, in other Australian State Parliaments which are generally larger in size, this argument may well apply. However, the Committee is of the view that in a Legislature of 17 Members there is an absolute need to have access to such specialised skills. In a Legislature of that size and with the breadth of State and municipal responsibilities, all Members are called on to have a depth of knowledge across a large range of issues, whereas in a larger Parliament with only state issues and more opportunities for Members to specialize, the range of knowledge each Member is required to have is perhaps not so great. Furthermore, many of the other Australian Parliaments have research staff in their Libraries who are able to provide quality issue related research to Members on request. It is difficult for Members in the Legislative Assembly to find staff with the depth of knowledge or skills required to meet all the demands made of them. If Members could on occasion tap into the specialist skills offered by a consultant this would alleviate the need for staff to be skilled in all fields with the risk of them being skilled in none.

Conclusion and Recommendations

12. The Committee considers that the work of the Members of the Legislative Assembly would be enhanced by the ability to have the right to access the specialist skills offered by consultancies and therefore **recommends:**

Recommendation 1

That the *Legislative Assembly (Members' Staff) Act 1989* be amended to enable all Members to employ consultants as part of their general staffing provided that it is within the existing allocation made by the Chief Minister.

Recommendation 2

That non-Executive Members employing consultants be required to have such employment approved by the Standing Committee on Administration and Procedures and that the details of the consultancies be provided to the Assembly in the form of an annual report at the end of each financial year.

Roberta McRae, OAM, MLA
Presiding Member

16 August 1994