USE OF THESIS

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ASPECTS OF POLITICAL CONTROL IN SELECTED
PUBLIC TRANSPORT CORPORATION


Thesis submitted for the Degree of Doctor of Philosophy in the Australian National University

November 1961
This thesis, and the research on which it is based, are entirely my own work.

H. L. Wettenhall
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My interest in the public corporation began during my studies for the Diploma of Public Administration at the University of Tasmania, when the adoption of that form for the management of Britain's nationalised industries was presented as an exciting new adventure in government. Most of us recognised that the public corporation was known before the advent of the Attlee Government, and in particular that Australian governments had already made frequent use of it. However it was not until its selection as the instrument of nationalisation by British Labour that it became a popular subject for study. Even to-day it is broadly true that the much longer Australian experience has interested few scholars and is neither understood nor well documented.

I therefore chose the Australian Commonwealth corporations as the topic for my MA thesis, and supplemented this with some essays dealing with various aspects of the corporation in Australia. However I became increasingly conscious that I was only skirting the subject: the work concentrated on the formal, legal, organisational features, and largely ignored the personal

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1. The class term "public corporation" came into use between the wars as the agencies possessing those loose characteristics it is meant to convey increased in number. It is now in general currency among political scientists, even though particularly in Australia alternatives such as "statutory corporation" or "semi-government body" are sometimes used. For discussion of the development of the term "public corporation" and the difficulty in defining it concisely, see D.N. Chester, "Public Corporations and the Classification of Administrative Bodies", Political Studies 11 (Feb. 1953), pp. 37-9.
element. I concluded that it was possible for the latter to distort the operation of legislative forms, but could offer very little useful information on just how or to what extent this did in fact occur.

This is, I believe, a difficulty which has confronted many students of the public corporation. It is due in large measure to the lack of empirical case-studies about the actual working of corporations, a lack which compels observers for the most part to generalise from scanty evidence or to take a primarily legalistic or speculative approach.

It is apparent that Australian governments have achieved many successes with the corporate form; but there have also been more than a few failures. The occasional crisis inquiries have usually pointed, explicitly or implicitly, to personal incapacity, tactlessness or lack of appreciation of the requirements of public service generally or of the delicate relationships which must be maintained between corporation and minister (or between board members and executives within the corporation, or even between the board members themselves), as contributing factors when corporations do go wrong. Professor F.A. Bland's remark "that institutions are nothing apart from the personalities who control them, and that the best drafted paper constitution will fail if the readiness to work it is absent", 2 is probably nowhere more true.

than in the corporations, where the many relationships involved are generally more complicated than in the departments. But these relationships are difficult to pin-point and describe; hence most contributors to our existing knowledge have been able only to hint at their importance.

Even on the formal side, Australian corporate experience presents many difficulties. As Bland pointed out a generation ago, the constitutions of public corporations exhibited almost endless variations which could not be dignified "as experiments, for their working was never observed nor their relative degrees of efficiency estimated". The picture is scarcely more orderly today: we still lack a thorough evaluation of the total practical value of this experience, and of the relative values of all its component parts. But we go on adding to the numbers of corporations, introducing more and more constitutional varieties.

Notwithstanding these difficulties, Australia was among the pioneers in the development of the corporate form of administration. This precedence is too often overlooked, even in this country. It is not so surprising that it should be ignored by overseas legislators and scholars, for larger nations seldom search the histories of smaller ones for methods to borrow or relevant experiences to profit by. Thus the Australian, F.A. (later Sir Frederic) Eggleston lamented in 1932 that "British

political thinkers who believe that social problems demand an extension of State action are still groping for an instrument and a set of sound administrative canons, apparently quite unaware that a relevant experience extending over fifty years is available in Victoria";\(^4\) and in 1935 the American, Professor M.E. Dimock, asserted bluntly in a British journal that "The United States and Great Britain have done more than any other countries to develop the public corporation".\(^5\) It is more regrettable to find an Australian transport corporation head recently suggesting to an overseas audience that "the statutory corporation system of administration is based on ideas first expressed in Great Britain twenty-five years ago".\(^6\) Certainly some of the developments in Australian public enterprise over the last generation have stemmed from overseas practice. But even

\(^4\) Eggleston, \textit{State Socialism in Victoria}, London 1932, pp.41-2. In fact an earlier generation of railway scholars and advocates of rail nationalisation in Britain had known of the Australian experiments with railway commissions before the turn of the century. But the misinterpretation of those experiments by the leading scholar, Sir William Acworth, caused the Australian experience to be written off. For Acworth's contribution, see e.g. "Government Railways in a Democratic State", \textit{The Economic Journal}, ii, 8 (Dec. 1892), pp. 629-36, and \textit{Historical Sketch of State Railway Ownership}, London 1920.


in these cases the legislative detail usually owes more to the pattern of a peculiarly Australian administrative evolution beginning with the railway corporations of the 1830's.  

For all the reasons sketched above, the Australian experience is deserving of greater attention by scholars of administration than it has so far received, and it is my hope that this study will fill some of the gaps. My primary interest has been to chart the evolution of the formal legislative provisions intended to govern the operations of public corporations, to assess the effectiveness of these provisions by comparing them with actual working practice, and in the process to examine the significance of the personal factor. As a secondary aim, I have hoped to contribute to an overdue correction of the tendency to neglect Australia's own rich heritage of administrative innovation in the sphere of public enterprise management.

The initial problem was to limit the project to a small enough field to permit a reasonably comprehensive coverage, and yet to ensure at the same time that the field chosen was such as to throw up sufficient evidence to make possible some useful conclusions. This involved selecting both the particular feature of

---

7. There was, of course, an earlier generation of administrative boards in British government, and this was reflected in nineteenth century Australian colonial administration. But the position taken here (which can be substantiated by reference to the abolition after the grant of responsible government of many such bodies in education and other fields) is that, by the time the public corporation movement as we know it today emerged in later nineteenth century Australia, the ministerial department had come to be regarded in British countries as the orthodox form of public administration.
corporate operations to be studied and the particular corporations in respect of which the study would be undertaken.

The choice of political control\(^8\) as the feature needs little explanation. It presents probably as many formal legislative variations as any other, while at the same time offering numerous opportunities for informal personal factors to distort the legal prescriptions. And it lies at the very heart of the problem of reconciling managerial autonomy and corporate accountability.

The selection of corporations to be studied took into account the likelihood that worthwhile conclusions might emerge only where these had something more in common than corporate status alone.\(^9\) Various possible classifications were considered and the functional group of corporations operating public transport enterprises was eventually chosen for a number of reasons.\(^10\) First, it included numerous corporations with a wide range of organisational patterns and prescribed relationships with ministers. Secondly,

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\(^3\) Throughout this thesis the term "political control" is used in a collective sense as referring to controls over the operating agencies exercised by the top organs of government, namely parliament, cabinet and ministers. It also covers in a general way a few controls delegated to supervisory administrative bodies.


\(^10\) This is not to say that a useful comparative study could not be made of corporations operating in other functional groupings, or coming together in classifications based on criteria such as scale (e.g., number of employees or magnitude of financial operations) or the possession of certain other common characteristics.
it presented many features which would make it difficult for governments to hold aloof from management, no matter what degree of formal autonomy was prescribed, e.g. the financing of railway deficits, political pressures for and against co-ordination of transport, the development of Commonwealth interest in recent years in the airline industry, and the significance of the transport sector in the economy generally as regards development, expenditure and employment. Thirdly, transport is an activity in which Commonwealth and states are engaged in roughly parallel activities, so that the theories and practices of both can be drawn together to a degree rarely possible in studies of Australian government. Finally, this grouping permitted the inclusion of some pioneering nineteenth century corporations, facilitating presentation of the full pattern of evolution in the control of public enterprise which seems necessary for an adequate understanding of current statutory provisions and working relations.

Within this group the study was restricted to six representative enterprises.11 Those chosen embrace the main public transport services functioning under the governments of the Commonwealth and the three states of South-Eastern Australia (New

11. The expression "selected enterprises" is used wherever it is necessary to refer collectively to the agencies forming the focus of the thesis. This term has been adopted in preference to "selected corporations" to avoid possible ambiguity in numbers. Certain of the agencies involved have undergone substantial reconstructions over the years, and it could therefore be argued that, while only six enterprises are involved, some have been operated by different corporations at different times. It has of course been necessary to refer on occasions to enterprises outside this group for comparable purposes.
South Wales, Victoria and Tasmania), other than those restricted to metropolitan areas and other than Qantas Empire Airways, the national overseas airline which is registered under company law rather than created by an individual statute. They are:

- **Victoria:** 1. The Victorian Railways
- **New South Wales:** 2. The New South Wales Railways
- **Tasmania:** 3. The Transport Commission (with its predecessor, the Tasmanian Government Railways)
- **Commonwealth:** 4. The Commonwealth Railways
  5. The Australian Coastal Shipping Commission, operating as the Australian National Line (with its predecessors, the Australian Commonwealth Shipping Board and the Australian Shipping Board).
  6. The Australian National Airlines Commission, operating as Trans-Australia Airlines.

**SUMMARY OF ARGUMENT**

The organisation of the thesis may be briefly explained. It begins (in Part A) with a brief introduction to the selected enterprises and discussion of basic concepts about corporate autonomy and control.

In the main body of the thesis I have drawn a broad distinction between "control" and "accountability", two terms frequently used interchangeably. As used hereafter, "control" signifies the descending relationship from superior to inferior levels in the governmental hierarchy, by which directions are given

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12. Listed in a rough chronological order of appearance.
and restraints imposed; "accountability" the opposite ascending (although of course interwoven) relationship by which the lower levels are required to give account of their actions (i.e. be responsible) to those above them in the hierarchy. Since the minister is usually the directing body and parliament "the ultimate guardian" to which account is rendered, this division will correspond fairly closely with that between minister and parliament. But the latter inevitably involves some overlapping and after considerable experimentation I have adopted the control-accountability division as a neater break-down and one eliminating at least some of the ambiguities.

The "control" sector is further subdivided to form Parts B and C. I have called the first "Structural Aspects of Control". It deals with three elements involved in the construction of corporations which have significance in terms of political control, namely organisational types, the selection of people to run the corporations, and basic financial arrangements. The second is concerned with "Operational Controls". It describes the development of particular techniques of ministerial supervision such as the specific powers of approval or veto of actions of established corporations and the general directive power. It also

13. Musolf's term, used as the title for his chapter on parliamentary controls in Public Ownership and Accountability - The Canadian Experience, Cambridge (Massachusetts) 1959.

14. E.g. in a budgetary situation, it is difficult to separate ministerial from parliamentary financial control; and the reporting of corporations may be for benefit of minister as well as parliament.
deals with the development of the unusual Australian "recoup clauses", by which governments and parliaments may be legally bound to reimburse corporations for losses resulting from their intervention; and with certain other special techniques of supervision applied to particular enterprises. It then goes on to examine how these provisions have worked out in practice as revealed by phases and episodes in the relations between the managements of the selected enterprises and the ministers associated with them.

The "accountability" sector is dealt with in Part D, and covers the reporting of the corporations themselves, those aspects of parliamentary supervision beyond the area of direct ministerial power (including the parliamentary question, in which the minister of course still plays a vital part), and, finally, the question of the minister's own responsibility to parliament for his actions in relation to the corporation.

This division of the subject according to its main features, rather than a chapter-by-chapter treatment of the individual enterprises, has been deliberately adopted to permit comparison and interpretation as the analysis proceeds. By this method it is hoped to avoid the need for a lengthy concluding section involving a further break-down into the individual elements of control. Part E will therefore consist only of a recapitulation of the chief claims to interest of each of the selected enterprises, some general propositions about practices and trends in corporate control, and some speculative suggestions about
implications for the machinery of government as a whole.

As is inevitable with a living subject such as this, new developments are constantly occurring. For the most part my account stops about mid-1961: already it is in some respects no longer up to date. There has, for example, been a recent reshuffle of portfolios affecting the Tasmanian Transport Commission, and a reprint of certain relevant Tasmanian legislation, which have not been noted. These are, however, questions of detail which do not affect the main argument. Of greater significance is the new airlines legislation currently before the Federal Parliament: I have endeavoured to make brief references to it where appropriate, but it is too early for the full effects to be judged.

SOURCES AND ACKNOWLEDGEMENTS

The study has drawn extensively from statutes, parliamentary debates, and printed reports of corporations and of parliamentary committees, royal commissions and other inquiries, as well as from press files and from the general literature on the public corporation, both in this country and overseas. However it would not have been possible to undertake it from those sources alone; and I am indebted to the governing bodies of all six enterprises for permission to interview their officials and to consult documents in their possession, including in a number of cases confidential files. My thanks are due also to a

15. And in the case of the old Australian Commonwealth Shipping Board, the Prime Minister's Department and Commonwealth Archives for permission to peruse many relevant files.
large number of people who have granted me interviews and/or answered written queries, including a number of politicians, commissioners and ex-commissioners, many senior officials of the corporations, and others such as officers of parliaments and parliamentary committees, Treasuries, Public Service Boards and Commissions, the NSW Ministry of Transport, the Commonwealth Departments of Shipping and Transport and of Civil Aviation, and employee associations, who are in one way or another associated with the work of these enterprises.

The full list of those who have assisted me with their knowledge and advice is far too long to enumerate, and in any case a number of public servants who should be included in it have asked particularly that they remain anonymous. However there has been a small number of people without whose considerable assistance this thesis would not have been possible in its present form, and I would like to acknowledge specially my thanks to them: Messrs W. Gilmore and N.H. Rashleigh, Secretary and Commissioners' Special Officer respectively, Victorian Railways; Messrs K.S. Gordon and J.R. Ritchie of the NSW Railways Budget Bureau and Research and Information Section respectively; Dr Lloyd Ross, NSW Secretary, Australian Railways Union; Messrs H.M. Blackwood and B.F. Denholm, Secretary and Research Officer, respectively, Tasmanian Transport Commission; Messrs L.J. Pyne and D. Mackay, Secretaries, Australian National Airlines Commission and Australian Coastal Shippin; Commission respectively; Messrs J. Martin, R.K. Goodrich and M. Bradley of the Department of Civil Aviation;
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for his guidance and valuable suggestions.
LIST OF ABBREVIATIONS AND SHORT TITLES USED IN
TEXT AND FOOTNOTES

A. Abbreviations used for the selected enterprises and the public corporations managing them (enterprises listed in usual order of treatment as explained in thesis):

1. VR
   VIC
   Victorian Railways
   Victorian Railways Commissioner(s)

2. NSW
   NSWRC
   New South Wales Railways
   New South Wales Commissioner(s) for (of) Railways

3. STCB
   STCB
   State Transport (Co-ordination) Board, 1931-2

4. THC
   THC
   Transport and Highways Commission, 1950-52

5. TGR
   TGR
   Tasmanian Government Railways

6. TTC
   TTC
   Tasmanian Transport Commission

7. CR
   CR
   Commonwealth Railways

8. CRC
   CRC
   Commonwealth Railways Commissioner

9. AAR
   AAR
   Australian-American Railways

10. ABC
    ABC
    Australian Broadcasting Commission

11. ALP
    ALP
    Australian Labour Party

12. ANA
    ANA
    Australian National Airways Pty Ltd

13. ARU
    ARU
    Australian Railways Union

14. BBC
    BBC
    British Broadcasting Corporation

15. BOAC
    BOAC
    British Overseas Airways Corporation

16. BTG
    BTG
    British Transport Commission

17. CP
    CP
    Country Party

18. CSIRO
    CSIRO
    Commonwealth Scientific and Industrial Research Organisation

19. DCA
    DCA
    (Commonwealth) Department of Civil Aviation

20. DST
    DST
    (Commonwealth) Department of Shipping and Transport

21. LPTB
    LPTB
    London Passenger Transport Board
TVA  Tennessee Valley Authority  
UAP  United Australia Party  

C. Abbreviated titles of journals and other source material (used in footnotes):

AJPH  Australian Journal of Politics and History  
AQ  Australian Quarterly  
AFSR  American Political Science Review  
CAA  Commonwealth of Australia Archives  
CIR  Commonwealth Law Reports  
CPA 1959  Debate on "Parliamentary Control of Statutory Bodies", in Report of Proceedings, (British) Commonwealth Parliamentary Association Conference, Canberra, November 1959  
CPD  Commonwealth Parliamentary Debates  
CPP  Commonwealth Parliamentary Papers  
LPPB  Liberal Party of Australia (NSW Division) Research Bulletin  
NSWPD(i)  NSW Parliamentary Debates, First Series 1879-1900  
NSWPD(ii)  "  "  "  , Second Series 1901-1952  
NSWPD(iii)  "  "  "  , Third Series 1952-  
NSWPP  NSW Parliamentary Papers  
PA (London)  Public Administration (London)  
PA (Sydney)  Public Administration (Sydney)  
PAC  (Commonwealth) Public Accounts Committee  
PAR  Public Administration Review (USA)  
FQ  Political Quarterly  
SADP  South Australian Parliamentary Debates  
SMH  Sydney Morning Herald  
TFD  Tasmanian Parliamentary Debates (Newspaper Cuttings or Mercury Reprints - folders compiled in Parliamentary Library in absence of official record)  
TPP  Tasmanian Parliamentary Papers  
VFD  Victorian Parliamentary Debates  
VPP  Victorian Parliamentary Papers  
WAPD  Western Australian Parliamentary Debates  

D. Short titles of official reports (and/or inquiring) cited on several occasions, used for greater convenience:  

AAPC Reports  
PAC, Twenty-First Report - Australian Aluminium Production Commission (Part I), and Twenty-Second Report - AAPC (Part II), (F.A. Bland, chairman), both Canberra 1955.
Banking Commission
Royal Commission on the Monetary and Banking Systems at Present in Operation in Australia (Judge J.M. Napier, chairman), Report, Canberra 1937.

Casey Board
Board of Inquiry into Working and Management of the Victorian Railways (Judge J.J. Casey, chairman), Report, Melbourne 1895.

Curlewis Commission
Royal Commission of Inquiry on Job and Time Cards System in the Railway and Tramways Workshops (Judge H.R. Curlewis, commissioner), Report, Sydney 1918.

Edmunds Commission
Royal Commission of Inquiry into Administration, Control and Economy of the Railway and Tramway Services of New South Wales (Judge W. Edmunds, commissioner), Reports, Sydney 1921-22.

Elliot Report

Fay-Raven Commission
Royal Commission of Inquiry into the Railway and Tramway Services (Sir Sam Fay and Sir Vincent Raven, commissioners), Report, Sydney 1924.

Goodman Commission
Royal Commission on the Control, Administration and Financial Position of the South Australian Railways (W.G.T. Goodman, chairman), Reports, Adelaide 1931.

Heath Conference

Hytten Report

Johnson Commission

Nixon Committee
Special Committee on the Capital Inteibtedness of the Victorian Railways (B.V. Nixon, chairman), Report, Melbourne 1933.
Northcott Committee
Commonwealth Transport Committee (J. Northcott, chairman),
The Co-ordination of Transport in Australia, Summary of Report, Canberra 1930.

Rogers Commission
Royal Commission of Inquiry into Railway Administration
(Judge F.E. Rogers, chairman), Reports, Sydney 1906.

Schneider Report
W.H. Schneider, Report on the Financial Position of the
Tasmanian Government Railways with particular reference to
Overcapitalisation, Hobart 1935.

Stead Commission (Tasmania)
Royal Commission on Tasmanian Government Railways (G.W. Stead,
chairman), Report, Hobart 1923.

Stead Commission (Victoria)
Royal Commission on the Control, Management, Working and
Financial Position of the Victorian Railways (G.W. Stead,
chairman), Report, Melbourne 1928.

Webb Report
W.A. Webb (Chief Commissioner, South Australian Railways),

Wedd Committee
Joint Committee on Transport Bill 1943 and Additional

Wilson Report
M.W.J. Wilson, Report on Tasmanian Transport Problems,
Hobart 1938.

Note on Annual Reports of the Selected Enterprises:
Although there are some variations in individual titles - e.g.
CRC, Reports on Commonwealth Railway Operations; NSWGR,
Department of Railways, New South Wales - 103rd Annual Report;
TTC, Reports on the Operations, Business and Affairs of the
Transport Department - for the sake of clarity the practice is
followed of describing all such reports in this way -

E. Short titles used for other works frequently referred to:

Blakey, "Politics and Administration"

Centenary History

Davies, "Ministerial Control"

DST, "Twenty Years"

Eggleston, "Public Utilities"

Eggleston, State Socialism

Eggleston, Swinburne

Goodrich, Economic Structure

Hytten, "Finances"
T. Hytten, "The Finances of Australian Railways in Relation to State Budgets", in The Economics of Australian Transport (Supplement to The Economic Record, vi), Melbourne 1930.

Johnson, "Accountability"
Kewley, "Some General Features"

Kewley, "The Statutory Corporation"

Hilligan, "Ministerial Control"

Musolf, Public Ownership

Poulton, "Legal and Policy Aspects"

Sawer, "The Public Corporation"

Thurston, Government Proprietary Corporations

Wettenhall, "Early Legislation"

Wettenhall, "Public Corporations"

Wettenhall, Railway Management

Winter, "Control of Nationalised Industries"
PART A

I. INTRODUCTORY

1. THE SELECTED ENTERPRISES

(a) The State Railways

Public enterprise in the form of state-owned railways appeared on the Australian scene at about the same time as the colonies gained the institutions of responsible government, i.e. during the 1850's. Private enterprise had been given every encouragement to provide rail transport facilities, but it proved unequal to the task. One of the main problems was that of raising sufficient capital: "There were far better openings in Australia for speculators than railways could hope to offer." In South Australia the government stepped in when a private project to construct a line from Adelaide to Port Adelaide folded up

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1. Except Western Australia, where responsible government was delayed until 1890.

2. The encouragement included liberal government advances, guaranteed dividends, free grants of land and other assistance such as the importing of labour from Britain at government expense.

3. E. Shann, An Economic History of Australia (Australian edition), Cambridge 1948, pp. 287-8. Other factors contributing to the failure of the private companies were the lack of technical "know-how", quarrels among directors as in the Sydney Railway Company, and difficulties in holding labour owing to the attractions of the gold-fields.
in 1851. 4 Within the next few years the Sydney and Hunter River Railway Companies in New South Wales collapsed, leaving their uncompleted task to the state; and in Victoria the Melbourne, Mt. Alexander and Murray River Railway Company sold out to the government for a nominal sum in 1856 and was followed in quick succession by a number of other companies. 5 In Tasmania the process was a little delayed, the two main companies being acquired in 1872 and 1890. 6 There were similar developments in the other colonies, and the colonial governments thus found themselves the reluctant owners of railway undertakings. But communications had to be improved and extended in order that territories could be developed. Victoria in 1856 was typical: "after having tried vainly to get the railways to the goldfields constructed by private enterprise, the State borrowed eight millions sterling to construct the lines. This decision was the forerunner of a vast extension of State enterprise ..." 7

Under government ownership and initiative the state railway systems with which this study is concerned have grown from very modest


7. Eggleston, Swinburne, p. 43.
proportions at the time of acquisition (usually just a few miles of track laid, frequently even this incomplete) to peaks, generally reached a little before World War II, of about six and a quarter thousand miles in New South Wales, nearly five thousand miles in Victoria, and 673 miles in Tasmania. To-day railway managements are more concerned with closing uneconomic branch lines than with new construction; by 1959 the respective mileages for the three systems had dropped slightly to 6,172, 4,401 and 567, out of a total Australian government railway mileage of 26,427. The systems employ approximately 52,000, 30,000 and 2,500 persons respectively, out of a total government railway employment of about 140,000.

Where acquisition took place before the advent of responsible government, the non-responsible Governors and their executive councils did establish as temporary expedients boards of control.

8. Current mileages of the other systems are - Queensland 6,387; South Australia 2,533; Western Australia 4,117; Commonwealth Railways [CR] 2,252. The figures shown for South Australia and Western Australia exclude CR mileage in those states. The mileage shown for the Victorian system includes 241 miles of border railways extending into Southern New South Wales, while that for the NSW system includes the 69 miles of standard-gauge railway into Brisbane operated by the NSW Railways [NSWR]. Details from Year Book of the Commonwealth of Australia, No. 46, Canberra 1960, p. 531.

9. Ibid, p. 541. The Tasmanian railway organisation was, however, incorporated in a composite Transport Commission [TTC] in 1935, and the latter now operates also a state-wide network of road passenger (Coach Lines) and freight services, and a small ferry and coastal shipping service. It also has other administrative functions such as conduct of the state's transport regulation and licensing services and control of secondary aerodromes. It employs in all about 3,000 persons.
separate from the regular departments. These were the South Australian Board of Undertakers created in 1851 and the Board of Railway Commissioners which replaced it in 1856; and the NSW Commissioners for Railways of 1854-58. But after the attainment of responsible government the elected ministers of the Crown, conscious of their newly won powers, lost little time in bringing the railways under their direct control. In this they were encouraged by colonial citizens who resented their inability to influence the irresponsible managements, e.g. in the matter of fare reductions — or, put in another way, who valued their new democratic rights and were determined to make the most of them. Thus by 1859 the railway systems were brought within the regular machinery of government. They were vested in departments presided over by ministers, who were fully responsible to the colonial legislatures for the activities of those departments subject only to certain variations affecting legal status. 10

The 1870's revealed growing dissatisfaction with the existing methods of departmental management, and gave a few hints of an impending movement to take the railways "out of politics". 11 It was in relation to the Victorian Railways (VR) that "the first

10. For sources and amplification of material in this paragraph, see Wettenhall, "Early Legislation", pp. 450-4, 468-70; Railway Management, pp. 5-10.

deliberate step" was taken to develop the public corporation as "a suitable instrument for government in business"; and the administrative form applied to that enterprise in 1883-84 furnished both pattern and stimulus for railway corporations in other Australian states.

Because the early rail corporations, born of sheer practical necessity, involved a high degree of inventiveness, far more consideration was given by governments, legislatures and even press and public, to their formation than has been customary with more recent creations. The contribution of later developments in the transport field has been largely a matter of adapting the original organisation and control provisions in the light of practical working experience to correspond more closely with the requirements of managing public enterprise in a democratic society. But the influence of the early railway legislation is still pervasive: it can be traced also in the features of a number of non-transport corporations in Australia, and it entered New Zealand through that dominion's railways legislation of 1887. Even where this influence cannot

14. This may explain what might otherwise seem to be disproportionate attention given them in the following pages.
15. New Zealand introduced its own variations, but acknowledged that it was using the Victorian act as a precedent; however it soon reverted to departmental control, and the subsequent railway history has seen a pendulum-swing between corporation and department, with Labour usually favouring the latter - L.C. Webb, "The Public Corporation in New Zealand", in W. Friedman (ed.), The Public Corporation, Toronto 1954, pp. 272-280. See also R.J. Polaschek, Government Administration in New Zealand, Wellington 1958, p. 56.
be directly traced, it is remarkable that corporate evolution in other fields has in many respects closely resembled that in transport.

(b) The Commonwealth Transport Enterprises

The Commonwealth's first ventures in the transport field were initiated seemingly without awareness of the considerable body of administrative experience already available in the state governmental systems. These ventures were the Trans-Continental Railway from Port Augusta to Kalgoorlie, and the first Commonwealth Shipping Line. The first was constructed both for defence reasons and because of an undertaking given to lure a reluctant Western Australia into the Commonwealth, and now forms the core of the CR network. The second was inaugurated with Prime Minister W.M. Hughes' lone-handed purchase of fifteen vessels in 1916.

16. This view is enforced by the "groping-in-the-dark" flavour of the proceedings by which the Commonwealth's first public corporation, the Commonwealth Bank, was established in 1911. Discussed in my essay "Evolution of the Idea of the Public Corporation in Australia", typescript 1959, pp. 18-19; see also below pp. 57, 126-7.

17. Circumstances reviewed at length in 1911 debates on the Kalgoorlie to Port Augusta Railway Bill, which authorised construction of the line: GDP, vols. 60-63. The CR network now consists of the following lines:

(i) "Trans-Australian": Port Pirie (SA) to Kalgoorlie (WA) - 1,108 miles.
(ii) Central Australia: Port Augusta (SA) to Alice Springs (NT), with a branch to Hawker (SA) - 822.5 miles.
(iii) North Australia: Darwin (NT) to Birdum (NT) - 316.5 miles.
(iv) Australian Capital Territory: Canberra (ACT) to Quaanbeyan (NSW) - 5 miles.

18. For the best account, see E. Scott, Australia during the War (vol. xi, Official History of Australia in the War of 1914-18) (9th ed.), Sydney 1943, ch. 18.
At the beginning both ventures were organised departmentally. The rail project was carried out by a Railway Construction Branch within the Home Affairs Department, while the "Commonwealth Government Line of Steamers" \(^1\) operated as a branch of the Prime Minister's Department. Both branches had unorthodox features—for example, being regarded as "provisional" government activities, they were exempted from staffing control by the Public Service Commissioner.\(^2\) The shipping line, moreover, had its head office in London, and there was usually an assistant minister within the Prime Minister's Department devoting his time to shipping and shipbuilding activities. However, although Hughes made much of his instruction that "these ships are to be run on commercial lines",\(^3\) both the shipping line and the railway project suffered considerably from excessive interference by the ministers in charge of them. Hughes himself, and in the latter case King O'Malley, were the chief offenders.\(^4\)

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19. By 1920 this was operating over fifty vessels, and was claimed to be one of the largest lines in the world: Melbourne *Argus*, 27.7.1921.

20. This fact led the retiring commissioner, D.C. McIachlan, who detested the growing lack of uniformity in government employment, to propose abortively in 1920 the establishment of a "Provisional Service" which would permit the greater managerial flexibility demanded by commercial undertakings while preserving a degree of consistency between them and the regular departments: Royal Commission on Public Service Administration, *Report*, Melbourne 1920, pp. 86-9.

21. These words of his in fact formed the motto of the fleet.

22. Evidence from files of Prime Minister's Department in CAA, especially CP 103 and CP 189; and debates on Commonwealth Railways Bill 1917, *3HD*, vol. 32.
The atmosphere was therefore favourable for W.A. Watt, an ex-Premier of Victoria and the architect of a number of public corporations in that state,\(^23\) to introduce legislation on the Victorian model to vest the railway undertaking in a "non-political" corporation in 1917,\(^24\) very soon after taking office in the Federal Nationalist Ministry. Despite pleas by Watt and others, however, the incorporation of the shipping line had to await the displacement of Hughes by J.M. Bruce (now Viscount Bruce of Melbourne) in 1923. Reared in the world of private capital, Bruce quickly sought to apply the forms he was familiar with to the management of the line, and established a corporation, the Australian Commonwealth Shipping Board \(\text{AGSB}\), so far removed from the government that he could assert with some validity that it "will not be a State instrumentality".\(^25\) The only important dissent came from Hughes, who failed to see the need for a board because (according to him) the line had been free from political influence without one.\(^26\)


\(^{24}\) The granting of the title of "Acting Commissioner" to the Engineer-in-Chief by the preceding Labour government (in 1916) reflected no change in the system of management, but merely a desire to give him a fitting status when in conference with the railway commissioners of the states - revealed by W.O. Archibald, ex-Minister for Home Affairs, \(\text{OPD}\), vol. 82, p. 620.

\(^{25}\) \(\text{OPD}\), vol. 103, p. 650.

However the fortunes of the line were now on the ebb. Bruce was at best a reluctant supporter, and his government imposed exacting financial conditions which the ACSB was unable to meet, owing to the shipping slump which preceded the depression and a number of other factors. The sale of the last seven vessels in 1928, to the very interests the line had been used to check, was a bitter pill for proponents of public enterprise to swallow, and it has occupied an important place in most subsequent socialist literature in Australia. This propaganda is convincing where it deals with the predisposition of the non-Labour governments of the 1920's and 1930's to associate themselves with the commercial interests propounding the doctrine that governments have no moral right to engage in business activities — indeed, they had a vested interest in "proving" that "the government stroke" would inevitably cause public enterprise to fail. But in the case of the shipping line the socialists conveniently ignore the important part played by the unions in bringing about the downfall of the enterprise, by turning many of its would-be supporters to the opposite camp, hastening the financial deterioration of the line, and making it so much easier for Bruce to justify his decision to sell. 27

27. Another factor was the squabbling among the three directors of the ACSB. I have discussed this episode in more detail, and with fuller documentation, in "Commonwealth Shipping and Airline Enterprise: A Review", mimeographed paper presented at Australian Political Studies Association Conference, Sydney 1961, pp. 2 - 8.
That decision was entrenched further in Australian political memories by the circumstances of the sale. Vessels only a few years old and costing £7,500,000 to build were sold for £1,900,000, to be paid off in instalments. Lord Kylsant, who headed the business for the Inchcape combine (the so-called "Conference Lines"), "very conveniently went bankrupt" after paying the first instalment of £580,000. The Commonwealth received some payments from the liquidator over the next decade, but finally had to write off about £300,000 as a bad debt. Then there was the alleged tampering with the personnel of the Public Accounts Committee to produce a report favouring the proposed sale. The Labour Party also contested the legality of the transaction on the ground that the government had not consulted the authority in whose ownership and control the fleet had been vested by statute; and there was concern that in his haste to sell Bruce accepted the only tender received from connections of the Conference Lines, and that the other tenderers were not given adequate opportunity to put their case.


29. Correspondence concerning "Tenders for the Purchase of the Australian Commonwealth Line of Steamers" was published in GPF, 1926-28, v, pp. 441-52. The other issues will be discussed in more detail later in this thesis.
Except that the second Commonwealth Shipping Line has been rather more (although not exclusively) a coastal than an overseas affair, its history is little more than a less spectacular repetition of that of its predecessor. It has ended differently because the Menzies Government was frustrated in its attempt to sell.

It was again a shortage of shipping and restrictions imposed by control from abroad that led to the revitalising of the ship-building industry and the re-emergence of the Commonwealth among the ranks of shipowners during World War II. Although a Labour government was in office at the end of the war, it was under a non-Labour government that these moves were begun. Even Labour did not make up its mind about the future of the new line until 1948, and there is little indication that its peacetime role was seen as anything more than one of offering competition for the closely associated companies operating on the Australian coast, a means of servicing uneconomic routes avoided by the companies, and a sure market for the products of Australian ship-building yards. When the Menzies Government came to office at the end of 1949, it hawked the ships round for years seeking a purchaser who would agree to certain conditions concerning provision of services, for the simple reason that it "believes in private enterprise". But by

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30. S.J. Butlin, War Economy 1939-1942 (Series 4, vol. iii, Australia in the War of 1939-1945), Canberra 1955, ch. 5.
1956 it conceded that it had not been able to sell on satisfactory terms, and legislated to put what Senate Opposition Leader N.E. McKenna aptly described as "its unwanted child" on a permanent footing as the Australian National Line ANL.

The influence of businessmen in government is clearly seen in the provision which requires the new Australian Coastal Shipping Commission ACSC to pursue a policy directed towards securing revenue sufficient to meet all its expenditure and to pay a reasonable return on capital to the Commonwealth. This has been interpreted by its chairman to mean that, "subject to an obligation to provide shipping services at the direction of the Minister, the first duty of the Commission under its Act is the payment of a reasonable return on its capital."

It does not, however, signify any lack of enterprise on the part of the line, which has in fact gone from strength to strength in an industry which private enterprise now appears to find scarcely more attractive than railways or tramways. In terms

34. It had previously been managed in theory by the Australian Shipping Board ASB established under the National Security (Shipping Co-ordination) Regulations, although in fact the Department of Shipping and Transport DST (originally Department of Supply and Shipping) had played a dominant role.
36. "The Chairman's Review", in ACSC, First Annual Report, 1957, p. 3. Thus a leading Australian political correspondent was moved to comment on a serious shortage of shipping services to New Guinea, and to speculate on the concurrent laying up of vessels by the ANL "because there was no profitable employment for them" - Don Whittington, "Behind the Headlines", Canberra Times, 1.8.1960.
both of number of vessels and tonnage the ANL constitutes by far the largest single fleet on the Australian coast.\textsuperscript{37} It is chiefly engaged in the carriage of bulk cargoes, but has recently entered the Tasmanian passenger and vehicular trade. When, late in 1959, it was enjoying all the publicity associated with the maiden voyage of its glamour vessel, the vehicular ferry \textit{Princess of Tasmania}, the old private line was quietly disposing of its Launceston office.\textsuperscript{38} The transfer of this important part of the coastal trade from private to public ownership did not even ripple the surface of political life; the old controversies seemed dead and buried, at least while expansion of the public sector was taking place under a conservative government. In fact the private companies had been given the opportunity to undertake the new

\begin{itemize}
\item \textsuperscript{37} 43 ships of 261,214 tons deadweight, as at 30.6.1960 - ACSC, Fourth Annual Report, Melbourne 1960, p. 7. It has also sought out overseas cargoes when good returns were offering, e.g. in the tramp trade after the Suez Canal closure in 1956-7.
\item \textsuperscript{38} Walkabout's correspondent observed that it "could not weather today's economic climate" - P. Fenton, "By Sea-Road to Tasmania", Walkabout, xxvi, 1 (Jan. 1960), p. 10. Factors include the high capital cost of fleet modernisation, and the greater entrepreneurial risk and generally lower profitability in this industry than in newer openings for private capital such as the hire purchase companies. Cf. the interest of the shipping companies in the privately-owned Australian National Airways Pty. Ltd. (ANA), whose fortunes also declined during the 1950's: Poulton, "Legal and Policy Aspects", p. 29.
\end{itemize}
Following p.13.

**ANL Equipment**

The 4,619 ton vehicular ferry, *Princess of Tasmania*. 
The case of Trans-Australia Airlines (TAA) is more complex. Since the course of events has been closely related to the question of political control, the details will be filled in during the main body of the thesis and only a bare outline is given here.

The Labour government which created the enterprise intended it to hold a monopoly of all interstate air services. However, the monopoly provision was invalidated as a result of judicial appeal, and what was designed as a monopoly organisation has in fact always operated in competition with private enterprise.

In opposition, the Liberal and Country Parties showed marked hostility towards TAA, and when they came to power at the end of 1949 would obviously have liked to dispose of it together with other public enterprises they were unloading. But they found that TAA, under the bold leadership of Chairman A.W. (now Sir Arthur) Coles and General Manager L.J. Brain and with certain advantages such as a virtual monopoly of airmail and government business, had

39. The ANL already has a second vehicular ferry on the Bass Strait run, and plans are well under way for a similar Sydney-Hobart service. These developments are dealt with more fully in my "Commonwealth Shipping and Airline Enterprise", op. cit., pp.24-6.


41. The critics, however, always ignored certain comparative disadvantages suffered by TAA: e.g. the Constitution prohibited the Commonwealth's airline from engaging in intrastate services except where the necessary powers were specially referred by state governments as in Queensland; during its early years it dutifully paid the air-route charges which its private competitors refused to do; and there was a virtual boycott of its services by many private enterprise interests - it could be (and was) argued that TAA's monopoly of government business was an attempt to offset this. For a more detailed account of TAA's development, see "Commonwealth Shipping and Airline Enterprise", op. cit., pp.9-23.
rapidly expanded to the stage where it held the dominant position in the airline industry. It had, for example, shown greater enterprise than its competitors in equipping with new aircraft types, and the government took notice of a remarkable change in the attitudes of the normally rabidly anti-public-enterprise press, and a series of Public Opinion Polls, both of which suggested that TAA enjoyed considerable popularity and that any attempt to modify its status would be electorally unwise. The main private competitor, ANA, was in marked contrast drifting into a situation of grave financial difficulty from which it appeared quite unable to recover under its own resources.

TAA's history during the decade in which the Menzies Government has been in office has been determined by this competitive situation. The government showed considerable hesitancy at first, and proposals for "pools" or "holding companies" under which the public and private operators would be associated in a virtual monopoly were considered. But in 1952 it decided to lend its considerable weight to preserving the existence of two main competitors in the industry, and reluctantly accepted that one of these, through force of circumstances, would have to be the public airline. To implement this decision a policy of "rationalisation" was
adopted\(^\text{42}\), which involved the bolstering-up of the private operator through public assistance to enable it to compete more effectively with the government's own airline, and corresponding restrictions on the latter's freedom of action.

In 1960, despite these handicaps, TAA became the first Australian airline to carry one million passengers within a single year. It had a remarkable safety record, and was at this stage operating a route mileage of 30,738 and serving 96 ports and stopping places. These figures were subsequently increased to 40,212 and 140 with the extension of operations to the New Guinea area.\(^\text{43}\)

\(^{42}\) Implemented by Civil Aviation Agreement Acts Nos. 100 of 1952 and 86 of 1957, and augmented by Airlines Equipment Act No. 70 of 1958. The second agreement followed the further decline of ANA, and its eventual replacement as TAA's main competitor by a new organisation known as Ansett-ANA. The entire ANA shareholdings were purchased by Ansett Transport Industries Ltd., subject to further Commonwealth assistance in the matter of credit and loan repayments - see Poulton, "Legal and Policy Aspects", p. 29. Mr R.M. Ansett, previously a small airline operator, thus became the leading private enterprise operator in the duopoly situation created by the Commonwealth government. From the protracted proceedings accompanying the sale of ANA it is doubtful whether another purchaser could have been found. It is therefore especially interesting to note the report that he had offered to sell out to TAA at the end of 1946. His price was the book-value of his aircraft plus £20,000 for goodwill. TAA was interested, but refused to meet the latter item and the matter was dropped. One wonders what course Australian civil aviation would have taken if this sale had eventuated. See Ansett's statement cited OPD, vol. 195, p. 3069.

2. THE CORPORATE FORM: FROM EXPERIMENT TO INSTITUTION

As already indicated, the adoption of the corporate form for the earlier Australian transport enterprises represented a major experiment in administrative organisation.

The pioneering enactments were, however, based on the negative concept of the failings of the old system of political control rather than a positive concept of the virtues of the new. The Victorians were groping in their search for an alternative method, and did not realise the full extent of the administrative revolution they were pioneering. At first, they did not see clearly that they were creating a new species of public authority - they continued to use the word "department" to describe the railway organisation, believing that they had merely given it a new and improved organ of control, not changed its basic nature. This too-modest view of the reform still affects the language of public administration in Australia - some statutes still confusingly refer to "railway departments", as do many of the rail corporations in their own reports and correspondence.

The achievement of the colonial politicians can be measured by the remarkable extent to which their "experiment" has been taken up and applied in other public enterprise contexts. Modern disciples of Duncan Gillies and James Service generally have no doubt that their creations belong to a species other than
the departments. Moreover those who followed have been able to build on to this "experiment" a new administrative doctrine which claims positive managerial advantages for the public corporation, and which indeed has facilitated major political changes such as the nationalisation of basic British industries. 44

As a result of its application to so many of the new public enterprises which emerged in the 1920's, 1930's and early 1940's, 45 the corporate form had by the close of World War II developed a momentum of its own. As a corollary of this, in Australia at least its further application was no longer regarded in any sense as experimental, nor did it require much explanation. It is now used almost automatically for activities far removed from those envisaged by its founders, and where the justification for departing from conventional departmental organisation is sometimes hard to find.

Therefore, when TAA was conceived towards the close of World War II, it was established from the beginning in accordance with what could be described as

44. British experience provides a relevant comparison between corporations set up because of their supposed managerial virtues and corporations set up primarily to take a particular activity "out of politics". The post-war nationalised industry boards all come within the first category; but cf. the Unemployment Assistance Board of 1934 - see J.D. Millet, The Unemployment Assistance Board, London 1940, esp. ch. 7 ("Taking Relief out of Politics").

45. To mention a few: in Britain, the Central Electricity Board 1926, BEC 1927, LPTB 1933 and BOAC 1939; in the United States, TVA 1933 and the many New Deal agencies established by President Roosevelt.
modern Anglo-Saxon practice in Government enterprise in which an attempt is made to separate business undertakings from the administrative functions of the State. A public corporation of this nature stands outside the civil service and is free from the detailed controls, red tape, and attachment to precedent, so necessary to the impartial administration of the law but so prejudicial to activity which calls for prompt decisions and the exercise of initiative.46

This passage may contain too generalised a view of the characteristics of the public corporation and too idealistic a view of its merits. Yet it does indicate that public corporations were widely recognised as a separate species of public authority by the time the Australian National Airlines Commission, \[\text{ANAC}\], which operates TAA, was created.47 It was, of course, already clear that they were to be British Labour's chosen instrument in the management of nationalised industries.

The first official statement about TAA announced the decision to form "a wholly Government-owned statutory authority ... to take over, operate and maintain all interstate airlines", with the Department of Civil Aviation \[\text{DOA}\] continuing as before to promote and maintain ancillary services.48 When the private Airline Operators' Secretariat retaliated with spectacular anti-


47. This is still not necessarily true of all politicians, especially in the state parliaments; and as noted above the earlier uncertainty about railway organisation is still sometimes reflected in current practice.

socialist press advertisements under slogan headings such as "Government Stroke Cannot Run Airlines", supporters of the Labour government could argue:

What of the "Government Stroke" then? ... the whole point of the matter is that a Government Department will not be running the interstate airlines ... Not the Department of Civil Aviation but a statutory authority will run the interstate airlines .... It will be able to employ whom it likes, and its employees will be the servants of the authority, not Government servants .... It will not be a Government Department ....49

A decade later the ACSC appeared as the successor to a line of shipping corporations dating from 1923, and was patterned in the mould of a series of other corporations modelled on the ABC and including the ANAC. All sense of innovation had thus disappeared. Moreover the Public Accounts Committee had the year before set the seal on the public corporation, if one were still needed, as a major institution in the machinery of government.50

To-day, particularly in Australia, it is the usual practice to use public corporations to manage public transport services, which constitute a large proportion of all transport services in the country. There are only a few exceptions. Western Australia's State Shipping Service functions under comprehensive ministerial control, and it is the minister himself

49. Ibid., p. 20 (italics in original).

50. In its AAPC Reports. The ACSC has been used in turn as the model for the corporation now being established to operate the Commonwealth Serum Laboratories.
who is incorporated. There is a general manager and the staff are outside the regular public service, but it approximates far more closely to the pre-1923 management of the Commonwealth Shipping Line than to the public corporations with which this study is concerned. Again Canberra's small public transport services are organised as a branch of the Commonwealth Department of the Interior; and Brisbane's public transport remains the responsibility of the Greater Brisbane City Council. But generally speaking even municipal enterprises have given way to corporations of the central governments. 51

And yet, while the public, statutory or government corporation has become an institution, the term itself covers a vast array of differing patterns of organisation and control. As early as 1941 Professor C.H. Pritchett expressed this opinion drawn from US experience:

Guided by no coherent administrative pattern, the existing corporations follow such a variety of forms, administer such a variety of programs, and differ so little in many cases from ordinary government departments that the term "government corporation" has been drained of much of its meaning. The paradox is that government corporations remain and even increase in numbers while the government corporation is passing away. 52

I would merely suggest that in the actual mechanics of public

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51. Thus the separate Municipal Tramways of Hobart and Launceston were in 1954 vested in a Metropolitan Transport Trust, which is the creation of the state government even though representatives of the two City Councils sit on the governing board.

administration there may never have been such a thing as "the government corporation". Certainly a considerable body of theory has developed about the term. But the American experience has shown that it has in practice never been more than a loose classification in which can be grouped, as Mr D.N. Chester puts it, what is left in the administrative and executive sphere after the departments of the central government and elected local governing bodies have been dealt with (i.e. the "rest"). This is borne out by formal differences between earlier US corporations such as the Panama Railroad Company, the Inland Waterways Corporation, the Reconstruction Finance Corporation and the TVA. The currents of opinion from which they emerged, and the roles they were intended to play, were almost as varied as those encountered in Australian experience.


54. This difficulty was partly recognised in reply to Pritchett by US scholars such as V.O. Key, Jr., "Government Corporations" in F.M. Marx (ed.) Elements of Public Administration, New York 1946, p. 240; and Harold Seidmann, "The Theory of the Autonomous Government Corporation: A Critical Appraisal", PAR, xii, 2 (Spring 1952), pp. 91-3.
3. APPROACHES TO CONTROL: BASIC CONCEPTS

In our system of parliamentary government, executive control of administration is entrusted to ministers who are responsible to parliament. The theory of ministerial responsibility assumes that ministers rule within the terms of the law for so long as they retain the confidence of parliament, and that the latter merely exercises a general oversight in the public interest. Its ultimate authority over the executive (apart from its legislative and budgetary functions) rests in its power to turn out ministries when they lose its confidence. This concept was defined during the nineteenth century as parliament came to accept that the responsibility of ministers was "the best means of ensuring that administration was carried out in accordance with its wishes." 55

In the ordinary departments, therefore, the minister has full powers of control, and in terms of this constitutional theory 56 is responsible for all acts of his department to parliament, which merely exercises a "watching brief" through e.g. its questioning procedures and committee work. The development of


56. The relationship of theory to practice will be further considered in chapter IX.
the public corporation has, however, brought with it a very different version of this relationship.

The corporation developed in Australia as a mechanism of escape from the evils (real or imagined) of this conventional system of control. The "radical democrats" who launched it were convinced that state enterprises could be well run provided only that they were effectively insulated from sectional pressures, and they therefore sought to grant substantial autonomy to their creations. In respect of the Victorians at least, Sir Frederic Eggleston was their chief literary advocate; and there has until quite recently been a large area of agreement among scholars that, for success in public enterprise, democracies should "seek salvation through renunciation".

Thus developed the "best-of-both-worlds" philosophy, the belief that the virtues of management as practised by successful private businesses could be combined with the virtues of public ownership (the ideal of public service) to the general


58. Although it is debatable whether the Irvine-Swinburne-Watt trio warranted the pre-eminence in this movement he accorded it - cf. Wettenhall, "Early Legislation", pp. 448, 474.

benefit of the state. Emphasis came to be laid on the notion of an individual responsibility of corporation leaders separate from and transcending in value the conventional permanent official-minister-parliament-electorate chain of control. The Crawford Committee, whose report led to the creation of the BBC, spoke of its ideal as a "Trustee for the national interest", kept apart from all the irrelevancies and capriciousness of party politics. This new concept of public administration was held to open the way to expert management by public-spirited leaders, motivated by their own high sense of duty and working all the better because of their freedom from "interrogation by inquisitive and irresponsible


guardians of the public interest". 62

This attempt to transfer the mantle of responsibility from the elected representatives of the people to nominated experts lies at the heart of the controversy about the corporation. Is it consistent with democratic government that a body of appointed officials should hold important powers in its own right? Can these officials be trusted to decide the public interest? Is the ultimate power of governments to remove them a sufficient safeguard of responsibility? Intellectuals and businessmen (the latter made up most of the governments and administrative inquiries favouring the corporation, especially before World War II) 63 generally


63. F.A. Bland noted that only one of the many pre-war Australian inquiries concerned with public enterprises - the 1936 Royal Commission on the Monetary and Banking Systems (Banking Commission), doubtless influenced by the left-wing ideas of one of its members, J.B. Chifley - adequately faced this question: Government in Australia: Selected Readings (2nd ed.), Sydney 1944, p. ii. A few similar doubts were expressed in pre-war Britain: see A.H. Hanson, "Parliament and the Nationalised Industries", Yorkshire Bulletin of Economic and Social Research, vi, 2 (Sept. 1954), pp. 145-6. But, by and large, the striking increase in the use of the corporation has reflected the oft and loudly repeated businessmen's dictum that departmental methods are inadequate for commercial enterprises, and the uncritical (e.g. ignoring the evidence of the Post Office) popular acceptance of this; on this see Sir Arthur Street, The Public Corporation in British Experience, London 1947, pp. 5, 14; H.R.G. Greaves, "Public Boards and Corporations", PA, xvi, 1 (Jan.-March 1945), pp.70-6; H. Laski, Reflections on the Constitution, Manchester 1951, pp. 199-200; Chester, op. cit., pp. 43-47.
answered in the affirmative. The managers they appointed came from their own economic strata in society, and could safely be relied on to share their views on fundamental contemporary issues. The system therefore did not offend their notions of democracy.

To many others influential in shaping administrative forms, however, the autonomous corporation is incompatible with the aims of the democratic state. To them the essence of democracy is the ability of citizens through electoral and parliamentary processes to gain redress for excesses on the part of public agencies, the existence of a representative of the people to answer directly for each act of government. Jeremy Bentham, who did much to lay the theoretical foundation for the ministerial department, asserted more than a century ago that responsibility meant little unless accompanied by liability to punishment; and that this in turn required clear identification of the individual responsible for a particular act. All those who value democratic processes more than business efficiency in the accepted commercial sense have not surprisingly called this interpretation of responsibility to their aid. They may argue further that public ownership involves a transference of primary aims. The new end is the achievement

64. B.B. Schaffer, "The Idea of the Ministerial Department: Bentham, Mill and Bagehot", AJP, iii, 1 (Nov. 1957), pp. 61-4. For Bentham's views on the screening effect of a board, see below, pp. 52-5.
of "a public purpose authorised by law", instead of the profit-seeking goal of private enterprise. 65 This must be taken into account in any assessment of efficiency: for example, it is by no means irrelevant to consider how effectively responsible government is preserved as one of the criteria of successful public administration. The danger is that many of those who agitate in the name of responsible government may have no regard at all for reasonable managerial requirements, that "the common interest" will be sabotaged by the "swarms of petty appetites" of "a multitude of fragmented interests". 66

The opponents of corporate autonomy 67 have included


66. Hancock, op. cit., pp. 143-5.

67. It is impossible to define this group concisely. Those who dislike the independent corporation have usually been on the political left, but not always. This paragraph includes one obvious case of right-wing opposition. Notable left-wing advocates of autonomy have been Herbert Morrison (now Lord Morrison of Lambeth) and A.L. Rouse, who argued that socialism had to justify itself by its efficiency, and that this involved making utmost use of competent managerial personnel: see Morrison, Socialisation and Transport, London 1933, especially chs. 10 - 12; and Rouse, Where Stands Socialism Today, cited F.A. Bland, "Some Implications of the Statutory Corporation", AQ, ix, 2 (June 1937), pp. 42-3. On the whole British Labour has been more inclined to accept this view than Australian Labour.
from time to time politicians, pressure groups and individual citizens resentful of loss of influence; labour interests usually distrustful of managerial elites; intellectuals and others reacting either from the lessons of fascist and communist dictatorships or from alarmist teachings about "the new despotism" or "bureaucracy triumphant"; and even some with a vested interest in the doctrine that public enterprises must fail, who try to hasten this process by the imposition of irritating controls. Because the autonomous corporation restricts or eliminates accepted democratic processes, they see it as "irresponsible administration"; and they apply their efforts to rectifying this situation.

Broadly summarised, three alternatives are open to them. The first is a return to purely departmental administration. The second is to construct alternative systems of accountability outside the traditional framework of ministerial responsibility - something of a compromise - ministerial responsibility. The third is to expand the area of conventional and parliamentary control over the existing corporations.

The first alternative is well illustrated by the activities of the Australian Federal Labour Party in the seven-year

68. One early example of this has already been given - above, p.4.
70. According to Prof. Mahalanobis, who visited Australia in 1960, this explains the loud demands that Indian corporations be subjected to full scrutiny by the Comptroller and Auditor-General, and to other departmental practices.
period from 1924 to 1931. Beginning with the debates on the bill to create the Federal Capital Commission, it waged open war against the corporation.71 At the 1929 election, "the members of the Labour party went out to kill the dragons of boards and commissions ... like knights in shining armour";72 and when the Scullin Government came to office it quickly despatched the three developmental corporations created by the Bruce-Page Government. The abolition of the Development and Migration Commission was accompanied by one of the clearest official statements of anti-corporate and pro-ministerial administrative principle I have yet seen.73 Having formulated this principle, it promptly had second thoughts, and set about designing a new corporation to manage the National Broadcasting

71. Matthew Charlton was the leader of this movement - as a member of the PAC he had become familiar with the disastrous results of "irresponsible administration" in the case of the War Service Homes Commission.


The second alternative - the seeking of new systems of accountability - may follow various courses. One is the provision through election of board members of a direct link between the corporation and the interests it serves. This idea lies behind the peculiar quasi-public corporation County Council device developed in New South Wales, and (with the addition of a government representative) the commodity marketing board device. It is of course also the basis of syndicalist notions of workers' control and the idea of the tripartite board (representative).

74. On the genesis of the ABC, see Joan Rydon, "The Australian Broadcasting Commission 1932-1942", PA (Sydney), xi, 1 (March 1952), pp. 14-15. Labour in the states generally did not share the Federal Party's anti-corporate attitude / see e.g. R.L. Wettenhall, "A State Fish and Wildlife Service for Tasmania?", PA (Sydney), xviii, 3 (Sept. 1959), p. 279/; and the flow of state men such as J.A. Lyons (ex-Tasmanian Premier, who subsequently became leader of the UAP) and J.A. Beasley (a leading member of the Lang faction in NSW) into the Federal Party, as well as an awareness of the gathering momentum of the corporation movement overseas, contributed to the change in its attitude. I have discussed this phase in more detail in my essay, "The Evolution of the Idea of the Public Corporation in Australia", typescript 1959, pp. 27-46.

75. Or government nomination to the board of one or more persons included on a panel of names submitted by the interest groups, as in the selection of e.g. the returned servicemen's representatives on the Repatriation Commission and the waterside workers' representative on the Melbourne Harbour Trust (in their 1920 and 1953 forms respectively).

enting workers, consumers and state] advanced by the 1920
Geneva Congress of the Labour and Socialist International and
extensively adopted for the management of France's nationalised
industries. It has been partly applied, often with disastrous
results, in some Australian public corporations; but Morrison
used his persuasive powers to divert British Labour from it.

British Labour in fact sought to follow something of
a middle course in the provision of Consumer Councils for each
of the nationalised industries. While having no direct part in
management, they were expected to provide a valuable meeting
place for advisory and public relations activities. It is a
development which has found little favour in Australia. A
further course is the provision either of a parliamentary
committee designed to meet the special requirements of corporate

77. See G.N. Ostergaard, "Labour and the Development of the
Public Corporation", Manchester School of Economic and Social
Studies, xxii, 2 (May 1954), pp. 200-1; and, on France, W.A.
Robson, Problems of Nationalised Industry, London 1952, ch. 14,
and M. Einaudi and others, Nationalisation in France and Italy,
Ithaca (New York) 1955. Cf. the concept of management by work-
ers and "the community" contained in the statement of methods
accompanying the "socialisation objective" adopted by the
ALP's 1921 Brisbane Conference: L.F. Crisp, The Australian

78. E.g., the Federal Capital Commission which included one elec-
ted member from 1928 to 1930; and the short-lived post-war
Stevedoring Industry Commission.

79. On these see e.g. Frank Milligan, "The Consumer's Interest",
in Robson, op. cit., ch. 3; Herbert Morrison, Government
265-8; and W.A. Robson, Nationalised Industry and Public
accountability or of a series of regular but infrequent investigating tribunals, as part-compensation for the restrictions on continuous questioning opportunities. Both methods are practised in Britain, but they also have been little used in Australia. The notion of a special efficiency audit tribunal has rarely advanced beyond the level of theoretical discussion.

The third alternative - the extension of conventional controls over the existing corporations - has proved the most popular. This is true of Australia and most other English-speaking countries, and it is the method which will be explored most fully in this thesis. At the conceptual level it is necessary to comment only that many leaders have recognised that

80. Through the Select Committee on the Nationalised Industries (Reports and Accounts) and the additional system of seven-year inquiries. Morrison in fact opposed the former and suggested the latter as an alternative, but both were adopted. The Labour Party has, however, expressed a preference for ten-year intervals between inquiries: see Lord Simon of Wythenshawe, The Boards of the Nationalised Industries, London 1957, p. 38.


82. Prof. W.A. Robson has been one of the main advocates - e.g. Public Enterprise, London 1937, p. 380; and Problems of Nationalised Industry, op. cit., pp. 321-4. See, however, A.H. Hanson's description of the Turkish "Prime Minister's High Control Board", which is designed with this purpose in view: Public Enterprise and Economic Development, op.cit., pp. 384-6.
the corporate form may lose its advantages if it returns too closely to the departmental fold by the application of departmental-type controls. Appropriate warnings have been given by authorities as diverse as Morrison in Britain,83 Professor Pritchett in the United States,84 Prime Minister Nehru in India,85 and the Australian Commonwealth Parliamentary Public Accounts Committee.86

Conversely, of course, a system of administration by autonomous or near-autonomous corporations imposes certain strains on the machinery of government, particularly in the matter of policy co-ordination.87 Professor Webb reminds us that the departmental system enjoys important advantages:

85. Letter to Speaker of Lok Sabha, cited by Shri S.V. Krishnamoorthy Rao in debate "Parliamentary Control of Statutory Bodies", GPA 1959, p. 163.
86. AAPC Reports, pp. 8-9, 62-3.
87. See e.g. H.R.G. Greaves' warning, just as the Attlee Government was embarking on its nationalisation programme, that only a static society could afford "corporative independence", that Britain's need was for co-ordination of services in the light of a generally determined economic and social policy, for integration "by the directive of political purpose"; hence his view that British Labour was "misled into welcoming" the corporation - "Public Boards and Corporations", op. cit., pp. 68-9, 70, 77. Cf. Seidman's observation that autonomous corporations have become "a headless and irresponsible fourth branch of government" in some Latin American countries, op. cit., p. 96; L.D. White's comment that they endanger the coherence of government policies as a whole: Introduction to the Study of Public Administration (3rd ed.), New York 1948, p.122; and L.D. Miscof's view that for this reason at least they are equally out of place in a dictatorship: Public Ownership, p. viii.
... we are apt to forget that, by the test of a century of experience, the departmental form is still the best device for reconciling the conflicting requirements of clear allocation of responsibility, policy coordination with other agencies of government, and accountability to elected representatives of the people. On the other hand, the public corporation, once it has ceased to be an island of administrative autonomy, is usually at a disadvantage because of its cumbersome structure at the top and seldom achieves the smoothness and simplicity of functioning which is found in a department with a good permanent head and a Minister who knows his mind. Most public corporations are handicapped because they have lost their autonomy and have nevertheless retained an administrative structure which requires, for its effective functioning, a considerable measure of corporate freedom.

One of the possibilities, as Professor Bland pointed out, is that political interests may come to exercise even greater influence over corporations than over departments, in which "certain rules of the game" (such as non-political staffing control by Public Service Boards and Commissions) have to be observed. This was well illustrated by the course of NSW politics in the 1920's and 1930's, during which considerations of political reward and advantage influenced many corporate appointments. And the results of the patronage of one ministry were not always acceptable to the next, as shown by the ludicrous situation of the Western Lands Board in 1935: "... it will be too often found", feared Bland, "that the Statutory Corporation

90. The state's tax-payers were then paying for "three sets of members, two of which have been dismissed or replaced (with compensation) because they were unacceptable to the Government of the day": F.A. Bland, "Overhauling the Machinery of Government", in W.C.K. Duncan (ed.), Trends in Australian Politics, Sydney 1935, p. 186.
is a veil for political control, which is the more sinister because the people have been led to believe that the Corporation was 'independent'.

This may be an extreme view. But in many cases the attempts made to reconcile the conflicting demands for independence of management on the one hand and accountability to parliament and responsiveness to central government policies on the other have so confused ends and means that some scholars have come to ask whether the corporation does not in fact produce "the worst of the two worlds of business and government" rather than the best.

As already indicated, the approach which has dominated corporate evolution in Australia is that which seeks to apply to greater or less degree the conventional processes of accountability. This means of course that ministers are the primary agents of control.

The original intention of the Service-Berry Government which legislated in 1883 to create the pioneer VR corporation was somewhat different. No doubt as a result of its awareness of contemporary criticisms of "irresponsible" administration, 93

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92. E.g., Kewley, "Some General Features", p. 23; cf. fear expressed by Chester, op. cit., p. 45.

93. E.g., the old boards or councils of education, whose replacement by ministerial departments had not long been achieved.
and particularly the need of the Liberal leader, Graham (later Sir Graham) Berry, to justify his so-called "celebrated somersault" on the question, it took care to indicate its conviction that ultimate accountability to parliament could be preserved, even though ministerial control was to be well-nigh abolished. The desire to eliminate the minister stemmed from the circumstances in which the commissioner experiment originated. But even before the 1883 proposals became law, he was written into the bill, in the legal form of Governor-in-Council, much more than its authors had intended.

Within a decade there was further evidence of the inadequacy of the 1883 concept of direct accountability to parliament; and its currency was cut short by both Sir Henry Parkes in New South Wales and William Shiels in Victoria. Parkes was still the counsel of restraint par excellence, whereas Shiels sought to facilitate political intervention at numerous points. But despite these important differences, their joint efforts served to focus the attention of Australian parliaments on the ministerial link with corporations.94

In fact the control provisions of most statutes dealing with the corporations concentrate almost entirely on this link. With all its imperfections, it is therefore more clearly defined than the other elements of control. To illustrate: the

94. For details see below, ch. V.
acts purport to prescribe just what ministers may or may not do in relation to the corporations, but they are generally silent on matters such as the jurisdiction of parliamentary committees and the eligibility of parliamentary questions. For the latter we are dependent on an imprecise body of custom and precedent and on a loose application of other statutes and rules not designed with the special position of corporations in mind. Other parliamentary systems on the British model are not much different in this respect. The acts relating to the individual corporations prescribe ministerial powers, whereas other relevant matters are dealt with in a loose collection of Speakers’ rulings, Standing Orders, precedent, and so on. But these matters are of secondary importance: parliament must very largely rely on the minister. 95

To the extent to which ministers are effectively accountable to parliament ministerial and parliamentary control will coincide. This, however, is not saying a great deal. Not only has the adoption of the corporate device limited the subjects for which the minister is held responsible, but the proven need for flexibility and difficulties in defining respective ministerial and corporate spheres of action have further weakened traditional concepts of responsibility. This desirable

coincidence of powers may not therefore be achieved in practice. It becomes possible for ministers to exercise powers while disclaiming responsibility, by taking advantage of these difficulties. The influence they exercise may be far greater than parliament intended.

The role of the minister is, indeed, of supreme importance. L.D. Musolf pointed out in relation to Canada that it is "Probably the most crucial - and yet the most elusive - element in a system of corporate accountability". It is obvious from the conclusions of students of the British system that it is equally crucial and elusive there; and this is also true of Australia. No apology should therefore be necessary for focussing the main spotlight in this thesis on the ministerial relationship.

PART B: STRUCTURAL ASPECTS OF CONTROL

II. HYDRA-HEADED OR SINGLE-SEATED?

1. VARIATIONS IN THE PATTERNS OF GOVERNING BODIES

Most modern writings on public corporations assume that there must be a board of directors or commissioners, i.e. that the top layer of the corporate organisation must be plural or "collegiate" in character, as distinct from the single-man apex of the orthodox pyramidal department. Thus John Thurston wrote in 1937 that this was "almost universal practice";¹ J.E. Hodgetts added that the 1936 changes in the Canadian Broadcasting Corporation, which made a part-time board of governors responsible for policy and a separate general manager responsible for administration, brought that structure "into line with current arrangements in private and other public corporations";² and Mr. Chester's comparison of pre- and post-1945 British corporations showed none without a multi-member board.³

The board can take various patterns. Britain has,

¹. John Thurston, Government Proprietary Corporations, p. 149.
for example, been concerned with the question whether it should consist primarily of policy-makers or primarily of executive officials with line responsibilities: this argument has been reflected in fluctuations from the "policy" type to the "functional" type in the case of the National Coal Board. Other questions which follow are whether the members should serve in full- or part-time capacities, the status of the general manager or other chief executive where a purely policy board is involved, and the size of the board itself.

Yet Australian experience not only shows numerous variations of practice concerning multi-member boards, but also clearly disproves any suggestion that such boards are a necessary feature of all corporations. The single commissioner with the legal status of either "body corporate" or "corporation sole" is quite familiar; and even on occasions it is the "general manager" alone who has the corporate status and exercises the statutory powers.

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4. This originally was entirely functional; as a result of the Burrows Committee recommendations it became predominantly a policy board in 1949; but following the report of the Fleck Committee in 1955 the functional principle was restored to predominance — see A.H. Hanson, Public Enterprise and Economic Development, London 1959, pp. 393-9.

5. Professor G. Sayer has commented on the "peculiar and unsatisfactory nature of 'corporation sole' theory at common law", and illustrated the strange case of the Queensland Fish Board which was given this status despite the fact that it had four members; he suggested the draftsmen must have been "thinking of the Board's most succulent offering, rather than its legal structure" — "The Public Corporation", p. 17.

6. As in the Tasmanian Government Insurance Office, where there is no board or commission. However it is unlikely that the position of the general manager of that enterprise could vary significantly from that e.g. of the Victorian Insurance Commissioner.
The selected enterprises furnish examples of a number of different patterns in the organisation of the governing bodies of corporations. The reasons for their adoption in particular cases and especially for the occasional reconstitutions form an interesting study in themselves. However considerations of space and unity of theme necessitate limiting this discussion to a simple outline of the patterns encountered (intended merely as a key to explain subsequent references to the various managements), and an indication of possible relationships between the various patterns and the question of political control. 7

In brief the present position is this: the VR retain the time-honoured three-commissioner pattern; the NSW and GR operate under single commissioners; the TTC has a board consisting of the three senior executive officers of the undertaking; 8 and only the ANL and TAA attempt to divide policy and administrative functions between a part-time governing board and a separate full-time general manager. All three state enterprises have, however, undergone significant changes over the years. The main features are summarised in Table 1.

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7. It will, of course, be necessary to refer again in later chapters to certain reconstitutions which have been directly related to changes in the techniques of political control.

8. The Commissioner for Transport has executive responsibilities in respect of the other branches equivalent to those of the Associate Commissioners for the Railways and Road Transport Branches.
### TABLE 1: CONSTITUTIONS OF GOVERNING BODIES

### IN OUTLINE

<p>| | |</p>
<table>
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| Key: | a. Year and authorising act  
|   | b. Legal title of corporation  
|   | c. Membership of governing body  
|   | d. Relations between members, etc.  
|   | e. Appointment and tenure \( \text{NE} = \text{not exceeding} \)  

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**VICTORIAN RAILWAYS**

1 - a. 1883. Victorian Railways Commissioners Act 47  
Vic. No. 767  
- b. Victorian Railways Commissioners.  
- c. 3 full-time commissioners, one to be chairman.  
- d. Chairman given overriding deliberative power. \( \text{This provision altered in 1891, when minister empowered to decide matters on which chairman differed from his colleagues: Railways Act 55 Vic. No. 1250.} \)  
- e. By Governor-in-Council. 7 year terms. \( \text{Tenure also varied in 1891 to NE 7 years.} \)

2 - a. 1896. Railways Act 59 Vic. No. 1439  
- b. Victorian Railways Commissioner.  
- c. Single full-time commissioner.  
- d. Assisted by senior branch heads forming a "Railways Board of Advice".  
- e. By Governor-in-Council. NE 7 years.

3 - a. 1903. Victorian Railways Commissioners Act 3 Edw. VII  
No. 1825  
- b. Victorian Railways Commissioners.  
- c. 3 full-time commissioners, one to be chairman. \( \text{Varied in 1956 in that one of the other commissioners made deputy chairman, with salary advantage over his colleague: Railways (Commissioners) Act No. 5973 of 1956.} \)  
- d. Chairman given overriding deliberative power.  
- e. By Governor-in-Council. NE 4 years. \( \text{Tenure altered to NE 7 years in 1915: Railways Act (No. 2) No. 2814 of 1915.} \)
   b. Railway Commissioners of New South Wales.
   c. 3 full-time commissioners, one to be chief commissioner.
   d. Equal voting powers.
   e. By Governor. 7 year terms.

   * For explanation of the position of the earlier sole commissioner - merely an officer of the Public Works Department - see Wettenhall, "Early Legislation", pp. 454 - 57.

2 - a. 1906. Railway Commissioners Appointment Act No. 7 of 1906.
   b. Chief Commissioner for Railways and Tramways.
   c. One chief and 2 assistant commissioners, all full-time.
   d. Chief commissioner given full executive authority;
      the assistants served as branch heads of the railway and tramway services respectively, which (in NSW) were associated in the one corporation until 1930.
   e. By Governor. 7 year terms.

   b. Railway Commissioners for New South Wales.
   c. One chief and 3 assistant commissioners, all full-time.
      * but one of the latter died within a few months of appointment and was not replaced, so that the 3-commissioner system was soon restored in practice.
   d. Chief commissioner given overriding deliberative power as in Victoria; and also power to recommend to Governor the respective duties of the assistant commissioners.
   e. By Governor. 7 year terms.

4 - a. 1924. Government Railways (Amendment) Act No. 73 of 1924.
   c. One chief and 2 assistant commissioners, all full-time.
      * Also 4 "area commissioners", but they were appointed by the corporation itself and were clearly part of the subordinate organisation.
   b, d and e. As 3, except that chief now legally entitled to report to Governor on appointment of assistants.
5 - a. 1931. (i) State Transport (Co-ordination) Act No. 32 of 1931.
(ii) Government Railways and Main Roads Amendment Act No. 61 of 1931.

b, c, d. (i) This act – the first stage of the Lang plan – subjected the 1924 organisation to a separate supervisory corporation, the State Transport (Co-ordination) Board. This consisted of 4 commissioners, one to be full-time chief commissioner (of transport) – the others might be full-time or part-time according to the terms of their appointment. Decisions by majority with casting vote to chairman.
(ii) This act abolished the two assistant railway commissionerships, and concentrated all powers remaining in the railway corporation in the chief commissioner alone.

e. All appointments by Governor. Tenure – STCB, NE 2 years (but subject to earlier termination if and when second stage of Lang plan introduced); NSWRC, as before.

6 - a. 1932. Ministry of Transport Act No. 3 of 1932.*
b. Transport Commissioners of New South Wales.
c. One "Chief Transport Commissioner" and seven other "Transport Commissioners" (who were to be the heads of the seven major branches), all full-time, plus the Commissioner of Police serving ex officio.
d. Chief given overriding deliberative power.
e. By Governor, but chief entitled to report on appointment of the 7 transport commissioners. Chief NE 7 years; other transport commissioners apparently held permanent office.

* This second stage of the Lang plan combined the existing rail, tram, main roads, road transport regulation, and co-ordinating corporations in a single body, described also as "Department of Transport" or "Ministry of Transport".

7 - a. 1932. Transport (Division of Functions) Act No. 31 of 1932.*
b. Commissioner for Railways, controlling a "Department of Railways".
c. One commissioner and one assistant commissioner, both full-time.
d. Commissioner given full executive authority, including power to determine duties of assistant.
e. By Governor. Tenure – commissioner, 7 years; asst., NE 7 years.

* The Bruxner plan, which broke down Lang's
composite organisation into separate rail, road transport and tramways, and main roads corporations, linked loosely in a "Ministry of Transport" - on the NSW use of the term "ministry" see below, p.237.

   b, c and d. Subordinated the 1932 organisation to a new supervisory corporation, the New South Wales Transport and Highways Commission (THC). This had 8 members - a full-time "Director of Transport and Highways" as chairman; the 3 commissioners in charge of the constituent "Departments" of the Ministry of Transport and the President of the Maritime Services Board; and three part-time members representing transport employees, rural industry and trade and commerce respectively. Minister arbitrates where director differs from majority decisions.
   e. Existing corporate heads serving ex-officio. Director appointed by Governor for term NE 7 years. "Representative" members appointed by Governor on nomination of minister, to hold office "at will of Governor".

9 - a. 1952. (i) Transport (Division of Functions) Amendment Act No. 15 of 1952.
   (ii) Transport (Division of Functions) Further Amendment Act No. 24 of 1952.
   b. (i) Formally abolished the assistant railway commissioner-ship. This had not in fact been filled since about 1950.
   c. (ii) Abolished the supervisory THC. The current governing body therefore consists of a single full-time commissioner, although a position of "Senior Administrator" has developed as head of the subordinate hierarchy, and performs much the same function as the old assistant commissioner.
   e. Tenure of NSWRC: 7 years until 1956, thereafter NE 7 years. Change effected by Transport (Division of Functions) Commissioner for Railways Act No. 2 of 1956.

TASMANIAN TRANSPORT

   b. Commissioner for Railways.
   c. Single full-time commissioner.
   e. By Governor. 4 year term. Tenure varied in 1924 to 5 years and then NE 5 years: Railway Management Acts 14 Geo. V No. 48 and 15 Geo. V No. 2.
2 - a. 1938. Transport Act 2 and 3 Geo. VI No. 70*
   b. Transport Commission.
   c. One full-time "Commissioner for Transport" and two
      part-time "Associate Commissioners".
   d. Commissioner is chief executive, with casting vote.
   e. By Governor. Commissioner: for such term not less
      than 3 years and not more than 5 as specified in
      instrument of appointment; associates: for the
      same term as commissioner.

   [* This brought about the amalgamation of all
    state transport functions.]

   b. As 2.
   c. One commissioner and two associates, all full-time,
      The General Manager of Railways and the Administrator
      of Road Transport, the senior branch heads, automatic-
      ically fill the latter positions.
   d. As 2, except that the associate commissioners hold and
      exercise statutory powers in respect of their own
      branches.
   e. Commissioner as 2. Associates by Governor on recommen-
      dation of commissioner, and hold office to 65.

   [* Details in respect of the latter are found in the
    Railway Management Act 1937-60 and the Traffic Act
    1925-57 respectively, following amendments made to
    those acts by the 1949 Transport Act (No. 2).]

COMMONWEALTH RAILWAYS

   b. Commonwealth Railways Commissioner.
   c. Single full-time commissioner.
   e. By Governor-General. NE 5 years.

COMMONWEALTH SHIPPING

1 - a. 1923. Commonwealth Shipping Act No. 3 of 1923.
   b. Australian Commonwealth Shipping Board.
   c. From 3 to 5 full-time directors, one to be chairman.
      In fact 3 were appointed.*
   d. Equal voting powers, with casting vote to chairman.
   e. By Governor-General. Initial appointments - two
      members: 5 and 4 years respectively; and others:
      not exceeding 3 years. All subsequent appointments
      NE 3 years.

   [* There were also two general managers (one in
    Australia and one in London), although the act did
    not provide specifically for them. This board
in fact remained in nominal existence until 1949 to wind up the sale of the ships and administer the Cockatoo and Schnapper Islands lease, but from the disappearance of the shipping line in 1928 it consisted only of regular public servants serving *ex-officio*. It was finally wound up to avoid confusion with the distinct board operating the second shipping line, by the Cockatoo and Schnapper Islands Act No. 30 of 1949."


b. Australian Shipping Board."

c. Virtually an inter-departmental committee, it consisted of five public servants representing various departments and serving *ex-officio*, together with four other part-time members.

d. Equal voting powers, with casting vote to chairman.

e. By the minister, to hold office on such terms and conditions as he determines.

*/ For the arrangements during World War II (e.g. division of Commonwealth shipping functions between the Shipping Control Board, the Commonwealth Government Ships Chartering Committee and so on - see DST, "Twenty Years", pp. 4 - 8. The ASB not only inherited from these bodies the Commonwealth-owned ships, but also the remaining war-time controls over private shipping; and its authority diminished as the latter were relaxed. After the change in government in 1949 it rarely met, effective control of the line fluctuating between Mr. C.M. Dewey, nominal vice-president of the ASB who also held appointments as "Director of Shipping" (an office incorporated separately under the same regulations) and general manager of the Commonwealth line; and a "Departmental Management Committee" on which he sat with three officials of the DST."


b. Australian Coastal Shipping Commission.

c. 5 commissioners (including chairman and vice-chairman) constituting a part-time "policy" board, with a separate statutory general manager as chief executive officer.

d. Equal voting powers, with casting vote to chairman.

e. By Governor-General. Initial appointments: 5, 4, 3, 2 and 1 years; all subsequent appointments: 5 years.

*/ The Shipping Act No. 6 of 1949, designed to place the ASB of 1925 on a permanent footing, was never proclaimed.*/
TRANS-AUSTRALIA AIRLINES

   c. As for ACSC^*. In 1959 a 6th commissioner was added: Act No. 3 of 1959/.
   d. As for ACSC.
   e. By Governor-General. Initial appointments: for 5, 4, 4, 3 and 2 years; all subsequent appoint­ments: 3 years. Tenure also varied in 1959, all terms now NE 5 years./

   / Except that the ANAC's first chairman (Coles) served full-time./

These organisational distinctions bear on the question of political control in various ways. For example, it seems likely at first glance that the multi-member authority will enjoy greater strength in relation to the political executive than the one-man corporation. Again, it is often assumed in conventional administration that there is a rough equation between politics and policy, in which case corporations with a distinct policy-forming organ might be expected to be further apart from the politicians than those without. And a third implication for control stemming from the constitutional arrangements for governing bodies concerns the tenure of office of members.

2. IMPLICATIONS FOR CONTROL

   (a) Hydra-headed v. Single-headed

   To many the multi-member board is "the trade-mark of a
government corporation"; without which there can be no effective autonomy. This view is taken, for example, by American scholars such as Dimock and Thurston. The latter, in his 1937 analysis of corporations in English-speaking countries, claimed to find only two operating under a single head, and he said of these that they were no more than "agent of an executive officer" (i.e. minister). Other Americans, however, have put an opposite view. Thus, Harold Seidmann described the board as one of "the relatively superficial manifestations of the corporate form"; while the Brookings Institution commented that "there appears to be nothing inherent in the corporate form of organisation to require a board instead of a single administrator". The Hoover Commission said much the same thing.


10. Thurston, Government Proprietary Corporations, p. 149. The two were the US Inland Waterways Corporation and the CR. However he was confused by the statutory tangle in New South Wales and erroneously believed the NSW still to be functioning under a three-man board (ibid., p. 166). See also below, p. 238. He missed others by confining his investigation of the Australian states to New South Wales and Victoria. On Dimock, see below, p. 69.


13. Hanson, op. cit., p. 401. Its view that boards were not essential and that where they did exist they should be of advisory character only, soon found application in Puerto Rico, where the board of a major development corporation was abolished in favour of centring control in a single "administrator".
Claims that relations with the government might be affected by the size of the board were first made in reference to the selected enterprises when the VR was converted from multi-commissioner to single-commissioner management in 1896. The relevant legislation arose from the deliberations of the Casey Board in the previous year.14

The bill drafted by the Turner Government involved a recognition that the earlier three-man commission had not succeeded in eliminating disruptive political influences, and it sought the substitution of a Victorian Railways Trust to handle policy and supervise management, with a separate general manager responsible to it for detail administration. But, in what was described as "the pantomime season"15 in legislation, it emerged from parliament in a shape which could hardly be identified with the original intention. The eventual compromise acknowledged a South Australian precedent and involved deletion of the trust idea and its replacement by "a general manager to be called the Commissioner",16 who would exercise powers similar to those previously held by the three-member board.17 Opponents

15. VPD, vol. 80, p. 5285.
16. Ibid., p. 5934.
17. But with the important protection of the recoup clause. See below, pp. 253-62.
of the change argued that a single commissioner would inevitably be in a weak position: he would stand face to face with the minister, without any "buffer" or intermediate authority, and the undertaking would be deprived of the strength and breadth of judgment several minds could give. But Shields' emotional appeal to the Legislative Assembly not "to return like dogs to their vomit" (i.e. an authority legally independent of the government as in 1883 - the independence had been reduced considerably in 1891) then carried the day.

But considerations of scale have often seemed more important in the evolution of the selected enterprises. Thus, when Victoria returned to three commissioners in 1903, the reason given was simply that the enterprise had grown too big for a single manager to cope with adequately. 20

Again it was assumed in Tasmania in 1910 that only the larger railway systems required (or could afford) more than one commissioner; Labour men protested against putting too much power in the hands of one man, but their alternative was full ministerial control, not a multi-member board. 21 When the Lyons

18. A similar view was taken by the Nationalist opposition in Tasmania in 1938. It argued that a single commissioner would be unlikely to take a strong line when facing the government on whom he was dependent for reappointment; and as a result the three-man TTC was substituted for the single Transport Commissioner originally proposed.


20. VPD, vol. 98, pp. 2459-60; vol. 103, p. 3095. In 1883 - when the three-commissioner pattern was first established - the general argument was simply that three minds were better than one.

21. TFD (Newspaper Cuttings), 1910, pp. 96-7, 142-3.
(Labour) Government attempted to create a three-man Board of Control in 1927, it claimed that it had gone into the matter carefully and had come to the conclusion that "the best form of control for a great public trading department" was a board. The problems were too complex for one man to manage, since no individual could be "a universal expert"; a board consisting of experts from each of the commercial, traffic and engineering sides would therefore give better all-round command. The Nationalist opposition and the Legislative Council countered with the size argument: the Tasmanian Government Railways could not be compared with larger systems in which three men might be needed. But they also introduced an argument suggestive both of Bentham's classic comment about the screening effects of a board and of not infrequent experiences of disharmony in such bodies when they maintained that it was better to

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22. It was the experience of friction between three executive commissioners which caused South Australia to establish the precedent Victoria had eventually followed in 1896. Friction (or at least lack of co-ordination) occurred also in the Queensland and New Zealand Railways before the turn of the century, in the NSW in 1900-06, in the ACSB in 1925-7, and in the Western Australian Railways in the early 1950's. Cf. the unhappy experiences of the original Canadian Radio Broadcasting Corporation and the original TVA which followed this pattern, cited Hodgetts, op. cit., p. 455, and O.H. Pritchett, The Tennessee Valley Authority, Chapel Hill 1943, pp. 162-3. Pritchett quoted (at p. 185) Thomas Jefferson's appropriate observation that "Internal jealousies and dissensions ... will ever arise among men equal in power, without a principal to decide and control their differences". Victoria wisely gave an overriding deliberative power to the VR chairman. On the NSW crisis, see especially Royal Commission of Inquiry into Railway Administration, und. chairmanship of Judge F.E. Rogers [Rogers Commission], Hanogan, Sydney 1906.
have one man "at the head with complete responsibility vested in his hands"; that with three there would be three different policies and the organisation would be, "like Medusa's head – all snakes"; and that while clear responsibility "created efficiency ... divided control would retard efficiency". 23

The Benthamite position is significant. At the very beginning of US administration, Washington had insisted on having single responsible officials at the head of his departments, rather than collective boards. 24 This precision, as opposed to the confusion and diversity of contemporary British administration, was admired by Bentham, who did much to lay the theoretical foundation for the modern British ministry. 25 In particular he roundly condemned the existing boards and commissions whose collegiate forms clouded the question of responsibility – e.g. "a Board, though in so great a degree unapt as a security for good rule, is ... completely apt as a security for misrule"; and the better-known passage:

A board, my Lord, is a screen. The lustre of good desert is obscured by it; ill desert, slinking behind, eludes the eye of censure: wrong is covered by it with a presumption of right, stronger and stronger in proportion to the

23. TFD (Mercury Reprints), 1927, pp. 24-7, 54-5.


number of the folds: and each member having his own circle of partial friends, wrong, in proportion again to the number, multiplies its protectors. 26

The idea of a uniform public service made up of "single-seated" 27 ministries fully responsible to parliament developed from the Benthamite teachings. 28 In Britain the choice has usually been clear cut, between the single-seated department and the multi-member corporate board. But in the United States, as we have seen, the mid-way device of the single-seated corporation has been accepted as a further possibility. Those who reject the rigid Dimock-Thurston view concede that single-seatedness on the one hand and the status and methods of the public corporation on the other are not mutually exclusive. Indeed, the application of the one to the other might well have the advantage of offering a clear

26. J. Bowring (ed.), The Works of Jeremy Bentham, Edinburgh 1843, vol. ix, p. 217; and vol. v, p. 17 (italics in original). Professor C.H. Pearson's argument in the Victorian Parliament in support of the 1883 Railway Commissioners Bill was the very antithesis of this: he asserted that a three-member board was preferable so that acts against powerful interests who might retaliate could not be traced to a single individual - VPD, vol. 43, p. 205.

27. Bentham's term, used e.g., op. cit., vol. v, pp. 17-19; vol. ix, p. 216.

28. Mill and Bagehot developed the theory of the ministry Bentham had begun. The former endorsed his view that boards hid abuses and prevented the exaction of responsibility; J.S. Mill, Considerations on Representative Government (World's Classics ed.), p. 326. The latter ruled out all conciliar forms, and presented a very clear statement of the virtues of having a temporary amateur minister accountable to parliament with a single expert but subordinate "permanent head": Walter Bagehot, The English Constitution (4th World's Classics ed.), ch. 6.
line of responsibility and at the same time retaining other virtues of the corporate form. 29

This is by no means an uncommon supposition in Australian corporate history. It is recorded that Queensland Labour Premier E.M. Hanlon strongly favoured the single incorporated commissioner, because "in his experience, a multi-man commission or board always hid behind the anonymity of the corporation ... he preferred to know the man who was responsible". 30 In the minds of the NSW legislators also this argument apparently outweighed that of size — for even as their railway system was nearing the peak of its mileage, they decided finally to depart from the board pattern. In neither case, however, was the corporate form rejected.

A significant controversy developed in relation to the organisation of the Commonwealth Bank. This provides an illustration of the use frequently made of the private enterprise analogy in designing public corporations, and shows that differences in pattern can often be traced to differing interpretations of that analogy. It also shows that the notion of corporate independence is a relative one, or at least capable of varying

29. See e.g. H.A. Van Dorn, Government Owned Corporations, New York 1926, pp. 270-4, in which boards with anything more than advisory functions are condemned.

30. T.A. Lang (Assoc. Commissioner, Snowy Mountains Hydro-Electric Authority), "Top Management in a Statutory Authority", mimeographed, Commonwealth Public Service Board Training Document 59/201, 1957 address, p. 4. Lang, however, believed the duties falling on a single commissioner would be too onerous and too complex for successful management (p. 5).
interpretations.

When in 1910 the Fisher (Labour) Government announced its intention of appointing a single "governor" to control the proposed bank, the opposition feared the vesting of wide powers in a single individual and wanted a board of directors instead. It was composed largely of businessmen, who were of course merely seeking to apply the form of commercial organisation they were familiar with. The government, however, saw parliament as the board:

... the circumstances are new and peculiar. I do not think the fact that there is only one man makes the conditions dangerous. I believe they are stronger and safer because we are putting our whole trust in one man ... if we get the right man, I have no doubt that we are pursuing a right course in that regard. No doubt there will be criticism of this proposition, and it may be contended that the general manager of any of the existing banks is controlled by his directorate. I have heard, however, on excellent authority, that about the best thing a board of directors of a bank ever do is to select a competent general manager, and then religiously draw their fees. In our case we have what is equal to a board .... What I mean is that Parliament meets at least once a year ... provision is made to enable Parliament to be informed, and Parliament can by legislation provide a remedy.32

The first governor, Sir Denison Miller, reportedly accepted

31. Following the self-contradicting proposal of the 1908 Brisbane Inter-State Labour Conference that the "people's bank" should be organised "purely as a Government Department, absolutely free from political control" - see L.G. Jauncey, Australia's Government Bank, London 1933, p. 49.

32. Prime Minister Andrew Fisher, in OPD, vol. 62, pp. 2644-5. However Sir Robert Garran has recorded in Prosper the Commonwealth (Sydney 1958, p.153) that the government left most of the work of designing the act to the draftsman. The Crown Solicitor received this instruction: "A Bill is required for the establishment of a Commonwealth Bank" - just those words and nothing more; and political exigencies demanded that the Bill should be ready the next day."
office on condition that "the bank was to be absolutely free from political control" and a comparison of the 1911 legislation with later acts creating corporations (even of the board type) will show that the early fears that the bank would become subject to such control were indeed answered by placing, in the words of one historian, "almost autocratic power" in his hands.

One-man command was a feature of most early Commonwealth corporations - not only the CR, but also the War Service Homes Commission and the Institute of Science and Industry as well as the bank. It was the government of "big business" (the Bruce-Page Ministry) which provided a board of directors as well as a governor in its 1924 banking legislation (and multi-member boards in the other corporations it created). At this time Labour contested the composition of the board rather than the board idea itself; but in the bitterness of the bank-


34. Commonwealth Bank Act No. 18 of 1911.


ing struggle of 1930, the Scullin Government unsuccessfully proposed the reconstitution of the general and savings bank sections under a single "governing manager".

The 1936 Banking Commission recommended continuation of the board, but in 1945 a Labour government restored control to a single governor assisted by an advisory council of senior Commonwealth Bank and Treasury officials. The change was intended to ensure "that an institution of this character should be under management which is entirely divorced from private interests", i.e. to make it independent of the influences Labour feared. But to the opposition, one-man control increased possibilities of political influence by a socialist government:

... one man, himself dependent for appointment on the government of the day, is not in a strong position to resist or argue about the instruction of a Treasurer or a government; but a board of directors, consisting of people who are in every other respect independent of the Government, is in a far better position to say, "We think this is wrong. We object to it. We are prepared to argue about it, and, if necessary, to tell the people and Parliament about it."

Moreover,

The great advantages of a board are the bringing together of a diversity of experience, the added judgment produced by frank discussion by competent men, the added strength involved in joint responsibility, and the publicity which


a board of directors strongly adhering to a view can secure for that view in the event of a great conflict of opinion ...  

On attaining office, Mr Menzies lost no time in introducing legislation to restore the board, but Labour fought the issue to the second double dissolution in the Commonwealth's parliamentary history before it eventually became law in 1951.  

Labour continued to advocate control by a single governor.

To summarise, the case for the multi-member authority generally rests on a few propositions, which may be used separately or in various combinations. They are: that three (or more) minds are better than one; that the board permits inclusion of varied experiences or even representation of interests; that some undertakings are too big for one man to cope with; that the board is widely used in private enterprise and may therefore be presumed to be useful in public enterprise also; and - certainly not least - that there is a strength in numbers which is a valuable safeguard for corporate autonomy.

The case for the single-seated authority rests largely on the arguments against the board. The main propositions are: that the internal discord which may appear in boards is eliminated; that the undertaking is too small to warrant more than one head; that there is less possibility of weighting in favour of


particular interests; that there is a clear individual responsibility as opposed to the screening effect of the board; that parliament (or cabinet) takes the place of the board of directors in private enterprise; and that the system is more in keeping with the requirements of democratic government (implying, of course, that there is less independence).

The important question for this thesis is whether the single-seated corporation necessarily enjoys less freedom of action than its hydra-headed cousin, or, put in another way, whether it permits greater political control. Any conclusion must rest on evidence presented in later chapters, and the remaining comments in this section are therefore tentative in nature.

At first glance, Labour's willingness to use boards for other public enterprises vis-a-vis its attitude on the bank question (TAA and the ASB were cases in point) introduced a note of inconsistency. In fact, however, there was an important difference. The bank legislation framed by the non-Labour parties prescribed that most of the directors should be persons actually engaged or experienced in agriculture, commerce, finance or industry; and Labour feared that the representation of these

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42. The situation may in fact be significantly affected by the division of the hydra-headed group into policy and functional boards - see section (b) below.

43. As pointed out by political correspondent E.H. Cox, in Melbourne Herald, 24.2.52.
interests would prove harmful to the "people's bank". This fear was largely confirmed by the bank's record in the depression. Where Labour has created boards, it has been careful either to prescribe the appointment of public servants (as in the ASB) or, while avoiding such prescription, to appoint public servants and others with sympathetic views (as in the Labour-appointed ANAC). Professor T.E. Chester's comment that Burmese corporations "are far more akin to inter-departmental committees" has some relevance in these cases also. While this is trespassing on the subject-matter of the following chapter, it is equally significant that the Menzies Government has replaced such Labour appointees with private enterprise leaders who can be relied on to be sympathetic to its policies.

To Labour, therefore, the test is whether a public corporation is subjected to these influences or insulated from them; to the non-Labour parties it is whether a public corporation is subjected to socialist influences or insulated from them. In practice the notion of corporate autonomy is thus related to the policies and ambitions of the political parties. Formal control may indeed by slight when a government is secure in the knowledge that there exists a common identity of purpose between it and the corporate board. And why should a carefully chosen board not co-operate with the government that appointed it?

44. I.e. than to boards as understood in Britain - T.E. Chester, "Public Enterprise in South-East Asia", P2, xxvi, 1 (Jan. - March 1955), p. 50.
Should we expect it to take a more independent line than a single-seated corporation?

There have been striking examples of multi-member bodies taking independent and unpopular action, such as the VRC during Richard Speight's chairmanship in 1890-92 and H.W. (later Sir Harold) Clapp's in the 1920's and 1930's. But these are exceptions rather than the rule; and similar examples may be drawn from Australian experience with single-seated corporations. The first War Service Homes Commissioner possessed remarkable propensity to defy the minister; and, as will be shown in the following pages, single-seatedness has not prevented Australian railway authorities from opposing ministerial demands.

(b) Policy, Administration, and the Board

The choice of a particular type of governing body usually also involves certain assumptions about organisation for policy-making. For the purposes of this discussion there appear at first glance to be three main types: the single administrator, the board of executive officers with line responsibilities (e.g. the three-man railway commissions and the post-1949 TTC), and the pure "policy" board which works through a separate chief executive officer appointed by and responsible

to it (e.g. ANAC and ACOS).\textsuperscript{46}

The last implies that policy and administration are distinct elements which can be divided sufficiently to permit them to be vested in separate organs. Thus René Morin, a former chairman of the Canadian Broadcasting Corporation, argued that quite different personal capacities or attributes were required in each sphere: at the policy level, "imagination, a broad culture, a comprehensive understanding of our national problems and an enthusiastic faith in the future of our country"; at the managerial level, "business experience, administrative sense and a positive mind".\textsuperscript{47} This form also involves the assumption that parliaments and governments have delegated both administrative and policy functions to the corporations.\textsuperscript{48}

In Thurston's view, the other extreme (the single administrator type) occurs where "the real control of the corporation rests with ... the government", in which case "there is neither need nor room for a board of directors, and the most

\textsuperscript{46} A variant is the mainly policy board which, however, includes the chief executive officer (e.g. TTC from 1938 to 1949, or the Commonwealth Bank Board discussed above) - cf. Lord Reith's categorical verdict (from his own experience in the BBC and BOAC) that "the chief executive, from his own point of view and every other, should not be on the board" - "Public Corporations: Need to Examine Control and Structure", PA (London), xxxiv (Winter 1956), p. 353.

\textsuperscript{47} Evidence before Special (Canadian) Committee on Radio Broadcasting, 1944, quoted in Hodgetts, \textit{op. cit.}, p. 457.

\textsuperscript{48} \textit{Ibid.}, pp. 456, 462.
workable arrangement is the appointment of a person to whom
the executive officer [i.e. the minister] can delegate the
details of administration". The three-man executive
commission presumably falls somewhere in between.

How do the selected enterprises line up in this scale?
Even at the height of the corporation movement in the 1830's,
Australian parliaments were aware assuming that they could on
the one hand take railway management "out of politics" and on
the other retain effective policy control over it. When Glidol
introduced his 1891 legislation, he was concerned to ensure that
the commissioners would henceforth "rather occupy the position
of traffic managers than that of railway despots"; there
followed the notable Victorian statement of 1896, already quoted, that there should be "a general manager to be called the Commiss-
oner". As recently as 1955 Mr R. Winsor (then NSWRC) wrote:

49. Thurston, Government Proprietary Corporations, p. 149.
50. VPD, vol. 66, p. 517.
51. Above, p. 51.
The formula hammered out by practical experience, is that the workings of the Railways are entrusted to a Commissioner, who is virtually the General Manager. His Board of Directors is the Government. General policy decisions such as fare and freight structures are reserved to the executive Government through the Minister for Transport, but day to day operations are entrusted to the Commissioner. 52

Are we to assume that the provision of a policy board at the apex of the corporate hierarchy signifies the grant of policy-making powers, which are withheld from lower forms of corporate life such as the state railways (whether of the single-seated or executive commission type)? Or that it signifies a neat division of policy and administrative functions between the board on the one hand and the general manager and subordinate staff on the other? If this is so, corporations with such a board must surely possess a wider range of powers and enjoy greater insulation from political influences than those without.

A generation ago scholars of administration often argued that it was possible to separate policy from administration (or "the political function" from "the administrative function"; those who make policy from those who execute it). 53 To-day this view is no longer seriously advanced. It is accepted that "Institutional organisation and management go far to

52. "One Hundred Years in Business", Introduction to Centenary History, pp. 3-4.

determine policy, while policy is everywhere present in administration, shaping it, handicapping or furthering it, and ultimately controlling its effectiveness;\textsuperscript{54} that, "In short, public administration and public policy cannot be separated, except in the vacuum of the text-book".\textsuperscript{55} It is no longer denied that public servants participate in the process of policy formation.\textsuperscript{56} If this is true of officials and ministers in a department, it must be true of line officials as well as boards in corporations.\textsuperscript{57}

This can be taken a step further. Advocacy of a policy board emphasises the corporation's policy-making role. Yet almost in the same breath the advocates attempt to discriminate between "policy" and "day-to-day administration" with a view to exacting ministerial responsibility in the former but not the latter area. Once this concept is accepted, the minister, and through him government and parliament, also inevitably become concerned in the "policy" of the corporation. Minister and board overlap, as do board and line officials.


\textsuperscript{55} C.M. Wiltse, "Some Reflections on Administrative History", \textit{PAR}, xii, 2 (Spring 1952), p. 117.


\textsuperscript{57} For relevant Canadian experience, see Kasolf, \textit{Public Ownership}, pp. 74-6.
In neither a British nationalised industry nor the NSWR does the minister intervene in all decisions in the realms of policy, but in both cases he now has the discretionary power to intervene if the matter is considered to be of sufficient public importance. The existence or absence of a board does not alter this situation; and Winsor's above-quoted comment would not need much adaptation to suit the current British situation. 58

At this point it is necessary to pose a question often avoided in discussing problems of organisation. Just what does "policy" mean? And how much do we achieve by introducing the term into the discussion? In fact the early attempts to divide policy from administration failed to draw any convincing line in these terms between upper and lower levels of an organisation.

Paul Appleby suggests that the policy process is simply the exercise of discretion with respect to administrative actions; and that the level at which the decision will be made will be determined by an evaluation of the importance of the subject or by its controversial content. 59 To Herbert Simon, whenever the process of decision-making involves value judgments, or whenever


it involves the formulation of goals, policy is being made. We might describe matters reaching the ministerial desk as "high policy", but clearly other policy issues are handled lower down. The frequent use of the term "policy" to denote the functions of higher units in an organisational hierarchy, or to delimit the area in which ministers can intervene in the affairs of corporations, might therefore be expected to cause confusion. That this is so will be demonstrated in relation to the exercise of ministerial controls.

Conscious of this difficulty but still convinced of the necessity for independent boards of directors, Dimock developed the idea of a "sub-policy" area (i.e. covering decisions less important than those dealt with by President or Congress but more important than could be delegated to line officials) to rationalise their existence. But the point below which authority may be delegated cannot be accurately defined in terms of policy. Dimock is here arguing for — and the board involves — in effect two such points, two ill-defined layers of delegated authority.

The additional organ complicates the machinery of government and disperses responsibility. Since on the one hand policy and administration are inextricably mixed at many levels


61. Dimock, op. cit., p. 916.
of the organisation (not excepting the minister), and on the other individual issues are subject to striking changes in order of importance in the policy scale, it may also breed confusion and duplication of effort. Harold Van Dorn illustrated some notable difficulties of this kind in early US corporate experience. The question arises as to whether a board separate from the management is really necessary.

One defender of the British "corporate Board of ability" described it as a "shock absorber", providing the executive with a useful sounding board for new ideas, being sufficiently of the outside world to retain an independent and critical judgment yet sufficiently part of the enterprise to understand and publicise its activities and problems, and able to decide when the experts disagreed. But he qualified his preference with the significant comment that such a function was only useful when the enterprise had considerable latitude in framing its own policy, not if "closely restricted" by ministerial power.

62. Van Dorn, op. cit., especially ch. 3 on Emergency Fleet Corporation.

63. See discussion in Hanson, op. cit., pp. 400-3.

64. Term used by Herbert Morrison, Socialisation and Transport, London 1933, p. 178. Morrison distinguished it from "the full-time Board of technical experts" and "the Board composed in the main of representatives of ... interests ...", and favoured it because of its separation from "departmental" duties. Dimock spoke similarly of "officer boards" and "non-officer boards", op. cit., pp. 916-7.

May it not be that the supposed strength and collective wisdom of a board are more necessary when a new enterprise is being launched, or when numerous small concerns are in process of amalgamation into a single nationalised industry, than when an enterprise is operating on firm foundations within clearly defined terms of reference? Moreover, while those of Thurston's school stress the need of the policy board for a large measure of corporate autonomy, more and more corporations are being subjected to a general ministerial power of intervention. Decisions taken by the ANAC in its formative years, such as the ordering of new untried aircraft types and the cutting of rates below those of private competitors, could be described in Thurston's terms as "of too great magnitude ... and too important consequences" for the responsibility to be left with a single individual. But the ANAC has now been effectively deprived of final decision-making powers in these and other fields - it has become little more than an operating agent of the government.

It is possible that the popularity of the policy board pattern for the Commonwealth enterprises reflects political

66. This was suggested to me by Mr G.G. Sutcliffe, a former Secretary of the Commonwealth Department of Shipping and Supply, Chairman of the ASB, and Commissioner of the Public Service Board. Mr Sutcliffe observed that he had noticed various corporations opening with a flourish of independence during their creative stages, but afterwards gradually returning to the departmental fold.

rather than administrative needs. The part-time board furnishes the Menzies Government, should it feel the need, with the opportunity to associate avowed anti-socialists with the management of its undertakings, to act as a brake on excesses of managerial enthusiasm which might further entrench the claims of socialist enterprise. Equally it furnished the Chifley Government with the opportunity to appoint a solid core of sympathisers and departmental representatives to put TAA on the map. 68

There are other views of the so-called "policy board" or "corporate Board of ability" which have political implications, but which are not necessarily consistent with those discussed above. One has been advanced in Britain. 69 It holds that the existence of part-time board members strengthens the position of the enterprise vis-a-vis the politicians because, being not completely dependent for their livelihood on that employment, they have greater freedom of action. They will, for example, find it easier to resign in the event of a disagreement with the minister, or in protest against excessive political interference, than will full-time officials who have no other substantial sources of income.

68. Such considerations would be less important in the states, for there is no controversy about the ownership of railways. There is, however, considerable debate about the extent to which railways should be "protected" against competition from private road transport.

There may, however, be a corresponding disadvantage.

Before deciding to restore the three-man executive commission in 1903, the Victorian cabinet had considered a number of other possibilities, one of which was the idea of the part-time trust plus separate general manager put forward by the Casey Board in 1895. The cabinet rejected this, believing there was a real danger that part-time appointees would carry out their duties more or less perfunctorily, with little benefit to the railways.

Finally there is the "buffer" or "filter" view, implicit in the Casey Board recommendations. The reasoning is that where the management of an enterprise is both politically appointed and at the head of the corporation, there will inevitably be frequent direct contact between it and the politicians. Under these circumstances it is almost impossible to eliminate the influence of the latter, whatever the statute may say about corporate autonomy. This, indeed, was the lesson of the VR after 1883, notwithstanding the fact that the great reforms of that year were motivated by a desire to take the enterprise "out of politics".

On this reckoning, the virtue of interposing a board is that a "buffer" is created between management and the politicians. The board will take over all political contacts, and

70. Casey Board Report, pp. 20-24, and also report of J.H. Smith (ex-chairman, South Australian Railways Commissioners), at p. 398 of evidence.
71. VPD, vol. 103, p. 3318.
72. Thus the Turner Government wrote into the abortive VR Trust Bill in 1895-6 that the trust, not the general manager, would receive all depositions.
it - not the government - will appoint and hold accountable the management of the enterprise. In other words, it will take the strain of political pressures from management (i.e. "filter" them off), allowing it to concentrate unhindered on matters of business and administration. To the Casey Board this arrangement would preserve public ownership, but it made all the difference between management by the state and "independent management on behalf of the State".

As A.H. Hanson points out, the hierarchy of control is more complex in public enterprise than in private enterprise, whether or not there is a separate board. The "layers' of policy-formation" may be contrasted thus:

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<th>TABLE 2: HIERARCHIES OF CONTROL IN PUBLIC AND PRIVATE ENTERPRISE</th>
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<tr>
<td><strong>Public Enterprise</strong></td>
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<tr>
<td>(a) With board</td>
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<tr>
<td>1. Electorate</td>
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<tr>
<td>3. Cabinet/Minister</td>
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<td>4. Board of directors</td>
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<tr>
<td>5. &quot;Management team&quot;</td>
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<td>74. Hanson, op. cit., pp. 400-1.</td>
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</tbody>
</table>

In the selected enterprises, the contrast between the
four and five-layer patterns is perhaps best illustrated in
the two corporations currently grouped under the Commonwealth
Minister for Shipping and Transport. This is shown in Table 3.
Otherwise, in so far as the selected enterprises are concerned,
the Commonwealth has consistently favoured the five-layer pattern.
The states have preferred the single commissioner or the execu-
tive commission, avoiding the separate policy organ. But
whichever pattern is adopted, policy decisions still have to be
made, and the policy process flows through all levels of the
hierarchy.

### Table 3: Public Enterprise Hierarchies Compared

<table>
<thead>
<tr>
<th>Commonwealth Shipping and Railways: post-1956 organisation</th>
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<table>
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<tr>
<th>BOARD OF DIRECTORS</th>
<th>Department of Shipping and Transport</th>
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<tr>
<td></td>
<td>Australian Coastal Shipping Commission</td>
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<td></td>
<td>General Manager, ANL</td>
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<td>Commonweal th Railways Commissioner</td>
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<table>
<thead>
<tr>
<th>MANAGEMENT TEAM</th>
<th>Functional</th>
<th>Other</th>
<th>Regional</th>
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<tbody>
<tr>
<td>Divisions</td>
<td>Office</td>
<td>Units</td>
<td>Branches</td>
</tr>
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</table>

75. However there was in effect an extra layer in the NSWR during
these periods in which a separate co-ordinating corporation
functioned between operating corporations and minister.
(c) The Question of Tenure

Tenure of office conveniently links the organisational features discussed above with the process of appointment and removal next to be considered. One relevant point has already been mentioned - the potentially greater freedom of part-time appointees who are not solely dependent on their employment in the corporation for their livelihood. Where such dependence exists, it is logical to expect that there will also be a greater sense of dependence on the goodwill of the appointing government.

Most Australian statutes go more fully into the question of tenure than do the British, which in many cases lay down no guide at all and leave the necessary decisions to the discretion of the appointing minister. The selected enterprises represent a fair cross-section of Australian practice, the periods prescribed for appointment usually ranging from three to seven years (with the important addition in a number of cases of the words "not exceeding"). In all cases commissioners and board members are eligible for reappointment, although this is not

76. The possibility of achieving greater continuity in policy and management is often hailed as one of the great advantages of the public corporation. But the contrary view is taken by J. Longhurst in his study of Britain's airline corporations. After highlighting the many resignations and new appointments to the boards ("Boards may come and Boards may go, but British air services go on for ever", as one paper put it), he compared the Post Office situation: "because the operation of the industry is in the hands of the Civil Service the chances of maintaining managerial continuity are probably better than under the corporation system" - Nationalisation in Practice: The Civil Aviation Experiment, London 1950, pp. 84, 170.

always laid down specifically by statute. The periods of appointment prescribed for the selected enterprises were summarised in Table 1.78

In very few cases have Australian parliaments been prepared to concede appointment to normal retiring age for corporation heads. The draft VR bill of 1883 contained such a provision, but members who stressed the experimental nature of that legislation persuaded the government to substitute seven-year appointments.79 Although corporations can no longer be regarded as experimental, the practice of prescribing limited terms has continued. It has, however, been condemned by various inquiries conducted in the main by business experts. The Fay-Raven Commission argued that transport needs were constant but that the administration was adversely affected by changing political considerations: it advanced as a remedy a scheme for much greater independence of the railway undertaking, which included life tenure for the commissioners.80

And English transport investigator J. (now Sir John) Elliot said of the VR in 1949:

There is no logic in seven years, and if a Railway officer is considered ... to be suitable for appointment as a Commissioner, he should be granted that freedom from doubt which must exist if he knows that he will be subject to

78. Above, pp. 43-9, item (e) in each case.
re-appointment at the end of seven years. However efficient a man may be, he will need to be of exceptional character, if that eventuality is not to influence his actions and decisions as he gets towards the end of his term.81

Views of this sort are by no means uncommon.82

There have been just a few examples of life tenure in Australian public corporations. Such a provision was enacted in Western Australia following an appropriate recommendation from the Gibson Commission;83 but the state was glad to revert to the old system nine years later when circumstances made this possible. The NSW Rural Bank is another rare exception where the corporate heads hold office until they reach the age of sixty-five; and it has been widely regarded as possessing a large measure of autonomy.84

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   (Elliot Report).

82. Of. Lord Simon's comparison of his experience as governing director of two private engineering companies for "roughly forty years" and as BBC chairman for five: "I have also studied the effect of continuity of tenure in top management in other concerns; everything I have learnt confirms my view that long-term tenure of the top executive posts is essential to successful management" — The Boards of the Nationalised Industries, London 1957, p. 6.

83. Royal Commission on the Management, Workings and Control of the Western Australian Government Railways 1947 (A.J. Gibson, chairman), which believed it "essential ... that the managerial head ... should/ not be dependent for reappointment on the political complexion of the Government of the day" — Report, p. 163.

84. See G.R. McKerihan, "The Rural Bank of New South Wales", PA (Sydney), xvi, 1 (March 1957), p. 77. The members of the NSW Public Service Board, unlike their counterparts in the Commonwealth and other states, enjoy like tenure; and it is surely significant also that this is regarded as "the most powerful and probably the most effective body of the kind in Australia" — (cont. overleaf)
If such permanency encourages greater independence of management than a seven-year appointment, so does the seven-year term offer somewhat greater security than, say, a three-year term. Here also is the significance of the words "not exceeding". The VR experience illustrates this. The original fixed term of seven years was altered in 1891, in a wave of hostility against the original "independent" commissioners, by prescribing this as an upper limit only, and otherwise allowing the government full discretion - Shiels would have reduced the limit itself, but had to accept this compromise. But the change made possible the much shorter appointments given the two teams of provisional commissioners between 1892 and 1896. The 1903 reduction of the limit to four years was reportedly made to suit the requirements of T. (later Sir Thomas) Tait, the Canadian who was then being appointed chairman, as he did not wish to commit himself for a longer period. And the restoration of the limit to seven years was due not only to a desire to make Victorian conditions as attractive as those offering in most other states, but also to a realisation that although they held essentially temporary appointments the commissioners were exposed to "considerable hazards" and that a security greater than four years was needed to attract young and vigorous "men


85. *VPD*, vol. 66, p. 531; and vol. 68, p. 3425.
of the best talent". But Clapp's appointment as chairman was made and extended for five-year terms, despite the seven-year limit.

In other cases also the "not exceeding" provision has permitted much shorter appointments than the prescribed limits, e.g. the series of nine-month and later one-month terms given R. Farquhar of the ACGB, and the short initial appointment given K.A. Smith from October 1960 to June 1961 only. In fact, as Joan Rydon pointed out in her study of the ABC, the prescribing of limits only, leaving governments free to exercise discretion within those limits, does not represent anything like a legislative guarantee of security, and it thereby decreases corporate independence. Where, despite five or seven-year limits, appointments are made for short periods only, the organisation's ability to maintain continuity of policy or to undertake long-range planning is curtailed, and

86. VP1, vol. 141, pp. 2392-6. D. MacKinnon, the Minister of Railways, then commented that the history of the VR had shown how "sudden gusts of public opinion are apt to interfere with bold and successful management".


88. J. Rydon, "The Australian Broadcasting Commission 1942-48", FA (Sydney), xi, 4 (Dec. 1952), p. 191. In this case the words "not exceeding" were deleted in the 1942 amendment.
the sense of dependence of its members on the government for their future livelihood is increased.89

The NSWR experience is also worth noting. Despite all the formal reconstitutions, the fixed seven-year term for the commissioners Parkes had copied from Victoria in 1888 remained unchanged till 1956.90 By the late 1940's, however, the Labour government was adopting tactics which made a mockery of the legal provisions.

Before F.J. Garside was formally appointed in 1943 for the statutory seven-year term, he was required to give a written undertaking that he would resign on his sixty-fifth birthday irrespective of the fact that his term would still have over three years to run. Garside observed this agreement, but the government ran into trouble with a similar agreement made with his successor Winsor.91 It also ran into trouble about the same time over an agreement it had made with T.J. Smith, president of

89. The Tasmanian Racing and Gaming Act No. 98 of 1952, which constitutes a commission, furnishes an interesting variant, the Governor being bound to appoint the chairman for not less than five years.

90. Although the 1932 reconstitution had provided a "not exceeding seven years" term for the assistant commissioner while retaining the flat seven years for the commissioner, in fact the former appointments were kept in line with the latter.

91. The government held written undertakings from Garside and Winsor in the following form: "When appointed Commissioner for Railways, and in consideration thereof, I hereby undertake to retire from the position on attaining the age of 65 years"; see 13HFD (iii), vol. 17, p. 1244.
the Board of Fire Commissioners, when reappointing him for the statutory five-year period in 1952. On this occasion the agreement was that Smith should resign "if desired to do so by Cabinet", and his resignation was duly requested when he reached his sixty-fifth birthday in 1955. But, fortified by their legal position, Winsor and Smith both decided to resist. In both cases the government finally got its way, but not without a great deal of unpleasantness and much adverse publicity.

The actual method of removal in Winsor's case will be described in the next chapter; in both cases, with the removal accomplished, legislation was rushed through to prevent future defiance of this sort by "prickly" commissioners. Premier J.J. Cahill introduced a bill, literally within minutes of securing Winsor's resignation, to alter the tenure to "such period, not exceeding seven years, as may be specified in the instrument of appointment" and the replacement, as the Smith had previously been a Labour MLA, and Winsor was also a Labour protege.

92. SMH editorial, 3.5.1956. Smith had previously been a Labour MLA, and Winsor was also a Labour protege.

93. Term used by SMH, 3.5.1956, in reference to Smith.

94. Transport (Division of Functions) Commissioner for Railways Act No. 2 of 1956.

95. He has since, however, been reappointed for longer terms: the reason given in this case was that the American firm, Ebasco Incorporated, was investigating NSW transport services, and the implementation of any changes it might recommend should not be embarrassed by further legal difficulties in discontinuing existing appointments - NSWPD (iii), vol.17, p. 1235. But the effect is that any appointments as commissioner may now be for much shorter periods than the traditional seven years.
legislation at last wrote into the law the government's desire that all the transport commissioners should vacate office on attaining their sixty-fifth birthdays irrespective of the terms set for appointment.\textsuperscript{96} Government spokesmen claimed that there was nothing new in the idea of a sixty-five-year age limit for public servants.\textsuperscript{97} But when opposition members pointed out that no attempt was being made to disturb the appointment, as director of the State Coal Mines Authority, of an ex-Labour politician who was near seventy and so much dogged by ill-health that he rarely turned up for work, the weak ministerial answer was: "I am not speaking about extra-public-service appointments".\textsuperscript{98} Surely the NSWRC is just as much an "extra-public-service appointment".\textsuperscript{99}

Another device for ensuring continuity and preventing a complete "spill" on political grounds is the staggering of initial appointments so that all members will not retire at the same time. This is fairly common among corporations with policy boards, and occurs in the case of the ANAG and AGSO. But it has

\textsuperscript{96} Transport (Division of Functions) Amendment Act No. 14 of 1957.

\textsuperscript{97} See e.g. SMH report, 8.8.1956, in reference to Smith.

\textsuperscript{98} NSWPD (iii), vol. 17, p. 1244.

\textsuperscript{99} The sixty-fifth birthday has no such importance in the other selected enterprises: a full-time appointment is generally allowed to lapse on the first subsequent occasion it comes up for renewal, but some part-timers are still serving in their seventies.
not been used in the three-man railway commissions. 100

It has also been suggested, notably by two Liberal Senators in debating the Commonwealth Grants Commission Bill (1957), that the discretion now usually given governments to determine the salaries of commissioners increases their dependence on political goodwill. 101 Senator McKenna’s reply, 102 in offering opposition support to enable the government to defeat its own dissidents, furnishes a fitting bridge between this and the next chapter. He stressed the administrative inconvenience of having to seek frequent statutory adjustment in times of rapidly-changing money values and pointed to precedents set in many other corporations. 103 He then argued

100. Those who advocate regular reviews of corporations at, say, seven-year intervals might well argue, however, that common expiry of terms is preferable to facilitate any reconstruction suggested by such an inquiry. The NSWGR experience shows that the joint termination of one body of commissioners by effluxion of time has on more than one occasion permitted such reconstruction.


103. The usual Australian practice (although there have been some exceptions over the years, and although part-time numbers complicate the position) is to relate the salaries of top corporation officials to the standard scales for senior departmental officials. There is far less discrimination between the two than is customary e.g. in British corporations or in Sweden’s “State Companies” — on these see Robson, Problems of Nationalised Industry, op. cit., pp. 102-5, and D.V. Verney, Public Enterprise in Sweden, Liverpool 1959, p. 52.
that statutory salary protection could not affect the question of autonomy:

What kind of assurance of the independence of a statutory office is it when the executive government retains the power both to appoint and to dismiss? There is only one assurance of independence, and that is the kind of independence conferred upon the judges and ... upon the Auditor-General ...

He was referring to life tenure and parliamentary protection against arbitrary dismissal.
III. SELECTING THE CORPORATION HEADS

During the course of my investigations I asked many people concerned with the operations of the selected enterprises what they thought were the features which most restricted corporate autonomy; or put the opposite way, which permitted the greatest exercise of political influence in corporate management. Two answers were so often forthcoming as to suggest that the formal provisions for ministerial review of corporate decisions and even the ministerial directive power by no means told the whole story. These answers were the government's "power of the purse", and its power of appointment and reappointment of corporate heads.

The financial arrangements will be discussed in the next chapter. The present chapter will outline the statutory machinery for appointment and removal from office of the heads of the selected enterprises, and it will attempt to analyse the actual appointments and separations which have occurred with a view to determining the part played by considerations of merit and patronage respectively in this process.¹

¹. The members of the governing bodies of the selected enterprises over the years are listed in Appendix A. I am concerned here only with appointments made at the political level — where there is a separate "policy board" it is usual for this to appoint the general manager, and appointments of this kind are not included.
1. **APPOINTMENTS**

(a) **Statutory Machinery**

One feature common to these enterprises is the appointment of the members of their governing bodies by the government of the day. There has been no resort to bizarre devices such as the panel of appointing trustees for the LFTB.² Nor do these enterprises furnish any case of direct election of certain members by interested groups as in the commodity marketing boards. Although this has been suggested at least for the ACSB and the NSWR and VR,³ the nearest approximations have been the nomination by governments of members intended specially to represent stated groups, as in the TTC from 1944 to 1949, the provisional ASB of 1945, and also the shortlived THC in New South Wales. But in only one of these cases - the last-named - was this required by the creating statute (or regulation).⁴

Neither do these enterprises furnish any example of parliamentary review of appointments such as the power of the

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2. See Ernest Davies, "The London Passenger Transport Board", in W.A. Robson (ed.), *Public Enterprise*, London 1937, pp. 164-5. Such a method was, however, suggested in Australia (although never adopted) by the 1931 Royal Commission on the South Australian Railways (Goodman Commission) (Final Report, p. 21), and by Prof. L.P. Giblin before the 1936 Banking Commission (Evidence, ii, p. 1341).

3. See e.g. Eggleston, *State Socialism*, p. 145; Blakey, "Politics and Administration", p. 12; and resolutions passed by more than twenty unions affiliated with the NSW Trades and Labour Council demanding election by employees of one member of the ACSB - correspondence in CAM, OP 189, file E212/1. Even more radical ideas for full workers' control of the railways were current in NSW in the 1920's, but they gained little support outside the unions.

4. Transport and Highways Act No. 10 of 1950, S3 (3)(c).
US Senate over senior presidential appointments. This question arose in connection with the appointment of the board of directors of the Canadian National Railways in 1919, when it was contended that parliament should help decide membership or that the opposition should nominate a minority of directors. One minister's answer underlined the distinction between American and British-based constitutions: it laid stress on ministerial responsibility as "the basic ... principle of our Constitution", emphasising that "for each appointment the Governor in Council is responsible to Parliament".\(^5\)

Similarly in Australia - when in 1887 a member of the NSW Legislative Assembly expressed the fear that, despite Parkes' avowed intention of taking the railways out of politics, political influence would continue through the power of appointment by Governor-in-Council, Parkes answered testily: "Who, in the name of common-sense, does the hon. member ... suppose is to appoint them? Is the Opposition in this House to appoint them? Is the Chinese League to appoint them?"\(^6\) And in 1917, when a Commonwealth member suggested that the parliament should have a

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6. NSUPD (i), vol. 23, p. 932.
say in the appointment of the CRC, Watt (as minister in charge of the bill) replied: "We have responsible government ... How can Parliament appoint except by entrusting the Executive with the selection?"7

Yet, as will be seen, no inconsistency was seen in the reserving to parliaments of an active role in the removal process. For the earlier corporations this was deemed necessary as quasi-judicial protection for the commissioners against arbitrary or capricious party political actions.

Depending on the drafting practice in each state, the power of appointment may be vested in either the "Governor" or the "Governor-in-Council"; in the case of the Commonwealth it is the "Governor-General". But whether stipulated or not, this invariably means the Governor acting with and on the advice of the executive council, which gives formal recognition to the desires of cabinet. This in turn normally accepts the recommendation of the supervising minister.8

For limited periods the NSW legislation required the government to obtain and consider reports from the chief commissioner on the filling of the other commissionerships. This is an unusual provision, and does not occur in any of the other selected enterprises except in the case of the senior branch

7. CPU, vol. 82, p. 764. Cf. the unusual offer of Tasmanian Labour Premier Lyons in 1924 to consult both leading businessmen and opposition leaders before finalising selection of a new Commissioner for Railways: TPD (Mercy Reprints), 1923-4, p. 213.

8. British statutes normally vest the power in the minister himself.
heads who sit as ex-officio associates on the post-1949 TTC.

In the case of TAA, however, the chairman has often taken the initiative in submitting recommendations for the filling of vacancies on the ANAC; but the recommendations have not always been accepted. 9

Whatever preliminary consultations or negotiations may have taken place, then, government appointment is standard practice in the selected enterprises. It remains here to inquire whether governmental discretion is in any way restricted by statutory prescription of qualifications for appointment.

Except where it is laid down that representatives of special interests are to sit on the boards (an indirect way of securing particular experiences), Australian parliaments have made little effort to write anything more positive in the legislation than a few formalities such as the disqualification of bankrupts. This is certainly true of the selected enterprises. The frequently-used expression "fit and proper person" might of

9. Thus in 1955, when the chairman enthusiastically recommended R.J. Webster's reappointment, the Minister for Civil Aviation disagreed; and when a few years later the appointment of an ex-Lord Mayor of Melbourne was suggested, the minister preferred to act on a long-standing DCA complaint that the board was "particularly weak on the aviation side", and appointed Air Vice-Marshall E.O. Wackett instead. From DCA file 99/1/639.
course just as well be left unsaid.  

(b) Merit or Patronage?

At the end of 1882 the Victorian Liberal, Berry, was reluctantly coming to the conclusion that only a board could lift railway administration out of the mess politicians had made of it. But he still voiced the reservation that it was the pet idea of Conservatives "to create boards in derogation of the true functions of this House", and that they made sure their appointees were drawn from their own social class so that they would in fact not be non-political but rather biased towards conservatism. The important question was: "Who is to give us a really non-political body? ... Who are to be the choosers of it?"

10. There are just a few exceptions among Australian corporations, such as the requirement that the directors of the Commonwealth Bank Board should be persons "who are or have been actively engaged in agriculture, commerce, finance or industry"; or that the members of Western Australia's three-man Railway Commission of 1948-57 should have "comprehensive knowledge and experience" in the following fields: (i) "the management, maintenance and control of railways", (ii) "conduct of the commercial traffic and accounting aspects of the business", and (iii) "engineering in relation to ... railways" respectively. For the first, see Commonwealth Bank Act No. 15 of 1924 (discussed critically by L.F. Giblin, The Growth of a Central Bank, Melbourne 1951, p. 20); for the second, (""") Government Railways Amendment Act No. 73 of 1948. On the position in Britain, see W.A. Robson, Problems of Nationalised Industry, London 1952, pp. 38-9.

11. The term "patronage" as used in this chapter refers to appointments made with a bias favouring the interests of a particular political group or party. All the appointments discussed below are "political" in the sense that they are made by governments; and the merit/patronage distinction is between the politically unbiased and the politically biased.

At that particular moment in history the formation of a coalition government gave Berry the opportunity to participate in a multi-party selection. But this was the exception rather than the rule.

The answers by Parkes and Watt to objections about appointment by the government of the day were realistic enough. As the executive of parliament, cabinet is constitutionally the correct repository for such powers, and it is accountable to parliament for the way in which they are exercised. But this, of course, does not stop governments making biased appointments.

Professor Bland's conclusion that the corporate device had actually facilitated appointments of a "spoils to the victors" character has already been noted. Much more recently Mr R.S. Parker has expressed concern that "the proliferation of statutory corporations ... open[s] a wide field of political patronage for appointments to the governing boards, most of whose members are specifically exempted from the provisions of the Public Service Act, even when their staff are not".

Yet most of the arguments in favour of public corporations involve a desire to remove the activity from close touch with politics and to secure management by impartial experts selected because of their special fitness for the task in hand.


To what extent do the persons selected as commissioners, directors and board members of the selected enterprises fit the latter description? Or to what extent do their careers suggest that the realisation of both aims has been prevented by the exercise of patronage in appointments and the resulting sense of dependence on political patrons?

Unfortunately it is not possible to give any neat statistical answer of the kind attempted by Mr Rune Tersman, when he sought to classify appointees to the boards of Swedish state companies according to whether they were "politically oriented", "civil servants", or "business people". The main difficulty is that there is so much overlap; but also many sub-classifications would be needed. Moreover the position varies substantially from one enterprise to another. The question can therefore be best considered by a narrative outline of the appoint-


16. E.g. cases such as those of A.S. Blackburn of TAA - V.J. winner, short-time Nationalist MP; organiser of the strike-breaking "Black and Tans" on the Port Adelaide waterfront in 1929, company director and Conciliation Commissioner; or Olesen, also of TAA - an eminent and successful businessman, but who was also in politics for some years, earning the enmity of the non-Labour parties. This problem was also recognised by Tersman in his Swedish study.

17. Is the "civil servant", for example, a career officer of the particular enterprise, or was he brought in as the representative of another department (and therefore minister)?
ment history of each enterprise. 18

The most noticeable thing about VR appointments is the very high proportion of career officers who have gained selection. Of the thirty appointments made, twenty-two were senior officers of the enterprise who already had extensive experience in its management. Moreover, most of the eight outsiders were well qualified for appointment. These were English railway expert Speight, the original chairman, and two senior Victorian public servants as his colleagues; subsequently J. Mathieson with appropriate railway management experience in England, New Zealand and Queensland, Tait with similar experience in Canada, C. Hudson likewise in England, New Zealand and Tasmania, and Clapp in the United States; and finally O.G. Mayer, also a railway expert of high repute, from the war-time Commonwealth Department of Transport. Clapp was Victorian-born and educated but had spent the greater part of his working life outside Australia; apart from Mayer and the two public servants who completed the complement of the first commission, the others were all outsiders imported to Victoria especially to accept these appointments, and with no prior contact with state politics.

18. A further difficulty is that of unearthing all relevant details in respect of each of the ninety-odd appointments to the main corporations. For example, Who's Who and its predecessors rarely deal with political associations (nor do they list all relevant cases); and with the passage of time many of the opportunities for checking details have disappeared. The following analysis is therefore based on information which has been gleaned from diverse sources and which is not necessarily complete in all cases referred to. But, in total, the available details seem sufficiently widely-based to permit general conclusions to be drawn.
The only evidence I have been able to discover of any special political pull is in the case of the provisional commissioners of 1892-96. They included some of the officials who had advised Shiels in his fight with Speight, and following the latter's removal they reluctantly accepted office to carry out the government's wishes - the then minister praised them as "loyal and true to the Government". But Mathieson's appointment in 1896 restored the non-political tradition.

There is also no evidence that VR appointments have been allowed to expire because of non-acceptability to new governments. Labour appointments have been renewed by non-Labour governments, and vice-versa; and separations have usually come with age or health "retirements", straightforward resignations, or deaths. My view that patronage has played very little part in these appointments has been endorsed by an ex-Communist Victorian ARU official, whose own conflicts with the commissioners gave him good excuse to "smear" their capacities if he so desired.

The post of CRC can, like its Victorian counterparts, be regarded as the final rung of the promotion ladder for officials of that enterprise. The first incumbent, N.G. Bell, had been the chief railway officer under the old departmental system;


20. The willingness of Victorian governments of all parties (Labour, Nationalist/UAP and Country) to reappoint Clapp, despite his outspoken criticisms of various ministers and his readiness to fight them to the limits of his legal powers, affords an interesting contrast with the NSW position.

21. Except for the most sensational removal of all, that of Speight and his colleagues in 1892 - see below pp. 129-31.
and his three successors have all been career officials.

The tradition of automatic reappointment is, however, not as well established in this enterprise. Although Bell and G.A. Gahan who succeeded him both survived changes in government and remained in the post until well past their sixtieth birthdays, there were occasions on which both were threatened by unsympathetic ministers. 22 P.J. Hannaberry (who succeeded Gahan) remained in the post for nearly twelve years and accommodated a change of government during his first term; but subsequently he failed to survive his open criticisms of certain government actions. 23

Many career officials have also received appointments to the Tasmanian corporations; the 1949 provision that two senior branch heads should enjoy automatic membership of the TTC entrenched this situation.

22. Bell fell out with R.W. Foster, Minister for Works and Railways, over plans for a north-south rail connection. Foster was a South Australian, and a strong supporter of that state's hopes for a South Australia-Northern Territory link through the barren country of Central Australia. "Despite strong pressure" from the minister, however, Bell favoured a link with the Queensland system over the more fertile Barkly Tableland country. Foster therefore approached the South Australian railway authorities to recommend a replacement for Bell, whose appointment was about to expire. But "Mr Bell called on the Prime Minister (Mr W.H. Hughes) ... and told him the story. The outcome of the Prime Minister's intervention was that Mr Bell was reappointed and administered the Commonwealth Railways successfully for years afterwards. Soon afterwards, Mr Foster was no longer Commonwealth Minister for Works and Railways ..." - details from Eric Harding, Uniform Railway Gauge, Melbourne 1953, pp.53-5, 83. As a footnote to this note it is perhaps significant that Bell had previously held a senior position with the Queensland Railways. On Gahan, see below, pp. 377-79.

All three of the pre-1939 Commissioners for Railways were acknowledged experts — only one a Tasmanian, and he had considerable experience outside the state — and Labour Premier Lyons had actually offered to consult the opposition before C. M. Miscamble was appointed in 1924. Of the members of the TTC all that can be said (with one exception) is that the Labour government did not appoint stalwarts of private enterprise who could be expected to oppose the extension of state transport control. The first commissioner, M.W.S. Wilson, was the experienced transport official who had prepared the blueprint for the amalgamation of transport activities involved in the creation of the TTC, and who had done well under non-Labour governments in New South Wales; his part-time associates were retired top public servants with appropriate experience either in railways or traffic control. The second commissioner, Mr C.E. Baird, and all the ex-officio associates since 1949 have been career officials.

The one exception was the interesting case of C.S. Barnard. As a result of union pressure and an affirmatory resolution of the State ALP Conference, the Cosgrove Government agreed in 1944 to seat an employee representative on the TTC as one of the associate commissioners. No special legislation was involved; the government merely asked each of five railway

unions (which covered the great bulk of the staff) to nominate one of their members by ballot, and undertook to appoint one of the five so nominated. The results of this experiment are worth noting.

Barnard, nominee of the Australian Federated Union of Locomotive Enginemen and an engine-driver and official of that union, was eventually chosen. He had probably never heard of Edmund Burke; but like Burke he interpreted his role as one where he should vote according to his conscience. He therefore did not oppose what appeared to him to be correct decisions even though these might adversely affect the railwaymen's interests (e.g. closing of uneconomic branch lines); moreover he would not agitate for what he regarded as unreasonable union demands.

The unions soon complained of his disloyalty; they dubbed him a "road man" and a stooge of the bosses. Within two years, despite a very good record in previous union ballots, he was soundly defeated in an election for a welfare fund organiser. Despite the aim embodied in his appointment, the unions did not use him as a liaison with management but quickly reverted to the old method of agitation, using as spearhead the ARU secretary. They desired a "glorified advocate" to push their demands, a man to create friction on the commission, not a man voting according

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25. Whose security depended on his being recognised as the winner of industrial gains and who had, therefore, encouraged the growing unpopularity of the official "representative".
to his conscience. This experience proved "representation" of the latter kind to be almost unworkable in these circumstances, and when the opportunity came in 1949 to reconstitute the TTC all concerned were glad to discontinue the experiment. The hostility shown towards the "representative" by his former workmates was such that thereafter it proved impracticable to re-employ him in his old work or surroundings. 26

The directors of the ACSB of 1923 were well qualified for their tasks, two in shipping proper and the third in shipbuilding, and all previously holding important posts in the government service. The members of the AGSB of 1956 also have reasonable claims to be on a shipping board, 27 although the fact that three businessmen can outvote two with public service backgrounds indicates clearly that it is not an enterprise of socialistic character. The chairman's past presidency of a Liberal Party Branch no doubt was a recommendation in itself to the appointing Menzies Government, and the other private enterprise members at least could reasonably be expected to hold similar political views. But the government has also been concerned to secure representation of outlying states heavily dependent on shipping services: there has always been a member from Western Australia and one from Tasmania.

26. Details of case from Mr Barnard and various TTC officers who were involved. The problem of employee representation is considered, particularly in relation to Public Service Boards and Appeals Tribunals, in R.S. Parker, "Employee Representation on Australian Public Service Boards and Tribunals", Journal of Public Administration (New Zealand), ix, 2 (March 1947), pp33-48.

27. Only the 1960 appointee, D. Bell from Western Australia, has had no important prior connection with the shipping business.
Labour's appointment of Coles as first TAA chairman was widely interpreted as having special political significance. Because of his vote to oust the Fadden Government in 1941 it was seen as a reward; it was also seen as part of a move to displace independents in parliament. But it was also a most intelligent appointment, for Coles applied his proven business capacity with great success to the task he had been allotted. He was something of an enigma: his energetic efforts on behalf of the "socialist" airline left no doubt of his loyalty to the government which appointed him, even though he was drawn from the world of private enterprise.

TAA's first vice-chairman, W.O. Taylor, was obviously appointed to watch the government's interests. A solicitor by profession, he was NSW vice-president of the ALP, had previously been used by the Curtin Government in an attempt to restore "popular" as distinct from capitalist control of the Commonwealth Bank Board, and was a recognised confidant of Labour

28. See D. Whiting, The House Will Divide, Melbourne 1954, p. 116. Cf. the appointment by the Lang Government in 1926 of independent Labour member A.D. Kay to the NSW Meat Board, for the reason that his doubtful parliamentary vote would almost certainly be replaced in the ensuing election by a safe official Labour vote (and his subsequent dismissal, reappointment and dismissal with successive changes of government) - J.T. Lang, I Remember, Sydney 1956, pp. 304-310.

28A. As Stanley Brogden remarked, "he was anything but the commissioner of a nationalised industry which the critics imagined might be the result of the Act" - "TAA is Fifteen", Aircraft, Sept. 1961, p. 16.

leaders.  

Labour's other appointments were all senior public servants who had been working with Labour ministers, appointed specifically to "represent" their departments.  

It is abundantly clear that most of these appointments were repugnant to the Menzies Government which came to office in December 1949. The government of course found the enterprise itself repugnant, but, as already noted, was compelled to persevere with it. However it deliberately set out to secure a board composed of stalwarts of private enterprise, and the transformation from a socialist undertaking was thus assured.  

The circumstances in which Coles departed from the ANAC will be discussed under the heading "Separations". Taylor's original term expired two months after the accession of the new government - because of his party affiliations, it was a foregone conclusion.  

30. It was said of Taylor's appointment that "the Government brought in a political personality as a check" - Stanley Brogden, "TAA's Enormous Expansion", Airports and Air Transportation, iv, 73 (July 1949), p. 142.  

31. A minute on DCA file 99/1/639 reads: "When it became necessary for the Government to appoint the Commission, the suggestion was made that it should comprise two men in high esteem for their business ability and probity, and three public servants, one each representing the Departments of Civil Aviation, Treasury and PMG, since those three Departments were considered to be all vitally interested in the successful and efficient operation of the Commonwealth's airline services. This suggestion was ... approved ..." (italics mine). Cf. T.E. Chester's view that corporations of this type are more like inter-departmental committees - above, p. 62.  

32. As one aviation writer put it, "it would be illogical for a liberalised aviation department to operate with the present Labour nominees pressing the buttons": Dudley Osborne, "No more favouritism for Government Services", Sydney Daily Telegraph, 20.1.1950.
conclusion that he would not be reappointed. E.C. Johnston had received one reappointment before Labour went out of office - but his double role (he was also Deputy Director-General of Civil Aviation) had been a source of constant irritation to the anti-socialists and he also failed to secure a further reappointment.

Johnston's case reflects the usual distrust accorded the alliance of regulatory and competitive operations within a single organisation. His original appointment had been vigorously opposed by the private airlines and the aviation press and also by their parliamentary mouthpiece T.W. (later Sir Thomas) White, who became first Minister for Civil Aviation in the Menzies Government. Aircraft claimed moderately that Johnston was in an "invidious position", and that the appointment had been offered and accepted without sufficient thought. But many of the complaints were in more emotional tones: thus White quoted from (and enthusiastically endorsed) an article in Air-Log:

nothing could be more unseemly than that the prosecutor, judge and jury over every permit affecting commercial airline operators should also be one of the inner junta lined up to operate an avowed whipping-stick against free enterprise operators and simultaneously armed with every tiniest detail of those others' existing or proposed operations.

33. This was apparent when the TTC began to operate road transport services in competition with those of private operators over which it already enjoyed regulatory powers; and also contributed to the division of the Commonwealth Bank in 1959 into two separate corporations, the Reserve Bank of Australia and the Commonwealth Banking Corporation.

34. Aircraft, August 1946, p. 15.

35. OPE, Vol. 197, p. 2240. The article was picturesquely entitled "Fox in the Hen-Roost: Get That Gun!". There were also many complaints from the private operators.
It would seem that the Chifley Government’s intention – to make Johnston’s undeniably valuable and long experience in civil aviation available to TAA – was quite consistent with the aim of creating a monopoly organisation. But almost before the enterprise got under way this aim was reversed; and in the competitive situation Johnston’s ability to give it confidential information about the strengths and weaknesses of its competitors harmed relationships between them and DCA itself.36

The case of G.P.N. Watt was also a curious one. As Secretary to the Treasury, he had been a confidant of Labour leaders and had helped Chifley37 prepare his controversial banking measures. He was therefore one of the unacceptable permanent heads of the previous administration the Menzies Government sought to replace.38 The opportunity came when Colevac vacated the ANAG chairmanship in 1950. Watt, already Treasury representative on the commission, was elevated to the chairmanship39 – scarcely a magnanimous gesture, for the future of TAA was in considerable doubt.40 It was eventually confirmed in existence

36. For a similar view see Goodrich, Economic Structure, p. 93.
37. At this time both Prime Minister and Treasurer.
38. Others were W. Funnell of Labour and National Service, who became chairman of the new Commonwealth Hostels Ltd., and Dr. J. Burton of External Affairs, who was made High Commissioner in Ceylon.
39. He was over 60, and retired from the Commonwealth Public Service at the same time.
40. In fact the ANAG carried on with four members for some time, and then only three for a few months during 1952. The government was obviously reluctant to make fresh appointments, although DCA stressed the difficulty of carrying on with a bare quorum, and the Solicitor-General advised naively that, since (contd. overleaf)
by the 1952 Civil Aviation Agreement, but, having clearly demonstrated his lack of sympathy with that agreement,41 Watt failed to gain reappointment in 1956.42 His replacement, company director and ex-Country Party candidate43 W.D. McDonald, was regarded by many as a protege of the Prime Minister.

Four out of the five members the Menzies Government had inherited therefore departed for reasons other than the "natural causes" noted in connection with the WR.44 G.T. Chippindall, the Post Office representative, was the only Labour appointee to survive this "purge" – he was in fact subsequently knighted (as Sir Giles) and appointed chairman. His first reappointment by the Menzies Government was preceded by a strong recommendation from Watt on two grounds relevant to the status

the act provided for five members, neglect to fill the vacancies "might lead to Parliamentary criticism of the failure of the Executive to carry out a declared wish of Parliament". From DCA file 99/1/639.

41. See below, pp.398-9. It is understood also that he earned some censure from the department for what it regarded as excessive haste in getting the new Viscount aircraft into service at the end of 1954. There was something of a "race" atmosphere about this, as ANA was introducing new DC6's at about the same time. In fact TAA's first Viscount crashed on a training flight.

42. He then became Financial Consultant at £1000 p.a. – this appointment appears to have been offered as a "consolation prize".


44. I.e. age or health "retirements", death, etc.
of public corporations in general as well as to TAA in particular. First, Chippindall was the only member still in direct contact with public service administration, policy and practice:

There is a large investment of Commonwealth funds in the Airline. The administration in relation to the staff of the Commission must conform to the principles laid down by Parliament for Government instrumentalities generally. Administration of contracts and finance must likewise conform to public policy.

Secondly,

It is most desirable that the personnel of the Commission should be such that in the event of a change of Government, there should not be a demand, on political grounds, for a change in the personnel of the Commission. For these reasons I trust no objection will be raised to Mr. Chippindall's reappointment.45

Chippindall had proved a reliable but uncontroversial administrator — hence he had done little to earn political unpopularity. The Menzies Government could reasonably assume that he would prove equally reliable and uncontroversial as chairman; and indeed his stewardship has not so far been marked by any episode which could be likened to Watt's refusal to participate voluntarily in the Civil Aviation Agreement or McDonald's outspoken comments on the Caravelle question.46 After a lifetime of public service, Chippindall could be expected to be both more respectful of his minister's wishes than another Coles who had

46. See below, p. 396.
been used to running his own affairs, and also less enterprising in the accepted commercial sense. These were attributes which suited the Liberal philosophy of keeping unwanted public enterprises firmly in their place.

The new appointments of the Menzies Government reinforce this view. There were no more public servants, but rather company directors and private chartered accountants inherently hostile to socialist enterprise, some at least on friendly terms with members of the government.47 As well as his business interests, Blackburn had been a Nationalist politician; and the most recent appointee, Sir Reginald Groom, was elected Lord Mayor of Brisbane on an anti-Labour ticket in 1958.

Patronage has therefore clearly played its part in TAA appointments. What, then, of the NSWGR, which might be expected to bear fruitful study in view of Mr Parker's general comment that in this state the field (i.e. patronage in senior corporation appointments) "has been exploited shamelessly"?48

The early appointees included two notable overseas railway experts, E.M.G. Eddy and T.R. Johnson. The former was widely respected except by a few union officials and others of little consequence who found their sectional influence effectively blocked by his appointment. Acworth described him as a

47. Wackett's recent appointment (and perhaps the reappointment of Packer, who had war-time RAAF experience) were designed to equip the board itself with aviation knowledge, but they do not disprove the generality of this statement - Packer, for example, is also a company director.

48. Parker, op. cit., p. 166
benevolent, enlightened and well-loved despot, and his passing was lamented as something of a national tragedy. But while Eddy had combined humane qualities and great tact with his managerial competence, Johnson was stiff, formal and uncompromising. His clashes with early Labour governments effectively ensured that he would not be reappointed when his term expired. The other early commissioners were mainly career officials receiving "promotion" after the Victorian fashion.

Patronage, open and unashamed, emerged in 1917. When Premier W.A. Holman parted with the Labour Party on the conscription issue, the member for Broken Hill, J.H. Cann, was one of his loyal followers. But this was a blue-ribbon Labour constituency, and Cann could not possibly retain it under Nationalist colours. So Holman, who was in the process of legislating for a reconstituted railway commission at the time of the change-over, demanded his appointment to that commission as a condition of his own pact with the Nationalists.

This set a precedent for many subsequent episodes. J.T. Lang boasts that he threatened Chief Commissioner J. Fraser with dismissal in 1925, to secure the latter's agreement to

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50. Holman was first a Labour Premier and then Nationalist Premier - for biography see H.V. Evatt, Australian Labour Leader, Sydney 1940.

51. Related by J.T. Lang, I Remember, op. cit., p. 83.
implement a particular policy. But Fraser was also persona non grata with Lang's political opponents, and it was in fact the Bavin-Buttenshaw (Nationalist - CP) Government which secured his resignation in 1929. Shortly afterwards Lang rewarded him with appointment to the STCB.

There were a number of reasons for Fraser's unpopularity. A railway man all his life, he had common cause with Lang in promoting railway interests and subduing the growing competition of road transport, to this stage wholly a preserve of private enterprise. In particular, he is reported to have fallen out with Railway Minister E.A. Buttenshaw over the latter's habit of sending for employees directly to discuss railway policy behind the backs of the commissioners - Fraser objected strongly that the railways should be free from political influence, and at one stage all three commissioners refused to see the minister. And the government wanted him out of the way in order to appoint its own businessman protege, brewery manager W.J. Cleary.

When Lang returned to office, he seized every opportunity to reduce Cleary to a position of impotence. The Nationalists had by special statute given Cleary extended tenure of nine years, according to the Labour view precisely because they wished to reduce the possibility of Lang's ending the appointment in the

52. Ibid, p. 256. Lang was the controversial Labour Premier of the 1920's and early 1930's. This particular episode is described in more detail below, pp. 325-30.
53. See also below, p. 137.
event of his return to office. But in 1932 Lang introduced his Ministry of Transport plan, by which Cleary's job was abolished and the way cleared for the elevation of G.J. Goode, Lang's confidant and sympathiser. When the Governor, Sir Philip Game, dismissed Lang a few months later, the incoming Stevens-Bruxner Ministry in its turn forced Goode's resignation, and brought Cleary back. Apparently disgusted with his experience of public office, however, he resigned in December 1932, on the eve of implementation of M.F. Bruxner's transport plan.

T.J. Hartigan and F.C. Garside were less controversial appointments; all parties seemed to welcome the quieter atmosphere following Lang's removal, and these men, appointed by Bruxner, received reappointments when Labour returned to power in the 1940's. But after the war the ugly head of patronage reappeared, and this time Labour had no competition.

Winsor had become the man of the hour to sort out the transport mess. He had been well known to Labour politicians

55. Govt. Railways (Amendment) Act No. 35 of 1929; "A Brewery Man Ran the Railways", op. cit.
56. Goode's earlier suspension by Cleary had aggravated the antagonisms - see below, p. 332, note 90.
58. Bruxner was CP leader and Minister for Transport. Cleary is reported to have sworn that he would never hold public office again - ("Baron of Beer and Broadcasts", Smith's Weekly, 6.8.1938) - but in 1934 he accepted another controversial public role as chairman of the ABC.
as president of the Railway Officers' Association from 1931 to 1940, in which capacity he had clashed violently with the Stevens-Bruxner Government over depression salary cuts, accusing it of "double-cross" and attacking it in radio broadcasts. He was, moreover, a self-confessed "Labour man". 59 He enjoyed a series of rapid promotions between 1948 and '50 as Assistant Commissioner for Railways, Emergency Transport Co-ordinator during the coal-strike, Commissioner for Road Transport and Tramways, and Director of Transport and Highways. 60 But when he was moved to the position of Commissioner for Railways in 1952 (with a salary reduction) his fortunes were on the decline. "Always an egotistic and tempestuous figure", he quarrelled with the "Labour regime to whose favours, along with his own unquestioned abilities, he owed his past preferments"; 61 over this salary reduction and on many other issues; and he was eventually removed by Labour in another storm of controversy. One of his final disputes concerned the selection of his successor, and in this also political

59. Reviews of Winsor's career in SMH, 16.5.50 and 26.7.56. The former records also that in 1932 he had been requested to give up either his senior position or the union presidency; had refused; and had got away with it. Since Winsor reached the pinnacle of his career under Premier J. McGirr it is interesting to note the latter's strong defence of him as early as 1932 - NSWPD (ii), vol. 134, p. 876.

60. i.e. chairman of THC.

61. SMH, 26.7.1956, editorial.
pressure was to play no little part.

Two other appointments to the THO, which enjoyed a power of direction over the NSWRC between 1950 and 1952, also merit reference here. These were the nominations by the McGirr Government of J.A. Ferguson to "represent" employees engaged in the transport industry and Alan Manning to "represent" rural industry.

Ferguson had been cleaner and gold-escort in the NSWR; he became an ARU organiser in 1934, and that union's NSW secretary in 1943. He was foremost a politician: by 1950 he not only retained the ARU post but was also a Labour member of the Legislative Council and both State and Federal President of the ALF.62 His conflicting loyalties, especially after he had organised a railwaymen's strike and participated in a warning that any attempt to organise compensatory bus services would result in extension of the strike to that industry also, prompted a member of the state opposition to describe that commission as an "Alice in Wonderland set-up" and to comment thus about Ferguson's confused role as party, union and public official:

I doubt if one could find anywhere a more conflicting and mutually exclusive set of responsibilities. Never before has responsible government taken the risk of saddling itself with a jockey who has backed so many other horses in the race. It is little wonder that confusion exists in the minds of hon. members, of the Commission and of the people generally, on the reason why this virtual dictator of the Labour Government, is considered a servant of the Minister,

as Commissioner, though he must do what he is told by the Australian Railways Union. Truly this is a 'Mad-hatter's Party'. One need not be surprised that this incongruous mixture has exploded ... Just where does Mr Ferguson stand?63

His many roles were also criticised by the press and within the Labour Caucus; but Ferguson himself had no doubt about where his first responsibility lay - it was not to the government or to the general travelling public, despite the declared object of the commission of which he was a member. He openly criticised the "efforts by the responsible authorities", and was reported further as saying: "My political responsibility as president of the A.L.P. is best served by a proper observance of my trade-union obligations"; and also that:

My attitude as an official of my union is not inconsistent with what is expected of me as employees' representative on the Transport Commission. The fact that I am a member of the Commission does not relieve my responsibility as a trade union official. On the contrary it merely increases it.64

His attitude was the very antithesis of that adopted by Barnard in Tasmania.65 Yet neither experiment in interest representation was a success. Ferguson and Manning were both being rewarded for service to the party. That the former had had his eye for some time on a senior executive post in transport is shown by Tribune's reference to him as a "keen contender" for the railway

64. SMH, 26, 27 and 28, 10, 1950.
65. See above, pp. 97-9.
commissionership in 1946.66 The latter - the representative of rural industry - was a grazier, but he had stood as a Labour candidate in the 1949 elections and been defeated by the OP. The opposition therefore ridiculed his appointment as much as it did Ferguson's.

After the abolition of the THC in 195267 Premier Cahill adopted a new line, at least in so far as the post-war NSW Labour governments were concerned. His actions were an acknowledgment of advice Bruxner had been giving for years. This was that transport problems would not be solved by creating ever more exotic and more complicated administrative forms, designed largely to provide "jobs for the boys".68 What was needed was a simplification of the machinery, more care in getting the right man for the job, and then adequate respect for his authority.69

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66. *Tribune*, 29.10.1946. In order to get over the difficulty that members of parliament could not hold offices of profit under the Crown, the relevant legislation provided specifically that these positions should not be so regarded. See also LPRB's: "The NSW Government Railways", 1952, p. 5; "Political Appointments by the State Labour Government", 1954, p. 4; and "Our Trams and Buses", 1956, p. 3.

67. On this see also below, pp. 273-4.

68. An expression coined in Britain in relation to appointments to the boards of the nationalised industries. See e.g. Acton Society Trust, *The Men on the Boards*, Claygate 1951, p. 1. For an example of its application in Australia see *SMH*, 3.5.1956, editorial.

69. E.g. his speech on Transport and Highways Bill, *NSWPD* (ii), vol. 191, pp. 5169-70. Cf. the view of Unilever's Sir Geoffrey Heyworth that the main task of the company's full-time board of directors was to know 600 men with sufficient intimacy to ensure that the right 200 got to the top: all the controls, audits and inspectorates in the world wouldn't turn a bad manager into a good one - see R.H. Thornton's review article in *PA* (London), xxviii (Autumn 1950), pp.209-19.
Outspoken critics of Labour patronage acknowledged that "After Mr Cahill succeeded to the Premiership there was a diminution in the more blatant political appointments".  

Cahill recognised, moreover, that ministerial personalities could be just as damaging: for example Mr W.F. Sheahan, who had held the transport/folio when Winsor was Director of Transport and Highways, could equally be described as an "egotistic and tempestuous figure", and whatever he accomplished by his own vigorous activity in the transport enterprises was more than countered by his creation of discord and his undermining of the authority of the executive officials by public criticisms and internal interference in detail. So Cahill transferred Sheahan to a ministry which involved less complicated relationships; and the tributes to C.E. Martin on his death seven months after succeeding Sheahan included both a reference by the Premier to the care he had taken in his selection and an acknowledgement by the Liberal leader of his generosity and loyalty to the officers under him. All this was a virtual rebuke to Sheahan. And Cahill's insistence that the reluctant Mr A.G. Enticknap should take the portfolio in 1956 showed a similar concern for the

70. LPRB, "Political Appointments by the State Labour Government" (1959 Addendum); also article "While Experts Wait, Labour Men Get Big-pay Jobs", SMH, 27.2.1956, p. 2. However the paper suggested uncharitably that this was only because an election was in the offing.

71. NSWPD (iii), vol. 5, pp. 464-5. See also below, pp. 340-53.
special requirements of humility and tact needed in the minister-statutory corporation relation. 72

The Inspectors of NSW Treasury's Budget Branch (formed in 1938) play an important co-ordinating role in public finance: they visit departments to review estimates and expenditure and advise on financial matters. 73 They also visit corporations whose finances are included in the budget: there is, for example, an officer concerned largely with railway affairs. Such officers played an important part in the development of the Budget Bureau within the NSWR and now work in close co-operation with it. The implications for corporate autonomy will be readily apparent: it was by this means that the government, growing impatient of Winsor and seeking to apply its new-found principles, obtained confirmation of the administrative ability and "fresh and unorthodox approach" 74 of McCusker, one of Winsor's subordinates.

Thus, when Winsor took sick leave in 1955, cabinet appointed McCusker over the heads of several senior officers as acting commissioner. Winsor reportedly was "furious"; 75 and his temper was not improved on his return to office by a minis-

72. NSWPD (iii), vol. 16, p. 480.
73. Parker, op. cit., p. 169
74. Description from article "McCusker Likely as Commissioner", SMH, 26.7.1956. McCusker had previously been THC Executive Officer, and had been tipped to succeed Garside as NSWR in 1951 (SMH, 15.11.1951). However he had become unfriendly with Winsor and was moved from the spotlight for some years.
75. Article "Winsor Rose from Bottom Rung", SMH, 26.7.1956. This appointment was facilitated by the temporary absence of W.A. Anderson, Secretary for Railways and the leading contender, who had gone to England in an endeavour to cancel the Garratt Locomotive contracts - see below, p. 352, note 133.
tential request that he should appoint McCusker as "First Deputy to the Commissioner" at £4,000 p.a. Winsor took no action, so the request became a direction. Even then he tried to block cabinet's desire by seeking legal confirmation of his view that it had no power to make staff appointments. Legal opinion agreed that it would be inconsistent with the intention of the railway legislation for anyone to appoint an "assistant" or "deputy" commissioner; however, cabinet had power to give general directions to the existing commissioner and there was no legal difficulty so long as the word "commissioner" was not included in the title of the new office. Mr E. Wetherell, the then minister, accompanied this advice with a further direction that McCusker should be appointed to some office which would rank next in seniority to the commissioner, at a salary of £4,000. Winsor then announced publicly that he considered the appointment unnecessary, but since he had no alternative was promoting McCusker as Senior Executive Officer. He then reportedly showed his resentment by rarely seeing McCusker and by leaving him in the small office he had occupied before his promotion. However the process of getting rid of Winsor had begun, and McCusker was waiting to step into his shoes when the government's

76. The statutory position of assistant commissioner had been abolished in 1952.

77. The position later became Senior Administrator.
ultimatum of July 1956 finally achieved the desired result.78

Of the selected corporations, therefore, it can be
said that patronage has been almost non-existent in the VR and
CR, and present to a limited degree in Tasmanian transport and
Commonwealth shipping. In TAA and the NSW it has been common-
place.

Having said this, it is necessary to make an important
qualification. Even though patronage can be identified in a
particular appointment, it does not necessarily mean that consid-
erations of merit have been discounted. The governments which
gave their partisan support (i.e. something more than purely
impartial selection) to Cleary, Winsor, McCusker or Coles, for
example, could claim with some justification that past histories
in each case indicated better-than-average abilities and a like-
lihood of success in the new jobs. Cleary, an economics graduate
and Lecturer in Business Management at Sydney University, worked
his way up from a humble position to be general manager of Tooth's
brewery at the age of thirty-seven, and his success in this post
causd him to be regarded by many as "the most brilliant financial
expert in the city". Even Lang later conceded that "the prejudice
of the Railways staff" contributed to the difficulties he had to
face.79 Despite Winsor's reputation for outspokenness, he had

78. Details from SMH, 5, 7, 9, 17 and 18.5.1955, and 26.7.1956.
It was rumoured that at the eleventh hour Winsor endeavoured
to make his resignation conditional on guarantees about the
choice of a successor. On Winsor see also below, pp. 138-9.

79. "A Brewery Man Ran the Railways", op. cit.; also "Baron of
Beer and Broadcasts", op. cit.
also built up a reputation during the war for his able handling of difficult staffing problems. Although the press was quick to denounce Labour patronage and may have regretted the manner of their appointments, it had no criticism to make at the time of either his or McCusker’s abilities. And Coles’ managerial competence was undisputed: under other political circumstances, he is just the sort of person one could imagine a Liberal government appointing.

Thus patronage does not necessarily conflict with merit; although it may of course do so. It could scarcely be said that Ferguson’s background justified his appointment as chairman of the NSW Milk Board when the THC was folding up; or that ex-Premier McGirr, a pharmacist by profession, had any good claim on the presidency of the Maritime Services Board. But there have been few such glaringly unsuitable appointments to the six selected enterprises.

Is patronage still to be deplored where adequate attention has also been paid to merit? South Australia’s Goodman Commission thought so: “The State is entitled to demand . . . that there shall not even be a semblance of favouritism or political influence . . .” But Whitington took a more realistic view of appointments such as those of Coles:


These were all actions by the Government which the Opposition was entitled to describe as political. But Curtin was as entitled to make appointments with the stability of his Government as prime consideration as Menzies was before him, and as, in fact, all leaders of Government are. The weakness of such a system emerges only when political considerations so transcend all others that the appointee lacks the necessary qualifications for the post he is required to fill.82

The question of political sympathies, however, requires further consideration. After a long discussion on personalities in the debate on Bruxner's 1932 legislation, Lang made this notable contribution:

... I hope hon. members opposite will not say they object to political appointments. What is sauce for the goose is sauce for the gander. When an anti-Labour Government is in power it has the right to receive sympathetic administration ... [but its appointees] are so intensely antagonistic to the political principles to which a Labour leader must aspire that he could not tolerate them. If he did, he would be inefficient and incapable. ... Who would expect men with the anti-Labour ideals of Mr Maddocks83 and Mr Cleary to deal sympathetically with Labour administration? ... When Labour is in office it has a perfect right to appoint to the highest administrative positions men who will give sympathetic administration.84

In this passage Lang seems to invest with considerable logic the chopping and changing that was going on in senior posts in New South Wales.

Lang's approach was an acknowledgement of the rather uncomfortable view recently expressed by a British scholar, that "no political leader ... could do without patronage" and that

83. S.A. Maddocks, previously secretary, NSW Police Dept., placed in charge of the tramway corporations which Bruxner had separated from the railways in 1930. Like Cleary, he lost his job with Lang's 1932 reorganisation and regained it after Lang's dismissal.
84. NSWPD (ii), vol. 134, p. 869.
"Certain key positions of power need for success to be held by sympathizers". This makes a mockery of the tradition of a non-political public service; and is what Bland feared in warning of the dangers of a "spoils system" in the corporations.

What infuriated Lang and his supporters most was the suggestion invariably made by non-Labour politicians that only Labour indulged in this practice. Beasley, who carried the Lang attitude into the Federal Parliament, said in relation to ABC appointments in 1933:

Labour has never disguised its belief that, in order to have the Labour policy carried out, it must appoint to key positions persons sympathetic with that policy. The difference ... is that Labour is open and honest about the matter, while the other side pretends all the time that its appointments are thoroughly impartial.


86. GFD, vol. 139, p. 1271. Much more recently Mr Allan Fraser, Labour MHR, was as cynical about the Menzies Government's appointments (including that of McLeod) to the Reserve Bank and the Banking Corporation: "Just imagine the storm that would have been aroused had a Labor Government done something of this kind - appointed a former Federal President of the Labor Party to the central bank directorate, a former labor candidate to the chairmanship of the trading bank, and a dozen avowed socialists to its board of directors. When the Menzies Government does a blatant thing of this sort, very little is said. But it needs to be said, and people need awakening to the implications of what is going on" - Extract from broadcast "Your Member Speaks", Station 2CA (Canberra), 28.6.1959 (Script sighted by permission of Mr Fraser).
Back in 1882, Berry had been saying the same thing about the Victorian Conservatives.87 Throughout Australian corporate history parties of the right have had the advantage, for the qualifications needed to manage public enterprises are usually found among persons with similar backgrounds to the right-wing politicians. As Mr Parker put it, patronage "has not been confined to governments of one political party, but it is easier for non-Labour parties, in awarding jobs, to select proteges who have some claim to independent expertise or public standing".88

It is not difficult to understand why patronage has appeared in a controversial enterprise like TAA, which has aroused the passions of socialists and anti-socialists alike. Each group, when in power, naturally feels it must have people it can rely on not to undermine its own political intentions. But no party disputes public ownership of the railways. The striking contrast between the NSW (where patronage has often appeared) and VR (where the commissionerships have generally been treated as simply the top of the promotion ladder) is in part at least a reflection of the much longer periods of Labour government in the former than in the latter state. The situation described in the last paragraph has thus favoured

87. See above, p. 91.
88. Parker, op. cit., p. 166.
Victoria, for the men whose abilities take them to the top in the normal course of promotion will usually see eye-to-eye with non-Labour governments.

Victoria also possessed in Clapp one of the strongest figures to lead any of the selected enterprises. He fearlessly opposed governments of all three parties during his "reign" of almost twenty years, yet was regularly reappointed. This appears to require further explanation, which I suggest lies in the statutory provisions for ministerial control. A government holding last-resort directive power over the corporation can afford to be more tolerant of a strong head than one which does not; and it might well reap advantages in terms of positive and stimulating leadership of the subordinate organisation. Victoria provided its Minister of Railways with such a power as early as 1891; this did not come in New South Wales until 1950. The question of obtaining "sympathetic administrators" more amenable to whispered suggestions may well have assumed greater importance in New South Wales for this reason.

It has become fashionable to debate whether the concept of a non-political civil service is a realistic one at all. 89

This is too wide a question to attempt to answer here, but in the

89. E.g. Balogh, op. cit.; also series of seminars on "Politics, Neutrality and the Public Service", conducted in Australian National University, March-May 1961.
context of the above discussion it seems appropriate to point out that most governments reserve the right to select top departmental officials (i.e. at the permanent head level, whatever arrangements are made for subordinate positions), and that they cannot be expected to appoint knowingly persons with radically different political views or "obstructionist" personalities.

The Menzies Government on coming to office sought also to change certain permanent heads of departments because of their political sympathies. It is therefore unreasonable to expect governments to refrain from considering similar factors in their appointments to corporations. But in ensuring that those chosen will also have relevant experience and managerial capacity, Labour is at a disadvantage for the reasons discussed above, particularly in the field of public enterprise management.

90. Above, p. 103. The Committee of Inquiry into Public Service Recruitment (Boyer Committee) recommended that the Commonwealth government should be under a statutory obligation to consult the Public Service Board about such appointments, and to notify to parliament any departure from the board's recommendations: Report, Canberra, 1958, p. 28. But this received very little support. In view of the position in NSW corporations, it is strange that that state's strong Public Service Board holds such a power in relation to the heads of departments. Because of this, and the weaker position over the years of the central public service authority in Victoria, I was at first inclined to the view that the relative absence of opportunity for the exercise of patronage in the NSW departments may have contributed to its wider exercise in the corporations as a compensatory effect. But this argument is probably too mechanistic.
2. SEPARATIONS

(a) Statutory Removal Machinery

Statutes creating Australian public corporations usually spell out in some detail two ways in which appointments may be terminated. These are automatic disqualification and vacation of office under prescribed conditions, and positive suspension and dismissal action by governments.

The disqualification and vacation of office provisions usually cover bankruptcy or insolvency, absence without approved leave for more than a specified period (e.g. fourteen days or three consecutive meetings), incapacity to perform duties, personal interest or participation in profits accruing from a contract involving the board or commission concerned, and — in the case of full-time appointments — engagement in other employment. The personal interest disqualification had the effect (e.g. in the case of TAA after the Menzies' switch from public servants to company directors) of making it difficult even to find suitable persons to appoint, since few business men did not have shares in companies likely to be transacting business with the corpora-

91. Herein is a further contrast with British legislative practice, regarding which Milligan wrote in 1951 that only in the case of the Bank of England was there any significant restriction on ministerial discretion in the matter of dismissal: "Ministerial Control", p. 166. Cf. the criticisms of J. Strachey's role in terminating appointments to the Overseas Food Corporation, in ibid (note 10) and also Alan Wood, The Ground-Nut Affair, London 1950, p. 219. Cf. also the governmental power over some Indian corporations to dissolve the entire board if in the government's opinion it has failed to carry out its functions or there is no need for its continuation: GPA, 1959, p. 166.
This led to some modification of these provisions in Commonwealth legislation; and to consideration of the question by the Public Accounts Committee.

The suspension and dismissal provisions fall into two distinct groups, those which allow parliamentary review and those which do not; and the drift from the first to the second has passed almost without notice or explanation. Acting on the precedent of the Audit Commissioners, the VR legislators of 1883 thought it necessary to give quasi-judicial protection against arbitrary dismissal and therefore gave the full legislature, if in session, sole power to authorise removals. If it were not in session, the government could suspend; but this action would be subject to review by the legislature, which had power to reverse it by address to the Governor. The only doubt which concerned the 1883 debaters was whether the Legislative Council should enjoy powers in the removal process equal to those of the Assembly. The grounds on which action of this sort could be taken were originally "inability or misbehaviour"; they were expanded in 1891 to


93. AAPC Reports, pp.63-5, 98. In the case of the Tasmanian transport corporations removal of the sort discussed in this paragraph is subject to the same parliamentary review as provided for in the case of positive suspension action by governments. It goes without saying that resignation or death results in vacation of office (although in some cases it is stipulated that no resignation can be effective unless accepted by the Governor-General). In the following analysis, such "natural cause" separations are distinguished from those resulting from breaches of statutory requirements.
"Inability, inefficiency, mismanagement or misbehaviour, or refusal or neglect or failure to carry out any of the provisions of the Railway Acts". 94

Parkes varied the provision slightly for the NSWR. In all cases the government would take initial suspension action, but in all cases also a confirmatory resolution of parliament was required, failing which the commissioner would be restored to office. 95 In this respect the TGR and CR legislation followed the Victorian intention despite some differences in phrasing. The TTC of 1938, however, switched to the NSW pattern by requiring positive parliamentary confirmation (rather than possible disallowance); and it went still further by giving the suspended commissioner legal entitlement to address parliament personally or by counsel. 96

The Commonwealth's first public corporation, as already noted, was designed in apparent ignorance of relevant state experience. The 1911 bank legislation said nothing about removal of the governor except to state that he held office subject to "good behaviour". That the creating government had not considered the

94. Act 47 Vic. No. 767 (1883), S.14; Act 55 Vic. No. 1250 (1891), S.41 - the latter continued in consolidated Act No. 6355 of 1958, S.60.


96. Commonwealth Railways Act No. 31 of 1917, S.12; "Act 1 Railway Management Act 1, Geo. V, No.69, S.15 (1910); Transport Act 2 and 3 Geo. VI, No.70, S.7 (1933). The grounds for suspension and removal in these cases are: CR - as for Victoria after 1891, TGR and TTC - "misbehaviour, negligence or incompetence", NSWR - "misbehaviour or incompetence".
implications was shown by Prime Minister Fisher's reply when asked who would determine what constituted good behaviour: although not explicitly stated in the act, his interpretation was that the High Court would decide. It was Watt of Victorian parliamentary experience who introduced to the Commonwealth Parliament the Victorian system of protecting corporate appointments by parliamentary review, in his CR legislation of 1917. These provisions were copied for the War Service Homes Commission of 1918 and the 1920 Institute of Science and Industry, although the latter involved a change to the more positive NSW parliamentary role. Inconsistently it was Bruce who, in his 1923 Shipping Act which sought in other ways to create a more independent agency than ever before, discontinued the practice of providing for parliamentary review; and in subsequent Commonwealth acts it is left entirely to the government to decide whether to terminate appointments "for inability, inefficiency or misbehaviour".

Parliamentary review is still retained in the railway acts; and the provision was copied from them for a number of other state corporations. But, by and large, it is a feature which has


98. Commonwealth Shipping Act No. 3 of 1923, which said only that directors held office "during good behaviour", (S.6(2)).

passed out of fashion. With the proliferation of corporations, their heads for the most part no longer enjoy that near-judicial status in the community possessed by the nineteenth century railway commissioners.

These carefully spelt out disqualification and dismissal provisions are, of course, for use in emergencies. What do the seventy-seven separations from office in the selected enterprises reveal about their application? They have in fact been invoked in four cases only.

(b) Separations in Practice

The conditions for disqualification from office may have had the negative result of restricting the field of selection in the first place, although it is unlikely that e.g. a bankrupt would ever be seriously considered. As indicated, the interest in contracts disqualification did prove embarrassing in the case of TAA and was therefore modified. But in not one of the six enterprises has an office ever been declared vacant for any of these reasons.

The four cases all followed the alternative pattern of removal for inability (and so on). They all occurred in rail

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100. As at August 1961. This number includes all separations from the governing bodies of the main corporations; it excludes the provisional ASB, the two NSW supervisory corporations, and the members of the amalgamated NSW body of 1932 other than the chief commissioner who was in a real sense successor to the NSMRC.

101. In one other notable case - that of the War Service Homes Commission in 1921 - the discovery that the commissioner was an undisclosed insolvent was used as a pretext for removing him from office.
corporations and therefore took the form of suspension by the
government with the possibility of subsequent parliamentary
intervention. But as three of the four commissioners concerned
were removed by a single act, it is convenient to consider them
as constituting two cases only. Both involved subjective judg-
ments about personal capacities, and in neither was the result
such as to encourage other governments to make use of the
relevant provisions.

The first case involved the suspension by the Shiels
Government in Victoria on 17 March 1892 of the three commis-
erers, Speight, Ford and Greene. Speight, who had got along
very well with Gillies as Minister of Railways, found it much
more difficult to tolerate Shiels' curtness and lack of respect
for the corporation's legal autonomy, his desire to deal directly
with subordinate railway officers, and his arbitrary layman's
demands for a reduction in train mileage and so on. In the
gathering storms of depression, of course, retrenchments were
necessary; and the VRC along with many others had contributed to
the extravagance in public finance of the "land-boom" of the 1880's.
They were perhaps slow to appreciate the need for a reversal of
many of their policies. But in legal terms at least they were
correct in resisting Shiels' pressures; moreover, to support his
case, Shiels had put forward an erroneous interpretation of the

102 Over a dozen grounds of suspension listed VPD, vol. 69,
pp. 131-4.
reasons involved in the setting up of the corporation in 1883.¹⁰³

This is also largely the story of the 1891 Railways Act, which has still to be told;¹⁰⁴ that legislation not only gave Shiels the additional powers he sought but also expanded the grounds for the removal of recalcitrant commissioners. In all this Shiels was scarcely his own master: behind him, pushing, prodding, threatening, encouraging with undoubted power to swing elections, was David Syme of The Age. Syme waged a bitterly hostile campaign against Speight’s management in the columns of his paper, and virtually forced the suspensions.

When parliament reassembled, it was clear that a consideration of the government’s action would form an important part of the session’s business. Speight had many supporters, including Gillies and most of the opposition, and the debate was well under way when it was announced that he and his colleagues had submitted their resignations. This action followed behind-the-scenes negotiations in which the government offered to deal liberally with them in the matter of compensation, and it was accepted at the time with heartfelt relief by all parties.

However the affair was not over. Speight was encouraged by his supporters to take legal action: significantly it was Syme he sued for libel, claiming £25,000 damages. The proceedings

¹⁰³. See especially Correspondence Between the Minister of Railways and the Railway Commissioners, VPP No. 016 of 1891. Episode described more fully in Wittenhall, Railway Management, pp. 39-59.

that ensued were described in 1908 as "the greatest libel action of modern times". There were two trials, lasting ninety-four and eighty-six days respectively, and other minor litigation hinging on the outcome. The verdict was inconclusive: there were eleven counts of libel, the jury returning verdicts for Speight on two of them (with token damages of £100 and one-farthing) and for Syme on the remainder. Syme had pleaded fair comment, and although the trial cost him £50,000 he regarded himself as vindicated. The Shiels Government, however, was out of office long before these proceedings concluded.

Many had claimed that, as head of an important public agency, Speight was a fair target for personal and political criticism. The Gillies group replied that this was unjust, because he had no seat in parliament from which to make his own defence. To the critics, however, this was merely the penalty of irresponsible administration. Speight was largely the victim of his times. Many of the views for which he was roundly condemned have since been accepted, as parliament's attitude towards railway problems has mellowed and as The Age has lost its crusading fervour.


106. When he was minister, Gillies had done the defending, Shiels, on the other hand, joined the attack. The ministerial attitudes are considered further in chapter VI.

The Government of Sir Walter Lee which suspended G. Wishart Smith, Tasmanian Commissioner for Railways, on 13 September, 1923, was master of its own destinies to a much greater degree than the Shiels Government had been. Yet it was following advice from an external source which was probably as disputable as that of The Age. The TGR had not been alone in receiving considerable criticism in the years after World War I; nor were they alone in being subjected to an external investigation. What was unusual was the rapidity with which the ensuing recommendations were carried out.

The inquiry was headed by G.W. Stead, whose railway knowledge and alleged superficial methods were criticised by Smith as soon as the appointment was announced. The two other members were not railway men at all, but nominees of the Hobart Chamber of Commerce and the Farmers and Stockowners' Association. Stead became almost a professional railway inquiry chairman in the 1920's, coming to Tasmania from a similar project in Western Australia, and chairing a Victorian royal commission a few years later. His criticisms of the Western Australian management were largely disregarded; and there were some ridiculous charges against the TGR (e.g. the assertion that the appointment of an Economy Board was proof of the incapacity of senior officials). But the government lost little time in acting on the recommendation "that consideration should be given to the question as to whether effective administration can be
obtained under Smith's control.\textsuperscript{108}

After his suspension\textsuperscript{109} Smith petitioned parliament for a judge to determine the charges against him; he had already made many counter charges against the royal commission. Lee was already out of office, and the new Lyons Government preferred to seek a further expert inquiry.\textsuperscript{110} The latter, while not directly referring to Smith's removal (the suspension was confirmed as parliament did not move for his restoration), clearly allocated most of the blame for unsatisfactory management on political interference.

Smith then commenced a court action for wrongful dismissal, but the Lyons Government arranged an out-of-court settlement. Lee was critical of this action, but Lyons' Attorney-General, A.G. Ogilvie, furnished some significant information in reply.\textsuperscript{111} The Crown law authorities, fortified by the opinion of a private counsel who had personally investigated the case, reported that there had been no real grounds for dismissal; that the majority of matters complained of were of controversial nature; that "every expert railwayman in Tasmania supported the plaintiff's views on all the charges on which his competence was called in

\begin{itemize}
  \item \textsuperscript{108} Royal Commission on Tasmanian Government Railways 1923 /Stead Commission/, Report, pp. 11, 14.
  \item \textsuperscript{109} There were three grounds of alleged misbehaviour and eight of alleged negligence - Minister for Railways (Sir Walter Lee), Statement of Grounds of Suspension, 1924.
  \item \textsuperscript{110} TPD (Mercury Reprints), 1923–24, many references; and W.A. Webb (Chief Commissioner, South Australian Railways), Report on Tasmanian Government Railways, Hobart 1924 /Webb Report/.
  \item \textsuperscript{111} TPD (Mercury Reprints), 1924–25, pp. 50, 54.
\end{itemize}
question"; that (regarding the charge that certain funds had been used irregularly) "all the Cabinet were in like manner compelled to, and did, irregularly resort to other accounts"; and in fact that the Crown simply had no case.

The subjectiveness of decisions about incompetence and neglect made clear-cut verdicts very difficult to obtain; and perhaps wisely governments have severely restricted their use of the prescribed dismissal procedures. Yet this obviously does not mean that all the other seventy-three separations have necessarily been free from suggestions of dissatisfaction with work done (or of unacceptability for political reasons).

As might be expected, such separations have tended to concentrate in those enterprises most subject to patronage in appointment. But first it is necessary to exclude from consideration those separations due (as far as can be ascertained) to natural causes. There have been twelve deaths in office; two appointments to higher positions in the service of the same government; and thirteen cases of non-reappointment on expiry of an earlier term where this was clearly due to age or ill-health. As will be indicated shortly, resignations are more difficult to

112. Or three, if McDonald is counted. After resignation as ANAC chairman, he was appointed chairman of the new Commonwealth Banking Corporation.

113. Including twelve full-time railway commissioners with an average service of 12½ years each on the governing body concerned, ages on "retirement" ranging from 61 to 71 years, a number of them having by this time completed more than 50 years individual service with the particular enterprise. (7 from VR; 2 each from CR and TGR; only one from NSW.)
classify: there have been nineteen in all, but, as far as I am aware, thirteen of these have been without political complication\textsuperscript{114} and may therefore also be excluded from further consideration.

Of the remaining thirty-three, twenty-two were cases of non-reappointment, due to something more than what I have termed "natural causes". Five concerned the NSWR: a notable instance was that of Johnson, whose resistance to ministerial demands, even counter-threats about the use of railway revenue, earned the undying hostility of the Labour government and ensured his non-renewal in 1914; the others were Gann and Fox (appointed by Holman, and not renewed in 1924 by the Nationalist–GP coalition which had ousted the Holman faction), and Forster and Brain (whose resignations the coalition had tried unsuccessfully to obtain in 1929 and whose appointments were allowed to expire a couple of years later by Lang to pave the way for his 1932 transport reorganisation). And from the other enterprises: the two provisional VR teams in the 1890's; the ACSB directors (who lost their jobs when the government sold their ships);\textsuperscript{115} the four part-time associates of the TTC, first St Hill and Lord (whose departure made possible the experiment in employee representation) and then Oakes and Barnard (whose departure facilitated reconstruc-

\begin{footnotesize}
\textsuperscript{114} Except perhaps pure disillusionment, as in Cleary's second term of office.

\textsuperscript{115} Although the reappointment history here reveals that Sir William Clarkson was dropped before his colleagues: perhaps because he had led the opposition on the board to Chairman H.B.G. Larkin, who in turn seemed to have more sympathy with Bruce's policies?
\end{footnotesize}
tion to terminate that experiment); and Taylor, Watt, Johnston and Webster of TAA. In other cases, of course, the threat of non-renewal has been held over corporate heads in an attempt to secure their agreement to courses of action desired by governments.

Three NSWRC's were removed by amending legislation abolishing the governing body in its existing form, designed at least partly with the specific purpose of getting rid of them. Lang's removal of Cleary in 1932 took this form. The other obvious cases were those of Oliver and Fehon in 1906. In introducing legislation to remove them and reconstruct the corporation, Premier J.H. (later Sir Joseph) Carruthers stated that, since there was "no gross maladministration", they could not be removed under the terms of the existing act; this could only be done by passing new legislation especially designed to dissolve the existing

116. Except for Mr Barnard, however, these associates were retired public servants, and probably would not have been reappointed for reasons of age even if there had been no other pressures for reconstruction. This was also true of some of the NSWR assistant commissioners: but cf. Forster who was only 41 when put out of his job.

117. On these see above, pp. 90(note 2), 101-4. On the causes of the various NSWR separations see also below, chapter VI.

118. Ministry of Transport Act No. 3 of 1932. The Legislative Council added a rider granting him compensation.

119. Railway Commissioners Appointment Act No. 7 of 1906, following the adverse reports of the Rogers Commission.
The appointment of Harper, another NSWRC, also lapsed with the passing of new legislation (in 1916).

And finally there were the cases of forced or assisted resignation. These are more difficult to substantiate because there are so many ways of exerting secret pressure. Those mentioned below are cases which clearly had political undertones. Four of these also concerned the NSW.

The first was that of Fraser in 1929, which has already been mentioned. There was bitter argument about what actually happened. Fraser had suffered a family bereavement, and was not in good health. He had fallen out with the Bavin-Buttenshaw Government, which in addition wanted his space to allow the appointment of Cleary. Whether he offered or was asked for his resignation is uncertain, but there was an inducement of £10,000 (equivalent to leave of absence for two years); and it is known that the government's refusal to accede to a demand for similar conditions caused the negotiations for the resignation of one at least of his two colleagues to fall through.

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120. In an instructive speech he used the precedents of Victoria (the Speight case) and Queensland (whose squabbling board of three commissioners had been removed by legislation substituting a single commissioner) to justify payment of compensation. - NSWPD (ii), vol. 22, pp. 687, 846-9.

121. Cf. Robson's comment that the "line between resignation and dismissal can be a very narrow one"; and his illustration of this from the experience of Britain's nationalised industries - Nationalised Industry and Public Ownership, London 1960, pp. 238-9.

122. Above, p. 108.

123. Blakey ("Politics and Administration", p. 40) considers the £10,000 payment was "out of gratitude to Fraser's voluntary retirement and for his outstanding service".
resignation of Goode, Lang-appointed chief of the amalgamated transport board, in 1932. Goode had been accused of accepting bribes, and the report of an inquiry carefully constituted by the Nationalists was sufficiently damaging to compel him to resign. Again, Garside and Winsor were asked for their resignations as their sixty-fifth birthdays approached.

This was in accordance with agreements both had been forced to sign before gaining appointment; but, as we have seen, Winsor refused to comply. A few weeks later cabinet decided to force the issue. Premier Cahill personally presented Winsor with an ultimatum "Resign or be dismissed", and the following day outlined his plans to a meeting of the State Parliamentary Labour Party. It was reported that two bills were drafted, one to dismiss him and the other, to be substituted if his resignation was forthcoming, to reduce the statutory term for his successors. The significance of the first bill is not clear, for, as the press pointed out, dismissal could be obtained by resolution of parliament — it was apparently intended to force the issue. Winsor stalled by asking to be allowed to complete fifty years' service in the railways, but the government was adamant. However, follow-

124. The Royal Commissioner was the ex-president of a Nationalist political league. See Lang's comments, NSWPD (ii), vol. 134, p. 866.

125. See also above, pp.81-2. By this time the government actually had press support, the growing chaos in Sydney's public transport causing even the SMH to demand that "Winsor must go" — Editorial, 5.7.1956.

ing earlier precedents (even in the case of Garside) in the matter of compensation, it offered him a lump sum payment of £15,000 in addition to superannuation (to cover long-service leave and compensation for the balance of his term) provided he resigned by a fixed time: the opposition described this as the price the government paid to save itself the embarrassment of dismissing him. At the last moment Winsor accepted these terms, and the Premier, awaiting his decision in a tense parliament, immediately interrupted other proceedings to introduce the second of his bills.\textsuperscript{127}

It may be incorrect to say that the other noteworthy resignations, those of Coles, first TAA chairman, and Hannaberry, third CRC, were forced in the same sense. Both made a voluntary decision to leave when they did, yet there is considerable evidence to suggest this was merely a judicious way of avoiding the unpleasantness likely to occur when the question of reappointment came up. The circumstances surrounding Hannaberry's departure will be described later, in connection with the issue on which his "obstinacy" was revealed.\textsuperscript{128}

Coles' initiative and ability in putting a public enterprise firmly on the airline map was a source of embarrassment to non-Labour politicians; his part in voting out the Fadden Govern-

\textsuperscript{127} SMH (ibid.) commented that it was "quite in character that he should make his exit in a storm of controversy". Other information in this paragraph from SMH, 5, (6), 26 and 27 July 1956.

\textsuperscript{128} Below, pp 453-7.
ment had already earned their hostility. A feature of the 1949 election campaign had been the CP leader's declaration that Coles would go if Labour were defeated: "The hatred of the Liberals for Mr Coles is surpassed probably only by the hatred the Country Party has for him", remarked one provincial paper. Consequently, as the Menzies Government took office, his future was the subject of much speculation. There were categorical press statements that the government did not intend to reappoint him when his current term expired; and, to add insult to injury, White, the irrational mouthpiece of the private airlines and arch-critic of TAA since its inception, became Minister for Civil Aviation. No wonder if Coles did "not feel comfortable", or if he doubted the government's intention to reappoint him.

In the midst of renewed speculation in May 1950 about a possible merger of the public and private airlines, Coles announced his resignation. He gave as his reason the fact that TAA was now well established under a capable general manager, and

129. Also included in this threat was A. Wilson, the other Independent who voted for Labour in 1941, and who was subsequently appointed Administrator of Norfolk Island. It was made by A.W. (later Sir Arthur) Fadden at an election meeting at Wangaratta, Victoria (see Melbourne Herald, 29.11.1949) and was given wide press publicity.


131. E.g. at the time of Taylor's non-reappointment in February 1950 - on 10.5.50 Melbourne Argus described this as "an open political secret". Details from TAA Press Cuttings, a number of volumes held at Commonwealth Archives Repository, Brighton, Victoria.
was no longer in need of a full-time chairman. He was
also reported as saying that he had enjoyed cordial relations
with the Prime Minister - but significantly he did not mention
White. The Sydney Sun "understood that Mr. Coles and Mr. White
could not agree on several policy points", and suggested that
one of these was the intention to restrict TAA's operations.

The experiences related above show that Australian
governments have preferred to by-pass the statutory provisions
in ridding themselves of unwanted corporation heads. But
this has been forced on them for several reasons. The provi-
sions deal with personal and financial probity and managerial
competence; they do not (and could not) deal with the matter
of political acceptability. Yet in some of the selected enter-
prises this has played an important part. Again, even if major
divisions of political opinion are not involved, the relationship
between government and corporation is still an intricate one
rarely allowing an easy or conclusive apportionment of blame when
things go wrong. And faults such as mismanagement or incapacity
defy accurate measurement - judgments can rarely be as conclusive
as those made in the case of the Western Australian Railways in
1957. The two occasions on which the provisions were invoked

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132. This also applied to BCPA (British Commonwealth Pacific Air-
lines Ltd.) which was then associated with TAA under Coles' chairmanship. The resignation was given wide press publicity
on 11.5.1950.

133. Except in the sense that the passive method of non-renewal of
appointment is sanctioned by the tenure provisions.

134. See F.K. Crowley, "The Government of Western Australia", in
S.R. Davis (ed.), The Government of the Australian States,
in the selected enterprises brought little credit to the govern-
ments concerned. In these circumstances it is not surprising
that governments have sought to follow more discreet methods. 135

The relative ease with which they do this is an
indication that they do hold "last resort" power to bend corpora-
tions to their will. 136 It is also a measure of the limitations
of the statute-book in laying down rules to guide the affairs of
corporations.

135. E.g. avoiding the publicity of parliamentary review where
the legislation provides for this. These methods may, of
 course, involve some delay, as in waiting for the term of the
previous appointment to expire; but a government, if suffici-
ently determined, can sterilise corporations in this condi-
tion, as Lang did the NSWRC in 1931 by the appointment of
the superior STOB.

136. One of the most astonishing features of the conflict between
the Commonwealth Bank Board and the Scullin Government in the
early 1930's was the reappointment of the chairman, Sir Robert
Gibson, even after the lack of agreement had become apparent.
The government thereby ignored the one avenue open to it of
obtaining control of the nation's monetary policy, for its
efforts to obtain new legislation failed because of a hostile
Senate. See L.F. Giblin, The Growth of a Central Bank, Mel-
bourne 1951, p. 100; and for a more lurid account, D.J. Amag,
The Story of the Commonwealth Bank (12th ed.), Adelaide 1948,
pp. 18-19.
"Furthermore, Mr. Wetherell, I don't think it's legal!"

BOLTE: "She's been there for years — and no-one seems to know how to shift her!"

STATE RAILWAY ISSUES:


IV. FINANCIAL ARRANGEMENTS

Finance plays an important part in both structural and operational phases of corporate control, i.e. through the initial decisions about sources of income and connections with the budgetary system, and subsequent supervision of charges and expenditure. Controls of the latter kind (e.g. over variations in fares and freights, letting of contracts and fixing of salaries) will be considered in Part C; the present chapter is concerned with basic arrangements of the first kind.

In terms of finance Australian corporations may be classified in two ways. By results, some are financially self-supporting and others dependent on Treasury contributions for part or all of their funds. By constitution, some are separate from the budget and enjoy a large measure of control over their own funds, while others are incorporated in the budget and are subject to close Treasury and parliamentary control on near-departmental lines. In the selected enterprises the shipping and air corporations are both outside the budget and normally self-supporting; the state railways are generally both inside the budget and unable to support themselves. The correlations are not surprising, for self-sufficient corporations might reasonably be expected
to be allowed greater freedom to manage their own affairs. However they are clearly not inevitable, for the CR comes within the budget but is apparently profitable, the TTC is outside the budget but is not.

The constitutional differentiation can be attributed partly to an error of judgment, or at least lack of foresight, on the part of those responsible for pioneering the corporate device. In view of the care taken by the railway reformers of the 1880's to give their new agencies a high degree of independence in other respects, it is remarkable that so little attention was given to finance. These bodies were given separate legal constitutions and important statutory powers in their own right, staffing independence and exemption from other normal civil service controls, and their heads were protected by parliamentary review of suspension.

1. Cf. Kewley, "The Statutory Corporation", p. 118. However, most corporations in this position enjoy little independence in relation to capital funds. A few state corporations, e.g. in the electricity field, enjoy the right to float their own loans on the public market; but this concession is of restricted value because of the "gentleman's agreement" by which any such loans amounting to £100,000 or more in one year are submitted to the Loan Council for consideration with the other loan requirements of Australian governments (see R.G. Gates, "The Finance of Government", in R.N. Spann (ed.), Public Administration in Australia, Sydney 1958, p. 231.) None of the selected enterprises has even this right - the debenture-issuing power of the AGSB did not disturb this position, because in fact it issued all its debentures to the Commonwealth Treasury which thus became mortgagee. Capital expenditure of course relates to long-term planning, and in these days of controlled economy it is an area virtually impossible for governments to vacate.
These attributes were all highly non-departmental in character. Yet in general no inconsistency was seen in continuing the old departmental financial arrangements even after conversion to the corporate form.

The launching of that form - even with this defect - showed great courage and imagination. But the great age of railway reform had passed by the turn of the century, and subsequent gains (which will be discussed below) have been far less spectacular. In fact most Australian rail corporations remain tied to the budget to this day.

The need to adopt special financial arrangements for corporations came gradually to be recognised as the corporation itself was institutionalised; and the new corporations have benefitted accordingly. But the railways have suffered from their priority in the corporation movement. Their form was set early, and in general the advantages of subsequent experience have been denied them.

I would not maintain for a moment that Australian railway systems, if they had operated under a commercial accounting system, need not now be in financial difficulties - for indeed railway systems the world over, both private and state-owned, are experiencing such difficulties. But I do believe that the

neglect to separate railway finances from the general budget has significantly aggravated their financial situation. It can be said for the corporation makers that they could not possibly have foreseen the difficulties which were to arise when railways lost their virtual transport monopoly; nevertheless, it was probably their biggest mistake that they did not accord their creations financial as well as managerial autonomy. Here also Victoria set the pattern.

1. RAILWAY FINANCE

(a) Departmental Origins

When conducted as an orthodox ministerial department before 1883, the VR were financed like the other departments through the annual budget, and their receipts were paid into consolidated revenue: towards the end of the pre-corporate period there were consistent deficits on each year's operations. Moreover, although creation of a renewals fund had been suggested as early as 1868, no attempt had been made to provide adequately for depreciation and maintenance, or to set aside reserves. There was a general desire that the railway revenue should cover both working expenses and the interest bill on capital, but in the absence of such fund maintenance and renewals were frequently covered by fresh loans and the capital indebtedness became swollen

unrealistically. The book-keeping capital value under this system bore no relation to the actual value of railway assets; yet interest on the total had to be paid.

Although the enterprise attained a large measure of statutory autonomy when the VRC were appointed, its financial position was not changed. Fresh capital was pouring in owing to the extravagant railway construction policy of the 1880's, and the VRC, who did not directly incur this expenditure, were expected to meet the total interest bill as well as their own working expenses. Despite profits in some years, they were unable to do this consistently. Treasury subsidies were required to make up the railway deficits, and the commissioners were frequently and bitterly attacked (particularly in the early years) for so-called inefficient management - this despite the fact that politicians were almost as frequently pointing out, in justification of their own interference beyond the statutory limits, that a public railway system had developmental rather than purely commercial aims.

4. Parliament retained to itself the power to authorise all new construction and governments used construction bills as devices for buying political support. In this connection the role of the VRC between 1883 and 1891 was to advise on new routes proposed by the politicians, and then to organise construction of those parliament approved. They never enjoyed the decision-making powers attributed to them by Prof. E. Shann in An Economic History of Australia, Cambridge 1948, p. 305. After 1891 they lost even these limited functions, which went to the Board of Land and Works. In the other systems also parliaments have always retained the right to decide which lines to build, and in NSW (until 1916) and in Tasmania railway construction remained a function of Public Works Departments.
Victoria's 1883 legislation and the other railway acts following it provided on broadly similar lines (a) that the commissioners shall prepare annual estimates, in a form directed by the Governor-in-Council, of revenue and expenditure for each year; (b) that all their receipts shall be paid into the Consolidated Revenue Fund and that they shall only spend moneys as appropriated by parliament for the particular purposes prescribed in the Appropriation Acts; and (c) that they shall obtain through the minister special parliamentary authority for all expenditure not covered in the annual estimates.  

The Victorian experience with this system is fairly typical. Early in each year the Treasury requests draft estimates of revenue and expenditure for the ensuing financial year (and also revised figures for the current year) on the basis of existing rates and fares. In their estimates the VRC include their claim for Treasury recoups, and comment on priorities and other relevant matters. For 1959–60, for example, they pointed out that owing to the difficult financial situation in previous years they had deferred much maintenance work; but in view of rapid deterioration e.g. of station buildings badly in need of a coat of paint, it was most important that the finance sought for this work be provided. A conference between VR and Treasury heads followed, and no doubt there was some haggling in cabinet

5. The VR and CR still function on this basis, although there have been some changes over the last generation in New South Wales and Tasmania. These will shortly be discussed.

6. Discussed below, chapter VIII.
between the various political heads. The Treasury then formally "requested" that the total railway estimate "be improved" by a minimum of £600,000. Amended estimates then furnished allowed for a further deferment of the maintenance provision. Before being finally passed in the budget, these estimates were cut by an additional £30,000, and the VRC commented that they presumed this represented a refusal to meet certain recoup claims: "The effect ... is that this Department is being called upon to bear a proportion of the loss incurred in implementing the Government's policy".7

Capital expenditure is also subject to close political control. Each year the VRC make an estimate of loan requirements, and after Treasury review and cabinet negotiations they are advised of the actual allocation. A Railway Loan Application Bill is then required to obtain parliamentary authorisation for the particular projects on which the money is to be spent: all projects estimated to cost more than a given amount (£4,000 in 1955) are listed individually. Special legislation is required for all new construction.8 Another control over capital expenditure is

7. Details from VR file 59/3103. Railway ministers themselves are not averse to chopping estimates supplied by commissioners: cf. the case recorded by the Tasmanian commissioner in evidence before the 1923 Stead Commission, in which he had asked the government for £130,000 to buy new locomotives, but the minister himself reduced the request to £60,000 before passing it on - from notes perused by permission of the TTC.

8. Today there are few such projects, which would normally be carried out by the Board of Land and Works. But the VRC do on occasions carry out quite substantial alteration work adjacent to existing railway property: on this basis they, and not the Board, have been appointed constructing authority for the Melbourne-Albury standard gauge project.
contained in the Public Works Committee Act, 9 which permits the Governor-in-Council to refer works estimated to cost more than £20,000 to the committee for report, and prescribes that no works estimated to cost more than £10,000 can be commenced without the sanction of the relevant minister (in this case the Minister of Transport).

One rather amusing case which associates the policy-making aspects of the VRC's managerial autonomy with the subject of the railway system to these financial controls concerns the decision in the mid-1930s to build the steel train "Spirit of Progress" for the Melbourne-Albury express service. In its day this was one of the most modern trains in the world, and its construction gave Victoria most favourable publicity. Yet if there had been a strong minister and a weak chairman at the time it probably would not have been built. The VRC had included the necessary item in a schedule to the annual Loan Application Bill, but, fearing parliamentary tight-fistedness, had hoped not to call specific attention to it.

Their briefing notes for the minister's use certainly did not envisage his reading out the schedule in detail. But they had miscalculated, and a political outcry resulted. The government could not admit that it had not studied its own legislation, and the bill had therefore passed; however, the Treasurer directed

9. Act No. 4288 of 1935, s. 20. Before 1935, a somewhat similar control over railway capital expenditure was exercised by the Railways Standing Committee.
that no funds should be expended on the new train without special cabinet authority. Undaunted, Clapp was soon writing to the Minister of Transport in these terms:

The Commissioners have been advised by the Treasury that the Treasurer desires an intimation from them that they are observing his direction, as expressed in the letter of 12th ultimo from the Director of Finance, that no expenditure on the proposed new train for the Sydney Limited service is to be incurred without Cabinet authority.

The Commissioners beg to point out that the Railways Act vests in them the responsibility for the management of the undertaking, and, subject only to a very special authority in the Governor-in-Council, leaves to them the control of the administration of the railways. No question of the provision of moneys is involved because the expenditure is covered by the Loan Application Act.

The Commissioners respectfully submit, therefore, that the incurring of the expenditure upon the proposed train for the Sydney Limited service is no longer a matter for the exercise of Cabinet authority.

Their attention has not been called to any provision of the Railways Act which justifies the Treasurer's request.

There is no record in the VR of any reply to this memorandum, and the "Spirit of Progress" was duly built in the corporation's workshops.

These arrangements induced a senior VR official to warn me that his organisation should not be regarded as a statutory corporation in the full sense of the term, for the reason that subjection to a full measure of Treasury co-ordination and inclusion within the Consolidated Revenue Fund bring it closely into line with the regular departments on the financial side.

They also prompted the VR to commence a statement on "Ministerial Control" they had occasion to prepare in 1942 thus:

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10. Memorandum dated 10.12.1935 (extract from VR file now destroyed, perused by permission of the Secretary).
The general control of the railways by the Government is exercised primarily through the "power of the purse". The Commissioners cannot spend the moneys which they collect, as everything is received for and paid into the Consolidated Revenue. Both the costs of ordinary work, and capital funds for additional rolling stock or works, have to be appropriated by Parliament.  

The CR corporation is similarly subject to both Treasury and parliamentary supervision of finance. However it has an advantage over its state counterparts in that the Commonwealth finances much of its capital works from taxation revenue rather than loan money so that the interest burden is lighter. Up to 1937 the CR drew its capital both from loans and from revenue, but all alterations, additions and expansions of a capital nature since 1937 have been financed from revenue sources.

11. Statement dated 31.3.1942, perused by permission of the Secretary.

12. The CR's interest bill on the old loan raisings is actually decreasing through the operation of the National Debt Sinking Fund. However, it is doubtful, given a continuation of the present government, whether it can long escape the thinking which forced the Post Office to increase rates in 1959 to cover so-called interest charges on the amount of general revenues as well as loan funds made available for its capital development. The significance of the interest factor here is well indicated by Post Office results in the two years 1958/59 (when interest was charged on loan moneys only) and 1959/60 (when it was charged on total capital, irrespective of source):

<table>
<thead>
<tr>
<th>Year</th>
<th>Working Profit</th>
<th>Interest</th>
<th>New Profit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958/59</td>
<td>£6,856,164</td>
<td>£812,730</td>
<td>£6,043,434</td>
</tr>
<tr>
<td>1959/60</td>
<td>£15,775,259</td>
<td>£15,347,006</td>
<td>£328,253</td>
</tr>
</tbody>
</table>

Figures from Canberra Times, 20.4.1961. There is also some dissatisfaction with other accounting methods used in the CR (including operation of the recoup clause), and this has led to suggestions that it should be brought more closely into line with the other Commonwealth transport enterprises.
This is in marked contrast with the states, where all capital expenditure comes from loans (and even over the years some expenditure on renewals and maintenance not properly chargeable to capital).  

For many years after adoption of the corporate form the NSW and Tasmanian railway systems were also financed as if they were departments in the full sense of that term. It is clear that they also suffered financially from excessive subject to political pressures. Such difficulties were revealed in proceedings before the 1923 Stead Commission in Tasmania, and before NSW's Fay-Raven Commission in the following year. Chief Commissioner Fraser informed the latter of pressure from the Treasurer to vary his estimates and of quite arbitrary changes made in them by the Treasury; and the commission cited some correspondence as evidence of the "considerable pressure ... brought to bear upon the Chief Commissioner to reduce estimates year by year in order to enable the Treasurer to produce a balanced State Budget".  

13. See also below, pp. 169-70. 

14. E.g. case referred to above, p. 149, note 7. 

15. Fay-Raven Report, pp. 14-17, and evidence, e.g. pp. 12, 51. One of the ways in which Johnson had made sure of his non-reappointment in 1914 was to answer the McGowan (Labour) Government's demand in 1911 that his loan estimates should be cut down by a large amount with the retort that if cuts were made he would take a corresponding amount from railway revenue - E.A. Pratt, The State Railway Muddle in Australia, London 1912, p. 111.
(b) Difficulties of the State Systems

The changes which took place in New South Wales and Tasmania in 1928 and 1938 respectively will shortly be described. First it is necessary to mention a growing awareness of weaknesses in the arrangements inherited from the pre-corporate era. Other enterprises were pointing the way quite early in Australian corporate history. But probably none of them affected as many citizens as intimately as did the railways, or equalled them in sheer scale of financial operations and size of staffs. It was therefore easier to afford them some real insulation from normal political processes.

The process of modification was tentatively initiated some time after the incorporating acts, and is still going on in piecemeal fashion. But it has never been followed through to its logical conclusion, i.e. adoption of financial methods appropriate to the corporate form of management otherwise enjoyed. This has been suggested many times, but numerous objections have been raised. It would require parliaments possessed of great reforming zeal; but this condition is rarely achieved. If Service, Gillies and Parkes had recognised the need, they would probably have carried this reform also in their legislatures, which were dedicated to the abolition of patronage in all its forms. But they did not, and later state parliaments have valued their influence in railway management too highly to embark on further ordin-

16. For a general survey of these problems, made at the height of the depression crisis of the early 1930's, see Hytten, "Finances".
ances of self-denial. The truism that Australian railway systems have been built around developmental rather than commercial objectives of course adds a logical base to their attitudes. 17

There is a further historical reason for the complexity of the problem of state railway finance in Australia. It concerns the association of the two distinct elements of railway management - track construction (and possibly maintenance), and operation of services. Whereas the corporations were given very little say in construction policy, 18 the finances of the two elements were inextricably mixed. This difficulty may be emphasised by a glance at other transport enterprises.

The shipping and airline corporations in general hold decision-making powers in the area denied to the rail corporations - i.e. what routes to operate. But although they are their own masters here to a much greater extent, they have the substantial advantage that the track they use - the sea and the air - is both flexible and cheap. Their "track costs" consist merely of certain "rentals" paid for navigational and berthing (or landing) facilities provided on their behalf. Operators of road transport services also contribute (e.g. by license and registration fees)

17. A proposal made in 1891 to include in the VR legislation a requirement that charges should be fixed so that revenue would cover working expenses and interest was quickly defeated for this reason. I have also shown elsewhere that Prof. Pearson was almost alone in the Victorian Parliament in 1883 in querying the advisability of continued Treasury control of finance. See Railway Management, pp. 29, 50-1.

18. And in many cases were not directly involved in the construction work. See also above, p. 147; note 4.
to the upkeep of their 'track'. But this is not their responsibility; nor do they carry all the debt obligations incurred on it.

The history of Australian railways furnishes numerous examples of parliaments ordering the construction of new lines without consulting railway managements or despite their adverse reports. But the debt obligation has still passed to those managements - construction items have frequently formed the largest part of the railway debt. To a considerable extent, therefore, the rail corporations have been forced to accept financial responsibility for political acts outside their control.

19. Subject of course to an ultimate government guarantee.

20. There have been other cases where the corporations have carried the interest burden on costs incurred in lines begun thus but never completed, or in lines closed or dismantled; and also in surveys ordered by governments for lines never begun. Moreover they have on occasions disputed (or not understood) Treasury calculations of their interest bill - but they have still had to pay. See e.g. Fay-Rayen Report, p. 13; H.W. Clapp, What Should be Done to Improve the Financial Position (mimeographed), Melbourne 1928, p. 7.

21. It is interesting - but now rather pointless - to speculate on what might have happened if the debt obligation had been left with the construction authority and the operating authority charged some form of rental for use of track. Such an arrangement would at least have permitted a clearer picture of the actual costs of railway operation and a more equitable allocation of financial responsibilities; and it may well have permitted the rail corporations in general to get much closer to the conditions of managerial autonomy intended by their founders. In presenting this case I am aware that some uneconomic lines - and many were so from the moment they were opened - were recommended by rail corporations (particularly during the Speight era in Victoria). But the responsibility was legally and constitutionally that of governments and parliaments, and in any case they often tacked many more on to lists the commissioners had recommended. It was specifically conceded by politicians that many Tasmanian branch lines were approved either without consulting the railway management or in spite of its adverse reports. In most states some construction work has (contd. overleaf)
The burden of the interest bill may be simply demonstrated. In 1928-29 the NSWR recorded a final deficit of £1.6 millions; but before this figure was obtained £6 millions interest had been paid. "Without interest and exchange, the Railways would always show a profit", said Lang. Speaking of the 1920's, when he was vitally concerned with such questions, he added that railway loans "were never retired. They were like the brook. They had paid more interest than the amount originally borrowed."22

The participation of the railways in the sinking fund arrangements made in the 1927 Financial Agreement has meant that all liability as at 1925 will be written off by 1985; and that subsequent loans will be written off over fifty-three year periods.23 The proceeds of sales of railway land (e.g. where lines are closed) are also usually applied to reducing the capital indebtedness.24

been undertaken primarily to provide employment; i.e. as an instrument of government social policy. Political considera-
tions enter equally into the matter of closing uneconomic lines: years frequently pass between the demonstration by rail corpora-
tions of the need for such action and the taking of necessary decisions, and in the meantime the corporations normally go on meeting the loss.

22. J.T. Lang, "A Brewery Man Ran the Railways", Truth, 18.3.1956. In New South Wales railway receipts have usually exceeded work-
ing expenses; but this has not necessarily been true of Vic-
toria in recent years or of Tasmania since 1925/6.

23. The NSW Auditor-General has, however, expressed strong doubts about the desirability of applying sinking fund obligations to a business undertaking. In his view the "essential requirement of railway finance is not to repay capital but rather to keep it intact". He notes further that the growing habit of expecting it to do both (the latter through special funds, which will be discussed shortly) "aims at a level of conservatism that the railways cannot be expected to reach in normal times". W.J. Campbell, Australian State Public Finance, Sydney 1954, pp. 221-2.

24. But of course they do not cover cost of earth works, etc., which are of no value except for railway purposes.
But even as this process is going on, the state railways are
drawing heavily on new loan raisings, so that the debt problem
is scarcely relieved. Thirty years later the NSWR capital debt
stood at £275,139,543, on which charges amount to about £13
millions. Thus a substantial working profit of £61 millions in
1958-59 was converted to a deficit of similar proportions.25

The governments often assume a charitable air in
funding such "moses", and it can frequently be shown that this
"subsidy" to the railways more than accounts for any budgetary
deficit. In the 1959-60 Victorian budget, the expected railway
deficit was over £5 millions but the net state deficit budgeted
for was only £1.2 millions. Without the railway drag, there
would have been a respectable surplus. In these circumstances
it is inevitable that railway finances will be accorded a great
deal of political consideration.26

In this matter of interest the very fact of public
ownership brought with it a major disadvantage. Since capital
is obtained predominantly by borrowing, interest is payable
regardless of profitability. On the other hand the stockhold-
ers of private enterprise, who normally provide most of the
capital, are entitled only to dividends which vary according to
profits earned from time to time - if there is no profit, there


26. See discussion of budget under heading "Fares Stay for
'Moment' - Bolte", in Melbourne Herald, 9.9.1959. Political
interest has been almost as great in those years in which
railways have made a clear profit after paying both working
costs and interest, for pressure is then immediately exerted
for decreases in charges.
is no obligation to pay a dividend.\textsuperscript{27} There is also no obligation on private enterprise to repay stockholders' funds, whereas provision has usually to be made for the redemption of borrowings by public enterprises.

Further, private enterprise has access to a method of adjustment to accommodate deterioration in asset values denied public enterprise. In the thirty years prior to 1911, for example, nearly 600 American railway companies went through receivership and reorganisation, thereby gaining capital relief "far greater than the total capital of Australian railways". In these cases stockholders and creditors bear the loss; but, short of debt repudiation, this method of relief is not available to state enterprises.\textsuperscript{28}

Though the interest bill and deficits have increased greatly in recent years, the problems of state railway finance are

\textsuperscript{27} Arguments of this sort were put forward by the ACSB secretary in relation to its fixed-interest debenture charges - C.A.A., C.P. 189, file U212/1, submission to board dated 2.9.1926; and also by Clapp, \textit{op. cit.}, p.6. Prof. T. Hytten recorded that the aggregate Australian state railway loss for 1928-9 was £4,400,000 - yet a private company with a similar capital subscribed by stockholders, and a similar revenue, "would have shown a net return of a little over 3 per cent. on its capital. This is admittedly a low return, but it sounds infinitely better than a statement showing a net deficit of £4,400,000". - "Finances", p. 22. See also A.A. Fitzgerald and G.E. Fitzgerald, Form and Contents of Published Financial Statements, Sydney 1948, p.274. Current arrangements for TAA and the ANL - to be outlined below - have largely overcome this problem.

\textsuperscript{28} Hytten, "Finances", pp. 22-3. See also Fitzgerald and Fitzgerald, \textit{op. cit.}, p. 227; and B.J. Ratchford, Public Expenditure in Australia, Durham (N. Carolina) 1959, p. 171. The latter comments that "the value of the public debts is usually wiped out or greatly reduced through inflation, but in the meantime the debt has contributed to the inflexibility of the financial system."
not new. Their implications, moreover, go beyond the politics of individual states - they affect the whole fabric of federal-state relationships. This was foreseen by a few contributors to the Federal Conventions during the 1890's. A small party then urged that the Commonwealth should take over both the state debts and the state railways, the costs of which were expected roughly to balance out the revenue surplus accruing to the Commonwealth through the agreed transfer of customs. They saw that otherwise federation would relieve the states of far more revenue than expenditure. Their proposal would, of course, also have relieved the railways of much of the localised pressures to which they were subject, and the need for even a centralised system to be under "non-political control" was stressed. 29 H.B. Higgins of Victoria warned that "if you federate without the railways being taken over you are like playing Hamlet with Hamlet left out." 30 But many leading politicians feared loss of influence, and this movement came to nothing. 31 Instead complicated formulae were evolved to distribute surplus Commonwealth revenue among the states.

In the late 1920's and early 1930's - as railway finances reflected worsening economic conditions and placed ever greater

29. The proposal was also sound from the defence point of view, and it offered a chance of solving the vexed gauge question. See e.g. Official Report of the National Australasian Convention Debates, Adelaide 1897, pp.922-34, 1176, 1199 (including reference to decisions of a Financial Committee appointed by the 1896 Bathurst Convention at p. 923).

30. Ibid., p. 928

burdens on state budgets - the matter was again seen as one of pressing national concern. Numerous inquiries were instituted, mainly by Commonwealth governments of the period; most of them recommended either fully centralised control of the railway systems, or management by some sort of federal or two-tier corporation to alleviate the worst problems but retain some measure of localised control. But these proposals also had little effect, and the only real measures of centralised control ever obtained were those instituted on a temporary basis for the construction of the Sydney-Brisbane standard gauge link in 1924, and for defence purposes during World War II. Neither was intended to solve financial problems.

In the absence of a system of centralised control, the states have acted individually, and the steps taken have


33. A Railway Council, consisting of the CRC, the chief NSWRG, and the Queensland commissioner. See Grafton-Kyogle to South Brisbane Railway Agreement Ratification Act No. 20 of 1924 of NSW Parliament (and complimentary legislation by Queensland and Commonwealth Parliaments).

34. Variously a Land Transport Board and a War Railway Committee, under control of the Commonwealth Transport Minister; on this see e.g. NSWR, Railways at War, Sydney 1947, pp. 9-10. There was also a War Railway Council during World War I, but its functions were purely advisory.

35. It should be mentioned that for many years regular Australian and New Zealand Railway Commissioners' Conferences have been held. These have done useful work e.g. in setting various operating standards, facilitating agreements about inter-system rates, and standardising statistical reports to facilitate inter-system comparisons. But they lack any statutory basis or authority, and cannot be said to meet adequately the needs of co-ordination. They cannot enforce action at the political level.
varied considerably from system to system. But the problem of railway finance has not been alleviated, as the figures given above indicate. Each year the states haggle with the Commonwealth for the federal disbursement, and the railway deficit is one of the primary causes of their discomfort. It has been said that "railway finances are the barometer of state finances", 36 that the "railways, more than any other single factor, cast the States on the Commonwealth's mercy." 37 Under these circumstances railways must evidently be among the most pressing concerns of governments.

The effect of inevitable deficits on management was argued convincingly by Eggleston:

no service can be efficient unless every worker in it feels some responsibility for its success; the best way for him to measure success is to co-operate towards an achievement which can be seen and realised; the best goal is a balanced profit and loss account. To budget for a loss is to discard a tangible measure of success and so diminish the incentive. 38

This view was repeated as recently as 1957 by a senior NSW official:

if railway financing could be put on a business basis, a railway organisation would be given a tremendous boost in morale, and thus in efficiency, by reason of having a financial task within its capacity to achieve. It must be difficult to display enthusiasm in the effort to produce a deficit

less than last year's, but which nevertheless will still be large. Such a situation can lead to disinterestedness among employees and to cheese-paring by management, and these, in turn, can result in frustration and lowered efficiency, just as can outmoded vehicles or untidy premises. 39

But, despite support from many quarters, 40 it has rarely been heeded by state governments.

The opposite view has usually carried the day — as Tasmanian Labour Premier R. (now Sir Robert) Cosgrove expressed it: the railways provided 'an important service to the people, and... should not be expected to be run as a paying concern' 41 This has implications not only for management but also for political control — for to discard the break-even test is to remove a further restraint on political intervention.

The habit 42 which has persisted of speaking of a railway "department" — although in fact it has most of the recognised attributes of a corporation — has militated against application of commercial-style financial arrangements. It was never seriously


40. E.g., D.B. Copland, "Leading Problems of Australian Transport", in Copland (ed.), The Economics of Australian Transport, Melbourne 1930, p. 7. Other examples of this thinking will be referred to in the discussion of the recoup clauses in chapters V and VIII.

41. Hobart Mercury, 5.3.1947. He added that even if they were abolished, the interest on capital liability would still have to be paid.

42. It was evident in another part of Cosgrove's above-quoted comment.
suggested that TAA or the ANL should be financed as departments, but then no one regarded them— even erroneously—as departments.

Before examining the reforms that have taken place, it is appropriate to consider briefly how the citadel of private capitalism, the United States, treats its own public transport enterprises. My illustration is the New York City Transit Authority, a public corporation which operates all that city's subways and much of its surface transport. It leases the properties from the city and operates them under a legal mandate that the fare be sufficient to meet operating expenses. This is its only financial obligation. Interest and other capital charges, engineering works and the purchase of rolling stock are all borne by the community as a whole through general taxation. The system is justified on a number of grounds: first, that the tracks are an extension of the street system and therefore deserve city support; second, that it is an equitable distribution of costs, for the community as a whole, not only the direct users, benefits from the services provided; third, that it is a clear cut and readily understandable allocation of costs; and fourth, that the need to (and feasibility of) operating within its own revenues provides an incentive for efficient management and an economic standard by which demands for new services can be evaluated.43

Many of these arguments apply equally to the Australian railway systems; and most have been put forward from time to time in this connection. But the advances that have been made are, by comparison, for the most part lacking in courage and imagination and of relatively minor significance.

(c) Reforms Attempted

These advances fall broadly into four categories — first, the recoup system, initiated in Victoria in 189644; second, the system of special funds, constructed laboriously during the early twentieth century; third, attempts to relieve rail corporations of part of their debt obligations; and fourth, attempts to remove railway finances from the Consolidated Revenue Fund.

(1) Special Funds: The chequered history of the special funds may be briefly described. They involve setting aside part of the railway earnings (which would otherwise normally go into consolidated revenue) to make provision for depreciation, obsolescence, and maintenance, and to allow for contingencies such as payment of accident compensation. Such provisions and reserves play an important part in the financing of private enterprises, and also of public enterprises such as TAA and the ANL. They can also be of great importance to railway managements: for example, they

44. Since this stemmed from a realisation of the effectiveness of political intervention in corporate operations despite legislative intentions, it is considered with other features of that intervention in Part C.
enable practices which swell the interest burden (such as financing maintenance work and renewals out of new loan moneys) to be avoided.

But the process of building up these funds illustrates vividly the handicaps suffered by the railway managements because of their close political involvement. The first such fund in Victoria was a limited Accident Fund for payment of accident compensation claims, established in 1891; it was followed by small Rolling Stock Replacement and Loan Repayment Funds in 1904 and by a more ambitious Railway Funds Act in 1907. But, although the VRC repeatedly called attention to the importance of these funds in their annual reports, the principle involved in their creation was not well established: between 1903 and 1912 governments used them to liquidate deficits in other departments.

Another act in 1909 legalised this use, insisting only that interest on the sums diverted should be paid into the funds; and further legislation in 1912 abolished the 1907 funds altogether and appropriated some money in them for rolling stock replacements and the remainder for the construction of agricultural and other high schools.45

The current legislation provides for a number of special funds.46 Though they are kept in the Treasury, I am not

45. Royal Commission on the Working as a Business Undertaking of the Victorian Railways /Johnson Commission/ Report, 1917, p. 21-2. The special fund acts were Nos. 1946 (1904), 2133 (1907), 2207 (1909) and 2423 (1912).

46. Act No. 6355 of 1958, Ss. 115-20. Those envisaged are the Renewals and Replacements Fund; State Loans Repayment Fund (into which proceeds of railway land sales are paid); Reserve Fund; Accident and Fire Insurance Fund; and Sinking Fund (for surplus revenues).
aware that they have been tampered with in this way in recent years. However, not all of those envisaged in the act are operative.47

The 1928 NSW legislation, shortly to be described in more detail, provided for the creation of a special Renewals Fund and also a Reserve Account to consist of net profits from year to year. However, further legislation in 1930 postponed creation of the former until a date to be proclaimed—in fact the proclamation was not made until thirty years later; and the latter has been of little use because profits have rarely been made.48 At the close of World War II, further legislation was necessary to legalise the setting aside of abnormal war-time savings in a special reserve for deferred maintenance, and also the creation of a Fire and Accident Insurance Reserve,49 but the funds in the former were soon exhausted. The long-delayed Renewals Fund finally emerged to accompany the 1960 writing-down of capital assets.50

47. At the time of writing there is a proposal for the creation of a new Railway Equalisation Account, which is apparently intended to replace the inoperative Reserve Fund—see also below, pp. 163-4.


49. Govt. Railways and Sydney Harbour Trust (Financial Provisions) Act No. 8 of 1946. According to a senior state Treasury official, the Treasury took about £3 millions of railway war-time surpluses to pay off certain state debts unconnected with the railways, and has "never been forgiven" for this.

Tasmania moved towards establishment of such a fund in 1926, when a conference of senior departmental officers convened by the Lyons Government recommended the establishment of a Replacement and Depreciation Reserve Account. But it was then used to cover some writing down of dead assets such as a dismantled branch line on whose construction cost the railways were up till then still paying interest.\(^1\) Moreover, after only three years, even this provision was discontinued; it was restored when Labour returned to office in 1934, but was still inadequate. As Premier Ogilvie said in initiating his more radical reforms in 1938:

> The neglect of depreciation gradually brought about conditions that rendered increased expenditure absolutely necessary if the trains were to run at all. Do you realise that with a capital of £6,494,003 in 1928/9 only £115,500 had been provided in 56 years for depreciation, whereas the Hydro-Electric Commission with a capital at that date of £3,592,535 had provided £191,695 for depreciation in 8 years as well as commencing a policy of writing down? What a contrast!\(^2\)

In Tasmania, a "claimant state", transport finance was of course associated with the question of the special Commonwealth grant; and Sir Earle Page, when Federal Treasurer, had reportedly described the depreciation provision as a luxury which no other

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51. This practice was denounced by the Development and Migration Commission investigators in 1929: *Fifth Interim Report on Present Position of Tasmania - Internal Transport*, Melbourne 1929, p.33. The account was never given statutory force.

52. A.G. Ogilvie, Second Reading Speech on the Transport Bill 1938 (Pamphlet issued in absence of a regular "Hansard"), Hobart 1938, pp.6-7. For a fuller explanation of the situation including relationship between the inadequate depreciation provision and over-capitalisation, see reports by T. Hytten and W.H. Schneider on Financial Position of the Tasmanian Government Railways, both mimeographed, Hobart 1935, pp. 3-4 and 11-13, 24-5 respectively.
state could afford, and which the Commonwealth would not recognise as a legitimate Tasmanian expense. But this unrealistic attitude changed with the creation in 1933 of the Commonwealth Grants Commission, whose subsequent investigations and reports under the guidance of Sir Frederic Eggleston did in fact stimulate a major financial reorganisation.

(ii) Debt Relief: Many inquiries between the wars confirmed that mischarges to capital account and failures to relieve it of costs of abolished and abandoned works had occurred on a relatively large scale, either because of expediency or because correct principles had not been laid down for the allocation of funds. It came to be acknowledged, therefore, that the capital account on which interest had to be paid was considerably overcharged. One report summed up the situation thus: "It is notorious that the railway 'assets' include works and equipment that do not exist and that have been replaced by others out of loans".

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54. The CR legislation, not otherwise referred to in this section, provides only for a Plant and Stores Suspense Account and an Accident and Insurance Fund.

55. E.g. the buying of "momentary popular favour" by politicians at the expense of sound financial management - see F.A. Bland, Budget Control, Sydney 1931, p. 93.

56. Queensland Bureau of Economics and Statistics, Railway Economics, Brisbane 1931, p. 35. Similar conclusions were drawn, e.g. by the 1928 Royal Commission on the VR Stead Commission and by the 1933 Special Committee on the Capital Indebtedness of the VR Nixon Committee; and by the Hytten and Schneider Reports in Tasmania. For a recent review of the problem and a recommendation for further reductions of fixed charges the railway accounts have to bear, "to more reasonable proportions in the interests of efficiency", see F.J. Hannabarry, (contd. overleaf)
Even today, "Much of the current loan expenditure by the transport services is for the replacement of worn or obsolete equipment rather than for additional equipment". 57

Such practices place a tremendous burden on railway managers: one Victorian MLA in 1929 described the VR as being "in the position of a horse which has been started in a race with one of its legs hobbled". 58

Eggleston's strictures about the demoralising effects of operating a service which must inevitably record a loss were pressed strongly by economists of the period, and an influential body of opinion developed in favour of writing down the railway debt. Professor D.B. (now Sir Douglas) Copland put the case thus:

If the Railway Commissioners are faced with a dead weight of debt and forced, therefore, to present, year after year, a heavy deficit in their accounts, enterprise throughout the whole staff is likely to languish. To stimulate co-operation and initiative in both the management and the staff of the railways, it is necessary to present them with a task that can reasonably be accomplished. The writing down of capital would, therefore, have a good influence upon efficiency, and it would enable a complete severance of railway finance from the budget to be effected. The Commissioners could then be left to manage the railways as a business concern ... 59


58. M.E. Wettenhall, in VPD, vol. 179, p. 131. He put the extent of "depreciated or extinct assets" at that time at £16 millions; this was also Glapp's calculation - op. cit., p. 7.

But the difficulty was that, while this might improve the railway accounts, it could not relieve the state itself of the interest obligations. To many politicians it was preferable to leave the burden with the rail corporations and use them as scapegoats when budget deficits occurred. In fact some action was taken, but it was often hedged in with so many compromises that the desired effect was not achieved.

South Australia and Queensland were the first states to transfer some of the capital debt away from the railway management. Victoria acted in 1936 to relieve the railways of £30 millions of loan liability, representing accrued depreciation for which provision was not made in the past. But parliament's price for this concession was considerable. In the same year Tasmania wrote off about two-thirds of its railway capital indebtedness by making the interest on this a direct charge on consoli-

60. Cf. description by R.G. Menzies (then in Victorian politics) of the "writing-off" concept as "the mystic right that lifts a baby from the office of the Commissioner and deposits it on the doormat of the Treasurer", quoted in TPD (Mercury Reprints), 1936, p. 30.

61. Railways (Finances Adjustment) Act No. 4429 of 1936. As the VRC showed in their Annual Report for 1937-8, the first full year following the adjustment, the apparent improvement of £1,288,616 in reduced interest charges was actually decreased to about £500,000 because they were deprived of all existing Treasury recoups (amounting to £668,926 in the last full year before the adjustment) and were required to pay £119,435 to the National Debt Sinking Fund. Moreover the 1936 act ignored the Nixon Committee recommendation that adequate allowance for depreciation should be made after the adjustment. It therefore scarcely attempted to prevent a recurrence of the circumstances which led to the 1936 adjustment.
dated revenue. Yet the scapegoat value of the corporation and an unwillingness to accept the implications of the change were apparent when a year or so later the Minister of Transport commented in explanation of the expected state deficit that the railways would be charged only £85,000 interest, whereas the Treasury would bear an amount of £203,991 under the 1936 act which should be added to the railway deficit before talking about the "real loss on account of the railways".

New South Wales has authorised such a transfer of part of the railway debt as recently as 1960. The amount of the reduction was £73,250,000 - Transport Minister Enticknap (for whom the decision was described as "a personal triumph") believed it still did not meet the true position of asset depreciation over the years, but, since it was to be associated with the creation of a renewals fund to which the replacement of worn-out assets would in future be charged, it would have a most salutary effect.

63. E. Dwyer-Gray, reported in Hobart Mercury, 1.4.1938.
64. The total debt was £275,139,543.
65. SMH, 14.5.1960. An important stimulus for the change appears to have been a desire by the government to deprive the opposition of what had become quite an impressive political catch-cry and election baits - see e.g. P.H. Morton (Leader of the Liberal Party), 1959 State General Elections: Policy Speech, Sydney 1959, pp. 7, 55; and R.W. Askin (new Leader of the Party), in SMH, 23.2.1960.
Victoria, after belated recognition of the relative ineffectiveness of its 1936 reform, has made other moves of this kind. These have included an advance to the corporation of about £40,000,000 of interest-free capital for post-war rehabilitation, and a subsidy, paid by the Cain (Labour) Government between 1949-50 and 1954-5 calculated to reduce the effective interest charge to one per cent.66 This practice was discontinued when the Bolte Government assumed office; but a recent statement by the Premier has foreshadowed a change of even greater significance.67

The VR, which for some years past had been unable to meet working expenses, let alone debt charges, were expecting a surplus of £750,000 over working expenses as a result of a heavy wheat crop; and the government, concerned about the effect on the budget of fluctuations caused by such seasonal conditions, was reviewing the system of railway finance. It had no plans to remove the railway accounts from the Treasury or the Consolidated Revenue Fund; nevertheless its new approach should go some way towards accommodating the Eggleston view.

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66. The value of this subsidy (i.e., the amount added to revenue), in the years in which it was paid, was:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949-50</td>
<td>£1,683,697</td>
</tr>
<tr>
<td>1950-51</td>
<td>£1,785,798</td>
</tr>
<tr>
<td>1951-52</td>
<td>£1,750,746</td>
</tr>
<tr>
<td>1952-53</td>
<td>£1,794,635</td>
</tr>
<tr>
<td>1953-54</td>
<td>£1,930,908</td>
</tr>
<tr>
<td>1954-55</td>
<td>£2,144,291</td>
</tr>
</tbody>
</table>

Details from VRC, Annual Report, 1956-7, note to Appendix 7.

discussed above. Briefly summarised, it is intended that

(i) "The aim of railway management should be to produce a balance between railway income and railway working expenses, forgetting all about interest".

(ii) Any surplus of income over working expenses should be paid into a "Railway Equalisation Account", to be available to balance expenses in subsequent years when income is adversely affected by seasonal conditions. (This would "help avoid the disconcerting effects on the total State Budget" of such fluctuations in railway revenue).

(iii) "... railway debt charges should be carried on the general revenues of the State".

The proposed system, the Premier concluded, "will enable the public generally to have a better appreciation of the railway financial situation"; but in answer to a question he conceded that it would not be difficult for a future government to discard the scheme. 68

Since the VR are to be given a reasonable chance to "break even" in future years, and since the economic prospects of the larger railway systems are brighter now than they have been for many years, 69 there is a wonderful opportunity for

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68. Ibid. (Italics mine). Past Reserve Funds were, of course, intended to contain only net profits after full interest charges had been paid.

69. See also below, p. 200.
Victoria to advance further - to sever the budgetary connection and reap the advantages of corporate experience in other fields. The New York experience related above demonstrates how the contemplated new approach might be brought to fruition. But the indications are that once again the opportunity for really worth-while railway reform will be neglected.

(iii) Revising the Budgetary Connection: The economists who advocated "writing-down" in the 1930's believed it would open the way to wider reforms. By placing railway finances on something like a just basis, it would facilitate their conversion to commercial accounting arrangements. As the Fay-Raven Commission had already pointed out,

The trail of ineffective and hampering finance is in evidence throughout the railway administration ... it follows the principles of British Parliamentary budgeting. It is beyond doubt that when the principle of yearly State Budgets was established it was intended to apply to national establishments of army and navy, education, sanitation, and such like. It was certainly not devised to meet the needs of a commercial undertaking ... Finance from year to year ... part of a consolidated State Budget has been found altogether inadequate to meet the demands of a transport organisation which needs, above all things, elasticity in dealing with money problems as and when they arise. The rigid Budget of a State has failed when applied to an organisation whose functions include not only the transport of people and things from place to place, but is a building and manufacturing business of large proportions, as well as a buying and selling agency on no mean scale ... The form and ceremony of a yearly State Budget have no virtue if they stand in the way of efficient and economical working ...70

Over the years many suggestions have been made for a

reversal of this system. In Victoria creation of a special account separate from the Treasury and under the direct control of the railway management had been recommended as early as 1895; and the case was again argued strongly in 1928, when attention was directed to relevant Indian reforms and to the fact that other Victorian corporations such as the State Electricity Commission and the Melbourne Harbour Trust were accorded financial independence.

The case for separation of railway accounts recognises that opportunities for political interference in railway affairs are increased by the existing system, under which political expediency can so easily overrule considerations of sound financial policy. This is seen in relation to the availability of money for maintenance, for which the railways have to compete (even for a share of their own revenue) with all other departmental demands on the Treasury. Separation of the railway accounts would, moreover, deprive impecunious Treasurers of their easy access to the small reserves the railways have been able to build up from time to time. It would also overcome the many disabilities associated with the annual estimating and budgetary process, such as the loss of unspent balances at the close of the financial year.

71. Casey Board Report, p. 23.

year, the uneven work programme, and the difficulty experienced in undertaking long-term planning where the availability of funds cannot be accurately predicted for more than a year ahead and depends on the political situation from time to time.

Elliot complained in 1949 of the resulting "inability to undertake major works on other than a hand to mouth basis".73

Writing a few years later as chairman of the London Transport Executive, he added that

It would be a fruitless labour to set down reasons why public transport should or should not support itself if under modern conditions self-sufficiency were impossible. It is a necessary preliminary, therefore, to enquire whether public transport can provide an adequate service and yet rely on its own resources. I believe that it can, and should, provided that those in charge are not prevented by restrictive legislation or 'political' decisions from discovering and applying sound remedies to its difficulties - in other words, given a fair chance to manage their own affairs.74

He illustrated such "political" restrictions from British and Australian experience. Indeed, the Nixon Committee had come to the conclusion that, so long as railway charges were in the hands of the government, and the VRC subject to any direction the Minister of Transport might give them, separation of finances was impracticable.75 Elliot had also recognised this difficulty in 1949, and proposed accordingly (but without result) to associate the separation of finances with the elimination of many of the avenues of political control.76

75. Nixon Committee Report, pp. 6-7.
Victoria has remained true to departmental-type financing for its rail corporation; but both New South Wales and Tasmania have made certain adjustments which go further than writing down capital without other relief. How effective have these been?

The NSW reform reflected the strictures of the Fay-Raven Commission, and followed Lang's action in forcing B.S. (later Sir Bertram) Stevens out of the position of Treasury Under-Secretary, and the latter's quick appearance in politics as Assistant Treasurer. Stevens appointed a special Budget Committee to reorganise the form of the state budget; and the changes were introduced in 1928 with the too optimistic comment that "The outstanding feature of the new financial proposals is the separation of the Business Undertakings from ordinary Governmental finance". Receipts and payments of the NSW and similar bodies were taken out of the Consolidated Revenue Fund and accounted for in separate funds, so that "The Governmental Estimate now covers only the Administrative Departments ...".

In the same year Stevens piloted through legislation


creating a new Government Railways Fund to consist of all moneys received by the NSWRO, including loan moneys appropriated by parliament. The legislation also provided for special funds (although as already noted, these had little effect), and it had a recoup flavour in providing a Treasury contribution towards losses on proclaimed "developmental lines", up to two-thirds of the amount of such loss but not to exceed £800,000 in any year. A Committee of Review (comprising the NSWRO, the Auditor-General and the Treasury Under-Secretary) was set up to report to the Governor on the amount of loss incurred on these lines, and also to keep under review the capital indebtedness of the railways. Interest had to be paid on this, and the Railways Fund also had to take a proportionate share of the state's obligations under the 1927 Financial Agreement. The intention was to balance the railway accounts according to the financial estimates for 1928/29. But the hope that this would allow a fresh start was

79. Govt. Railways (Amendment) Act No. 37 of 1928. Till the separation of the tramways in 1930 it was actually the Government Railways and Tramways Fund.

80. The Nationalists had advocated that the general revenue should contribute to developmental line costs in their 1922 election policy; while interests supporting the OP (e.g. Producers' and Graziers' Associations) had made similar suggestions: Raven Report, evidence, pp. 107–8. New Zealand had adopted a provision of this kind in 1925, and this precedent was also acknowledged in the NSW debates. Balanced against this payment, however, the Railways Fund would have to carry the public subsidy on the railway superannuation fund, and make provision for sinking fund charges and interest on incomplete works, all previously borne by consolidated revenue.

81. NSWPD (ii), vol. 116, p. 2181.
not realised, for other factors such as growing competition by newer forms of transport and oncoming depression caused a continuation of deficit results. Moreover the "developmental lines" subsidy limit represented more like one-third than two-thirds of the relevant loss. 82

Apart from all this, although the new fund was vested in the NSWRC, they could only draw on it as, and for the purposes for which, it was appropriated by parliament; and they had to furnish estimates of income and expenditure as before. The fund is kept in the Treasury, 83 and all its transactions continue to be dealt with as part of the budget, which now consists of two parts, the Consolidated Revenue Fund and the "Business Undertakings", whose results are presented separately and then in a combined "Aggregate Statement". 84

The only concession to overcome the old budgetary rigidities was the provision that the commissioners might, with the approval of the Governor, anticipate parliamentary appropriations where work could not reasonably be postponed without injury

82. In recent years payment in respect of these lines has been increased to £1 million p.a., although there has been no amendment to the statutory provision.

83. Which regards it as the "bank account" of the commissioner - Manual of Governmental Accounting in New South Wales, Sydney 1952, p. 31.

84. Ibid., pp. 42-3. Note, however, the strange distinction both financially and terminologically between the "Business Undertakings" included in the budget (railways, tram and bus services, Sydney Harbour) and the other "Government and Semi-Governmental Undertakings" (not called "Business Undertakings") excluded from it (e.g. Water Boards, Electricity Authority, State Brickworks, Housing Commission, Government Insurance Office) - ibid.; pp. 112-18.
to the public interest - but as Professor Hytten pointed out, even this could be a double-edged sword in view of the need for ministerial approval.\textsuperscript{35} Despite the Fay-Raven recommendations, there was no suggestion that the NSW\textsubscript{R} should have separate loan-raising power (as conceded the Metropolitan Water Sewerage and Drainage Board in 1924). Bland wrote within months of the passing of this act that "there is reserved to the Treasurer a considerable measure of control, in addition to that of Parliament ... These measures do not give the enterprises financial autonomy".\textsuperscript{36} Unlike the Tasmanian reform, this was little more than a change in name which produced a "more elaborate book-keeping system."\textsuperscript{37}

The Tasmanian Transport Act of 1938,\textsuperscript{88} which substituted the TTC for the earlier rail corporation, also established

\begin{itemize}
  \item \textsuperscript{35} Hytten, "Finances", p. 36.
  \item \textsuperscript{36} Bland, "The Administration of Government Enterprises", op. cit., pp. 20-1. He wrote elsewhere that while it made an effort to give "independent accounting" it did not concede "autonomy of management" - Budget Control, op. cit., p. 91. Note also the close working relationship which has grown up between the Railways Budget Bureau and the Treasury's Budget Branch, referred to above, p. 115.
  \item \textsuperscript{37} Blakey, "Politics and Administration", p. 39. Under the State Transport (Co-ordination) Act (No. 32 of 1931) passed by the Lang Government, a special tax (designed to protect the state's investment) is imposed on road transport, the proceeds of which are allocated, with the approval of the minister, to the rail and tram corporations. In recent years this has meant a contribution of almost £1 million p.a. to the NSW\textsubscript{R} - see e.g. Ratchford, op. cit., pp. 172-3; and NSW Auditor-General, Report, 1955-6, pp. 111-3.
  \item \textsuperscript{88} Act 2 & 3 Geo. VI, No. 70.
\end{itemize}
a very clear separation of its finances from the general budget. A novel feature was the payment to the TTC of the entire state land tax revenue. This entrenched the concept described earlier by Labour Minister T.G. deL. D’Alton (in relation to writing down) as "asking Peter (represented by the Lands, Forestry, Mines and Taxation Departments) to pay Paul (represented by the Railway Department) a fair amount for services rendered". Ogilvie estimated that at least one-quarter of unimproved land values in Tasmania was a direct consequence of the provision of transport facilities, which, in addition, had bolstered many other sources of state revenue such as income tax on industries supported by low freight rates. He claimed that in taking this step "the Government is the first in Tasmania and quite possibly in the world to recognise that a Transport Department is entitled to some direct return from the wealth which its operations undoubtedly create".

Separate trading accounts are kept for each of the TTC's trading branches (railways, road services, marine), and

89. **TPD (Mercury Reprints)**, 1936, p. 29.

90. Ogilvie, *op. cit.*, p. 7. Note, however, some similarity with the rationalisation of the financial arrangements for the New York City Transit Authority - above, p. 164. As well as its own charges the TTC also collects all motor registration, licensing and tax fees and certain Commonwealth road contributions, but these are clearly allocated to a Traffic Account and a Highways Trust Fund, and therefore do not concern the operation of the TTC's own enterprises.
provision is made in each for depreciation of assets.\(^91\) Despite these separate accounts, all accounting work was centralised in a single Finance Branch in 1944.\(^92\)

Unlike the other state transport systems, it does not keep its accounts in the Treasury, but holds them independently at the Hobart Branch of the Commonwealth Bank; and its operating expenditure is not subject to parliamentary appropriation. Expenditure from loan moneys is, however, subject to parliamentary approval, and working capital is obtained by advances from the Treasury up to a prescribed limit. Interest is payable on these advances and on an amount equivalent to the capital indebtedness of the railways when the TTC was created, which together constitute a loan from the state to the corporation. Any loss is to be made up out of consolidated revenue after the Auditor-General has certified the correctness of the profit and loss account — but interest is not payable on this and significantly the Treasury is for the most part content to accept the Audit Report (and also the Annual Commonwealth Grants Commission Report) without further concern.

\(^91\) C.E. Baird, *Transport Administration in the State of Tasmania, Australia*, mimeographed Hobart 1959, p. 7. In the 1940's the TTC financed its new road services out of moneys in the Railways Depreciation Fund. This procedure (an interesting variant of the "milking" of depreciation funds by impecunious Treasurers) was probably realistic — for it was almost certain that a hostile Legislative Council would have stopped any vote for the purpose. But it was condemned by the Joint Committee on Transport Bill 1948 and Additional Transport Matters /Wedd Committee/ Report, 1949, p. 13; and regularised when, as a result of that report, the opposition accepted the TTC's role as a road operator.

\(^92\) TTC Minutes, 1943-44, p. 99. This arrangement continues despite occasional protests from the railway side — e.g. D.J. House, *Special Report on Railway Administration and Operation*, Hobart 1948, p. 9.
about the commission's operating efficiency. If there were any profits they would be applied first to reimbursing the Treasurer for losses made up by him in other years, and then to meeting interest on that part of the railway debt transferred to the Treasury after the 1936 writing down. 93

Thus the TTC figures in the annual budget only in respect of its own payments (if any) to the state, and of payments by the state to it: its other transactions are of no concern to the state legislators. Despite a regularly recurring annual deficit, and notwithstanding the comment of the Leader of the Opposition in 1938 that it was "naive" to suggest that the transport authority could be freed from political control when it would have to obtain large Treasury grants to make up its losses, 94 it may be said that under these arrangements it enjoys a considerably greater measure of financial independence than the other state rail corporations. 95

Another unusual feature of the Tasmanian system is the financial position of the Minister for Transport himself. Unlike his modern NSW and Victorian counterparts he does not have a small "ministry" he can call his own. 96 Even his personal

93. Act 2 and 3 Geo. VI, No. 70, Part VI. Also summary of financial arrangements in Wedd Committee Report, p. 4.
94. TPD (Mercury Reprints), 1938, p. 63.
95. This view has been endorsed by Mr K.J. Mackenzie, Secretary of the Commonwealth Grants Commission, in a discussion with the writer. But, of course, the independence is by no means absolute; the comparison is one of degree - see also below, p. 186.
96. On these "ministries", see below, pp. 243, 275-6.
secretary is regarded as an officer of the commission; and although a few minor functions, such as administration of the Straits Islands shipping subsidy, are vested statutorily in him, he must in the absence of a personal staff work through it. Yet the practice has developed of providing him in each budget with what is virtually a personal vote.

Between 1948 and 1956 the portfolios of Treasurer and Minister for Transport had been held by the same minister; and during this time the few transactions with the TTC were included in the Treasury vote. But in 1956 the portfolio was separated from all others, and the Appropriation Act for the following year included a new item, under the heading "Minister for Transport – Miscellaneous", which has appeared in all subsequent appropriation and supply legislation. It authorises payments to the corporation such as loss reimbursement, land tax collections and aerodrome maintenance costs; and in addition compensates it for certain concessions granted at the wish of the minister (e.g. free carriage of goods for charitable institutions and free travel for blind scholars), covers the Straits Islands subsidies, and provides a small amount which the minister can apply at his own discretion (e.g. free carriage of relief goods in the 1960 floods). The preparation of estimates for this vote (also undertaken by the corporation in the absence of a

97. Act No. 36 of 1957, Item XII.
separate ministerial staff) and for the regular Loan Fund Appropriation Bills, together with negotiations concerning proportionate payments in advance on account of the estimated yearly loss, provide the main contacts between TTC and Treasury.

Tasmania's 1938 act was probably the boldest of all state transport legislation since the 1880's. Not only did it provide co-ordinated transport control and separate finance; as will be shown below, it also conceded substantial autonomy in management. Ogilvie's aims have, however, been only partly achieved. There are probably three main reasons for this: first, the bold administrative reform came in a small and mountainous state where the railways were least able to stand on their own feet economically; second, the new system was subjected almost immediately to all the stresses and strains of war and post-war inflation; and third, Ogilvie, driving force of the reform, died within months of its passing, so that the corporation he created never enjoyed his encouragement and protection. Notwithstanding all this, the combined reforms he introduced must be regarded as moderately successful: as will be further indicated below, the TTC is more immune from capricious political pressures than most of its mainland counterparts.


2. **SHIPPING AND AIRLINE FINANCE**

(a) **The First Shipping Line**

The first of the selected enterprises to depart from conventional departmental accounting was the Commonwealth Shipping Line in its 1923 form. Hughes had financed his original purchase by an overdraft secretly obtained from the Commonwealth Bank. Thereafter, while administered as part of the Prime Minister’s Department, the line operated through a trust account, incorporated within the budget and called the "Commonwealth Shipping Line Trust Account".\(^{100}\)

During the war and immediate post-war years it made large profits, but in the slump after 1921 earnings dropped and shipping values declined. Capitalised on the basis of war-time costs, the line was soon in difficulties; but General Manager Markin’s requests for devaluation went unheeded until the Bruce-Page Government took office.\(^{101}\)

The new government decided to write down the book-value of the vessels from £12,766,588 to what it regarded as a fair "present-day value" (£4,718,150), in order to relieve the management of excessive interest and depreciation burdens and

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enable it in theory to earn a reasonable interest on the capital involved. At the same time the line was vested in the AGSB and freed from all connection with the general budget.

The new financial arrangements were as follows. The AGSB would issue to the government debentures to the total amount of the asset valuation, carrying fixed interest at the rate of five per cent. It would also pay income tax. Any profits earned after meeting these obligations could be retained until the corporation had built up reserve funds to prescribed limits, while the Treasurer was empowered to provide working capital by an advance from consolidated revenue (fresh debentures would cover such advances), or to guarantee a bank overdraft for this purpose.\(^\text{102}\)

As socialist commentators later pointed out, the debenture and interest provisions meant virtually that the Treasurer had "acquired a mortgage over the Line, which could be foreclosed at any time in

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\(^{102}\) Commonwealth Shipping Act No. 3 of 1933, Ss. 15-20; also comprehensive review in letter from Page (Acting Prime Minister) to AGSB, dated 19.10.1926, in QAM, C.P. 189; file U 212/1. See also A. Campbell Garnett, Freedom and Planning in Australia, Madison (Wisconsin) 1949, p. 223.

\(^{103-4}\) Deleted.
the event of the Board defaulting on its interest payments. The AOSB was in difficulties from the start. Many of its ships were already laid up awaiting purchasers, but it had to carry overheads such as watchmen's wages and maintenance costs. All this had to be met from the earnings of the ships in commission, and business here was disappointing. In 1924 it therefore asked both for an advance from the Treasurer of £250,000 and relief from interest charges on ships out of commission. The Treasury refused on both counts, but agreed to guarantee a small bank overdraft as provided in the 1923 legislation. Meanwhile operating losses were being financed by proceeds from the sale of surplus tonnage. In fact this was to be the main source of revenue supplementing the line's own earnings until its eventual disappearance - it got no relief from the government. The AOSB made a second approach following a demand by the Treasury that all interest be paid up, seeking suspension of payments until the line could operate at a profit, but this also was rejected. In fact it was able to meet only a small part of the debenture interest, the balance being treated as an outstanding debt. Larkin wrote in 1925:

It is heart-breaking to realise, as we dispose of tonnage and collect the proceeds, we are spending it on the upkeep and running expenses of our fleet in commission. This


106. Details from correspondence in C.A.A., C.P. 99, file 6 418/2/2. See also its secretary's argument about the burden of fixed-interest charges recorded above, p. 159, note 27.
cannot, of course, go on indefinitely and the Government will sooner or later have to choose between transfer of registry and some form of subsidy. 107

In fact the government's choice was to foreclose and sell the remaining vessels. 108

As will be indicated below, Bruce scrupulously refrained from interfering with the ACSB in managerial detail. Yet it was so handicapped in the emerging depression situation by its basic financial terms of reference that its failure was a foregone conclusion. The attitudes of government leaders were in conflict with the very existence of the enterprise, and no amount of statutory autonomy could have averted the more fundamental hindrances to which it was subjected.

(b) Current Methods

Finally to be considered are the methods applied in a group of current Commonwealth public trading enterprises. 109

In the selected enterprises the system was introduced by the Labour government which established TAA in 1945-46. It was adapted by the succeeding Liberal-OP government - in relation to TAA - to suit its own philosophy of public enterprise, and

107. Larkin to Clarkson 17.9.1925, in Chairman's Letters to Deputy Chairman, Folder I, C.A.A., G.P. 103, S.21. By Feb. 1926 38 vessels had been sold for a total of £916,390 which was then "partly applied towards the ordinary working costs of the fleet" - from Page's letter, op. cit., On the "registry" see below, p. 381.

108. For outline of these events see above, pp. 9-10. The sale is referred to again below at pp. 353-6.

109. As distinct from e.g. the ABC, whose financial development has taken quite different lines - see e.g. Joan Rydon, "The Australian Broadcasting Commission 1942-43", PA (Sydney), vol. xi, 4 (Dec. 1952), pp. 192, 201-3.
applied also to the ANL. Its application is also envisaged in the recent Commonwealth Serum Laboratories legislation, and is currently under consideration for the CR. The improved form is similar in essentials to the commercial arrangements for Qantas Empire Airways Ltd., which have continued to operate notwithstanding acquisition; indeed, it is probable that the Qantas pattern has been influential in guiding developments in other public enterprises.

The 1945 legislation provided that the Treasurer could advance the ANAC such amounts up to £3 millions (or such additional sums as parliament might appropriate) as were in the opinion of the minister required by it. These advances were subject to such terms and conditions in respect of interest as the Treasurer determined. Moneys held by TAA were to be lodged with the Commonwealth Bank or such other bank as the minister approved. It had no connection with the Consolidated Revenue Fund, but was to prepare and submit to the minister annual estimates of its receipts and expenditure in such form as he directed.

Moneys were to be applied to the payment of working expenses, salaries and wages, and the Act prescribed ways in which

110. Australian National Airlines Act No. 31 of 1945. Details in these paragraphs from Ss. 30-39.

111. This was presumably intended as a matter of information, for the relevant section gave no legal ministerial right of intervention; but of course the relevant minister (and also the Treasurer) had various rights under other sections, and their powers of persuasion were considerable.
they could be invested. Accounts were to be kept in a form
approved by the Treasurer. TAA was liable to all Commonwealth
taxation except income tax; and with the approval of the
Treasurer it could make provision for depreciation, insurance
and so on. Profits were to be applied first to payment of
interest on moneys advanced by the Treasurer, secondly (in
such amounts as the Treasurer determined) to repaying the
advances themselves, thirdly (with ministerial approval and
Treasury concurrence) in the establishment and development of
services, and fourthly in such other manner as the minister
(again with Treasury concurrence) might direct.

One of the main features of financial operation under
this system was the bold policy of writing off development costs
as they occurred. This delayed the appearance of the first
profit result until 1949/50 and gave White and his private enter-
prise allies much room for distorted and highly imaginative
assertions of inefficiency; but it also placed the enterprise
on a very sound foundation, particularly in relation to its
private competitors whose debts rose to much larger proportions.

The Menzies Government, after it had exhausted the
possibilities of disposing of TAA, set about reorganising it to
accord with the intentions of the 1952 Civil Aviation Agreement.

112. Up to the substitution of a "dividend" obligation for an
"interest" obligation in 1952, TAA had paid interest on the
Treasury advance at the rate of 3\% - OPD, vol. S.11, p. 1386.

The change was authorised in legislation which accompanied the ratification of that agreement, and it had the effect of bringing TAA financially much more closely into line with a private company. 114

First, the Treasury advances under the 1945 act were transformed into the capital of the enterprise. Henceforth no interest would be paid on this, but TAA would pay the Commonwealth out of its profits such amount as the Treasurer determines, after consulting the Minister for Civil Aviation and considering the corporation's views. This is the so-called "payment in the nature of a dividend", which has become a familiar feature of TAA and ANL finance. 115

Secondly, TAA was made liable to all Commonwealth taxes including income tax. And thirdly, the provisions dealing with the application of profits 116 were varied. They are to be used primarily to meet the "payment in the nature of a dividend" requirement, with any balance applied in such manner as the

114. Australian National Airlines Act No. 102 of 1952, Ss. 6 - 8.

115. The capital itself is repayable to the Commonwealth at such times and in such amounts as the Treasurer determines, also after consulting the minister and considering the corporation's views.

116. Now defined as the amounts remaining after deducting all working expenses and provision for obsolescence and depreciation of assets, insurance, staff superannuation and income tax.
minister determines (with Treasury consent and after considering the ANAC's views). It was further provided that the ANAC might borrow for temporary purposes up to £1 million from the Commonwealth Bank or such other bank as the Treasurer approved. Other provisions regarding e.g. preparation of accounts, submission of estimates and banking were unchanged.

Under the provisional management from 1946 to 1956, the treatment of the second shipping line was basically similar to that of TAA under its 1945 legislation; and this would have become a permanent feature of the statute-book if the 1949 Shipping Act had ever been proclaimed.\(^{117}\) When the Menzies Government, having here also exhausted the possibilities of disposal, legislated to put the ANL on a permanent footing in 1956, it followed TAA's 1952 pattern.\(^{118}\) The capital was fixed at the valuation of ships and assets vested in the ACSR plus any additional advances appropriated by parliament. Conditions for temporary borrowing, repayment of capital, application of profits, taxation, and "dividend" payments to the Commonwealth were all as currently applied to TAA. There were a few drafting refinements such as the provision that the ACSR should keep "proper accounts and records in accordance with the accounting principles generally applied in commercial practice".

\(^{117}\) Shipping Act No. 6 of 1949, Ss. 19-26. This had been intended by the Chifley Government to put the ASB on a permanent statutory basis; but that government was defeated before the act was proclaimed.

\(^{118}\) Australian Coastal Shipping Commission Act No. 41 of 1956, Ss. 28-34, 36.
It is of some interest to note the results of these two enterprises under the financial methods described above.

### Table 4: Operating Results Under Current TAA and ANL Financial System

<table>
<thead>
<tr>
<th>Period</th>
<th>Revenue</th>
<th>Profit after tax</th>
<th>&quot;Dividend&quot;</th>
<th>Rate of &quot;Dividend&quot; on capital</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TAA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1952-53</td>
<td>7,459,685</td>
<td>136,783</td>
<td>Credited to accumulated profit and loss account</td>
<td></td>
</tr>
<tr>
<td>1953-54</td>
<td>7,908,837</td>
<td>114,410</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1954-55</td>
<td>8,779,960</td>
<td>221,059</td>
<td>131,100</td>
<td>3%</td>
</tr>
<tr>
<td>1955-56</td>
<td>9,797,967</td>
<td>302,945</td>
<td>174,800</td>
<td>4%</td>
</tr>
<tr>
<td>1956-57</td>
<td>10,702,466</td>
<td>308,829</td>
<td>218,500</td>
<td>5%</td>
</tr>
<tr>
<td>1957-58</td>
<td>11,581,113</td>
<td>282,702</td>
<td>218,500</td>
<td>5%</td>
</tr>
<tr>
<td>1958-59</td>
<td>12,229,461</td>
<td>253,911</td>
<td>243,500</td>
<td>5%</td>
</tr>
<tr>
<td>1959-60</td>
<td>14,622,213</td>
<td>352,938</td>
<td>293,500</td>
<td>5%</td>
</tr>
<tr>
<td><strong>ANL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From Oct.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1956 to</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.6.57</td>
<td>n.a.</td>
<td>646,992</td>
<td>433,064</td>
<td>6%</td>
</tr>
<tr>
<td>1957-58</td>
<td>15,939,994</td>
<td>1,255,203</td>
<td>975,876</td>
<td>6%</td>
</tr>
<tr>
<td>1958-59</td>
<td>13,611,715</td>
<td>899,834</td>
<td>985,507</td>
<td>6%</td>
</tr>
<tr>
<td>1959-60</td>
<td>13,655,058</td>
<td>1,314,376</td>
<td>985,507</td>
<td>6%</td>
</tr>
</tbody>
</table>

Note: The difference between profit and "dividend" has been applied e.g., to the creation of general reserve funds and special insurance reserves, with a small amount usually carried forward each year as "Unappropriated Profit".

Owing both to the peculiar difficulties of the government-sponsored dual-airline system and to the general difficulties associated with the high cost of modern aircraft replacements, some further changes in TAA's financial pattern have been necessary.
These have concerned mainly the provision of new capital, although "tidying-up" legislation in 1959 made a few other minor changes. 119

The new loan provisions were included in the 1958 Airlines Equipment Act and an accompanying Loan Act. 120 The earlier provision concerning borrowing for temporary purposes up to £1 million from an approved bank was deleted. Instead the ANAC was given greater latitude to borrow both from the Commonwealth and elsewhere up to a limit of £3 millions (additional to the existing capital); and there were special arrangements covering the acquisition of two Electra aircraft. The approval of both Treasurer and Minister for Civil Aviation was necessary to all such loans and the former with the latter's concurrence could guarantee those from outside sources on behalf of the Commonwealth.

The ANL is in a more fortunate position, having up to the present been able to finance all additions to its fleet from its own resources, with the aid of overdraft accommodation to the prescribed limit of £1 million. 121

119. Australian National Airlines Act No. 3 of 1959. In relation to finance it adopted various drafting refinements of the 1956 Shipping Act and laid down that the provision made for overhaul of aircraft, engines and equipment was expenditure properly changeable before the annual profit was assessed.

120. Airlines Equipment Act No. 70 of 1958, Ss. 5-7; and Loan (Australian National Airlines Commission) Act No. 71 of 1958.

121. AOGC, Fourth Annual Report, 1960, p.3. In 1959-60 the disposal of redundant vessels actually resulted in a capital gain to the commission.
3. **GENERAL COMMENT**

Do the current financial processes of the Commonwealth enterprises afford significantly greater insulation from politics than those of the state railways? On the one hand it is clear that even in the former power at vital points is reserved to both "parent" minister and Treasurer. A senior Treasury official informed me that in his view the government retained effective control of such corporations through its power over additional funds and over price policy. On the other hand, it is also clear that these Commonwealth enterprises enjoy much greater flexibility in finance than rail corporations still tied to the general budget. They escape most of the restrictions and frustrations whose detrimental effect on railway management has been attested by so many investigators. Moreover, the normal profitability of their operations even by the most rigid commercial standards represents a further advantage on the side of managerial autonomy.

The distinctions in financial practice discussed above obviously operate to the disadvantage of the rail corporations, and thereby increase their political involvement. They appear to suffer most from the combined effects of two factors: inclusion within the budget, and the burdensome interest system. Particularly in the hurly-burly of state politics, the first prevents the attaining of that degree of formal separateness from government.

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122. The latter is considered further in Part C.
necessary for full achievement of the goals inherent in the corporate form. The second is in part a by-product of the first; where adjustments have been limited to this factor alone they have brought little lasting relief. But it also has conceptual weaknesses in its own right: as the NSW Auditor-General wrote, the interest system represents a "somewhat rigid way of looking at the railway finances", giving "no recognition to the aspect of proprietorship whereby the amount earned over and above expenses of working and maintenance could be regarded as a return on the Government's investment ..."123

We have seen that the Commonwealth's shipping and airline system, while not conferring complete managerial autonomy, nevertheless avoids both these difficulties. This system has much to commend it: could it not also be applied to the state railways?

There is of course the argument that railways represent a major part of each state's investment. But in recent years another state activity under public corporation management — electric power development and supply — has begun to rival them in economic importance; and, as Elliot pointed out in relation to Victoria, this has not been subjected to the same hindrances:

123. W.J. Campbell, *Australian State Public Finance*, Sydney 1954, p. 216. Most corporations of course enjoy financial separation from the budget without substitution of the "dividend" for the interest system. Separation in itself normally permits more adequate provision for depreciation and so on, and in such cases the interest bill is rarely as burdensome as in the railways.
The State Electricity Commission is a good example of State enterprise freed from direct Treasury and Governmental control; the State Railway, its natural partner, has suffered, and is still suffering from all the frustrating defects of a machine tied hand and foot by Parliament. 124

The legislation of Tasmania's Ogilvie Government in the late 1930's went furthest towards pointing the way for state railway reform; first, the 1936 debt adjustment; and second, the 1938 separation of transport finances from the general budget, the creation of a new corporation with entrenched autonomy, and the laying down of rules to guide the setting of "economic" charges. The TTC constitutes an improvement which has scarcely been matched in other states; but in important respects it has failed to operate as its designers intended. 125

This failure indicates clearly the difference between electricity and railway undertakings. In recent months the Tasmanian government has shown itself adamant that Hydro-Electric Commission costs will be borne by users; this corporation is seen happily as both an instrument of economic policy and a business undertaking. But, in common with the other states, in the railway undertaking the former requirement is stressed at the expense of the latter. 126

124. Elliot Report, p. 10

125. Further considered in Part C.

126. Railways of course face stronger competition today than electricity undertakings; but this is surely an argument for rather than against improved managerial incentives.
While the states continue to view railways in this light there is not likely to be any great incentive for further reform. The recently-heralded new approach in Victoria has interesting possibilities: if fully accepted it will remove one of the major burdens. But the corporation will still not be free of the budgetary connection. It therefore appears to follow in the usual railway tradition: a piecemeal adjustment indicated by the circumstances of the moment, not a radical reform designed to place the enterprise on a sound commercial basis.

Meanwhile the very magnitude of the railway debt is an impediment to sound working of the federal system of government, underlining the vision of those colonial statesmen in the 1890’s who advocated transfer of the railways to the Commonwealth. It significantly increases the need for Commonwealth support for state budgets, and this writer at least regards it as a tragedy that the former, with its superior financial resources and less parochial political environment, does not have the chance to give a new lease of life to railway managements. The time is surely opportune, for in the larger states at least there are indications of an improvement in the economic position of railways, through developments such as Commonwealth-sponsored gauge standardisation on major trunk routes, and introduction of pick-a-back goods services. 127 But it is not hard to imagine the

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127 These permit ‘road’ vehicles (or containers lifted from them) to travel long distances cheaply by rail, and yet preserve the advantages of door-to-door delivery.
vigorous opposition any such proposal would draw from the
state governments.
PART C: OPERATIONAL CONTROLS

V. TECHNIQUES OF CONTROL: LEGISLATIVE EVOLUTION

It is customary to discriminate between two main kinds of operational control over corporations. The Acton Society Trust described these as:

(i) "powers of direction and approval on certain matters specified in detail in the Acts - these we shall call specific powers"; and

(ii) "powers of issuing 'general directions' ... on matters affecting the national interest".1

Frank Milligan defined them thus:

(i) "prescriptive or veto power over a wide range of specific activities ..."; and

(ii) "a broad power to give '... directions of a general character ...'".2

These categories referred to the British nationalised industries. But their generality is indicated by Musolf's Canadian classification:

(i) "issuance of ministerial directives"; and

(ii) "approval and veto of certain corporate actions".3

3. Musolf, Public Ownership, pp. 41-2. All three studies mentioned also the power of appointment and removal of corporate boards; two of them included the power to require information; and Milligan also recognised a few other powers (e.g. in relation to Consumer Councils and certain matters of special concern in particular industries) which did not fit easily into any of these categories. In the main, I have treated these in other parts of this thesis either as structural controls or aspects of accountability.
Both techniques play an important part in Australian corporate practice, and their evolution in the selected enterprises will be outlined in this chapter. In fact the Australian experience both paralleled and preceded that of Britain and Canada. In all three countries, the specific powers reserved to ministers to approve or veto certain corporate decisions (or to prescribe procedures in strictly defined matters of a formal nature) came before the general directive power. The first-generation British and Canadian corporations were subject only to this limited form of control; the general power came in both countries at the close of World War II.

It first appeared in Britain in the nationalising statutes of the Attlee Government, so that Milligan could write in a Canadian journal in 1951 that "The idea of investing ministers with broad powers of direction over the corporations is a development of very recent years". Hanson remarked on the link between the advent of the general power and the accession to office of a government committed to planning the national economy; while, speaking more generally, the American Emmerich attributed the growing demand in the 1940's for greater controls to the very multiplication of corporations, to "over-enthusiasm


5. Milligan, "Ministerial Control", p. 166. Because of this development, he described the nationalised industries as "public corporations, strong minister type". (p. 164).

in the adoption of that device in the last twenty years". 7

The first case of a general directive power in Canada occurred with the creation of the War Assets Corporation in 1944, but Musolf shows that although the practice is expanding it is not yet sufficiently widespread to be described as "the crux of ministerial control" as in Britain. 8

Yet Victoria had set the pattern as early as 1891. In 1937 Thurston wrote of such a power as so much reducing the autonomy of the VR that "control of administration must be held to lie with the minister rather than with the commissioners. They have no autonomous status in managing the railroads". 9

But events were soon to bring an avalanche of other corporations towards the Victorian position. 10

The so-called "secoup" provision will be considered in the following pages as a third technique of control, complementary to the specific and general powers.

In other contexts government subsidies have been paid to balance the budgets of public corporations. But the notion

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10. The NSW had already been subjected to a similar power by the Lang Government in 1931-2, but this disappeared for the time being with that government. I have given other examples of this general trend in Australian Commonwealth and NSW legislation in Railway Management, p. 88.
of direct reimbursement for a particular piece of political intervention, calculated to equal the revenue loss thus occasioned, is an unusual one. Morrison frowned on the idea even when stressing that the social obligations of public enterprises would not always allow them to follow commercially desirable policies:

It would be wrong to subsidise the socialised industries in order to enable them to do what I have suggested should be expected of them as good citizens. It would be regrettable if they came, cap in hand, to the Exchequer whenever they foresaw financial losses due to Government intervention... Subsidies are bound to increase the Boards' dependence on the Government and to bring them into the political arena, ... and it would need the wisdom of a Solomon to disentangle the losses which were, in fact, due to such intervention from those which were due to other causes...

For such reasons the idea was not written in any specific sense into British corporate legislation. But there are now indications of a growing interest in it.

The principle here suggested was written into Australian legislation over sixty years ago. It was fitting that Victoria, which pioneered the public business corporation in Australia and also laid the foundation of the system of control over such corporations, should lead in this respect also. The recoup provision came as a partial counter-reaction to the reaction of 1891 which brought the general directive power. Once again all five other selected enterprises eventually followed suit — what


12. See below, pp. 466-7. Cf. also the recoup element which has developed in the financial arrangements for the New York City Transit Authority, noted above, p. 164.
differences there were differences of degree rather than kind.

Thus the main elements of statutory political control over the operations of most established Australian public transport corporations (the reservation of certain clearly defined powers to ministers; the general directive power; and the compensatory recoup provision) were all quite firmly entrenched in the VR legislation before 1900. Clearly, therefore, the attitudes and expectations of the late nineteenth century Victorian legislators are of considerable importance to any understanding of the political relationships of Australian corporations.

Developments in the other selected enterprises (and many other corporations) reflected the Victorian philosophy. The application of all its elements to the NSW was a long drawn-out process, and the subject of much controversy: first, Parkes' adaptation of Victoria's 1883 position in 1888, and then the persistent Labour attempts after the turn of the century to follow the Victorian reaction of the 1890's, and the long conservative resistance which did not finally crumble until 1950. But elsewhere the broad outlines of the Victorian philosophy were accepted much more cursorily, with interest centring rather in the differences of order, detail and procedure in the various combinations of the elements which originated in the Victorian model.

The needs of particular industries have led to the development of certain other forms of control in individual corporations. Those encountered in the selected enterprises are
mainly of a co-ordinating or "rationalising" character, and have sometimes involved the establishment of special agencies. They will also be described in the present chapter, which will then conclude with a brief comment on certain standardised governmental procedures applied to a greater or less degree in the corporations.

Table 5, which is intended to serve as a key to the main legislative developments, shows in comparative form the order in which the main techniques have been adopted for the selected enterprises; but it is impossible in a tabular presentation of this sort to indicate the relative importance of the various techniques in individual enterprises. 13

1. FOUNDATIONS: THE SPECIFIC CONTROLS

(a) The 1883 Victorian Philosophy

In introducing the Railway Management Bill in 1883, Gillies was careful to explain his government's view that the reform would not involve loss of powers by the legislature. 14 Almost the only important power being retained by the ministry was that of reviewing by-laws framed by the VRC, which would cover fares, freights and other prescribed matters. In this respect the ministry would be responsible to parliament for action

13. An appraisal of this kind will be attempted in chapter VIII.

14. VPD, vol. 43, pp. 103-12. Gillies was Minister of Railways in the Service-Berry Coalition Government. I have discussed the debates on the bill in more detail in Railway Management, pp. 20-30.
TABLE 5: CHRONOLOGY OF MAIN CONTROL TECHNIQUES
IN THE SELECTED ENTERPRISES

<table>
<thead>
<tr>
<th>VR</th>
<th>NSWR</th>
<th>TGR/TTG</th>
<th>CR</th>
<th>Shipping</th>
<th>TAA</th>
</tr>
</thead>
</table>

KEY:
- Specific Controls
- General Directive Power
- Recoup
- Special External Rationalisation or Coordination Machinery
- Obvious Derivations
taken; but the power was the passive one of checking rather than the active one of initiation. The great bulk of the managerial power previously centred in the minister was being transferred to the VRC. However care had been taken to include other provisions expected to ensure their direct accountability to parliament. The latter's authority would be preserved by its powers over the removal of commissioners (in itself an assurance of their responsibility); by the retention of the power to authorise expenditure ("Parliament each year will have before it the affairs of the Railway Department as it does not"); by annual audit by the Audit Commissioners (themselves regarded as "officers of parliament"); and by regular reporting of the VRC at quarterly and yearly intervals.

Gillies went so far as to assert that parliament's supervision would henceforth actually be more effective, since under the old system any question of censuring a minister for maladministration could not easily be separated from the question of turning out the whole government. Parliament therefore often took the easy course, letting things lie. With railways removed from such political complications, parliament could now determine relevant issues on their merits alone.

The 1883 reform represented the culmination of a period

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15. For a contemporary comment underlining the Service-Gillies attempt to equate the VRC with the Audit Commissioners as officers of parliament rather than of the government of the day, see J. Reid, "State Railways", Sydney Quarterly Magazine, June 1887, pp. 140-1.
of growing popular dissatisfaction with departmental management. Most attention was given to the evils of patronage in staff employment, and the railway reform was closely associated with anti-patronage legislation dealing with other branches of the civil service. But Gillies pointed also to the growing complexity of the railway system, both commercially and technically, and argued that, whereas a minister could cope with a system consisting of a few hundred miles of track only, the VR now required an expert at its head. A minister was unlikely to have the required experience, could not devote his full time to the task, and was unlikely to stay in the portfolio long enough to gain that experience.

More particularly, however, the demand for action had been precipitated by the antics of Thomas (later Sir Thomas) Bent, last of the ministerial managers. Bent, always a controversial figure, had boasted that he would run the railways "on commercial lines"; but one has only to glance through the contemporary Melbourne press to realise that his failure to do so furnished almost limitless material for the cartoonists and the critics. When a fatal crash (one of many) occurred at the Melbourne suburb of Hawthorn late in 1882, it was immediately apparent that the temper of parliament, press and public alike would tolerate no further delays; and the 1883 election returned a coalition government dedicated to taking railway management out of politics.16

For all these reasons the emphasis in the bill was on elimination of ministerial management. But the Berry Liberals now in the coalition had been critical of the old "irresponsible" administrative agencies: 17 hence the care taken to indicate that parliamentary control was preserved even though an expert commission was being substituted for the minister. Most members in 1883 agreed that, although they were not prepared to hand the VRO a blank cheque, there were sufficient safeguards for ultimate public control in the powers retained by parliament. Berry explained that the aim was to keep ultimate supervision with parliament, but to leave the experts with sufficient independence from ministerial control to enable them to "fulfil the functions of their office undeterred by any passing feeling of annoyance or objection which might be entertained in the Assembly or by the Ministry". There was also an assumption by many supporters that parliament would retain general responsibility for "policy"; but a suggestion that a clause be included clearly dividing policy and administration between it and the VRO respectively did not draw much support. 18

However, a handful of rebel Liberals who had refused to follow Berry were more critical of the proposed arrangements. They wanted to know how parliament could possibly retain this control

17. See above, pp. 36-7.

18. These and following details of the debates from VPD, vol. 43, pp.112 at seq. , 177 at seq.
after giving such wide powers to a body of appointed officials. Although they could not prevent the legislation passing, they caused even its supporters to have second thoughts, and some revision resulted.

At this point the inadequacy of the concept of direct parliamentary control became apparent. Parliament was not in session all year round, and was too unwieldy as an executive instrument. How, then, to preserve popular "policy" control without losing the essential features of the bill? The obvious answer was to give the government an overriding power over corporate decisions in the policy area - as always, it would be responsible to parliament for the way it exercised that power.

The question remained of defining the policy area, and this was done by specifying particular matters mostly contentious in nature. Thus the pressure of private members (and in one case a deputation of local manufacturers) led to amendments requiring Governor-in-Council direction on the form in which railway estimates were to be presented; providing for ministerial oversight of the ordering of supplies; and preventing on decentralisation, protection and sabbatarian motives respectively the closing of country workshops, the letting of contracts outside Victoria, and alterations in Sunday train services, without Governor-in-Council approval. Much parochial argument developed: the decentralist who proposed the workshops closure reservation bitterly opposed the external contracts reservation as a "little sop" to extreme protectionists which would "trammel"
the commissioners. Shiels, later to become a leading opponent of VR autonomy, complained that such amendments were "whittling into the principles of the Bill", and censured the government for giving way. The Legislative Council was also critical of a number of these "paltry" restrictions, but in the course of inter-house negotiations it desisted in its attempt to delete the workshop closure reservation because, although "absurd", it believed it was of comparatively little significance.

The Melbourne press was also critical of these changes, but the coalition appeared dedicated to the spirit of compromise. Gillies now argued (in relation to Sunday traffic and external contracts) that the reservations would be to the advantage of the VRC: they would safeguard them from having to decide contentious policy issues on which public opinion could so easily be roused. A supporter added that they were constitutionally correct: without them the VRC would have complete control, but with them the government at once assumed full responsibility to parliament for policy matters.

It is worth noting that the VR legislation of today, by retaining many of these controls (they were in fact considerably augmented in 1891) still reflects the nineteenth century thinking on what constituted issues of policy. The deliberate choice made

19. *Melbourne Punch* claimed (2.8.1883, p. 44) that they would "utterly destroy the value of the measure ... and effectually provide that all the evils which have disgraced our railway management in the past shall continue in the future ..."
Left: Taking the Railways out of politics (showing Bent, feeling boot, and ex-Minister Woods, who had designed a brake and was seeking to have it fitted to VR equipment). From Melbourne Punch, 14.12.1882.

Right: Premier James Service accepting the specific reservations. From Melbourne Punch, 23.8.1883
by the 1883 legislators in favour of reserving political power in a few narrowly-defined matters, rather than attempting a general clarification of political and managerial spheres, had a lot to do with the crisis which was to develop within a decade in the VR, and it has influenced Australian corporate legislation to this day.

The Minister of Railways was almost, but not quite, ignored in the 1883 act. The VRC had to apply to him for additional stores, and to furnish various reports to him; but most of the reserved powers were vested in the Governor-in-Council. A few debaters queried the need for a special railway minister at all in view of the drastic reduction in his legal powers: the office was "practically done away with", "the duties ... would not occupy him five minutes a month", "like Othello, his occupation will be gone". Government speakers conceded that the portfolio might be held jointly with another; but a separately-designated Minister of Railways was still needed "to be the representative of the corporate body, so that he may place before this House whatever statements or explanations are requisite".

The discerning few foresaw the difficulties this situation was to produce before many years had passed. Few ministers would be content to be mere figureheads; and their very existence would inevitably cloud the location of responsibil-

ity and encourage other politicians to seek favours from them. These views correctly predicted the difficulty in defining the respective spheres of corporation and minister which has since complicated the operations of the WR and many other corporate public enterprises.

This was a difficulty Parkes recognised and tried to avoid in New South Wales. Indeed, his 1888 legislation represented a remarkable attempt to reconcile corporate autonomy and ministerial responsibility.

(b) Parkes' Adaptation in New South Wales (1888)

As in Victoria, there were vague objections in New South Wales to the patronage system quite early in the 1870's; but it was not until the five "great railway years"\(^21\) from 1880 to 1885 that departmental management came generally to be regarded as inappropriate. There was no minister as controversial as Bent, and, although there were occasional accidents, there was no similar political crisis to trigger off decisive action early in the decade. New South Wales therefore moved with less haste, and under Parkes' guidance it paid greater attention to basic constitutional principles.\(^22\)

Although Parkes had seen the need for railway reform for

\(^{21}\) A period of rapid expansion - see Centenary History, p. 88.

\(^{22}\) The NSW reform movement is discussed in Wettihall, "Early Legislation", pp. 456-62. Parkes was a prominent scholar of parliamentary and constitutional procedures.
some time, it was W.J. Lyne who first attempted (in 1886) to introduce the Victorian system to New South Wales. Lyne's plan, which he claimed was dictated by successful Victorian experience, was to create both a board of railway commissioners and a new portfolio of Minister of Railways. Parkes immediately opposed it on the ground that it would "emasculate responsible government". He pointed to the great inconsistency in appointing commissioners with many statutory powers and protections and not subject to conventional ministerial control, and at the same time creating a "responsible minister who really will have no rational responsibility. If you create a managing commission as indicated ... what will be the use of your new minister?" The proposal was "a blow at responsible government itself", and if implemented would cause all sorts of awkward situations. He desired to see the railways removed from political influences, but he had an equally strong desire to preserve the spirit and letter of responsible government and would do nothing to impair it in the slightest degree. What had happened in Victoria was "inconsistent with the genius of responsible government".

25. New South Wales had previously conducted its railway undertaking as part of the Public Works Department, whereas Victoria had a separate Railways Department and therefore a separate Minister of Railways.
Lyne's measure was eventually dropped, leaving the way clear for Parkes to introduce his own scheme. Before he did so, he visited Melbourne to examine the working of the Victorian act, conferring with ministers and commissioners and making his own assessment of the strengths and weaknesses of that law. With remarkable insight he was able to predict many of the difficulties that were to arise in Victoria by 1891.

The Victorian act greatly influenced the shape of Parkes' proposals, but this was almost as much because of what he learned to avoid in it as because of what he borrowed from it. Lyne had claimed this model should be followed because it had removed "the great incubus of political patronage which exists wherever railways are under a political head", because it contributed surpluses to the general revenue, because it was giving general satisfaction, and because it had permitted the recruitment of an overseas expert of high quality as chairman. But within a few years Victoria was to entertain grave doubts as to whether it had achieved any of the successes Lyne credited it with; and it drastically altered its railway legislation in the 1890's. Even when Parkes was handling his own bill in 1887-88 the opposition came mainly from those who disliked his departures from the Victorian model and wanted to accept assurances that this had

27. J.B. Lyne, Life of Sir Henry Parkes, London 1897, p. 482; and letter from Parkes to Victorian Premier, D. Gillies, dated 20.3.1887, copy in Parkes Correspondence, A916, pp. 91-2, in Mitchell Library, Sydney, quoted by permission of the Trustees.

28. NSWJD (i), vol. 23, pp. 531-2.
"solved" the railway problem. Parkes would reply sagely,
"There really has not been sufficient time!" 29

His own contribution may be briefly described. 30 He
remained adamant that New South Wales should not create a full
ministerial portfolio for railways, since he saw the existence of
such an office with drastically restricted powers as a source of
trouble. 31 He rejected the Victorian notion that the commissioners
were to become officers of parliament rather than servants of
the government, insisting that the influence to be avoided was
the influence of parliament itself (i.e. the "pettifogging" local
members) rather than the minister. They were therefore to be
one step further removed from parliament than the regular depart-
ments. They were still subject to ministerial supervision, but
in keeping with the commercial nature of their activities this
was to be of a "dormant" character only. Unlike the Victorians,
he was careful to describe his new creation as an "authority" to
distinguish it more clearly from the regular departments; 32 and
he asserted that the construction of lines was inescapably politi-
cal and therefore left this with the Public Works Department so


31. The convention developed of vesting the loose supervisory responsibility over the NSW in the Colonial Treasurer — see also below p. 235. A list of ministers made available to me by the NSW (prepared about 1940) is wrong in this respect, as it continued to list the Secretary for Public Works even after 1888.

32. Govt. Railways Act 51 Vic. No. 35 (1888), preamble and s. 6.
as not to compromise the authority in any way.

Parkes' idea was that parliament should lay down in the railway legislation the broad policy it desired the authority to follow. Beyond this it was the responsibility of the ministry of the day to see that the "principles and provisions" of the act were carried out. All parliament could do would be to turn out the government if not satisfied with its conduct of the administration, or to alter the broad policy by amending legislation. Members had no right to demand answerability of the authority through parliamentary questions — the minister was a channel of communication, but he could not compel it to answer. The government itself had no right to interfere unless it could be shown that the authority had contravened its act; all actions covered by its terms must be sustained. But the government did hold a watching brief to be exercised in a "continuous, constant and searching manner".

In an important passage Parkes outlined his concept of dormant supervision:

all through the bill what I may call the dormant authority of the Government has been studiously preserved. I use the words "dormant authority" in contradistinction to any

33. By contrast with recent acts creating corporations, it certainly contained a great amount of detail — see also below p. 514.

34. See e.g. statements by Parkes and two successive Treasurers in his ministries who carried this supervisory responsibility, W. McMillan, and Bruce Smith, in NSWPD (i), vol. 28, p. 804; and vol. 53, pp. 2156-8, 2171-2. Smith claimed that he had on numerous occasions had to point out this difference between the railways and other departments to deputations as well as in parliament.
active authority. It has been intended, and the whole object of the bill is, to allow the commissioners virtually the control of the railways; but it never was for a moment contemplated to give up the authority of the Government of the country ... the design throughout ... is to preserve the authority of the Government in any emergency or in the last resort. 35

He had ensured the ultimate responsibility of the government for the work of the NSWRC through strictly defined means such as the power of suspension and dismissal (subject to parliamentary review), the need for government approval of by-laws and of estimates of expenditure (with consequent parliamentary appropriation of funds), and the adoption of the Victorian technique of reservations of power to the government in specified matters such as disposal of lands and purchase of supplies. However, as well as his other refinements on the Victorian model, he avoided the more parochial reservations such as Sunday service alterations and workshop closures.

The Parkesian foundation survived much longer in New South Wales than did the Service-Gillies foundation in Victoria. This was attributable in part to differences in actual working relationships between the respective corporations and ministers; 36 in part to the existence in New South Wales of a strongly conservative Legislative Council which championed Parkes' system and resisted many Labour attempts at reconstruction. As a result, the general

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35. NSWFD (1), vol. 32, p. 4060.

36. In accordance with his views, Parkes and his followers stoutly defended the NSW against capricious political pressures, whereas the VR rarely enjoyed such protection - see chapter VI.
directive power, which had supplanted the specific reservations as the most important control technique in the VR as early as 1891, did not come to the NSWNR until 1950. In the meantime, however, the specific reservations were augmented.

(c) Extension of the Specific Controls

The inadequacy of the rigid and limited system of control constructed by the 1883 Victorian statute became apparent when the VRC came into conflict with the Munro and Shiel Government, which faced the financial crisis after the collapse of the "land-boom". The railways again became dependent on large government subsidies to finance deficits, leading to strong demands for an extension of political controls. But the VRC in fact used their statutory independence to hinder the extension of the Munro Government's retrenchment policies to the railway undertaking. The 1891 legislation arose out of this conflict.

William Shiel, the author of the bill, described it as an endeavour to "substitute constitutional and responsible government, with checks and counterpoises ... for a system of administration practically absolute, wholly irresponsible, and,


38. For a summary see Appendix B.

39. Railways Act 55 Vic. No. 1250. A further result was the suspension of the original commissioners, described above, pp. 129-31.

40. Minister of Railways in the Munro Government, and Premier shortly afterwards. For biographical note see Eggleston, Swinburne, pp. 57-8.
in the last resort, wielded by one man". In an emotional appeal he asked parliament: "shall this state of powerlessness in the Government be allowed to remain? Are the finances to be jeopardised by irresponsible men ...; and is the Government of the day, which is responsible to Parliament, to remain unable to do anything to save the State?"41

Yet the bill as introduced by Shiels remained faithful to the technique of specific controls. He explained that the whole field of railway operations had been surveyed, and that the government proposed to increase substantially the number of prescribed matters over which it would hold "some power of veto". One clause of the draft bill listed many such matters, all of which bore a definite relation either to the question of railway finance or to specific criticisms against the administration of Speight and his fellow commissioners.42 The intention was to give the government power to intervene at these points, to alter corporate decisions or direct other action to be taken; and a formula was drawn up to govern such intervention. But in fact Shiels' draft clause was altered in important respects before it became law, by deletion of the specially defined subjects and substitution of much more general wording. It was thus the root from which the first general directive power emerged.43

41. Shiels' speech in VPD, vol. 66, pp. 504-33. See also Railway Management, pp. 44-51.
42. Clause 24. They included prescription of methods of entering into and subdividing contracts, enforcement of contracts and penalties, and limits on train mileage, the number of stations on new lines, the number and salaries of officers and employees, and the issue of free passes.
43. See below, pp. 230-3.
But his bill included in separate clauses other specific restrictions on corporate activity. For example, in order to prevent a recurrence of the Darbyshire incident, the VRC would not be able to appoint or promote any person to an office the salary of which exceeded £500 p.a. without the minister's approval; and in reviewing any such proposals the government would be entitled to say that the position should be filled but that it does not approve of the nominee, in which case the VRC would be requested to make a fresh nomination. The fear of extravagance also resulted in a clause requiring the minister's approval for all overtime payments. Again, to prevent a recurrence of criticisms which had followed the letting of large contracts by the VRC, the minister was to have the power of review over all contracts exceeding £5,000 in value or one year in period of performance. The final act contained all these and a number of other reservations in matters such as the employment of persons over sixty-five years of age, notification of recruitment examinations, and construction by the VRC of platforms, offices, sidings, drains, etc.

The transformation of Shiel's draft clause twenty-four therefore implied a recognition of weaknesses in the system of

44. In which the VRC, with full legal power in the matter, went ahead with the appointment of G.G. Darbyshire as Engineer-in-Chief, despite the fact that the government had made aware its objection to the appointment, allegedly on the ground that he was over sixty-five years of age.

45. This also stemmed from the Darbyshire incident.
specific controls as early as 1891. But equally this did not prevent a simultaneous expansion of such controls. The technique has in fact been widely used in subsequent Australian experience, and despite the petty motivation of many of the VR reservations, a number of them have been copied for other corporations.

The fixing of charges is of course of vital importance in the management of public transport services, for these constitute the major source of revenue. This is a matter over which Australian governments have, with a few exceptions, been reluctant to relinquish their powers, and they have utilised variations of the specific control technique to this end.46

Apart from the fixing of charges, the controls in the matter of contracts and staff salaries above set limits seem most popular. While this no doubt indicates the importance with

46. None of the selected enterprises has ever operated under the shield of an independent fares tribunal such as the Transport Tribunal in Great Britain. On this, see Winter, "Control of Nationalised Industries", pp. 696-8; W.A. Robson, Justice and Administrative Law (3rd ed.), London 1951, pp. 99-104. Suggestions for the establishment of such bodies have been made from time to time in Australia, e.g. in the shipping and surface transport industries, but have come to nothing. The nearest approach to fulfilment came in New South Wales where two tribunals (for railways, and trams and buses) were appointed by Sheahan in 1952. But that eccentric minister then "either changed his mind or lost interest in the idea"—comment by Ministry of Transport official cited in article "Appointed, but Never Met - Mystery of Tribunals on Rail, Tram Charges - Members Puzzled", in SMH, 26.7.53.
which they are regarded by governments, it should not be forgotten that they stem directly from the Shiels-Speight conflict in the early 1890's. Would they have appeared irrespective of that conflict? The CR legislation was clearly derived from the VR, and in turn has served as the model in these matters for much subsequent Commonwealth corporate legislation. But Bruce's 1923 shipping legislation which was independently motivated, included neither contracts nor salaries control. Nor have they appeared in the Tasmanian transport legislation. In the NSW in 1892 a contracts reservation was imposed to placate protectionist opinion within the colony. But whereas in the VR all external contracts as well as local contracts exceeding £5000 or one year were then reserved, in New South Wales the restriction applied only to external contracts exceeding £20,000. And there is no formal salaries reservation in the NSW.

Many other specific controls have appeared over the years in one or more of the selected enterprises. Not even the VR (where the restrictions were already numerous by 1891) has escaped, as governments have reserved to themselves powers of approval in new activities which have become important from time to time, such as electricity generation, operation of railway motor

47. Govt. Railways (Contracts) Amendment Act 55 Vic. No. 28.
48. The repeal of a few such controls is considered below, pp. 422-3.
buses, and closure of level-crossings.49

Some specific controls are legally vested in the minister, some in Governor-in-Council; the distinction here is a more formality. A few of these controls are, however, vested in parliament itself. The most obvious is the matter of new rail construction (and sometimes closing or dismantling of lines), for which special legislation is required. But the CR and Tasmanian transport legislation have gone further: the former requires parliamentary approval for the acquisition of public parks and recreation grounds for railway purposes;50 while the latter reserves to parliament power to approve running agreements with private railways.51 Such approvals would normally be given by resolution of both houses. This type of control was used again in Tasmania in 1949 to resolve the political crisis over the operation of road transport services by the TTC. Direct parliamentary approval is now required for the initiation of new services and for the retention of unprofitable services.52

49. To give a further trifling example: when the NSW Railways Act was amended in 1952 to confer power to rescind any notification for the resumption or taking of land, government approval was required – the reason given was simply that such a check "affords a sufficient guarantee that every case ... will receive careful consideration": Acts, (iii), vol. 3, p. 2413; and Govt. Railways (Amendment) Act 59 of 1952. A number of such controls are also applied today in the constitution and proceedings of staff appeals tribunals, on the ground that the government stands in a position of neutrality as between corporate management and staff.

50. Commonwealth Railways Act No. 31 of 1917, s. 63(3).


52. Transport Act (Amendment) No. 69 of 1949, s. 5. (ss. 11A and 11B of principal act).
An attempt is made in Appendix B to summarise in easily comparable form those matters which have been subjected statutorily to this form of ministerial control in the selected enterprises. This listing ignores differences in the wording of the relevant sections, which sometimes suggest that the legislators and draftsmen responsible consciously sought to show in how many different ways they could convey a similar meaning. Thus the VR legislation reserves variously for 'approval', 'sanction', 'confirmation' or 'consent'. In other cases there is provision e.g. for the issue of a 'direction' or 'order' or 'determination' on a recommendation of the corporation. Where e.g. examiners of candidates or chairmen of appeals boards are concerned, Governor-in-Council often has direct power to appoint. But this too usually follows a corporate recommendation, and the specific nature of the power warrants its inclusion in this category. Some of these controls concern finance, and have already been referred to in that connection.

But a word of warning is necessary about the value of a numerical count of such reservations. When Brendan Bracken counted up the references to the minister in the bill nationalising the British gas industry in 1943, he produced the remarkable

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53. A few other specific controls are added from time to time in legislation other than that creating the managing corporations: e.g. NSW's Grafton-Kyogle to South Brisbane Railway Management Act (No. 30 of 1943, which conferred on the NSWGR the duty of running trains on the standard gauge link into Brisbane) ratified the agreement with Queensland and authorised the NSWGR to enter into changes in that agreement with the approval of the minister (S. 5).
tally of sixty-seven. But such a count takes no notice of the varying importance of individual references. In the selected enterprises it is clear that the VR and NSW have the highest number of specific controls, and also that the low-water mark for ministerial reference was reached with the ACSB of 1923. This obviously is significant; but in any ranking of enterprises standing between these extremes it must be remembered that some reservations refer to genuinely important matters, some to matters of the most trivial character; some will be frequently used, others rarely or only in the formative stages (such as approving head office locations); still others, while remaining in the statute book, are ignored in practice or have virtually become dead letters with the passage of time. This will be considered further in the analysis in chapter VIII.

Before considering the general directive power provided for the selected enterprises, one other point must be mentioned. This concerns the practice which has developed since Bruce's 1923 shipping legislation of providing governments with a regulation-making power within the area of jurisdiction of public corporations.

In all the earlier railway acts, by-laws on prescribed matters and sometimes separate staff regulations framed by corporations were subject to review by Governor-in-Council. But instead of such a provision, the ACSB statute prescribed that:

54. Acton Society Trust, The Powers of the Minister, Claygate 1951, p.2. Bracken was a member of the House of Commons and former minister.

55. This would of course not include all references to the minister in the creating legislation (as in Bracken’s count), but it would no doubt cover most of them.
The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.\(^\text{56}\)

This is of course a common feature of much legislation; but the implications of vesting direct regulatory powers in governments, where otherwise autonomous or near-autonomous corporations are created to administer the relevant statutes, do not appear to have been adequately examined at any stage in Australia. This practice has been extended (with slight drafting adjustments) to TAA and the ANL, in which cases there is also a by-law power vested in the corporation, subject to approval of the Governor-General;\(^\text{57}\) and also to the TTO.\(^\text{58}\) But is the requirement that no regulation may be inconsistent with the act a sufficient safeguard of corporate powers? And if so, why not vest regulation-making powers in the corporation (subject to review) as with the railways, rather than with the government, which, by very use of the corporate device, is absolved of direct interest in administration?\(^\text{59}\)

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56. Commonwealth Shipping Act No. 3 of 1923, S. 23.

57. Australian National Airlines Act No. 31 of 1945, S. 70; and Australian Coastal Shipping Commission Act No. 41 of 1956, S. 50.

58. Transport Act 2 and 3 Geo. VI, No. 70, S. 43. In this case, however, there appears to be a safeguard in the provision that the Governor shall make such regulations "on the recommendation of the Commission."  

59. Other questions follow from these. To what extent would consistency with statute be judged in relation to the respective spheres of government and corporation? If a power is conferred by the statute, would not the average Australian court content itself by measuring the regulation against that power in the total sense? For the question to be taken further it (contd. overleaf)
2. THE RISE OF THE GENERAL DIRECTIVE POWER

(a) The Victorian Reaction of 1891

The priority of the VR in relation to the general directive power has already been noted, as has the fact that this arose from dissatisfaction with the long list of additional specific reservations included in Shiels' draft bill. Shiels' problem was essentially that the Munro Government had desired to extend its retrenchment policies to the railways; but that, when the VR did not respond to its "requests", it had found the existing reservations of power to the minister too narrow in scope to permit the desired compulsion. But his "solution" was merely to expand the list of prescribed matters on which the minister had overriding authority so that all foreseeable causes of difficulty would henceforth be covered.

Many members in the 1891 debates objected that Shiels was seeking to reverse the whole philosophy of the 1883 act by restoring political control at so many points. But some believed more constructively that, even if there was a case for extended controls, an extension of the specific reservations was not the best way. This view was put particularly by Alfred Deakin and

would presumably be necessary for the corporation itself to seek a legal ruling on a particular exercise of the power; but it is most unlikely that it would be prepared to go this far. On these assumptions, governments could well use the power to restrict the exercise of authorities vested by parliament in the corporation itself. The limited practical experience is considered below, pp 426-7.

60. VPD, vols. 66-8, p. 504 et seq.
J.B. Patterson, and was what the former had in mind when he complained that Shiels had prepared a "Bill of details" rather than a "Bill of principle".

Summarised, the argument was that efficiency would suffer if the VRC were subjected to overriding ministerial authority on so many rigidly-defined and often petty matters of management. The proposed reservations were so wide that they would in fact be deprived of all effective responsibility, and would be no more than "traffic managers". It would be better to find some way of enabling the minister to intervene on any matter touching on government policy when a genuine emergency arose; but otherwise to leave the VRC untrammelled. The VRC should then be involved in fewer dealings with the minister, thus eliminating numerous irritating and time-consuming references on politically unimportant matters in which they, as the experts, deserved to be given a free hand.

This approach received considerable support in the committee stages, during which it was argued that the bill should lay down the principle that the government should have some initiative in matters of policy and finance but not the right to interfere in matters of detail. It was Patterson who suggested the emergency general directive power as a substitute for Shiels' 61 62

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61. Deakin had been Liberal leader in the Gillies-Deakin Coalition of 1886-90 and subsequently became Prime Minister of the Commonwealth of Australia; Patterson had been a Minister of Railways in the pre-corporate period and subsequently became Sir James Patterson and Premier of Victoria.

62. Shiels had stated this quite specifically as an objective of the legislation in his introductory speech, VPD, vol. 66, p. 517.
clause twenty-four. Shiels then advised that cabinet had originally thought along these lines, but eventually decided with the Parliamentary Draftsman that it would be better to state specific issues. However, in view of parliamentary feeling he offered to reconsider, and the clause was redrafted to provide that the minister could at any time in writing request the VRC to propose a scheme for effecting an increase of income or a decrease of expenditure or for carrying out any matter of policy. If the minister did not approve of the scheme proposed, he could then advise them of his own scheme which they would take all necessary steps to implement. In the event of any doubt or difference of opinion, the matter would finally be decided by the Governor-in-Council. This was described by those who favoured a large measure of autonomy as a "large and handsome ... concession", although it was some distance from the philosophy of the 1883 act.

The clause remains unchanged in the current VR legislation, and it has furnished a precedent for the enactment of provisions with a similar purpose (even though the actual formula for intervention may vary in individual cases) in other corporations. Rather undeservedly, in view of the events related above, it has come to be known as the "Shiels clause".

In view of the important place history has accorded the

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63. It was unfortunate that this change was suggested only in relation to that clause. As indicated, the new line of thinking did not prevent a considerable expansion of the specific controls in other clauses.
Above:
Duncan Gillies.

Right:
Shiels, Speight, and the 1891 act.
From Melbourne Punch, 14.1.1892.
1891 VR legislation in Australian corporate evolution, it is worth emphasising that it arose out of a personal conflict between minister and corporation heads. The former had acted hastily, uncivilly and with scant respect for the legal status of the latter; and their refusal to co-operate with him (whereas they had enjoyed cordial relations with his predecessor, Gillies) was clearly due in no small measure to this state of affairs. Many in the Victorian Parliament in 1891 described the resulting bill as "hysterical legislation" drawn up only to deal with the existing commissioners, and not on a general view of the question. It might have been very different if the clash of personalities had not occurred or it might not have been necessary at all.64

(b) The Long Campaign in New South Wales

(i) Early Labour Efforts: During the debates on the 1906 reconstruction of the NSWR there were already a few Labour members who asked for greater power to be vested in the supervisory minister, e.g. a power of revising decisions and of mediating in disputes between the commissioners.65 Soon after the formation of the state's first Labour government in 1910, a number of disputes arose between Premier J.C.T. McGowen and Chief Commissioner Johnson, owing to the latter's failure to carry out certain instructions the government had issued. One result was the first

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64. The whole episode is treated fully in Railway Management, Chapter 4. I have, however, suggested there (p. 41) that some such power would have arisen sooner or later, even if the course of events in 1891 had been different.

65. NSWPD (ii), vol. 22, e.g. p.693. On this reconstruction see above, pp. 53, 136.
Abortive Labour attempt in 1912 to reassert formal political control over some part of railway management. This was a bill to create a Duplication Board to consist of two ministers and the chief commissioner, to act as a statutory authority for the carrying out of duplication and deviation work previously undertaken by the corporation. Johnson himself issued a statement declaring that the relevant bill went to the very foundation of the principle of independent control. The opposition and the press were united with him in believing that the government manoeuvres were based on a desire to reverse the Parkesian philosophy, to establish the politician in "the very citadel" of the commissioner, and to return to "that curse of the country - political control of the railway system"; and, although passed twice by the Legislative Assembly, the Council obliged by turning out the bill. For the time being Labour had to put up with a system which, McGowen declared, made the chief commissioner a "czar over Parliament and Executive Government ... a thing unheard of in any other part of the British dominions".

Holman, second NSW Labour Premier, planned comprehensive amending legislation in 1914. This was to have added to the Parkesian base many more provisions of the Victorian legislation as amended during the 1890's, including the so-called "Shields


clause". But the bill was delayed because of pressure of war business, and when finally introduced in 1916 this part had been dropped. Holman explained carefully that, although he was sympathetic to such a provision, he had deleted it because he feared it might introduce party bitterness and thereby delay implementation of other urgent reforms.68

The practice regarding ministerial appointments also requires comment. Although some subsequent lists (and even contemporary debates) blurred the distinction created by Parkes, it was the Holman Nationalist Government formed late in 1916 which included for the first time a Minister for Railways, i.e. as an office carrying a separate officially-recognised title in its own right.69

68. NSWPD (ii), vol.63, pp.6483-5; and Govt. Railways (Amendment) Act No. 69 of 1916. The other reforms included the transfer of construction work from the Public Works Dept. to the NSWRC, the modification of the "bossism" of the chief commissioner, and the enacting of a "recoup" clause. The latter will be considered below (pp.263-5). Holman was at this time entering the very delicate phase of his political career which resulted in his separation from the Labour Party and his formation of a Nationalist Government (the bill was still under consideration when he changed sides).

69. As noted above (p. 218) the supervisory responsibility for the NSW under the Parkesian system had usually been vested in the Colonial Treasurer. As in Victoria, the change did not mean that the new portfolio could not be held concurrently with another by one minister; but it did remove one of the important distinctions created in 1888. The Bavin-Buttenshaw Government discontinued the separate portfolio again in 1929. But since the provision of a new portfolio of Minister for Transport in Lang's 1932 legislation there has always been a minister associated especially with the transport corporations. Details from NSW Parliamentary Record 1624-1953, Sydney 1953, section on "Ministries"
(ii) Lang's Control System: During the 1916 debates some Labour members had objected to the dropping of the general directive clause, acknowledging that their party aimed at getting greater political power over all boards and commissions. They did not want a complete reversal to the pre-1888 system, but believed there was "just as great a danger in conferring ... the unlimited powers entirely beyond control of Parliament". They objected in particular to the refusal of ministers to accept any responsibility in their treatment of parliamentary questions. As Lang gained influence in the party, its demands for greater ministerial powers were pushed more and more strongly.

By 1925 the ARU was demanding not only that a Labour government should provide for the election of a commissioner by the employees, but also that it should legislate to subject railway management to "the policy of the Government". At the 1925 elections Lang promised to comply with these demands if returned to

70. NSWFD (ii), vol. 66, e.g. p.2700.

71. The party's interest in (and dissatisfaction with the existing) railway management was stimulated by the 1917 strike and its aftermath, and also by the nation-wide shift of the party towards doctrinaire socialism with its accent on workers' control of industry, highlighted by the 1921 Socialisation Objective. There was, however, also a strengthening of non-Labour forces leading in the opposite direction. Interests like the Chamber of Commerce and groups supporting the emerging Country Party (or Progressive Party as it was at first called) were advocating the granting of full financial independence (including separate borrowing powers) to the NSWRC, and they received the support of the Fay-Raven Commission. An indication of the many cross-currents of opinion on railway management current in the early 1920's is contained in the terms of reference issued the 1921-2 Royal Commission into the Administration, Control and Economy of the Railway and Tramway Services (Judge W. Edmunds, commissioner) (Edmunds Commission) by the Storey (Labour) Government - listed in Commission's Report, pp. vii-viii.
office; but he was soon to realise that the existing commissioners were more competent than he had believed, that they were with genuine enthusiasm helping him carry out other planks of Labour policy such as suburban electrification and the city underground, and moreover that they provided him with a convenient scapegoat for unpopular actions. In 1927, after much union prodding, a bill was finally introduced to implement these promises; but his government was defeated before this got beyond the first-reading stage, and his 1931-32 proposals were quite different. ⁷²

He was concerned to devise some way of regulating road services, which were taking custom from the railways. But, whereas in 1927 he had shown himself willing to use the NSWRC as his agents in this matter, ⁷³ when he returned to the premiership in 1930 he found private-enterprise schooled and Nationalist-appointed Cleary in charge. His new proposals therefore sought to override the railway management rather than make use of it. ⁷⁴

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⁷² Bla"n"y, "Politics and Administration", pp. 9, 12, 28-34. The bill proposed that the minister could direct the carrying out of any work he might require.

⁷³ Transport Bill, introduced in 1927 but not finalised before defeat of his government - NSWPD (ii), vol. 109, pp. 572-9.

⁷⁴ These personnel changes were considered above, pp. 107-9.
Those features of the 1931 legislation dealing with the establishment of the co-ordinating authority will be considered under the heading "Co-ordination and Rationalisation Machinery". However that legislation also had the important effect of subjecting the NSWWR to comprehensive ministerial power for the first time since Parkes' 1888 act, and this feature warrants attention here.

The act not only created an overriding authority, itself "subject to the control of the Minister", with full powers of direction and investigation over the subordinate transport corporations, but also established a most elaborate legal system by which these bodies were subjected directly to the minister.

75. State Transport (Co-ordination) Act No. 32 of 1931. From this point onwards, a number of significant changes in the form of management of the NSWWR and in its policial relationships have been authorised in a labyrinth of other legislation which affects but is not embodied in the Govt. Railways Act. As it remains in the statute-book, therefore, this is very much out of date on these matters. It is kept up to date as a kind of railway regulation manual, but one must look to a series of other acts of various descriptions (viz. State Transport (Co-ordination), Government Railways and Main Roads (Amendment), Ministry of Transport, Transport (Division of Functions), Transport (Administration), and Transport and Highways) for the organisation and control changes of the last thirty years. This confused the US scholar Thurston in his 1937 study Government Proprietary Corporations. The last important amendment to the relevant sections of the Govt. Railways Act was that of 1924; but the organisation and control pattern has since been drastically remodelled in 1931 (twice), 1932 (twice), 1950 and 1952, with less significant changes at other times.

76. There were six of these by 1931: the NSWRC; the Main Roads Board (created 1924); and the Metropolitan Transport Trust, Newcastle and District Transport Trust, Commissioner of Road Transport, and Management Board (all created when the tramways were separated from the NSWWR in 1930).
 Principally, all the powers and functions conferred on them in their own separate statutes were henceforth to be "exercised and performed subject to the control of the Minister, and the Minister's directions shall be carried into effect accordingly". There was also much more in this strain. The relevant debates were the first of a long series on the question of ministerial control in the NSW.

Lang likened his scheme to proposals for London transport then being considered, but the analogy could well be disputed for even as British Labour envisaged it the LPTB enjoyed a large measure of freedom from ministerial control. The opposition complained that the subjection of the whole system to the minister was the result of persistent ARU pressure (they had plenty of evidence for this charge), that it reversed the Parkesian policy which the state had followed loyally for many decades, and that it would "sound the death knell to the independence and the integrity" of management.77

The debates were harshly gagged in the Legislative Assembly; but, after a long and interesting discussion in the Council, all the offending clauses were deleted in so far as they affected the NSWRC and the Main Roads Board.78 J.M. Concannon, the Government Leader, attempted a compromise by offering to

77. NSWPD (ii), vol. 127, p. 3415 at seq.
78. Ibid., p. 3642 at seq.
substitute the so-called "Shiels clause" of the Victorian 1891 act. This was, Concannon asserted, all Lang had intended in his bill - a vastly different thing from taking away all the powers of the corporation. Opponents of the measure raised some ridiculous arguments completely opposed to the principle of ministerial responsibility. One could not see why supreme control should be handed to any minister: he "might go out of his mind and order all the engines to be run into Darling Harbour". To this Concannon replied, "Anything is possible to the Minister under any Act of Parliament". Government supporters argued that such power had existed in the VR and CR for years without making those systems significantly worse than the NSW, and that, since the government was blamed for railway affairs, it was surely not too much to ask that it should have some say in their conduct. Concannon also tried to use the recoup clause of 1916 as proof that the railways were already subject to de facto policy directions. For the moment the conservatives remained adamant; but the Assembly disagreed with the amendments, and on this occasion the resubmission of the bill in the Council saw a remarkable collapse. Thus Lang had his way.

79. Already admired in New South Wales by Holman and which gave the minister a discretionary power to intervene on matters of policy.

80. See below, pp. 263-5.

81. The opposition degenerated into a discussion as to whether ministerial control would be used to victimise the loyalists of the 1917 strike, and the amendments were no longer insisted on. Lang had already shown that he had little patience with this chamber, and would not hesitate to use strong tactics to deal with it - below, p. 230, note 37.
The differences of opinion were repeated in 1932 when Lang introduced the second stage of his transport plan, under which all the existing transport corporations (including the supervisory STCB) were amalgamated into a single Board of Transport Commissioners. In the Lang tradition the new authority was to be "subject to the control of the Minister". The opposition complained bitterly that the proposal was a negation of the public policy applied ever since Parkes' act - it "marks the final abolition of the principle of the independence of public utilities". Parkes received many eulogies, one member commenting that Labour, "in the profundity of their ignorance, believe that Sir Henry Parkes was an intellectual pigmy compared with John Thomas Lang". But this time attempts to defeat the control provisions were easily defeated.

Lang's successes, however, were short-lived. Within months his dismissal from the premiership was to allow the non-

82. Ministry of Transport Act No.3 of 1932. Together with the new Minister of Transport this "board" (or "department" as it was also called) constituted the "ministry". As noted, Parkes had been careful in 1888 to describe the new railway management as an "authority" rather than a department, thus emphasizing the distinction he was endeavouring to create. But the distinction gradually became blurred as the Labour Party gained political power, just as it had been blurred in Victoria. In suggesting (in its Report of 26.2.1932, cited NSWPD (ii), vol. 132, p. 8518) "one corporate body under a Ministry of Transport", with a "chief transport commissioner ... responsible to the Government for the efficient and proper conduct of the services in the Department of Transport", the STCB under Lang's tutelage set the pattern for great subsequent confusion of terminology. Terms such as ministry, department, board, commissioner, and body corporate (the latter defined quaintly, in view of the legal purpose in incorporating public authorities, as "a statutory body representing the Crown") were thereafter to be used indiscriminately in the NSW transport undertakings.

83. NSWPD (ii), vol. 132, e.g., pp. 8416 et seq.
Labour parties to reverse the situation. The UAP-GP coalition under Stevens and Bruxner, formed on Lang's dismissal, lost no time in drafting a scheme to replace his composite organisation and reverse his political control provisions.

(iii) The Bruxner Arrangements: In introducing his own bill, Bruxner gave numerous examples of how ministerial control had been exercised since its legalisation in 1931, and explained that the new government believed the railway law as it was before Lang tampered with it allowed adequate room for the exercise of genuine policy controls. The only result of Labour's additions to the mechanics of supervision had been undesirable interference in operational details. However it was clear by now that Labour and non-Labour could never agree on how to classify industrial questions – to the former these were high policy, to the latter they were merely administrative detail. Further, the latter feared not so much the voluntary activities of Labour ministers, as the power of the unions to gain industrial advantages by exerting pressure on them.

Bruxner's legislation divided Lang's composite board into three separate corporations, under a Commissioner for Railways,

84. The GP leader who, like Buttenshaw before him, insisted on occupying the transport portfolio as one of the most vital in the government. This in itself was significant, in view of the fact that he immediately legislated to delete provision for formal ministerial control. It reinforced his claim that even without this the government had adequate policy control.

85. See below, p. 336.

86. Bruxner's second-reading speech, NSWPD (ii), vol.134, pp. 797-810.
Commissioner for Main Roads, and Commissioner for Road Transport and Tramways respectively. With the minister, these constituted in a very loose sense the "Ministry of Transport". There was, however, no legal subjection to a general ministerial control, and with a single exception the legislation in this respect constituted a reversion to Parkes' system. The exception was that any disputes concerning the re-division of transport functions were to be referred to the minister, in which cases a decision would be given "by the Governor, or in such manner as the Governor directs".

Bruxner claimed he was giving each commissioner effective control of his own service, but that he was also preserving a measure of co-ordination through this "ample power", which would enable him to call them together to discuss mutual problems, to arbitrate between them if they could not agree after consultation, and to call in such expert assistance as may be necessary to this end.

(iv) The 1943 Debates: The subject again became a matter of political controversy in 1943 when the McKell (Labour) Government introduced a bill to provide, inter alia, that the three transport commissioners would be "subject to the control and direction of the Minister ... in the exercise and performance of the powers, authorities, duties and functions conferred and imposed" on them. The government argued that it believed "a Minister should

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87. In common usage, however, the term has come to refer to the small personal secretariat built up around the minister and apart from the operating corporations.

88. Transport (Division of Functions) Act No. 31 of 1932, s. 19.

89. NSWPD (11), vol. 134, p. 809.
have the right to control his department in matters relating to Government policy"; but, as the legislation then stood, the transport commissioners could defy his wishes. Once more, the terminology reveals Labour's reluctance to accept the Parkesian distinctions. There was no suggestion that recent commissioners had been defiant, and in fact, as was pointed out, policy directions had been given and accepted, e.g. in the matter of drought relief concessions, a hardy perennial. The new bill merely sought to legalise this position – there was no intention that the minister should interfere in administrative details. The Minister for Transport, Maurice O'Sullivan, described what was sought (although in fact the wording of the amendment was not so specific) as the power "to direct the three commissioners to carry out matters of Government policy".

Bruxner opposed the change because of his fear that it would mean union domination, but UAP Leader A. Mair supported the amendment as being consistent with the principles of responsible government. The bill therefore passed easily through the Assembly; once more the stumbling block proved to be the Council, where

90. Debates on Transport (Administration) Bill (which, when amended, became Act No. 23 of 1943); NSWPD (ii), vol. 171, pp. 3217 et seq., 3382 et seq. O'Sullivan added that, because of the wide powers vested in the commissioners, "the Minister becomes a Minister in name only, without any authority. Whatever Government is in office, it is always faced with the position that it cannot give effect to matters of policy on which it was elected, if it has no power to give directions to the Commissioners or Boards in charge of departments. After all, these Commissioners are appointed to administer Government instrumentalities, and when there is a change of Government and of policy, the Government of the day should have the right to give effect to its policy ... without having to amend legislation or change the administrative officers of the departments affected".
Sir Henry Manning, a former Attorney-General, led strong opposition. He refused to discuss the question of ministerial control in the abstract, preferring to examine relevant experience in the past and also existing provisions in the almost forgotten Government Railways Act. Thus, in contrasting Parkes' system and Lang's, he was able to show — a point Labour usually ignored — that the former had reserved a number of specific matters for government review after a consideration of the whole range of powers vested in the corporation. The latter was therefore not completely independent of the government of the day as Labour suggested; the relationship had already been carefully defined in the interests of sound management. Manning argued that the new proposal would not only destroy this relationship but also have the strange effect of superimposing the general authority of the minister over the particular authorities already vested in Governor-in-Council.

The latter distinction was no more than a technicality, although the wording was perhaps unfortunate. The effect of Labour's proposals was that the old system whereby all corporate decisions on certain matters clearly defined in the Railways Act were subject to mandatory government review would be supplemented by a new system laid down in another act giving the minister discretionary power to intervene in any matter that seemed of importance to the government. This was after all just what had happened

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91. NSWPD (ii), vol. 171, p. 3682 et seq.
in Victoria in 1891, although there both systems had been included more conveniently within the compass of a single statute, and the latter intention was spelled out in more detail. Although the new bill spoke of submission to "the control and direction of the Minister" without qualification (i.e. it did not specify that the ministerial authority was limited to matters of policy), government speakers made it clear that it was not intended to be any more stultifying than the Victorian system; and it had the possible advantage of permitting greater flexibility - certainly it prevented any arguments about the limits of policy as have occurred in Victoria.

Manning, however, scored in suggesting that the change would further confuse the location of responsibility - when the commissioner is given authority, the responsibility for any action taken is his; but, he asked, "whose responsibility is it if done at the direction of the minister?" Labour answered most inconsistently, "the commissioner's". Manning finally had the Council carry his amendment that the provision for ministerial control of the NSWR be deleted.

The Assembly insisted on its own version. Many members criticised what they regarded as the "splitting of principle": if the Council was so opposed to ministerial control why did it not also delete the provision in relation to the other transport corporations? Moreover the last non-Labour government, in which Manning was Attorney-General and which had Council support, had established a similar form of ministerial control over corporate bodies such as the Western Lands Board, the Police Commissioner
and the Soil Conservation Service; and no objection had been raised to Labour's doing likewise with the Milk Board in 1942. It was also argued that the NSWR should have the same relation to the government as a general manager to the board of directors of a private company.92

But in the Council Manning was adamant, now saying that since the NSW were responsible for their own funds they could afford to be treated differently. Also, of course, they had a long tradition of formal autonomy. The Council's message in reply insisted on its amendment;93 and at this stage the government, having obtained a general power over the tramway and main road corporations, conceded in regard to the railways that "we

92. See especially Assembly's message to the Council, NSWPD (ii), vol. 171, pp. 3989-90. This pointed out also that the VR and OR were subject to such ministerial control.

93. Because it believed the existing division of the powers conferred on the NSWR into those to be performed by him solely and those to be performed subject to the approval of the Governor had been carefully drawn up and proved by experience to be a satisfactory arrangement; because the "imposition of ministerial control is not a matter of abstract principle" which can be applied simply by copying other establishments; and because in the scheme submitted by the government "the control is duplicated [in those matters already reserved to higher authority] and calculated ... to cause uncertainty and confusion" - NSWPD (ii), vol. 171, p. 4037. However Manning and Co. were in error when they asserted that the existing division of powers was a "distribution arrived at after full consideration of the Report of the Fay-Raven Royal Commission" - for the main features of that division were effected by Parkes in 1888 and Fay and Raven did not report until 1924. Another mistake commonly made in the debates was the assertion that Victoria adopted its general directive clause in 1915 - for that happened in 1891. These were of course matters of historical detail only; nevertheless it is surprising that practising ministers of the Crown, an ex-Attorney-General and Parliament House authorities did not have a better grasp of the evolution of the laws they were dealing with.
shall, for the time being, have to bow to the inevitable." 94

The opportunity was to come in 1950.

(v) Restoration of the Directive Power, 1950: The 1950 changes bore obvious similarities to Lang's schemes two decades before. In fact Premier McGirr had been Lang's first Minister for Transport; and both the additional supervisory corporation and the general ministerial power appeared again in his government's transport legislation. This subjected all the operating commissioners (and also the Maritime Services Board in respect of some of its functions) to the THC collectively (and also to its director individually), and it completed the web of ministerial control by subjecting all three levels (THC, director and operating commissioners) to the "control and direction of the Minister". 95

Labour actually had less support in the Assembly than in 1943, for the Liberals (successors to the UAP) now opposed ministerial control. Their leader, V. Treatt, conceded that he had originally supported it; but his recent experiences had caused him to change his views. He endeavoured to distinguish between restrained "ministerial control" and efficiency-destroying "ministerial interference", implying that the latter was practiced by

94. NSWPD (ii), vol. 171, p. 4056. Note, however, the temporary war-time control over all state transport authorities, exercised by the Commonwealth Minister for Transport, mentioned above, p. 161.

95. Transport and Highways Act No.10 of 1950, Ss.3, 4, 8, 13. The tram and road corporations had of course been dealt with in the latter respect in 1943.
Labour governments. His conclusion - "If a Government is effective and energetic and it faces the real issues it will evoke a response from its administrative heads whether they be independent or subject to ministerial control" - led him to oppose any extension in ministerial powers.96

Bruxner for the CP had not wavered from the position he had taken in 1932 and 1943:

When I was Minister for Transport I had no power of direction, and I did not want it any more than Herbert Morrison did. I did not want to have all sorts of trifling matters brought to me. I did not want a member of Parliament writing or saying to me, 'Tell the Commissioner to move Bill Jones from Boggy Gully to Stony Flat', and thinking that I would do it. I was there to keep the 'dogs' away from the Commissioners, so to speak, to keep this House and the Government apprised of what was happening, and to get assistance for the Commissioners if they wanted it.97

In his view the minister should be "the umpire" between conflicting requirements and pressures, and the existing organisation - his own adaptation of the Parkesian base - was adequate for this purpose.

The present proposals would merely let in "political pressure and push".

But Labour now had the numbers in the Legislative Council, and that chamber could no longer resist the implementation of government transport policy as it had so often in the past. Labour had at last succeeded in its long-standing desire to establish the

96. NSWPD (11), vol. 191, p. 5169.

97. Ibid., p. 5176. Bruxner was a scholar of transport administration in his own right, and studded his speeches with apt references to e.g. Morrison's Socialisation and Transport, UK legislation, and the views of eminent transport administrators such as Sir Cyril Hurcomb, Sir Josiah Stamp and Lord Ashfield.
general power over the NSWR. Indeed, two years later this was all that remained of the 1950 legislation.98

(c) Tasmanian Variant

When Tasmania appointed a General Manager of Railways in 1891, it vested many statutory powers in him "subject to such directions as he may from time to time receive from the Minister ...").99 His status and powers were greater than those of a permanent head of a normal department – hence the need for some overriding control of his activities; but the organisation was not given separate legal incorporation, and it was not a public corporation in the accepted sense. It received such incorporation in 1910, when the General Manager was replaced by the Commissioner for Railways.100 At the same time the general subjection to the minister was repealed; the relationship was henceforward governed statutorily only by a few reservations of power on specific matters.

The Lewis Government's reasoning followed Parkes rather than the Victorian innovators in the matter of political relationships. In stating its object as "to free the management from political influence and control", it virtually exonerated ministers and centred the blame for previous mismanagement on parlia-

98. The short career of the THO will be considered below, pp. 73-4, 35.
100. Railway Management Amendment Act 1 Geo. V, No. 69.
The assumed identity of interest between minister and management seemed, however, rather naive.

The inadequate attention to the latter relationship perhaps had something to do with the difficulties which soon developed. Although the 1910 legislation conferred a large measure of statutory autonomy on the corporation, the frequent pious statements that a fresh start was needed showed how little that autonomy had been respected.

It was in fact left to the Labour Party in Tasmania to entrench the managerial autonomy of the transport undertaking. This was in marked contrast with Labour's role elsewhere in Australia (and particularly in New South Wales). Lyons had set the pattern for official Tasmanian Labour thinking on the subject

101. Second-reading speech of A. Hean, Minister for Railways, TPD (Newspaper Cuttings Book) 1910, p. 142. Also, when Labour Leader J. Earle complained that the commissioner would make the lines pay at all costs and that the proposal therefore did away with "the present policy of running State railways, which were not to be so much revenue-producing as for State development", another minister retorted that it meant rather "Doing away with management by members of Parliament" - ibid. On the other hand, popular agitation which preceded the reform looked rather to the original Victorian model: the Hobart Mercury wrote of the need for management "independent of Ministers and responsible only to Parliament" - The Tasmanian Railways: The Inconvenience and Danger of the Present Hobart Station, and the Evils of Political Control (booklet of reprinted press articles), Hobart 1908, preface.

102. See also below, pp. 362-3, 366.
in the 1920's; it was Ogilvie who obtained the necessary legislation a decade later.

The financial reforms contained in the 1938 Transport Act have already been noted; that act made an equally significant contribution to political control techniques. Ogilvie stressed his non-party approach to the question, and quoted numerous authorities favourable to the independent management of public utilities. He was in fact quite prepared to recognise, a thing that few Australian Labour leaders could do, that the corporation should be a trustee for the general public interest, and that this goal could not be achieved by subjecting it to Labour Party dictation. He concluded his second-reading speech with the remark that the government had "been guided by the wisest councillors it was possible to secure", and an appeal to the opposition to follow in divorcing consideration of the measure.

103. E.g., his statement that "There was only one way of making the railways a success, and that was by leaving the Commissioner untrammelled during his term of office ... should be quite free from political influence. He knew that the principle had been whittled away, but the Government proposed to make a fresh start" - TPD (Mercury Reprints), 1933-4, p. 213. Hence his offer to consult the opposition about selection of a new commissioner, and his unsuccessful 1927 proposal to create a more business-like Board of Control.

104. Act 2 and 3 Geo.VI, No. 70.

105. These included the Webb and Wilson Reports on Tasmanian Railways/Transport; the Fifth Report of the Commonwealth Grants Commission (under Eggleston's chairmanship - this was also critical of Tasmanian transport administration), Canberra 1938, pp. 63-5; the Report of the 1929 British Economic Mission (usually castigated in Australian Labour circles for its conservative role in the depression banking crisis - one of its members, Sir Ernest Clark, was Governor of Tasmania in 1938); and the example of the LPTB.

from the party-political spirit. Ogilvie was a fearless and highly respected leader who carried his party where lesser men would have failed — but without the stimulus of the Wilson and Grants Commission Reports he may have failed in the face of a hostile upper house.

The opposition did contest many features of the bill, and the Legislative Council made some changes. Disappointed, Ogilvie accepted the "fragments that fell from [its] table." They were, nevertheless, quite considerable fragments.

Ogilvie was particularly concerned with the provisions for ministerial control. He used the general rather than the specific technique, but saw this as a means of restricting rather than increasing opportunities for political interference. He stipulated that "the Commission shall be absolutely free from political control in the administration of this Act", and the general power was contained in the rigidly-defined exception to this. This section — which continues to govern formal ministerial-corporate relationships today — provides that the minister can only intervene, if dissatisfied with TTC decisions, through appeal to the Governor (i.e. Governor-in-Council); and in cases of appeal the TTC is itself entitled to be heard directly before the matter


107. TDP (Mercury Reprints) 1938, p. 100. The changes concerned mainly the functions of the TTC.

108. S. 6 (2).
is determined. 109

(d) The Directive Power in the Commonwealth Enterprises

The application of the general directive power to the Commonwealth enterprises may be briefly described. There was about it little of that sense of innovation or of the protracted arguments which had been experienced in the state parliaments. The Commonwealth in fact appeared content to accept the procedures devised by the states; and where the general power exists it has usually come with the corporation itself - it did not have to be tacked on at some later stage. There was no opposed philosophy as influential as that constructed by Parkes to be disposed of.

Watt's CR legislation of 1917 was closely patterned on the VR with which he was familiar. It incorporated all the major control elements of that model, and was the second of the selected enterprises to be subjected to the general directive power. However, since Watt's most notable contribution was his rationalisation of the combined effect of that power and the recoup provision functioning side by side, consideration of the legislation will be deferred for treatment in the latter connection.

109. S.33. Where the decision is varied, a recoup provision applies - see below, p. 266. In fact, however, Ogilvie was guilty of one important oversight. The existing Railway Management Act was incorporated with his Transport Act, with the proviso that all references in it to the minister and to the old railway commissioner should be read as references to the new TTC. But some of the specific controls in that act were lodged with the Governor, and were therefore not covered by the proviso - they remained legally operative. In view of Ogilvie's philosophy it would seem that this was unintended; but in fact even a few additional such controls have been added in subsequent amendments to the Railway Management Act, while one (the need for the TTC to gain approval for delegations of its authority) has appeared in the Transport Act itself.
As already indicated, the ACSB of 1923 represented the low-water mark in statutory control provisions: there were very few specific controls, and no suggestion of a general ministerial power. 110 The ASB was in a very different position under its provisional charter of 1945. This provided that the exercise of its powers and functions "shall be subject to any directions of the Minister"; 111 and with the general directive power thus conceded, no attempt was made to list in addition specific reservations. 112 In fact, under ministerial direction this board suffered the indignity of having the ships it was intended to manage virtually taken right out of its hands.

110. This corporation also represents the low-water mark in respect of cabinet arrangements for supervision. We have seen how Victoria persisted with a specially-designated Minister of Railways even after creating a very autonomous corporation in 1883; how Parkes in New South Wales objected to this practice and instead vested the loose supervisory responsibilities in his Treasurer; and how the special railways/transport portfolio reappeared there many years later. The present Commonwealth arrangements avoid having separate ministers for each corporation; nevertheless each is associated with a particular minister and "parent department". In the case of the ACSB it is difficult to see that any minister was even thus loosely associated with the corporation. The Prime Minister had, since the war-time origins of the shipping line, been the minister involved; but after creation of the ACSB, although his department continued to act as a "post office" for correspondence between government and corporation, Bruce refused on many occasions to acknowledge that he had any responsibility whatsoever for its affairs. The two specific reservations were vested in the Governor-General (head office location) and Treasurer (disposal of assets) respectively.


112. Except for the requirement of S.20(1)(f) that the terms and conditions on which the ASB could demand assistance from interstate or overseas shipping organisations were subject to ministerial approval.
Finally we come to the current Commonwealth practice, as applied to TAA and the ANL. After it had rejected the proposal of the Corbett Committee\textsuperscript{113} for a single airline company with mixed government and private shareholdings and including a special government director with a power of veto over certain matters of policy, the war-time Labour government set about designing a public corporation to conduct inter-state air services. Minister for Civil Aviation A.S. Drakeford, who introduced the airlines legislation in 1945,\textsuperscript{114} quoted British Conservative ministers who fathered BOAC in 1939 to justify adoption of the public corporation form; but the details of his bill clearly owed far more to earlier Australian corporate legislation. The structural provisions were modelled on those of the ABC; while the debt to the state railway legislation in respect of the control provisions was acknowledged when Drakeford on occasions likened his own position to that of ministers associated with the relevant corporations.\textsuperscript{115} There were, however, certain important refinements.

There were the more common specific controls and a regulation-making power, and also a directive power. But this was defined as applying only to the establishment, alteration or continuation of particular services.\textsuperscript{116} This is obviously one of the

\textsuperscript{113} Inter-Departmental Committee on Civil Aviation (under chairmanship of A.B. Corbett, Director-General of Civil Aviation), set up in 1943 - details from Goodrich, \textit{Economic Structure}, pp. 60-2.

\textsuperscript{114} Second-reading speech, \textit{CPD}, vol. 183, pp. 4178-89.

\textsuperscript{115} E.g. \textit{CPD}, vol. 197, p. 2248.

\textsuperscript{116} Australian National Airlines Act No. 31 of 1945, s.25(1).
most important areas of discretion for any transport service, and the form is basically similar to that of other general directive powers. However it is not as broad as e.g. in the rail corporations, and may be regarded as something of a cross between such powers and the specific controls. A complementary recoup provision was similarly restricted.

A similar combination of specific reservations and a general directive power and recoup provision restricted to the matter of services was applied by the Chifley Government in its abortive 1949 Shipping Act; and to show that there is in this respect now no basic difference between the political parties, the Menzies Government applied the same system to the ACSC in 1956. The latter, however, brought one important modification: the requirement, previously applied only in the case of ABC programmes among Australian corporations, that the ACSC should record in its annual reports details of ministerial directions on services, including special information on the financial results of services operated as a result of such directions.

117. Legislation is before the Federal Parliament, as this thesis is being finalised, to enable the Minister for Civil Aviation to set a profit target for TAA. Although details are not yet available, this presumably represents an extension of the directive power.


120. Ibid., S.39(2). There was no attempt, as in the UK nationalised industries, to add the rider that reference to such directions shall be omitted where the minister notifies the corporation that it is against the national interest to accord them publicity - on this, see e.g. Winter, "Control of Nationalised Industries", p. 673.
3. THE RECOUP CLAUSES

(a) Victorian Origins, 1896

The 1891 additions to the mechanics of control in the VR did not immediately solve many problems, and political influences in management made the most of the additional opportunities thus afforded. In 1895 the Casey Board advanced a proposal for the creation of a Victorian Railways Trust to preserve public ownership but eliminate political influence, and to operate on sound commercial lines with independent financial control. Legislation which broadly followed this proposal was brought down by the Turner Government, but this underwent a remarkable transformation in parliament and in the event did little more than substitute a single commissioner for the existing board of three commissioners.121

The relevant debates122 ranged over many controversial subjects raised by the Casey Board and by memories of the great clash of 1891 and the ensuing suspensions and libel trial; so much so that the recoup provision inserted by the Turner Government slipped through quite unobtrusively. The underlying idea had, however, been crystallising slowly during the previous decade.

Politicians seeking freight reductions had taken many deputations to Gillies in the late 1880's asking the government to

121. On this, see above, p. 51.

122. VPD, vols 79-80, p. 3788 et seq. Also Wattenhall, Railway Management, pp. 64-69.
direct the VRC to reduce rates, and then to make up to them the resulting loss of revenue. Again, there was a motion before parliament early in 1895 for a twenty per cent reduction in country freights and fares, with the rider that the resulting loss should be paid to the VRC out of general revenue and direct taxation levied to recover the amount. Premier G. (later Sir George) Turner had no objection provided the all-important rider was authorised at the same time; but parliament on that occasion had second thoughts and the motion was dropped after much debate.

In the debates of 1895-6 H.R. Williams (Minister of Railways) and Turner briefly explained the intention of the clause: when parliament made an alteration in the law or directed the carrying out of a new system or the construction of a new line, the amount of any loss thereby caused would be certified by the Auditor-General and then made up to the VRC in the annual Appropriation Act. Shiels then pointed out that the minister would continue to have powers of direction under the 1891 provision, and the clause was widened to include directions by Governor-in-Council.

The few members who referred to the clause in their

123. VPD, vol. 65, p. 2511; and vol. 76, pp. 1851-1928.

124. It is difficult to understand why Governor-in-Council only was designated when the amendment obviously contemplated directions by the minister as permitted by the 1891 act. The effect was that the recoup was legally operative only when the direction was accompanied by a formal Order-in-Council; yet this procedure seemed unnecessary except where the Governor-in-Council was called in to decide a difference arising between minister and corporation as a result of a direction already issued by the former. See also below, p. 312.
speeches anticipated future controversy about it. One considered it would bring political interference into the open and was therefore most useful, but only Williams suggested that it could give fresh hope and incentive to the railway management. On the other hand an opponent described it as a farce, since parliament had been regularly making up railway losses in the past without such a provision - moreover it was "entirely unusual, if not unconstitutional, to commit it in this way". The clause had the merit (if fully observed) of affording some measure of protection against political interference, of presenting a better chance of making the railways self-supporting, and of forcing governments and parliament to accept a direct financial responsibility for each act of intervention rather than allowing them to make scapegoats of the railway management in an annual reckoning in which specific causes were often forgotten. In the VR situation, where politicians had been most reluctant to observe the spirit of the earlier corporate legislation, this was a considerable gain.

(b) Watt's 1917 Justification

Watt's CR legislation had the effect of transferring the cumulative wisdom of the Victorian legislators of 1883, 1891 and 1896 to the Commonwealth statute-book in a single operation. From his own experience in Victorian politics, he was able to add something of the spirit of corporate legislation in other fields where
political influence had been more successfully contained.

He used the technique of specific controls, while avoiding the more trivial of the Victorian reservations; but he clearly regarded the general directive power and the recoup together as the vital clauses. Since the interpretation and operation of the latter has proved to be one of the most contentious issues to arise between the CR and government, it is important here to consider the underlying intentions. Watt explained that they were provisions which have been framed as the result of experience of State action. There have been frequent occasions when a perfectly competent and conscientious Commissioner has collided with the Government of the day on questions of policy, and these clauses provide the safety valves which have been found to operate with signal effect and safety in certain of the States. They amount to this: that the Minister may submit to the Commissioner a proposition for consideration. If the Commissioner approves of that proposition all is well — there is an agreement. If he does not, and there is any dispute as to who is right and who is wrong, the Governor-General in Council may determine the question. If, after such a determination, the Minister deliberately orders certain alterations in the railway management, and those alterations involve the Railway Commissioner in any expenditure, then the cost has to be provided by the Treasury. That is a broad provision in many of the State Acts. Without it we could not pretend that a railway balance-sheet is an independent thing, or that a railway cash-box is a commercial cash-box.

In committee Watt further amplified his aims:

... [the provisions] are the most delicate part of the Bill. They constitute a kind of bridge between the political control of former days and the practically independent control by a Commissioner of modern times ... Broadly speaking, the Commissioner will control the railway property and services, and will

126. Commonwealth Railways Act No. 31 of 1917, Ss. 43, 44.
127. CPD, vol. 82, p. 442.
have large responsibilities and definite duties. But Parliaments have said, 'We cannot hand over these large assets and responsibilities to a permanent official whose voice is not heard in Parliament' ... [the effect of these clauses is] to provide a common meeting ground for Commissioner and Minister, to the satisfaction of Parliament and the public. There has been no abuse under them, a check against abuse being provided in the provisions themselves ... It has been found in practice that no Ministry will wantonly play fast and loose with railway administration when it has to foot the bill ... These clauses provide checks and create a genuine equipoise of the responsibility properly resting on the Commissioner and the powers of the Minister responsible to Parliament.128

To a questioner who asked whether the recoup would apply only to policy directions of the sort envisaged in this passage, he replied: "To anything, including fares andfreights, over which Ministerial interference with the Commissioner may operate". It therefore applied also to matters covered by the specific controls. However, when asked whether it would operate where the ORC recommended an increase in fares and the minister withheld his approval, Watt's answer was in the negative: "The Minister has to give a positive direction, and not merely assume a negative attitude. The Bill refers to positive interference by the Minister". In view of Eggleston's dissatisfaction with the VR legislation and his praise for both Watt and Irvine as champions of the autonomous corporation, it is interesting to note the latter's endorsement of the views expressed by Watt: "These clauses lay down the only possible conditions of independence".129

128. Ibid., pp. 794-5.
129. Ibid., pp. 442, 757. Irvine was also an ex-Premier of Victoria then in the Federal Parliament. A contrasting view about application of the recoup provision was put forward in December 1896, when practical operation of the new Victorian clause was first considered. Turner, whose government was
In these respects the CR legislation has not been altered since 1917. But it is under review at the time of writing, owing largely to Treasury dissatisfaction with the recoup and other provisions Watt had borrowed and attempted to rationalise from the Victorian model.

(c) Application in New South Wales

The recoup provision came to the NSWRC in two stages. The first preceded the CR legislation by one year: it was one part of the reforms Holman had been planning which survived the confused political situation of 1916. 130

As with the CR it was to have been associated with a general directive power (also on the Victorian model), and by its very nature seemed to depend primarily on that power - for where was the point in providing that the NSWRC should be recouped for losses incurred as a result of political directions if there was no power to give such directions? Yet it remained even though the directive power was dropped. Holman argued significantly that the railway management was already dependent on the government in certain respects - "no railway commissioner has ever doubted that". For example, the executive had parliament behind it on broad questions of policy, and the corporation had to approach the Treasury for finance: political control could be exercised responsible for the clause, then assumed that non-acceptance of a commissioner's recommendations for increased rates would constitute political intervention and that the provision would therefore apply in such cases (although even then Irvine disputed that interpretation) - VPD, vol. 84, pp. 423-7.

130. See also above, pp. 234-5.
through this dependence. Initially the only change from the
VR clause was the deletion of the reference committing parlia-
ment to include the refunds in its Appropriation Acts; instead,
the amount of loss due to political intervention, if certified
by the Auditor-General, was merely to be "placed to the credit
of the account of the Commissioners in the Treasury".

In parliament, however, the entire clause was opposed
by many members either because they believed it most undesirable
to give any legislative recognition to the fact that political
interference could still take place, or because it might enable
the corporation to hide bad management. The Legislative Council
struck the clause out, and Holman compromised by deleting refer-
ence to losses on new lines but insisting that the remainder of
the clause be retained. His arguments were instructive, and
indicative of much subsequent discussion about railway management.

He referred to directions that the NSWRC carry war
supplies and personnel and starving stock from and fodder to
drought areas at substantial concession rates, suggesting that
it was quite in order for governments to implement such policies
but unfair to make an otherwise successful management show an
operating loss as a consequence. This would adversely affect
the reputation of the NSWRC and the business management of their
organisation. It was in the government's interests to avoid
this situation, and make up the loss from general revenue. It
made little difference to the taxpayers whether they recouped
the railways in this way or made good ultimate deficits; but it
would make an enormous difference to the railways.\textsuperscript{131}

The second stage sought to rectify the omission of "developmental lines" from Holman's recoup clause, and was implemented as part of Steven's 1928 financial reforms. It has already been referred to in that connection.\textsuperscript{132}

(d) The Recoup in the Other Enterprises

As early as 1891 TGR General Manager F. Back had "forcibly pressed upon the minister that it would be much better to provide for Civil servants many of whom enjoyed free travel in the estimates, and really show what the revenue of the railways was".\textsuperscript{133} Mean, the Minister for Railways, recognised in 1910 that numerous concessions and items of expenditure had been approved by parliament against the wishes of management, and that "in all fairness" a vote should have been passed on each occasion to make good the resulting loss. But, although he hoped that "would be the principle which Parliament would have always to adopt if a Railway Commissioner were appointed",\textsuperscript{134} he neglected to write the principle into his bill. By 1927 some parliamentarians had realised that such reimbursements were made in other states,\textsuperscript{135} and Ogilvie finally enacted appropriate

\textsuperscript{131} \textit{NSWPD} (ii), vol.66, pp.2705-6; and \textit{Govt. Railways (Amendment) ACT No.69 of 1916, S.10. In this compromise form the clause remains in the current \textit{Govt. Railways Act} as S.14A.

\textsuperscript{132} See above, p.179.

\textsuperscript{133} \textit{TPD (Newspaper Cuttings)}, 1891, p.41. Cf. also TGR, \textit{Report by General Manager}, 1890, Hobart 1891, p.8

\textsuperscript{134} \textit{TPD (Newspaper Cuttings)}, 1910, p.142.

\textsuperscript{135} \textit{TPD (Mercury Reprints)}, 1927, pp.24-7.
provisions in his Transport Bill of 1938. These were to operate where a ministerial appeal against a decision of the TTC had been upheld by cabinet and had caused a decrease in its revenue, or where cabinet had directed it to make rebates or remissions of charges. 136

There was neither directive power nor recoup in the case of the ACSB; but as already indicated, the directive powers applied to TAA and the ANL in relation to services were accompanied by complimentary recoup provisions. In respect of the former, Drakeford made it clear in 1945 that he regarded the twin provisions as particularly important in view of the developmental services the government intended its new instrumentality to operate in the outback, 137 and the precedents he established were copied almost automatically for the ANL.

There were two refinements on railway practice. The first was the limitation of the recoup to ministerial directions concerning the new services. The second was the proviso that it would only be available where the particular service operated under ministerial direction was worked at a loss, and where a loss was also recorded on all services operated by the corporation. In other words, it would be expected to use the profits on main trunk routes to subsidise the developmental ones even where

136. Act 2 and 3 Geo. VI, No. 70, Ss. 33, 34. The Minister for Transport also has a small personal fund which is sometimes used to recoup the TTC for concessions granted - see above, p. 185.

established by ministerial direction, and the Treasury recoup would cover only the outstanding balance if any. 138

4. **SPECIAL CO-ORDINATION AND RATIONALISATION MACHINERY**

The controls to be considered in this section fall into two distinct groups: those applied in the states in an attempt to co-ordinate various transport services, mainly rail and road; and those applied more recently by the Commonwealth in an attempt to "rationalise" competition between private and public operators in the airline and shipping industries. Both, however, have led to the establishment of special control machinery (i.e. additional to ministers) in some enterprises.

(a) **State Transport Co-ordination**

The wasteful effects of unco-ordinated competition between road and rail transport became apparent during the 1920's, as the former expanded rapidly and the approaching economic slump made profitable operations more difficult than ever to achieve. The problem was considered by a number of special inquiries at the federal level, from which came recommendations that special legislation was required to deal with the matter. 139 However it was scarcely a federal responsibility; and there was little uniformity in the methods adopted in the various states, which

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138. Australian National Airlines Act No. 31 of 1945, S.25(2); and Australian Coastal Shipping Commission Act No. 41 of 1956, S.17(4). Like the general directive power, the complementary recoup clause was also included in the abortive Shipping Act No. 6 of 1949, S.15(5).

139. Especially Northcott Committee Report, Summary 1930, pp. 5-6.
were concerned additionally to protect their own large railway investments.\textsuperscript{140}

In general the administrative arrangements have fallen into three broad classes. The first method - amalgamation of the whole area of transport administration (including management of the state's own services and regulation of private road operators) in a single agency - was applied in Lang's short-lived "Ministry of Transport" of 1932.\textsuperscript{141} Bruxner quickly abolished the scheme later in the same year, claiming much inconvenience had been caused e.g. by splitting up railway operations among a number of new branches.\textsuperscript{142} But any reform of this sort would have its growing pains, and the few months Lang's organisation was in operation was hardly sufficient to test its possibilities.\textsuperscript{143} The method seems to have been applied with a fair measure of success in Tasmania since 1938; and it was also envisaged in a Ministry of Transport Bill submitted to the Victorian parliament in 1930, but

\textsuperscript{140} The latter was particularly true of Labour-governed states. There has also been pressure to rationalise the various publicly-owned transport services, e.g. rail v. city trams and buses.

\textsuperscript{141} Lang claimed this had the great virtue of removing "top-heavy administration" by eliminating the numerous boards, commissions and trusts which had cluttered up the field of transport administration and had been a financial burden on the state - NSWPD (ii), vol. 131, pp. 8290-1. On this "ministry", see also above, p. 241.

\textsuperscript{142} NSWPD (ii), vol. 134, pp. 306-8.

\textsuperscript{143} The NSW Liberal and CP opposition now seems to favour a return to this type of organisation - see P.H. Morton, 1959 State General Election: Policy Speech, Sydney 1959, p.6. Cf. proposal by Labour MLA H.J. Mullan, Sydney Sun, 23.2.1960 and SMH, 24.2.1960 - Mullan had been an adviser to the government on public transport.
never finalised. 144

The second method - establishment of a separate regulatory agency in more-or-less parallel relationship to the rail and sometimes other operating corporations - was used prior to Lang's reforms, when Bruxner separated the tramways from the NSW and associated the former with licensing powers over private operators. 145 This combination remained, although in simplified form, following Bruxner's re-organisation of Lang's "ministry" in 1932. 146 The associated functions (i.e. metropolitan transport operation and general road transport regulation) were eventually separated in 1952; 147 but both agencies remained in parallel relationship with the NSW. As will be discussed shortly, however, a further co-ordinating corporation has twice reigned over all these agencies for short periods. In Victoria a Transport Regulation Board appeared in 1932; it also is concerned primarily


145. Transport Act No. 18 of 1930. For description of this complex scheme (which involved four distinct corporations apart from the NSW), see Whitlam, op. cit., pp. 165-8. Bruxner was at this time Minister for Local Government in the Bavin-Buttenshaw Coalition.

146. Transport (Division of Functions) Act No. 31 of 1932. The relevant agency was the corporate "Department of Road Transport and Tramways", which formed one of the three parallel units of Bruxner's "ministry" (the others were the "Departments" of Railways and Main Roads).

147. Transport (Division of Functions) Amendment Act No. 15 of 1952 (which sub-divided the earlier corporation), and Further Amendment Act No. 24 of 1952 (which accorded the new corporations their present titles, "Department of Government Transport" and "Department of Motor Transport" respectively).
with road transport and is parallel rather than superior to the
VRC. A Transport Committee which functioned for a few years
in Tasmania before 1938 (and which included the Commissioner for
Railways as one of its members) was in much the same position.

My main concern is with the third method—the creation
of a co-ordinating or second-tier corporation above (and enjoying
powers of direction over) the operating corporations. Such an
arrangement has been seriously suggested on at least two occasions in Victoria: by the Stead Commission of 1928, and by
Elliot in 1949. But of the states concerned in this study only
New South Wales has taken positive action of this kind.

Lang's 1931 legislation has already been mentioned in
another connection, and the influence of personal factors noted. At the 1930 elections he had put forward a plan for a virtual
government monopoly of the whole transport system (through a com-
bination of ownership and regulation) to solve the problems of
competition and co-ordination. In justifying the need for a

152. State Transport (Co-ordination) Act No. 32 of 1931—see also
with road transport and is parallel rather than superior to the VRC.\textsuperscript{148} A Transport Committee which functioned for a few years in Tasmania before 1938 (and which included the Commissioner for Railways as one of its members) was in much the same position.\textsuperscript{149}

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Lang's 1931 legislation has already been mentioned in another connection, and the influence of personal factors noted.\textsuperscript{152} At the 1930 elections he had put forward a plan for a virtual government monopoly of the whole transport system (through a combination of ownership and regulation) to solve the problems of competition and co-ordination. In justifying the need for a new co-ordinating body he illustrated the action of an autonomous Main Roads Board in building extravagant highways paralleling main railway lines, thus facilitating private road competition and depriving the railways of the traffic for which they were built.\textsuperscript{153}

\textsuperscript{148} Transport Regulation Acts Nos 4100 of 1932 and 4198 of 1933. The VR are affected by this corporation only in minor ways; its recommendation is necessary before the minister will approve operation of road bus services by the VRD (s.33(1) of Consolidated Transport Regulation Act No. 6400 of 1953); they present evidence to it on how proposed bus services will affect their operations; and their representatives sit with its representatives on the Joint Transport Research Committee established in 1953 to consider various matters of common interest such as closure of non-paying railway lines.
The STOB would therefore be created to co-ordinate and control the activities of the existing public transport authorities, over which it would have wide powers of direction and inquiry; and it would itself be "subject to the control" of a single ministerial head responsible to parliament for the whole transport policy.

Stevens for the opposition criticised the crude "super-authority" whose inquisitions would cause chaos and turmoil in the operating corporations, and undermine the authority of their recognised heads - but, in the case of the NSW, this of course was just what Lang wanted. Far better, said Stevens, to put in a skilled administrator as Under-Secretary to assist the minister: this would permit reasonable ministerial oversight without such revolutionary changes destructive of years of tradition based on past working experience. 154

But this was only the first stage of the Lang plan. The STOB was also given the duty of drafting legislation for the complete amalgamation of NSW's public transport services; and the Ministry of Transport of 1932 was in accordance with the recommendations it submitted. 155 The STOB itself then went out of existence; yet it bore a striking resemblance to the co-ordination arrangements of another NSW Labour government twenty years later. 156

154. NSWPD (ii), vol. 127, pp. 3442-5. Stevens' administrative experience has already been noted, above p. 173.

155. See also above, p. 241, note 82.

156. The similarity was of course more than a coincidence, for McGirr was closely involved on both occasions, as Lang's lieutenant in 1930 and as Premier in 1950.
McGirr obtained the services of three London Transport officials in 1949 to furnish another of the growing series of reports on NSW transport. As McGirr had anticipated, their British experience led them to criticise the lack of centralised controls. Such controls, they asserted, were necessary to ensure that the development of services should be free from competing claims by the various commissioners, and that demands should be met by provision of the most economical type of service in each case. A co-ordinating body was therefore required, to be responsible to parliament through the Minister for Transport. These views were clearly in line with NSW Labour thinking, and the resulting THC was broadly in accordance with their recommendations.

The THC possessed powers over the operating corporations as comprehensive as those enjoyed by the STGB. Once more the opposition assured Labour that its "grandiose superstructures" would not bring efficiency, that its "system of multiple administrations" was more likely to produce discord than harmony. It would be much better to back up the authority of the expert


158. Transport and Highways Act, No. 10 of 1950; also O'Sullivan's second-reading speech, NSW (1.), vol. 191, pp. 5152 ff.

159. Except for the addition of the "representatives" of interests, the "jobs for the boys" flavour of which appointments was noted above, pp. 111-13.
managers already in office, and to give the minister a competent secretariat to assist him quietly in the "umpiring" role championed by Bruxner. 160

In fact the THC was to survive for only two years. When further legislation concentrated many of its powers in its director-chairman and made him a body corporate in his own right, it was clear that the course of what Bruxner called "that excrescence" was nearly run. 161 The opportunity came with the appointment of Ferguson to the Milk Board and of Winsor as NSWR. 162 The opposition expressed itself delighted with the abolition of the THC, but critical of Labour for not listening to it in the first place. The government fooled nobody when it asserted that the THC had accomplished a large part of its task and that the move was occasioned only by the urgent need to exorcise every possible economy - Concannon, still in the Legislative Council, conceded for Labour that "it is a wise man who, when he makes a mistake, does his best to remedy it." 163

There have since been suggestions in New South Wales for a reimposition of the second-tier co-ordinating corporation

160. NSWPD (ii), vol. 191, pp. 5124 et seq., 5164 et seq.

161. Transport (Division of Functions) Amendment Act No. 15 of 1952; and NSWPD (ii), vol. 198, pp. 5716-21. The THC had been rendered virtually unworkable because of the attitude of Ferguson, the employee "representative"; moreover Labour leaders were by now losing faith in the director, their protege Winsor.

162. The latter was facilitated by the death of the previous NSWR, K. Fraser.

163. NSWPD (iii), vol. 1, p. 155; and vol. 2, p. 1060 et seq. Also Transport (Division of Functions) Further Amendment Act No. 24 of 1952.
functioning between minister and operating authorities, but they have so far come to nothing. The period of quick changes passed with the abolition of the THC, and as already noted there is much evidence to suggest that Premier Cahill had realised what Bruxner had been telling Labour for years, that getting the right people was more important than devising new and ever more complicated schemes of organisation and control. He took great care in his selection of ministers and commissioners, and his efforts were rewarded after 1956 by a transition to a comparatively smooth administration of public transport. Again following Stevens and Bruxner, there has been a gradual strengthening of the ministerial office as a competent co-ordinating and policy-making secretariat, in place of the grandiose schemes Labour had previously found so appealing.

This operates as an extension of the ministerial personality in its relations with the operating corporations, and is in a roughly similar position to the departments functioning under ministers associated with the Commonwealth corporations. Although

164. E.g. proposal by Richard Hauser, of the Sydney private research organisation "Social Surveys", who had been Industrial Consultant to the "Department of Government Transport" ("What's Wrong With Transport", SMH, 4.7.1956), and who claimed that the technique had previously failed because of personal tensions, not because it was wrong in principle.

165. Above, p. 113.

166. In relation to the selected enterprises, now DGA and DST. However the functions of the Commonwealth ministers (and their departments) are by no means limited to the supervision and co-ordination of corporate activities as are those of the NSW Minister for Transport.
all the controls are of course legally vested in the minister, the influence of official advisers in the departments may be considerable. Victoria also legislated in 1951 to build a "Ministry of Transport" around the minister, but there has been no development of this sort in Tasmania. There the Minister for Transport has no expert assistance outside the corporation he supervises.

(b) Airline and Shipping Rationalisation

The main addition to the framework of control over the Commonwealth enterprises attributable to the Menzies Government has come from special industry "agreements" binding public and

167. The NSW secretariat was recently raised to the position of a full department when its top official was accorded "permanent head" status.

168. Transport Act No. 5559 of 1951, reprinted as Ministry of Transport Act No. 6322 of 1958; and VPD, vol. 235, p. 3444 et seq. This legislation recognises the usage that has developed in New South Wales, and restricts the term "ministry" to the minister and his secretariat - in the NSW transport legislation the term loosely embraces all the operating corporations but does not acknowledge the secretariat. Although the 1951 legislation was prompted by the 1949 Elliot Report, it avoided the relevant recommendations as too "grandiose" (see above, p. 271). Victoria of course already had its Transport Regulation Board, and the "ministry" has served mainly to investigate and advise on particular proposals. In 1958 it consisted only of the so-called "Co-ordinator" and a few office assistants, apart from the minister's personal staff; whereas its NSW counter-part has developed considerably with the addition of specialists in the various sectors of transport since the closure of the THC in 1952.

169. See also above, pp. 184-5. In this case, however, the coordinating motive is absent, for co-ordination is effected within the THC itself.
private operators alike and designed primarily to protect the interests of the latter.

The first Civil Aviation Agreement of 1952 affected TAA in two main ways. First, ratifying legislation\textsuperscript{170} directed this unwilling "partner" in the scheme to comply with all the provisions of the agreement between the Commonwealth and the main private competitor, ANA. Secondly, both airlines were subjected to coordinating machinery set up within the industry itself. This machinery involved a system of joint consultation, with provision (in the event of failure to agree) for further discussion under an independent "Chairman", in whom rested a final power of arbitration.\textsuperscript{171}

But even the protection afforded ANA under the 1952 agreement did not prevent a further crisis developing in its affairs in 1956-7. It defaulted on interest payments guaranteed by the Commonwealth, and it began to appear likely that it would go out of existence altogether.\textsuperscript{172} With the future of its declared policy of preserving two major competitive operators at stake, and with its already considerable financial commitment in the private as well as the public airline and also in the provision of aerodrome

\textsuperscript{170} Civil Aviation Agreement Act No.100 of 1952. For a general discussion of these developments see Wettenhall, "Commonwealth Shipping and Airline Enterprise: A Review", mimeographed paper presented to Australian Political Studies Association Conference, Sydney 1961, pp. 19-23.

\textsuperscript{171} Sir John Latham, ex-Chief Justice of the High Court, was appointed to this office.

and air navigation facilities, the government was virtually compelled to take a more active part in regulating the industry. A cabinet sub-committee was appointed in 1957 to review the situation; and in addition DCA began to exercise strong influence in its own official as well as ministerial right.\textsuperscript{173} The view emerged that one of the main weaknesses of the 1952 scheme had been the "absence of opportunity for the Government to directly influence airline policy",\textsuperscript{174} and accordingly the revised agreement of 1957\textsuperscript{175} took care to remedy that defect.

The most important development was the appointment of a person nominated by the minister as "Co-ordinator".\textsuperscript{176} His functions were to chair a "Rationalisation Committee" on which both airlines (TAA and its private competitor, now the combined Ansett-ANA) would be represented, and to arbitrate on all differences between them not settled by joint discussion. This power of arbitration was, however, subject to appeal to the Chairman appointed under the 1952 agreement.

Some difficulties still remained. For example, the initiative in seeking government arbitration (i.e. through referral of a dispute to the committee) remained with the airlines. In

\begin{itemize}
\item \textsuperscript{173} Under D.G. Anderson and H.W. Poulton as Director-General and Assistant Director-General respectively. \cite{Goodrich163}
\item \textsuperscript{174} Another had been the failure to bind smaller operators (particularly Ansett), who expanded rapidly at ANA's expense.
\item \textsuperscript{175} Ratified by Civil Aviation Agreement Act No. 86 of 1957.
\item \textsuperscript{176} In fact this was Anderson, DCA's permanent head.
\end{itemize}
particular the problem of aircraft types became crucial as the operators sought to embark on costly re-equipment programmes; and the adoption by the government of an aircraft standardisation policy led to the passing of an Airlines Equipment Act in 1958 to overcome these deficiencies. This provides the government with machinery, which was still lacking after the 1957 agreement, to force the airlines to co-operate in the matter of fleet rationalisation. 177

Thus TAA was now subject not only to the sort of controls which had become customary in Australian public transport corporations, but also to the fairly extensive powers the government had taken to itself under its rationalisation policy. But in the latter respect it was no different from its private competitor, in whose financial affairs the government was by this time deeply involved. The complicated position of TAA, in a duopoly situation entrenched by government action, is thus unique among Australian public transport enterprises.

This technique was applied in modified form to the coastal shipping industry in 1956, but in its compulsive legislative

177. Act No. 70 of 1958, especially Part IV. Also Poulton, "Legal and Policy Aspects", pp. 31-5; and Goodrich, Economic Structure, pp. 216-20. This act gives the minister power (subject to a no-discrimination provision) to estimate the total traffic available from time to time and the maximum aircraft capacity required by each operator to enable it to carry one-half of this traffic on competitive routes; to direct either operator to dispose of aircraft surplus to that requirement; and to disallow the acquisition of new aircraft or types of aircraft where these might cause excess capacity or be detrimental to the stability of the industry. The obligations are imposed on TAA by the act; on Ansett-ANA through conditions imposed in the guaranteeing of loans raised by it (Ss 10, 12-15).
form it is here of less significance. The Coastal Shipping Agreement\textsuperscript{178} which accompanied the creation of the ACSC invested the minister with powers which might affect the corporation, subject to appeal by the private companies to an independent arbitrator.\textsuperscript{179} But in fact more informal consultative machinery already in existence has proved adequate, with the admission of the ACSC to its proceedings, in an industry where the tendency is towards combination rather than competition.\textsuperscript{180}

5. MISCELLANEOUS PROVISIONS

It remains in this survey of the statutory techniques of control to consider two other matters very briefly: first, the extent to which special agencies of control within the regular public service have been given jurisdiction over the corporations; and second, the extent to which general legislation covering all the corporations has been used as a method of co-ordination and standardisation.

\textsuperscript{178} Ratified by Australian Coastal Shipping Agreement Act No. 42 of 1956.

\textsuperscript{179} E.g. if the minister considers the private companies are not providing adequate services or patronising Australian shipbuilding yards, he can authorise the public line to exceed the tonnage limit imposed on it. Likewise he may authorise the ACSC to take over its own booking, cargo handling and stevedoring services, if in his opinion the private companies are not performing those services for it satisfactorily as provided in the agreement.

\textsuperscript{180} This is the "Combined Traffic Committee", an owners' association which meets regularly to allocate tonnage according to cargo demands and the availability of vessels. For background information see Wattenhall, "Commonwealth Shipping and Airline Enterprise", op. cit., pp. 24-26.
The chief control agencies in Australia are the Auditors-General, Public Service Boards or Commissioners, and special industrial and appeals tribunals. In theory the first two at least are official organs of parliament which contribute to its supervision of the executive government, but they are identified in practice with the executive rather than the legislature.

Nearly all acts constituting public corporations in Australia provide that their accounts shall be audited and annual balance sheets certified by Auditors-General, and the selected enterprises follow this general rule. However the jurisdiction of Public Service Boards and Commissioners is less comprehensive.

Some corporations are treated as departments for staffing purposes and are therefore subject to the same controls as the departments; some are independently staffed although subject to detailed statutory provisions which bring them close to conditions operating in the departments; some, while exempted from the Public Service Act itself, are nevertheless required by their own acts to obtain Public Service Board approval for staff salaries and

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181. There has (with the minor exception of the first shipping line while its headquarters were in London prior to creation of the ACSB) been no substitution of external commercial auditors as in Britain, although some adaptation of audit procedures to suit Commonwealth commercial enterprises has occurred largely as a result of criticisms in the AAPC Reports.

182. Statutes creating corporations of this kind usually provide that the governing board shall be regarded as the permanent head for Public Service Act purposes; e.g., the old Federal Capital Commission, the abortive National Insurance Commission, the Australian Broadcasting Control Board, and the Victorian and Tasmanian Forestry and Rivers and Water Supply Commissions.
conditions of employment and sometimes also their recruiting methods and administrative and clerical organisations; 183 yet others suffer almost none of these restrictions. 184 In fact the shipping and airline enterprises enjoy greater statutory independence in this respect than do most Commonwealth corporations. Similarly the rail corporations enjoy more freedom than most state corporations. 185

All corporations are in the last resort subject to the federal arbitration machinery. Some Commonwealth corporations also come within the jurisdiction of the Public Service Arbitrator, and some state tribunals extend similarly to corpora-

183. A further variation is presented by the TTC, whose staff are subject in broad terms to the conditions imposed by the Public Service Act, except that (a) discretionary powers under that act are vested in the corporation itself, and (b) the corporation enjoys other special privileges in the matter of staff recruitment.


185. However New South Wales has enabled its Public Service Board (which has no other connection with the constituent "departments" of the Ministry of Transport) to be called in by the minister at any time as an investigating body - Transport (Division of Functions) Further Amendment Act No. 24 of 1952, s.9. But this power has been invoked on only one occasion; and an earlier provision written into the Public Service Act in 1932, enabling the Governor by proclamation to extend the board's power to review organisations to corporate bodies not otherwise coming within the terms of that act, has never been formally exercised (although the board has conducted a number of investigations on an informal basis). See also below, pp. 346-7.
But controls of this type are rarely apparent from the statutes creating individual corporations, except where it has been found necessary to write special exemptions into those statutes. This brings me to the question of general legislation applying to corporations as a class.

There is in fact nothing in Australia that resembles Canada, the standardising legislation of the United States, Turkey and the Philippines. However the assumption has been made from time to time with scarcely any examination of the special nature of corporations that they are covered automatically by the terms of legislation dealing with particular features of public service administration, such as superannuation, accident compensation, leave and (as already noted) arbitration. Not all corporations fall into line: thus most railway acts provide for separate

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186. E.g. the Public Service Tribunal set up in Tasmania in 1958 to co-ordinate the fixing of wages and conditions of employees of the regular public service and the various corporations. This body includes the TTC in its jurisdiction. (See my article "Public Service and Public Corporations in Tasmania", P.A (Sydney), xviii, 4 (December 1959), p. 299). In its unifying Crown Employees Appeal Board (created 1944), however, New South Wales has exempted the railway and tram and bus "departments" while specifically including most other "boards" and "commissions".

187. Thus the VR legislation reflects the jurisdiction of the Commonwealth arbitration machinery by exempting salaries so fixed from the operation of the relevant specific ministerial control (Act 6355 of 1958, S.155).

superannuation funds, and TAA was exempted in 1956 from the provisions of the (Commonwealth) Public Service Arbitration Act. But in the absence of such specific exemption provisions in the statutes creating corporations it may be assumed that they are so covered. Again, it is generally assumed that statutes (or orders) creating parliamentary committees to deal with general subjects such as public accounts and public works apply equally to departments and to corporations. 189

The rapid growth of public employment outside the Public Service Acts, the majority of it in the service of corporations, caused the Commonwealth Parliament to pass one piece of legislation which would otherwise have been unnecessary. The Officers' Rights Declaration Act of 1928 made uniform provision for the preservation of rights of Commonwealth officers transferred out of the regular Public Service to these separate services. 190 However such limited measures are a far cry from the co-ordinating legislation of other countries.

189. This is not so clear in the case of the Commonwealth's Public Works Committee, whose 26th General Report (Canberra 1961, p. 5) points to an inconsistency in that it is consulted about the programmes of some corporations but not others. Legal advice in this case was that it should not be consulted because it was concerned only with the Commonwealth 's works and "statutory authorities ... are not ... included in the expression 'the Commonwealth'."

190. Act No. 16 of 1928; amended by Acts Nos 19 of 1933, 86 of 1940, and 1 of 1953. The amendments add to or vary the schedule of authorities whose "services" are covered by the main act, the application of which has been extended to other Commonwealth authorities not so scheduled by a provision in each creating statute that the "Officers' Rights Declaration Act 1928-40 applies as if this Act had been specified in the Schedule to that Act".
VI. WORKING RELATIONS (1)

Before estimating the effectiveness of the statutory control techniques, it is necessary to consider the actual working relations between the corporations managing the selected enterprises and their political supervisors. Space prevents presentation of a full analysis of all stages in the political relationships for each enterprise, and my intention in the next two chapters is rather to highlight episodes and issues which illustrate the existence of factors likely to distort the statutory provisions. Cases in which the latter are faithfully observed will be referred to more briefly for comparative purposes.

The existence of extra-legal forms of political control has been noted in the literature of public corporations by apposite phrases such as Ernest Davies' "behind closed doors" influence,1 de Neuman's "boudoir politique",2 and Morrison's "old-boy principle" (of which Verney gives an excellent example in a Swedish setting).3


Their effectiveness is indicated by the fact that the Attlee Government never found it necessary to utilise the general directive power, even though it was that government's great contribution to the statutory techniques of supervising British corporations. That such practices also play an important part in the relationships between Australian corporations and their ministers should therefore cause no surprise.

Broadly speaking, the extra-legal elements in the experiences related below may be attributed to two sets of causes. First, the sheer pressure of political circumstance has often led to demands on corporations beyond the limits of authority reserved to ministers in particular statutes. Secondly, quirks of personality and variations in ministerial attitudes towards administrative autonomy (which sometimes take little notice of custom, precedent, parliamentary intent or statutory prescription) can modify significantly the intended relationships. These two sets of causes are by no means mutually exclusive.

Taking Commonwealth and states together, the public corporation in Australia furnishes a very wide range of relevant experiences. It will be shown that the ministers involved over the years in the supervision of the selected enterprises have ranged from the extreme resisters of political pressures and protec-

4. And which marked its creations as "public corporations, strong minister type" (Milligan's phrase, see above, p. 203). On this use of the directive power, see also below, pp. 436-7.
tors of corporate independence to the extreme egotists, interferers and haters of such independence. Not surprisingly these extremists have usually attracted the spotlights. There have also been those not actively interested in the problem at all; and those who seek consciously to attain a compromise between ministerial responsibility and managerial independence. The latter group normally produce the most successful and harmonious relationships, taking into account the three dimensions involved, parliamentary, ministerial and corporate. With moderates in office, differences of opinion are settled quietly and amicably, and the publicity that attends the more notable conflicts is lacking. The personalities of the corporate heads are, of course, also important in setting the tenor of particular relationships.

Many of the most vivid illustrations come from the state enterprises. In general their histories have been longer (throwing up a wider range of personalities and pressures), the standards of drafting poorer (causing difficulties in statutory interpretation, particularly where an act has had a long currency and been amended often\(^6\)), and the political interest content greater. Whereas public enterprises are normally of peripheral interest only to Commonwealth politicians, they form "the fast-moving current" in state politics,\(^7\) with the result that state ministers have been more

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6. In some cases of this nature changes in parliamentary intent over the years have led to apparent inconsistencies in the acts themselves.

sensitive to attack and more inclined to become personally involved.

This is in fact so much the case in Victoria and New South Wales that it has been necessary to devote the present chapter to the respective railway experiences. The relevant Tasmanian and Commonwealth experiences will be covered more briefly in the next chapter, and an attempt will be made in chapter VIII to draw together all the various threads in the control pattern.

1. VICTORIAN RAILWAYS

(a) Early contrasts

There are numerous accounts of political deputations and other representations to Speight and his colleagues during the later 1880's, demanding general fare reductions, freight concessions for particular commodities, additional services, special treatment for individual employees, favourable action concerning station buildings and lost property, and so on. All this is clear evidence of the propensity of the average politicians of the time to put the interests of their constituents before any desire to preserve the spirit of their own path-finding legislation of 1833. The VRG co-operated within reason, but when the financial crisis developed they were roundly condemned

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8. Which had required the VRG to do no more than obtain ministerial approval before acting in certain rigidly-defined fields. For further documentation see Railway Management, pp. 31 - 40.
for giving way on some issues by the very politicians who had exerted pressure on them.

As minister Gillies sought to defend the corporation he had created. Thus he insisted that the government had accepted full responsibility for rate reductions when it approved the relevant by-laws, and that it was therefore improper to blame the VRC for their adverse effects. His own relations with Speight were cordial and sympathetic; but his actions drew many charges of laxity, probably causing later ministers to resolve to take a sterner line. Gillies remained Speight's defender even in opposition, no doubt prejudicing the chances of a recovery of his own political fortunes in doing so.

Shiels, who replaced him in 1890, had a very different attitude to the corporate relationship. His inclination was to add his own ministerial weight to the critics and the pressurists instead of standing between them and the corporation as Gillies had done. After a month in office he had reopened the ministerial office in the VR building, and had "requested" or "urged upon" the VRC various economy measures such as the withholding of annual increments. In the emerging depression situation the government desired to implement a policy of retrenchments, and the

9. Respectful of corporate autonomy, he closed the ministerial office in the railway building; and he allowed the VRC to ignore time-consuming minor statutory requirements, such as the furnishing of quarterly returns and the keeping of minutes in a form directed by the Governor-in-Council.

10. However his defence was neither as vigorous nor as effective as that of Parkes in New South Wales; but of course ministers and politicians alike in that colony had the Victorian lesson to learn from.
railway service of course represented a very large section of state employment. The government's concern was therefore understandable, but its requirements went well beyond the limits of the specific reservations, and Speight was within his legal rights in resisting.

Shiels showed his lack of sympathy with the Gillies concept of corporate administration when he complained bitterly:

In no other English constitutionally-governed country or dependency is there a more anomalous or more unique position than that the Minister of Railways of this colony holds. By law he is absolutely powerless. He cannot give a single direction or order ... 11

The VRC, he continued, could "disregard and flout everything I say", and "refuse to consult with me in their board-room, ... to give me information of any kind, or even allow me intercourse with officers of the department".

As Shiels' intemperate attacks increased, the VRC became even less co-operative. They proceeded with the Darbyshire appointment despite his known objection, and took an independent stand on many other matters. As previously indicated, the legalisation of the general directive power in 1891 arose out of this friction. When the VRC prevaricated about further demands for retrenchment (leading to the first use of that power), their suspension followed at The Age's bidding. 12

11. VPD, vol. 65, p.2462. In his wisdom, Parkes had already recognised that the parallel existence of an autonomous corporation and a specifically related minister would confuse that concept - see above, pp. 216, 218.

The new commissioners who took over following the
suspensions included VR officers whom Shiels and Wheeler (who
succeeded Shiels as Minister of Railways when he became Premier)
had consulted in preparing their case against Speight. At
first there was no suggestion that they enjoyed any independent
status apart from the government;\(^\text{13}\) but under the relatively
milder supervision of Williams\(^\text{14}\) even they began to assert them-

Williams was a reasonable soul if his own words can be
believed. He admitted he had made various suggestions to the
VRC, but stated that they had not always agreed with him. How-
ever he saw the force of their views and did not persist, for
they knew a lot more about railway management than he did. Under
him they complained publicly of the "tentative and anomalous
character" of their own appointments, and objected that the direc-
tive power of 1891 allowed the minister to usurp their full powers
if he so desired.\(^\text{15}\)

They had clearly had bitter experience of this when
Richard Richardson occupied the portfolio in 1893-94. Of him they
remarked:

13. Wheeler was, however, prepared to defend his own appointees,
although their inferior status \textit{vis-à-vis} Speight was as clear
from his statement that they were "loyal and true to the Gov-
ernment" (above, p. 95) as it was from the salary situation
(see \textit{Railway Management}, p. 59)

14. Minister of Railways in the Turner Government, 1894-99. It was
this combination which accorded the VRC the protection of the
recoup clause and which, if it had had its way, would have cre-
ted a more independent railway management than ever under the
proposed Victorian Railways Trust.

15. \textit{VPRD}, vol.79, pp.3790, 3798; and VRC, \textit{Annual Report}, 1894-95,
p.15.
that if anything was done to disorganise the service, or bring about management from the bottom, it was done by that gentleman who listened to and encouraged the statement of grievances or complaints of any dissatisfied or malicious employee who chose to approach him, and endeavoured to override the Act by exercising powers which were therein conferred on the Commissioners.16

A.R. Outtrim, who succeeded Williams in 1899, created an issue out of the first minutes he saw. This resulted in use of the directive power to compel the VRC to reverse a decision to discontinue running certain excursion trains on public holidays. As he told parliament,

He thought that as he had been called upon to read the minute, it would be as well if he attached some memorandum to it ... Why the Minister was called upon to read the minutes ... and attach his initials to them when no instructions were given to him to do anything more had always been beyond his comprehension.17

But the worthiest successor to Shiels was undoubtedly Bent, who returned to the portfolio in 1902.18

Bent made frequent use of the statutory powers: e.g. to demand reductions in railway expenditure, to prevent the signing of a contract for NSW coal in favour of the higher-cost Victorian pro-

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16. Memo of the Acting Commissioners (in reply/Cahey Board Report), VPP No. 05 of 1895, p. 5. For some examples of Richardson's activities, see Railway Management, p. 62.

17. VPD, vol. 94, pp. 965-78; vol. 95, p. 1436. See also Railway Management, p. 72.

18. He had of course been the last of the pre-1883 ministerial "managers", and his antics then had a lot to do with precipitating the reforms of that year (above, p. 210). In the intervening years he had been an unquenchable opponent of "irresponsible" public bodies; and it was therefore surprising that Irvine, Eggleston's hero of the autonomous corporation, restored him to the portfolio. In fact he so muddled the complicated strike negotiations of 1903 that Irvine restored Shiels, now much mellowed through ill-health, to the office. But Bent made certain of it when he himself became Premier in 1904.
duct, and to refuse various increments and bonuses. But his activities ranged far beyond the statutory limits. He intervened in staffing matters and boasted of his success in beating the VRC down in their claims for recoups; he showed no desire to defend them against parliamentary criticisms, instead virtually assuming the role of leading critic himself; and he employed four men, on a fee basis and unconnected with the VR organisation, "to make inquiries ... when the general public have made complaints, and I could not get the information in any other way".

One quality Bent did not possess was loyalty to his "department". But he would have argued it was a most improper department in that he did not have unfettered authority, and that this circumstance excused his unkind references to it. To those who believed in full ministerial control and responsibility, the restrictions imposed on the VRC in 1891 did not go nearly far enough.

Up to the early 1920's at least railways remained one of the state's primary instruments of economic development, and

19. Thus, after he had objected to W.F. Fitzpatrick (sole commissioner 1901-3) about what he regarded as excessive hours worked by signalmen and engine-drivers, he read the latter's reply out with the comment: "That is the reply of the gentleman who, by law, is authorised to give it ... but ... such things should not have happened, and I think that in any well-regulated business establishment they would not have happened"—VPD, vol. 161, p. 83. For similar instances see Railway Management, pp. 73-5.

parliamentary pressure was intense on ministers and corporation alike. To most members Bent had done a much better job than, for example, Gillies, as parliament's "watch-dog". The VRC have in fact rarely enjoyed that degree of immunity from political pressures envisaged in their legislation; and the few pro-corporate ministers who have tried to stem the tide have quickly become unpopular. As Professor Hytten remarked, "It is much easier for the minister to avoid Parliamentary derision by giving in to popular clamour ... particularly if he can get a name for strength by being weak".21

The existence of two kinds of political interest - the government with responsibility for the condition of the state's finances, and the lobbyists and back-benchers exercising pressure on behalf of constituents - was well illustrated by the rail charges issue in 1917. On this occasion, as has not infrequently happened, the former gave way to the latter. The Johnson Commission recommended general increases to square the railway ledger,22 and the Peacock (Liberal) Government acted on this advice. But it was an unpopular step, and the Conservative opposition, the traditional exponents of sound finance, attacked the government on it and gathered sufficient support to defeat it in parliament. The Conservatives fought the ensuing election on


the railway fares issue, promising reductions if returned to power. Peacock suffered a crushing defeat and the new government immediately directed the reduction of fares by five per cent. What had been carping criticism was thus translated into official policy. 23

Again it was an adverse vote on the railway estimates following dissatisfaction with the Bowsler Government's handling of Railway Classification Board recommendations which brought down that government. But immediately he relinquished the reins of office Bowsler's Attorney-General and Minister of Railways, Agar Wynne, gave vent to his own displeasure with the VRG. In doing so he made it clear that the concept of corporate autonomy meant nothing to him. He made numerous criticisms about truck use, decisions in disciplinary cases, and payments of compensation to injured employees. In one compensation case he had supported representations to secure an increased payment, "but could not persuade the VRG to do so. I hope my successor will be able to do better." He had discussed such matters with them

pretty often, but the Minister has not sufficient power in the Railway Department. The Commissioners have absolute control, and it is on account of that that considerable unpleasantness arose between myself and them. I wanted to exercise a power and supervision that I was not entitled

23. Eggleston emphasised the adverse effects of this episode on subsequent railway finance, in *State Socialism*, p. 133.
to exercise under the Act. 

(b) Eggleston, Clapp, and "The Tragi-Comedy of Political Interference" 

It was Eggleston who deliberately sought to restore the Gillies tradition. He was one of Australia's foremost scholars of administration; and all his studies and his own political experience led him to support the independent management of public enterprises. Having great faith in Clapp, the chairman with whom he worked, he made strenuous efforts to protect the VR from harmful pressures. In his words, many politicians sought personal gain (e.g. in electoral support) by

inflaming prejudices, twisting facts to bring the service into discredit. When the writer was in office in 1926/7, his life was one long tug-of-war to prevent political interference, in which he was subject to all sorts of abuse and misrepresentation, and was eventually defeated.

24. VPL, vol.143, pp.958-62. Another issue between Wynne and the VR was his cable to ex-Chairman Tait (who had returned to Canada) asking him to recommend a replacement for Chairman C.E. Norman, soon to retire. Norman had already recommended Commissioner E.B. Jones, and, having taken the precaution of advising Wynne of his intentions, himself cabled Tait asking him to bear Jones' qualifications in mind. Tait's reply was to recommend Jones straight out, and Wynne charged Norman with disloyalty. The latter contemplated resignation, but within a few weeks Wynne was out of office. The new minister, S. Barnes, gave the VRQ the opportunity to reply to all Wynne's criticisms; since they could not come into the house to reply personally, Barnes offered to read out any statement they cared to make. Another ex-minister, J.J. Billeon, however, supported Wynne's demands for greater ministerial control. From ibid., pp.366, 411-5, 10/7-24. (Jones, however, died before the recommendation could be implemented).

25. Term used as sub-heading by Eggleston in State Socialism, p.111.

26. Eggleston, "Public Utilities", Ch.4, pp.45-6. He threatened to resign from the Allan Ministry in 1926 in an effort to force his own colleagues to agree to rate increases recommended by Clapp, arguing that it would be preferable to give Labour a chance to clean up the mess than for his own government to mark time vainly hoping for a gift of providence.
Eggleston's political writings\textsuperscript{27} both chronicled the virtues of public corporations and stressed the grave dangers inherent in excessive political interference in their affairs. To him the minister should merely represent the commissioners in parliament with a view to interpreting their requirements, and keep the politicians and sectional interest groups at bay. The attempt Victoria made to put the railways under statutory corporation management "was a step in the right direction, but it broke down" because its intention was "to take the service out of politics" and it failed to do this.\textsuperscript{28}

He recorded many instances of political influence in railway affairs. The Irvine Government's intervention in the 1903 strikes\textsuperscript{29} bolstered rather than undermined the VRC's authority;

\begin{itemize}
\item \textsuperscript{27} Probably no other ex-minister in Australia has taken as much care to record his ministerial experiences and to relate these to broader questions of administrative principle and social philosophy.
\item \textsuperscript{28} Eggleston, \textit{State Socialism}, p.147. This was all very well for Eggleston, friend of the commissioners and admirer of their expert knowledge and commercial methods. But to the railway employees and the Labour politicians who cultivated their grievances, or to the primary producers and the CF politicians who cultivated theirs, it was not in the least democratic. There were, moreover, some difficulties in Eggleston's own argument. He eulogised Irvine, Swinburne and Watt as great architects of the autonomous corporation; and said of the railway legislation, with which they were not directly concerned, that it was "so badly designed that it did not stand the strain ..." (\textit{State Socialism}, p.46). Yet, as noted in connection with the modelling of the OR legislation on the VR in 1917, Watt and Irvine regarded the clauses of the latter governing the political relationships as "the only possible conditions of independence" (above, p.262 ). How did this attitude square with Eggleston's view of their other achievements?
\item \textsuperscript{29} Eggleston, \textit{Swinburne}, pp.103-10.
\end{itemize}
but this was not so in the matter of the passes customarily issued to members of volunteer country fire brigades for free travel to the annual demonstrations. There was agitation to extend the period of the passes, but the VRC considered the existing concession was sufficiently liberal and refused. The agitators enlisted parliamentary support and an adverse vote was threatened. This would have been successful if the government had not intervened to effect a compromise.30 But another government was not so fortunate when an engine-driver was dismissed for disregarding a signal and thereby causing a serious accident: it was condemned by a parliamentary vote after a weekend of great political activity.31

Eggleston also wrote indignantly of his own difficulties in the matter of truck sizes. He agreed with the VRC that large trucks would be more economical and sanctioned the experimental purchase of eighteen forty-ton units. The potato and onion growers immediately sensed danger: they had to feed markets which fluctuated rapidly, and wanted large numbers of small trucks waiting at local sidings to take their produce in small quantities when the prices were right. Eggleston explained in vain that the larger trucks would not become standard equipment throughout the country: "the matter was an ideal subject for a political attack." After he had been called "a liar ... on the faith of undivulged

31. Ibid, p. 130.
information; the Premier compromised by agreeing that no alteration would be made in the truck situation until after a general election. This issue remained a bone of contention for many years.

The relevant section of Eggleston's prize thesis concluded with his own catalogue of the political interferences sustained by the VR during the 1920's:

**TABLE 6: VR: EGGLESTON'S CHRONICLE OF POLITICAL INTERVENTION**

(From Eggleston, "Public Utilities", Ch. 4, pp. 45-6)

At present the railways may be said to be bleeding at every pore from the damage inflicted on them by politicians ... It is a long and melancholy story, of which only the merest summary can be given. At present the commissioners are prevented from carrying out the policy they advise in the following matters:

1. No permission is given to establish a depreciation or sinking fund.

2. Freights and fares are kept down to an uneconomic level.

3. Bonuses for efficiency and piece work are discontinued.

4. Men are not being charged for offences in certain cases.

5. The railways are being ordered to buy local goods at immensely inflated prices.

6. The tender system is practically destroyed.

7. Work is forced to be done at country centres which could be done more cheaply in Melbourne.

8. The commissioners are prevented from carrying out their truck policy.

9. The commissioners are compelled to retain men who are not wanted.

32. Ibid., pp. 131-2.
Eggleston was one of the few VR ministers to recognise and accept all the implications of the special administrative status intended for and legally granted the commissioners. Like Gillies, he had sought to defend their autonomy; but the sectional pressures were too much for him also, and his own political career suffered as a consequence. Once more the lesson was not lost on succeeding ministers.

The story was continued by Clapp in his outspoken testimony before the Stead Commission:

... the Commissioners have been definitely hampered by political interference with their administration of the railways. This is not a question of any Government in particular, but of all Governments. The difference is only one of degree. In some cases the powers conferred by Section 101 may have been more freely availed of than in others, but these powers, even if not formally exercised, have always exerted their influence.

He showed also that various governments had made the most of the many specific controls as a further means of influencing railway management. Despite the general distribution of Clapp's criticisms, however, it is clear that the propensity for ministerial interference in details increased considerably with the advent of the Hogan (Labour) Government in mid-1927.

33. He concluded that the ministerial role he had tried to achieve was an almost impossible one; he had found that ministers were forced by parliamentary pressure to assert themselves against the commissioners in order to avoid the very damaging "rubber-stamp" reputation - *State Socialism*, pp. 128-9. Cf. Prof. Hytten's observation, cited above, p. 294.

34. H.W. Clapp, *Politics in the Management of the Railways* mimeographed, Melbourne 1928 (submission No. 6 to the Stead Commission), p. 7. S.101 was the general policy direction clause of the consolidated Railways Act No. 3759 of 1928. This was originally S.24 of the 1891 Act; and is numbered S.107 in the current (1953) consolidation.
Clapp's streamlined train "Spirit of Progress" (above pp.150-1)
From VR Annual Report 1937-38.

F.W. Eggleston:
From Eggleston, Reflections on Foreign Policy, Melbourne 1957.

H.W. Clapp:
A few examples of the activities of E.J. Hogan and his two railway ministers, T. Tunnecliffe (1927-28) and J. Cain (1929-32), must suffice. Two months after taking office and despite strong protests from the VRC and the men affected, the government directed discontinuance of the bonus system and cessation of recruitment to the butty-gangs. And, under the senior staff reservation, it vetoed appointment of a senior executive in the Rolling Stock Branch, filling of a number of positions vacated by retirement, proposed reclassifications, and payment of allowances to officers acting in higher positions. The government claimed it was motivated by considerations of economy, but Clapp pointed out that "there is nothing to differentiate between cases which have and have not been authorised". 35

Moreover the government interfered with the VRC's own economy plans. In late 1927 they recommended the curtailment of their works programme, involving the retrenchment of about 500 men, as well as increases in charges. Cabinet rejected both proposals, and asked under section 101 for alternative proposals to effect a similar improvement in the financial position. Eventually the government proposed its own scheme, which involved placing men on

35. Clapp, op. cit., pp. 7-11, 18. Again, ministerial approval was given under the appropriate reserving section for advertising normal junior recruitment examinations. But after they had been held, the Premier advised that he "did not deem it desirable to proceed with these appointments", in order that adult employment be not disturbed. There were complicated negotiations before a compromise was reached. And the government reversed a decision of the VRC limiting leave-without-pay granted to officers serving as union officials to two years. Ibid., pp. 22-5, 32-3.
short time to permit the re-engagement of supernumeraries who had already been put off. The VRC pointed out that the savings would be negligible, but that they would loyally abide by any formal direction the government cared to give them. Eventually they received approval for a modified version of their original scheme.36

There were also numerous contracting and related difficulties.37 Governments used their powers to prevent the installation of automatic couplers on rolling stock and the equipment of locomotives with electric headlights. On the truck sizes issue the VRC "were obliged to agree" that, for each old eleven-ton truck that became unfit for further use, one of the sixteen-ton trucks introduced over the years as a replacement should, for rating purposes, "be written down to a capacity of 11 tons". A subsequent direction stipulated that no eleven-ton truck be scrapped "even if it were beyond further economic repair and therefore unfit for service". Neighbouring rail systems were adopting larger and more economical sizes, and the VRC had commenced construction of some of these for bulk commodities. But the government effectively stopped the work in progress on them by declining to pass an Order-
in-Council for required materials. At this stage cabinet decided that sixteen-ton trucks were to be the limit, and the minister formally asked the VRC to submit a scheme (under section 101) to give effect to that decision. Clapp’s comment was that:

A policy such as this can only have the effect of setting back the hands of progress, increasing the cost of and difficulties of operation, and of hindering modern and efficient service to our customers, and making it all the more difficult for the Commission to balance the Railway accounts. To aggravate the decision, this decision was arrived at without our having been asked for any report on the relative merits of the various standards.

In pursuance of an old Legislative Assembly resolution, the VRC, in their ordering of stores and materials, had been giving "substantial preference to Australian manufacturers over British and foreign and a measure of preference to British manufacturers over foreign". The extent of such preference was fixed by agreement with the then government, and the VRC received an appropriate Treasury recoup. They were also prevented by law from entering into any contract for supplies from outside Victoria except with specific Governor-in-Council approval; but many years past had regarded this provision as not applying to the purchase of imported supplies from stocks held within Victoria. Tunnecliffe, however, challenged their interpretation, and the Crown Solicitor ruled that it was unlawful.

This amazing development meant that every single small contract for purchase, even from a Melbourne shop, of goods imported from overseas had to go before Governor-in-Council for approval. Clearly some alternative arrangement was necessary and Tunnecliffe then approved that all purchases over £30 be authorised
strictly in terms of the law, those between £15 and £30 be approved by the minister, and those below £15 (or involving provisions for refreshment room services) be exempt altogether. Even so, to make this workable a direct channel of communication was established between minister and chief storekeeper, a practice which Clapp asserted "is open to strong objection".

Clapp also complained of delays in getting approvals, of what he regarded as petty queries about submissions involving further clerical work and delay, and of apparent inconsistencies in the occasional rejections. He illustrated a number of cases in which the purchase of inferior-quality Australian goods had been insisted on, despite the VRC's recommendations for overseas goods, even where the measure of preference involved was in excess of the established standards.

The interests of the VR were also hindered by restrictive application of some of the petty specific controls written into the 1883 act, notably those concerning Sunday services and the closure of country workshops. Experiences of this sort, however, did not quench Clapp; they made him more determined to fight for what he regarded as the best interests of the enterprise.

38. Ibid., pp. 21-2. The VRC had wanted to begin an excursion service between Melbourne and Geelong to compete with the growing volume of road coach services. However, succeeding governments had vetoed the proposal. It was finally approved on the second submission to the Hogan Ministry, but not before the road operators had gained considerable advantages in the competitive situation that was developing.

39. Ibid., pp. 27-8. In 1924 and again in 1926, proposals by the VRC to close the Bendigo foundry had been vetoed under this reservation, despite clear evidence that centralisation of foundry work at Newport would effect significant economies.
This was evident when the Hogan Government refused to authorise the payment of increments to officers receiving over £600 p.a. Subsequently the appropriate union approached the Federal Arbitration Court for an award to reverse the government's decision; and the VRC were informed by the minister that the government desired them to indicate to the court that the non-payment of increments was in accordance with their own policy - "It also appeared from the remarks of the Minister that Cabinet took the view that whatever policy is adopted by the Government should become the policy of the Commissioners". The court was, however, left in no doubt as to where this particular "policy" originated, and it granted the increments. A further development was the government's order under section 101 that the VRC should propose a scheme for carrying out the following matter of general policy, that increases in the salaries of officers in receipt of salaries of £600 per annum or over should not be recommended unless in a particular case very special circumstances exist and unless the Commissioners, before making a recommendation in any such case, consulted the Minister with respect to it.

The awkwardness of the VR general directive clause is here apparent. Clapp explained the VRC's reaction:

We replied to this that we felt some difficulty in understanding the relation of Section 101 to this request, but that in future, before recommending increases in the salaries of officers in receipt of £600 or over we would consult the Minister.

40. The award was legally binding in the case of members of the plaintiff union, but this covered less than half the officers involved. The VRC then requested that all be treated equally but this was also refused. Details in this paragraph from ibid., pp. 28-32.
The necessity for doing this has not since arisen, but we anticipate that the provisions of Section 101 will not be stretched to the extent of a direction that we are to refrain from making any recommendation we think fit - a right which we feel could not be suppressed.

Clapp mentioned other matters which had been the subject of ministerial direction or other intervention on political grounds, but space permits reference only to two more. When Tunnecliffe directed that the staff magazine be discontinued and contracts for advertising in it cancelled, the VRC pointed out that as the procedure laid down in section 101 had not been observed they did not regard the direction as valid. They then received a formal request "to propose in writing a scheme for effecting a decrease in expenditure by arranging that in future the Magazine be not produced by or at the expense of the Department". But they then convinced the minister that they could economise by using cheaper materials, and the matter rested on this compromise.41 And section 101 was invoked several times in connection with the establishment of a local board of (industrial) reference for the state coal mine under VR control.

Clapp's comment was again significant:

although the original direction by the Governor-in-Council determined that the matter at issue was one of general policy, the Crown Solicitor had previously advised that it appeared to be rather of a specific character than a matter of general policy.42

41. Ibid., pp. 38-9.
42. Ibid., pp. 33-4.
He concluded his 1928 peroration thus:

Officers and employees have been encouraged to solicit political influence in regard to matters affecting their promotion and conditions of service, and members of the staff have been requested to make certain investigations and report the result direct instead of through the Commissioners.

Political interference of this kind cannot be too strongly deprecated. These are tactics which cannot but undermine the effective discipline of the service and result in inefficiency, misconception and poor service to the public.

Ministers have also received deputations with requests concerning matters of railway operation, which it is obviously the Commissioners' business to handle and which require expert consideration whereas the Minister's knowledge of the technique of railway operation is necessarily limited.

This tends to weaken our relations with our clients, and it is obvious that there is in many quarters an impression that concessions may be obtained from political sources. The impression has at its root the powers given to the Minister by the Act, which, although evidently intended to function in matters of wide policy, can be applied to the details of administration.43

Clearly there had been numerous differences of opinion between minister and corporation. And the schemes the VRC proposed in accordance with ministerial requests under section 101 were not always acceptable, so that the rider to that section permitting ministerial direction or (in the event of continuing difference) final determination by Governor-in-Council was frequently invoked. As Clapp suggested, there was in some cases only the most tortuous connection with the statutory intent; but

43. Ibid., pp. 42-3. For further evidence given by Clapp in catalogue form before the 1932 Heath Conference, see Table 7.
reliance on the word policy makes easy such tortuosity.

Tunnecliffe replied to Clapp's charges, which included a demand for complete independence from political control, that section 101 had been used only where the VRC's proposals were inconsistent with the policy of the government, or where they

**TABLE 7: VR: CLAPP'S 1932 CHRONICLE OF POLITICAL INTERVENTION**

*(From Heath Conference, *Interim Report*, p. 22)*

From time to time the powers under this Section 101 have been exercised by the Governor-in-Council, or the Minister for Railways has indicated that the powers would be exercised if the Commissioners challenged his wishes... For example, the Commissioners were directed to -

Discontinue the employment of men under Butty Gang contracts, and to substitute day labour therefor. This resulted in increased costs, at that time estimated at £44,000.

Discontinue the operations of Fuel Conservation Committees, the activities of which were estimated to result in appreciable savings to the Department, apart from the aspect of the co-operative spirit engendered by the movement.

Discontinue the payment of awards for suggestions made by employees for the betterment of the Service. Such suggestions it is estimated resulted in financial benefits aggregating many thousands per annum.

Refrain from taking action in the High Court to challenge the jurisdiction of the Arbitration Court in Railway cases then being heard.

intimated that this would only be accepted by them under a formal direction from the Governor-in-Council. He explained also that his practice of getting staff members to investigate and report
direct to him was specifically authorised in the Railways Act. Hogan later recalled another direction his government has issued by formal Order-in-Council - that the VRC reintroduce return tickets on country services. But he had found that, in complying, they had refused to make any fare concessions for the return trip. Once again Clapp was exercising his right to demand that the government accept full responsibility for making him do things against his better judgment (and therefore the costs thereof, through the recoup provision): for it was competent for Hogan to arrange another Order-in-Council if he wished to push the matter further. This defiance, however, made the ex-Premier very critical of "this Yankee manager".

The year 1932 marked another significant change, even though the legislation remained unaltered. The change was due to the advent of the Argyle (UAP-OP) Government, with R.G. Menzies as Minister of Railways. Ministers from the Liberal Party and

44. VPD, vol. 176, p. 64. For the latter provision, see below, p. 479.

45. VPD., vol. 179, pp. 879-80. Although Victorian-born, Clapp had gained much of his railway experience in USA. But it is only fair to record that, when Hogan publicly criticised the VRC's explanation of certain expenditure in 1927, and appointed the Auditor-General to investigate, the latter reported that they had not been well advised by senior officers, that they had ordered excessive quantities of certain equipment and that they had ignored available facts in judging prospective traffic increases. This was an episode in which ministerial intervention was clearly justified. See Auditor-General, Report on the Purchase of Electrical Equipment for the Railways in 1925, Melbourne 1928, pp. 3, 10.
its predecessors have generally shown more respect for the corporate device than their Labour counterparts; and in countermarching many of the directions given by Tunnecilffe and Cain before him, he was responsible for the classic exposition of this attitude recorded in Table 8.

**TABLE 8: VR: THE MENZIES LETTER**

(To the VR: From VR file 32/8893, now destroyed - extract sighted by permission of the Secretary)

Two deputations recently interviewed me in relation to the butty gang and bonus systems and asked me to prohibit the re-introduction of such methods of work and payment.

This gives me an opportunity of putting on record for the information of the Commissioners my general attitude to such matters. As Minister, I regard my chief function as that of acting as a liaison between Parliament and the Department. I always will be prepared to consider a real substantial matter of Government policy and, if necessary, I would not hesitate to give the Commissioners a binding direction upon it.

All matters of legislation affecting the Department or calculated to improve its effective working, I regard as my responsibility.

On all matters of ordinary business administration, however, I regard the Commissioners as having full power and full responsibility, and, if in the exercise of their discretion, they think it desirable to introduce piecework or bonus work or the butty gang system or any other lawful method of securing the best results for the money expended, they will be submitted to no interference and no direction by me. They may, therefore, assume that during my term of office, any Ministerial direction previously given on such matters may be taken as rescinded. In other words, I think we will achieve the very best co-operation if the Commissioners devote their unrestricted attention to the business administration of the Department and I devote mine to the political side of the Department.

The Commissioners may confidently rely on my full and sympathetic consideration of any proposal they may make at any time in relation to legislation upon railway or transport problems generally. I, in turn, will expect that the business undertaking controlled by the Commissioners will be carried out with the greatest possible degree of economy and efficiency.

Robert G. Menzies
Minister of Railways
Such a statement, of course, has its limitations: Mr Menzies has elsewhere acknowledged the impossibility of clearly differentiating between matters of policy (or "the political side") on the one hand and "business administration" on the other. The very differences in the main interests of the various political parties invariably result in different interpretations. To the Labour Party questions of industrial management are inevitably political; but it was just such questions which Mr Menzies regarded as coming within the province of business administration. The value of his statement was not that it made any real attempt to solve the riddle of the distinction between policy and administration; but rather that, within the context of his own political interests, it made a genuine attempt to clarify the respective fields of responsibility of a particular minister and the corporation during their period of association. The possibilities of frustrating situations developing between them were thereby reduced. While the corporate system is maintained any such attempt to clarify respective powers and responsibilities should be helpful even though the line may vary from government to government. However, few ministers (even from the Liberal Party) take the trouble.

By 1935 the Dunstan (CP) Government was in office, and Clapp was again fighting hard. A single episode will be mentioned as a final indication of his readiness to go to the limit of his statutory powers.

46. Below, p. 432.
The VRG decided to close a number of uneconomic country lines, most of which were constructed before the passing of the 1896 act and which therefore did not qualify for recoup payments under the existing law. But cabinet then decided the lines should be kept open for a further period to allow those protesting to demonstrate the extent of their patronage of the affected services. The minister, A.L. Bussau, passed the decision to the VRG. They objected first that the procedure laid down by section 101 had not been observed, and then (when Bussau took action to remedy this) that the request was still out of order because the matter was not one of general policy. A difference of opinion having thus been created, the minister submitted the matter to Governor-in-Council and obtained an Order-in-Council accordingly. Following this determination of the issue, the VRG claimed and received a recoup to cover their continued losses on the lines.

This underlined further the awkwardness of the VR control provisions. The recoup applied only to directions by parliament or by Governor-in-Council, not by the minister. If they anticipated financial loss and desired to bring the recoup clause into play, the VRG therefore had to create such a dispute in order to extract the formal Order-in-Council.

This second phase of VR experience has been described in

47. Bussau was also the minister involved in the "Spirit of Progress" case – see above, pp. 150-1.

48. Details from VR file 1936/165; Victorian Government Gazette, 16.1.1936; and VRG, Annual Reports, 1935/6, p. 15, and 1936/7, p. 15.

49. See also above, p. 259, note 124.
some detail for two reasons. First, the available reference material is unusually full and authentic because of the broad interest and/or fearlessness of two of the leading participants, Eggleston and Clapp, in publicising their views and experiences. This is in marked contrast with the secrecy in which dealings between ministers and corporations are often conducted. Secondly, the sequence of events involved vividly illustrates the effect personalities can have on the application of the statutory provisions. The main provisions were static throughout, for the last major change in the VR control machinery was that of 1896. Yet the VRC's relations with pro-corporate ministers such as Eggleston and Menzies were completely dissimilar to those with ministers of the Bent-Tunnecliffe persuasion.

Although my main emphasis has been on the role of ministers, it is clear that the personalities of corporate heads are also important in setting the pattern of working relationships. Chairman Speight's refusal to accede to ministerial requests not covered by the act, and the readiness of the stop-gap commissioners who followed him to carry out political orders, provided an early contrast. And between the wars Clapp, a strong and generally well-respected chairman, was quick to fight undue intervention, whereas others may have been more inclined to overlook a degree of interference in their managerial functions for the sake of harmony.

(c) The Last Twenty Years

Soon after the departure of Clapp, the new board of commissioners had occasion to prepare a statement on "Ministerial
Control. 50 It listed the provision of finance and the general directive power in that order as the most effective instruments of supervision, commenting mildly that:

Over a period of roughly 50 years since the powers spoken of were given to the Minister, it is difficult to recall any which, except as to finance, seem with the retrospect of years to have trespassed very seriously on managerial functions.

Was this occasioned by a new war-time spirit of co-operation? It was hardly a view Clapp would have endorsed. The new board conceded, however, that there had:

been a tendency at times to exert these powers in the sphere of industrial management. The renewal or growth of such a tendency might certainly constitute a serious menace. Of recent years the directions of the Governor in Council have been restricted to such matters as the continued operation of branch lines which the Commissioners had decided to close, or the reduction of specified rates and fares, e.g., wool and live stock rates and outer suburban fares.

It then listed some of the specific reservations, describing them merely as "other limitations placed upon the Commissioners which encroach upon their managerial powers". Following the Hogan Government's demonstration of the wide use to which the directive power could be put, these tended to be regarded as the least effective method of supervision. During the decade following Tunnecliffe's own loose arrangement, the external contracts provision had:

been rendered more workable in the case of small purchases (up to £50) by a blanket Order in Council which leaves the Commissioners free up to that limit. Moreover, in cases

50. Statement dated 31.3.1942 - see also above, pp. 151-2.
of emergency the present Government has been very helpful by endorsing approvals given by the Premier and the Minister of Transport.\textsuperscript{51}

The Labour government of the early 1950's again intruded into the industrial field, with P.L. Coleman as minister in 1953 issuing a direction that the VRC should not proceed with their penalty rate reductions claim in the Arbitration Court.\textsuperscript{52} But the moderation of attitudes has generally been maintained. Thus when the Bolte Government desired in 1958 to make concessions in pensioners' fares, a verbal arrangement proved sufficient to short-cut the long drawn out legal niceties of the Clapp era. The recoup principle was in this case imperfectly applied: the Treasury informed the VRC how much it was prepared to pay (well below actual cost of the concession), and they made no more than a mild protest.

Sir Arthur Warner has now held the portfolio for more than six years; and the indications are that he and the corporation are in substantial agreement on important issues. In 1956 he was announcing that "the Railway Commissioners and I have a common policy ...",\textsuperscript{53} and in 1960 it was difficult to distinguish

\begin{itemize}
  \item The 1928 Stead Commission had considered the benefits conferred on local manufacturers by this reservation were negligible, and recommended (without immediate result) amending the act to give the VRO freedom up to £250 - Report, p. 9.
  \item SMH, 8.7.1953. (This coincided with a similar direction in New South Wales).
  \item VR file 56/04484. The policy concerned the leasing of airspace over the Jolimont Railway Yards.
\end{itemize}
between ministerial and corporate roles in the industrial troubles over the union claim for "service grants". Their public statements suggested complete harmony between them; and it was the minister's, not the chairman's, effigy that the men threw into the River Yarra as a token of their dissatisfaction. A leading businessman, the present minister comes from the same side of politics and society as did Eggleston and Menzies before him; personal inclinations have normally led such ministers to share or respect the VRO's views on management problems. Not surprisingly in view of his own background, he has a lively interest in their business operations; and while he forwards parliamentary and other representations to them to deal with, he makes it clear he has a personal interest in judging their answers. Thus his minute forwarding an anonymous allegation of overstaffing read, "Although we cannot reply to 'The Onlooker', the onlooking Minister would like to hear the reply".

For purely physical reasons contacts between minister and commissioners must be frequent. They not only share the same building; their offices are located on the same corridor. As well as a considerable flow of correspondence between them, there are as a result frequent informal meetings. This proximity has

55. VR file 59/7251.
56. One senior railway officer estimated that there would be an average of one or two such meetings each week. On the other hand, the minister rarely visits the Melbourne and Metropolitan Tramways Board - whose relationship with the government is more distant for both geographical and financial (it is separate from the state budget) reasons - or the Transport Regulation (contd. overleaf)
also facilitated over the years direct contacts between minister and subordinate railway staff - a practice which was legalised by Shiels in 1891 but which is usually a source of friction. It would appear, however, that most ministers in recent years have been circumspect in this regard.

It must be emphasised that the formal relationship is not that of permanent head to minister in a regular department, despite the continued and confusing popular use of the word "department" in reference to the railways. I have found many instances to illustrate the distinction. The minister's recognition of the right of the VRC to have a policy of their own on the Jolimont Yards question indicated their superior status to departmental officials. Again, when the minister received representations that through trains should stop at certain small stations, he asked the VRC to consider and report on the matter: they certainly furnished him with a full statement of all the circumstances, but their conclusion - "the Commissioners regret they cannot see their way to vary the existing timetables" - represented an assertion of formal independence which a permanent head could not aspire to.57

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57. VR file 59/1552.
It remains to mention two continuing difficulties. First, it is nowhere clearly laid down whether representations should be directed to minister or to commissioners, and in fact both receive a large number both by correspondence and by deputation. It is not uncommon for representations which are not satisfied by the commissioners to be redirected to the minister, reflecting no doubt a recognition of the ultimate although frequently latent supremacy of the latter. Secondly, where minister and commissioners take the trouble by preliminary discussion to reach agreement on any issue involving extra costs, and where as a consequence no formal direction is issued, the latter do not legally qualify for compensation under the recoup system. By his readiness to force such issues to a direction, Clapp had often avoided this difficulty.

2. NEW SOUTH WALES RAILWAYS

(a) In the Shadow of Parkes’ Legislation

The early years of the NSWR corporation were remarkable—in contrast with the position in Victoria—because of the self-denial practised by leading politicians. In so far as the defence of administrative autonomy and the honoring of legislative intent and prescription were concerned, this was one of the classic

58. Where minister and corporation are in harmony, the pressurists frequently raise their sights further and approach the Premier— as in the closure of branch lines. This may cause further delays, as the latter often asks for further investigation and report.
phases in Australian corporate history.

With the railways showing greatly improved results under the brilliant and tactful Eddy, there was little cause for government to interfere. Parkes was full of praise for Eddy's management, Eddy for Parkes' legislation.59 The opposition came chiefly from spokesmen for discontented labour interests. A few members of parliament associated themselves with men Eddy had retrenched, with employees dismayed by the sterner disciplinary methods he introduced and frustrated by the elimination of patronage as a means of advancement. They made many charges designed to discredit the commissioners, but the latter were exonerated by a series of official inquiries. Parliament showed that it was at this stage solidly behind Parkes and the ministers of his persuasion by rejecting W.F. Schey's 1891 motion to curb the powers of the commissioners and then recording by a large majority its severest condemnation of his conduct towards them and the opinion that he ought to resign his seat.60

The Parkesian philosophy of corporate independence was assiduously preserved by a succession of Colonial Treasurers who held the loose supervisory responsibility. The pattern was set by McMillan, who frequently reminded parliament of the special


60. NSWPD (i), vol. 53, pp. 2129-89; and vols. 60-1, pp. 1911-89. Schey was secretary of the railwaymen's association.
status of the NSWRC\textsuperscript{61} as when he parried a question dealing with the dismissal of railway employees:

We are now trenching upon matters which must be left absolutely in the hands of the railway commissioners. They have complete and absolute power to remodel the department, and to deal with all matters connected with the employees; in fact, they are in the same position as the managing directors of a company, or the partners in any commercial transaction; and it is impossible - it is a contradiction in terms - to tell these gentlemen to bring about certain results in our Railway Department, and at the same time to tie their hands in those rearrangements which are necessary to bring about those results.\textsuperscript{62}

In defending the commissioners against one of Schey's attacks, he asserted that trouble was developing in the VR because its act "has not been carried out in its integrity ... because political influence has worked itself into the management of the railways". He added that his whole aim as supervisory minister had been to defend the NSWFR from a similar fate;\textsuperscript{63} and his praise for the corporation was unstinted: "The work of Mr. Eddy and his fellow-Commissioners has been the work of giants. They had not merely re-created the railway service, but they had sustained the credit of the colony".\textsuperscript{64}

\textsuperscript{61} Though in the matter of terms habit proved too strong - even he continued to refer to the railway "department".


\textsuperscript{63} NSWPD (i), vol. 50, pp. 6407-8.

\textsuperscript{64} Centenary History, p.100. On Eddy see also above, pp.106-7. In reporting a public luncheon given in his honour, however, SMH (15.8.1891) pointed out appropriately that Eddy had been greatly encouraged and assisted by McMillan, and contrasted the situation with Victoria where railway management had been thrown into confusion by advent of a minister hostile to the commissioner system.
The view taken by McMillan, his successor Bruce Smith, and Parkes himself, that the ministerial function was merely to ensure that the NSWRC were managing the railways in accordance with their act, has been noted. Even with Parkes in opposition and the Dibbs Government in office in 1893, this view was as earnestly propounded by John See, the new Treasurer. To further criticisms of treatment of employees by the NSWRC, he replied that he was satisfied they were acting within their legal authority. Government and parliament, not having amended or abolished the act, must therefore sustain their actions. It was his duty to see this was done:

... I do not care a dump for a man who is not prepared to do his duty. I will not be a party to doing anything which the act does not empower me to do, and I say distinctly that this is a departmental measure which the railway commissioners have an absolute right to deal with. The mere fact of bringing before the House, from time to time, questions concerning the administration of the railways is, to a large extent, a contravention of the very act which we passed.

Even if not all ministerial supervisors shared the same deep conviction about or understanding of Parkes' motives, the relationships he prescribed endured for many years. This is shown by the growing volume of Labour complaints through to the


66. NSWPD (i), vol. 66, p. 7662.

67. Lyne, original mover for NSW reform in 1886, suffered something of a change of heart in the 1890's - see "Australian Character Sketches - The Political Leaders of N.S.W.", Review of Reviews, Melbourne, 20.7.1894. There is little to suggest, however, that he attempted to change the system during his ministerial supervision in 1899-1901; he was, of course, far more concerned with problems of federation.
1920's, and the various attempts of Labour governments to change the legislative framework.

About 1900 the See Government decided to introduce concession rates for starving stock; it is reported that several months passed before the NSWRC could be persuaded to implement the policy. But the main issue up to the McGowen-Johnson clash concerned not the political relationships but the squabbles within the corporation after Eddy's death. This, however, occasionally brought the minister in to decide matters which "ought to have been settled departmentally".

(b) The Labour Reaction

Following the internal squabbles, the 1906 legislation had centred authority in the person of the chief commissioner: and Johnson (who was brought out from England to fill that position) was dictatorial by nature and intolerant of advice about local conditions. This was the "supremacy of bossism" Holman's 1916 legislation sought to end. When the Labour Party came to office in 1910, already critical of "irresponsible" public bodies and

68. As when one member objected in 1916: "... when an hon. member asks the Minister for Railways a question, the only answer he can get ... is 'The whole of these matters are in the hands of the Chief Commissioner for Railways. I will place the matter before him ...' Every preceding Minister for Railways has taken up the same attitude." - NSWPD (ii), vol. 66, p. 2700.

69. NSWPD (i), vol. 63, p. 6498.


71. Above, pp. 234-5.
disposed to champion the railway employees against the stern disciplinary measures favoured by Johnson, the stage was set for the first major conflict between minister and corporation since Parkes' act.

There was, of course, no legalised ministerial directive power. Johnson (like Speight before him in Victoria) was therefore well within his legal rights in refusing to accept Premier McGowen's 1912 "instruction" to introduce an eight-hour working day in all grades of the railway service, a minimum wage of 8/- for all adult staff, and long-service leave to employees of twenty years standing. Johnson argued that the government had not made available the necessary funds to enable him to comply.72

At the same time Johnson requested government approval (in this case power was statutorily reserved) for the purchase of twenty locomotives from an English company in a bid to relieve gross congestion of goods traffic. When the request came before cabinet, it "refused to sanction the placing of the order, and required further information as to the need for the engines". Ministers claimed that Johnson had shown "a decided disregard of the declared policy of the Government"; and McGowen and Johnson

72. SMH, 6.3.1912; E.A. Pratt, The State Railway Muddle in Australia, London 1912, p. 108. McGowen was most critical of this refusal to obey "instructions", and stated that the government was doing all it could to have them enforced. The press, the opposition, and Pratt who recorded the episode, quickly pinpointed the issue as an attack on the statutory autonomy of the corporation.
then engaged openly in mutual recriminations. The Sydney Mail declared that when the Premier and the chief commissioner disputed in the public press concerning their respective responsibilities for a railway blockage, it was evident that relations between them made for disorganisation of the service they controlled. In the event McGowen had to give way. 

But, although for the time being the legal provisions and majority parliamentary feeling favoured Johnson almost whenever he chose to fight (according to ex-Minister McMillan he was merely doing his job, enforcing the act "in its integrity"), the events of the period ensured his non-reappointment in 1914.

Of course not all differences ended in this way. McGowen's requests that the NSWRC implement government policies such as cheap fares to encourage people to move from congested city to more spacious suburban areas, or general freight reductions on products from the interior, drew replies pointing out the loss of revenue involved, but when he "wrote a minute" that it was government policy the changes were made. However, he did seem

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73. Pratt, op. cit., pp. 108-14 - press comment cited by Pratt. It was Labour policy that railway equipment should be manufactured in the state, but Johnson claimed he had warned the government 18 months before that local resources were inadequate. The Premier subsequently made much of the fact that, by insisting on placing the order with a company other than the one Johnson had proposed, he had saved the state £3100 on contract price besides gaining earlier delivery. This episode was followed immediately by Labour's abortive Duplication Board proposal - see above, p.234.

prepared to observe a policy-administration division according to his own lights, and opposed a proposal for a select committee to examine discrimination in charges as between alcoholic and temperance beverages because, within the terms of the existing law, he could not "consent to an interference with the commissioners on such small details". 75

The NSWR, in which the general directive power did not come till 1950 (except for a short period in 1931-32), furnish many other examples of extra-legal political intervention; and most governments were more successful in this than McGowen's. An issue which tempted Nationalist as well as Labour ministers to intervene was the 1917 strike and its aftermath. Lang in particular showed his teeth on this question. 76

75. Related NSWPD (ii), vol. 43, pp. 1337-39. Ministers of the first period of Labour rule (1910-16) again intervened to form a joint board to eliminate wasteful rivalry between the NSWRC and the Public Works Department (the constructing authority until 1916) in the purchase of sleepers. But they could not prevent the former refusing to accept from the latter certain new lines not satisfying "the high standard of polish and finish to which they are accustomed"; the result was the "extraordinary anomaly of 300 miles of lines ... being worked under enormous difficulties by the Works Department". From NSWPD (ii), vol. 63, p. 6493.

76. For the general background, see H.V. Evatt, Australian Labour Leader, Sydney, 1954 ed., pp. 333-5; J.T. Lang, I Remember, Sydney 1956, pp. 107-9, 253-8; Blakey, "Politics and Administration", pp. 13-25; and Edmunds Commission Report. The strike resulted from the introduction by the NSWRC under Fraser of American-type "job and time cards" to the railway and tramway workshops at Randwick. The 1918 Royal Commission on Job and Time Cards System (Judge H.R. Curlewis, commissioner) showed that the new system was a sensible step to increase business efficiency, and that one of the main objections was simply the traditional union fear of "speeding-up".
Nationalist Acting Premier G.W. (later Sir George) Fuller first conferred with Fraser and other politicians, and then took over the negotiations; the strike had spread to other industries, and was seriously affecting the nation's war effort. The government organised the non-strikers as "loyalists"; and advertised a deadline for the strikers to return to work, those refusing to do so to lose their jobs and the rights and privileges which went with them. About 1300 returned before the ultimatum expired. The Labour movement took up the cause of the remainder, the so-called "lily-whites", and the government recruited volunteer labour to replace them. It gave certain undertakings to new volunteers and loyalists; and unions were organised to draw membership away from those involved in the strike. Subsequently a settlement was reached on written terms; but the strikers who returned to work lost their old seniority and many were employed on lower-graded duties than before.

The written agreement was between Fuller and the "Strike Defence Committee"; and the NSWRC first learnt of the details through the newspapers. They were, however, prepared to accept it; and they also agreed in advance to implement the findings of the Edmunds Commission, intended primarily to inquire into the treatment of the strikers. The subsequent difficulties were therefore scarcely of their making.

77. They included J.B. Chifley and J.J. Cahill, later Prime Minister of the Commonwealth and Premier of the state respectively.
The major problem was that Fuller had made conflicting promises to the loyalists and the strikers. As heir to these agreements it was impossible for the corporation to honour both fully. The Curlewis and Edmunds Commissions had both proposed that the strikers retain their seniority, but successive Nationalist governments would not agree; despite their assertions that the NSWRC were a thing apart from the government, they interfered to the extent of preventing their compliance with these recommendations. Fuller, now Premier in his own right, complained that the course the NSWRC were taking was not in accordance with his promises to the loyalists; and his Attorney-General, T.R. (later Sir Thomas) Bavin, had to adjudicate. Bavin prescribed "a middle course", and once again the NSWRC complied. 78

Judge Edmunds had noted the government's lack of legal power in the matter, but cited Dicey in support of his view that such intervention might be justified in "extraordinary circumstances" — "...as a matter of law, settled by the Railway Act, the Government had no standing in this dispute"; but, "if the crisis appeared to the Cabinet to be one of national peril", it had a duty to intervene nevertheless. 79

But he noted related cases of political intervention in

78. Recorded by Bavin, NSWPD (ii), vol. 102, p. 918, and vol. 117, pp. 3293-4. See also Sydney Labour Daily, 15.7.1925.

administrative detail which could not be so regarded, and seemed rather surprised by his own conclusions:

Although the Railway Act makes the Commissioners in law independent of interference by any outside authorities - ministerial, political or otherwise - except so far as the Act itself provides, the evidence given before me showed that attempts are made to exercise such illegal pressure by outside authorities, and that while in some instances the Commissioners firmly withstand such pressure, in others they submit to it ...

While the foregoing instances seem to indicate that the Commissioners in some cases yielded to the pressure put upon them by Ministers or Members of Parliament, a number of cases were brought under notice in evidence in which Ministers or Members had made representations to the Commissioners in respect to the treatment of certain individual employees without, apparently, affecting the Commissioners' determination in any way whatever.81

With such evidence of interference or attempted interference by the Nationalists, the rightful heirs of the Parkesian philosophy, Lang had little cause for scruple. He was merely more determined, less concerned with maintaining an outward appearance of respect for the existing law, for which he frequently showed his distaste.

Lang's metropolitan constituency included many "lily-whites", and he had taken up their fight. In the 1925 elections which returned him as Premier, he undertook "to give direct and emphatic instructions to the Commissioners on industrial matters";

80. E.g., pressure on the corporation to modify physical standards of entry for the volunteers, and interference in the case of individual employees.

81. Edmunds Commission Report, pp. 73-5. In one case, which particularly impressed Edmunds, the Premier and two other ministers had made representations to the NSWRC on behalf of a certain man without causing them to vary their decision; but a subsequent appeal by the man's wife was more successful.
and one of his promises made in a pre-election agreement with the unions concerned was to restore the strikers' rights. On being sworn in as Premier, he immediately sent for Fraser, asking him to restore the strikers' rights and to refrain from making further permanent appointments until the matter had been attended to.

Lang records this conversation in his political memoirs.

In brief, Fraser pointed out that the Premier had no legal authority to make this request; Lang replied that the government had a mandate and was prepared to accept full responsibility:

... if you attempt to stand in the way between the elected Government and its pledge to the people, I think it my duty to warn you. If that happens, when you get back from your /country/ tour, you may no longer be Commissioner of Railways in New South Wales. You will no longer be in a position to refuse to carry out the Government's instructions.

According to Lang, "Fraser saw the point." He had of course already shown himself more moderately inclined on this question than the Nationalists, and Blakey's verdict therefore seems reasonable: he offered "token opposition" to ensure that responsibility would be laid directly at the Premier's feet. "To cover him", he obtained from Lang the so-called "historic minute"

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82. SMH, 27.5.1925; Sydney Labour Daily, 15.7.1925.

83. Lang, op. cit., p. 256; Bavin in NSWPD (ii), vol. 117, p. 3296. As Blakey noted, Lang dominated the scene, personally introducing important railway legislation and issuing the vital administrative orders; the railway ministers in his first two governments were virtual nonentities - "Politics and Administration," p.7.

84. Ibid., p.19. The financial implications were considerable for, although directing the upgrading of the strikers at the expense of the loyalists, Lang insisted that the latter should not suffer reduction in pay.

85. Lang, op. cit., p. 256.


Left: J.T. Lang, Labour Leader 1925-32; Caricatures from Art in Australia, 15 June 1931.
The minute received wide publicity and, together with the ensuing legislation, gave Lang his peak of popularity in the unions.

This episode contained a mixture of control ingredients. Governments of both political groups had intervened, given directions, and had them accepted, quite outside the range of subjects statutorily reserved for ministerial control. They were, as Edmunds noted, therefore acting illegally. Yet the strike settlement question highlighted the impracticality of complete autonomy, for with the nation's war effort and many other industries affected, government intervention was inevitable. A government

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86. Reproduced in Sydney Labour Daily, 15.7.1925. Thus Chifley, who had been reduced to cleaner, returned to his old job as engine-driver.

87. The Nationalists had not let the matter rest. Bavin organised a test case before the Equity Court, which ruled that the NSWRC did not have power to regress employees. The incensed Lang immediately introduced a remedial bill, and forced his way through a constitutional crisis to secure a favourable Legislative Council vote. But the 1927 elections found Bavin promising to reverse Lang's measures; and on assumption of office he in turn instructed Fraser not to make any further permanent appointments until the necessary action had been taken. Despite a petition from a large number of loyalists asking him to refrain for the sake of internal harmony in the railway service, Bavin personally insisted on pushing through legislation restoring the pre-1925 position. The fight was still hot over: in office again in 1931, Lang introduced a further bill to restore the strikers' positions and seniorities. The Bavin Government had in turn taken care of the Legislative Council; and it did not pass. But by then Lang had a simple alternative: the legalised power of ministerial direction over the rail corporation. The direction was duly issued and there the matter finally rested.
which abstained in these circumstances would be failing in its duty. The subsequent events also showed governments prepared to seek special legislative authority to ensure enforcement of their desires in matters of detail.

This was not the only episode to mar the relationships of the 1920's. For example Fraser's fall from favour under the Bavin-Buttenshaw Government had been due largely to a quarrel about ministerial access to subordinate staff. The GF minister, Buttenshaw, interviewed a number of subordinate officers of the Railways without informing the Commissioners. They resented such action. The head of one of the sub-departments was requested to report to the Minister for a conference. Instead he went to the Commissioners and requested instructions. They told him to ignore the Minister's request. They would not tolerate members of their staff going through the back-door to the Minister and Fraser told the Minister so.88

As already noted, this deterioration in ministerial-corporate relations contributed to Fraser's replacement by Cleary.

This change, however, did not restore harmony to the corporation, for Cleary's advent was followed by Lang's return to the premiership; and the Lang-Cleary relationship rivalled in bitterness other notable Australian rail corporation conflicts. The conflict was marked by Lang's legalisation of the ministerial


89. Above, p. 108.
directive power and creation of the supervisory STCB.  

(c) Legalised Ministerial Control 1931-32

In sponsoring the 1916 recoup provision Holman had acknowledged the readiness of most commissioners to follow government policy decisions, notwithstanding the absence of any legislative requirement. Nor did Cleary contest governmental authority in this field, as he interpreted it. As he told the Heath Conference, "neither the recent Board of Commissioners nor the present Railway Commissioners questioned the Government's desire to enforce its wishes, in matters of general State policy". He had on this basis accepted instructions from Lang, e.g. to

90. Before this stage was reached there were two incidents of note. First, as stated by Labour leaders, Lang had interviewed a number of NSW officials with a view to selecting one to assist him personally in drafting the co-ordinating legislation; but Cleary had refused his ensuing request to make Goode available (NSWPD (ii), vol. 132, p. 8619). Soon afterwards Cleary had occasion to dismiss Goode on a charge of bribery, and Lang sought to intercede on the latter's behalf. Cleary replied that he would accept an order from "the top man in the state" if covered by a written directive; but on this occasion Lang refused. Obviously he could not expect to receive the same support for intervention on behalf of a subordinate officer of dubious character as he had for his extra-legal efforts on behalf of a large and honoured section of the labour movement. But he won out eventually with his freezing and later removal of Cleary, and his appointment of Goode to the top transport jobs in the state. (From conversation with Mr Cleary's brother).

91. Except that "by implication" in the recoup clause. Above, p. 263.

re-introduce a forty-four hour week and to withhold contemplated applications to the Arbitration Court, even before the State Transport (Co-ordination) Act came into operation in November 1931. As to the limits of this authority, he explained:

... it was generally held (and this view was acted on by the Commissioners in practice) that the power was limited to matters of general policy, such as hours of labour, and other matters affecting the general body of employees, but did not extend to matters of internal administration such as the employment or dismissal of individual employees.

However, after the STCB (under Goode's chairmanship) commenced operations, with a comprehensive framework of controls all leading to Lang himself as minister, Cleary's own authority was almost entirely dissipated; and many of his actions reversed. The campaign against him reached its peak early in 1932, when W.B. Rogers was instructed by the Premier to investigate the NSW management. His reports were submitted to and released by Lang; Cleary first read them in the newspapers. They were obviously an attack on his personal administration.

One of Rogers' criticisms was that the Premier's Department had circularised all departments to the effect that all purchases of goods made outside Australia should be submitted for the Premier's

93. E.g. Lang's instruction that S.E. Lamb, K.C., who had appeared against him in a court case, should not be briefed for railway cases (Blakey, "Politics and Administration", p. 50); and his intervention in a disciplinary case at the Lithgow colliery controlled by the NSWRC (NSWPD (11), vol. 131, pp. 7310-11).

94. SMH, 1, 2, 3, 7 and 9.3.1932. Rogers, Investigating Officer of the STCB, was, like his chief's Lang and Goode, a stormy character: he had resigned from the South Australian Railways after a disagreement with the chief commissioner of that system, and had then been refused employment in the NSW by Cleary.
prior approval, and accompanied by a certificate that neither
the article concerned nor a suitable substitute could be obtained
locally; but that this had been disregarded by Cleary.95 Lang
immediately wrote to Cleary demanding a reply to this charge,
forwarding copies of his letter to the press.96 Cleary answered,
also publicly, complaining of discourteous treatment in the
conduct of the investigation and in the release of its findings
without prior reference to him. He pointed out that when this
particular circular was received it was not mandatory on the
NSWRC to observe such instructions for they were not then legally
subject to ministerial control; and argued that it would be
ridiculous for an organisation the size of the NSWRC to submit
every order for goods produced overseas (even though on sale
locally) for approval. It had in fact complied when orders were
actually placed abroad. Cleary claimed also that many of Rogers'
other criticisms applied to things done when Fraser (now on the
STGB) was in charge, and that his own administration had suffered
from "interference by the Minister and the Transport Board in
respect of almost every conceivable phase of administration".97

At about this time Cleary and Goode participated in the
Heath Conference. Cleary, with Clapp from Victoria, furnished

95. Rogers' third report, SMH, 3.3.1932.

96. Extracts published ibid. Cleary also read these press extracts
before receipt of the original letter.

97. Cleary's replies published in SMH, 4, 5, 7 and 8.3.1932. The
paper claimed in an editorial that the NSWRC had "suffered
continuous harrassment if not martyrdom since Mr. Lang came
into power".
most of the evidence which led the conference report to lay on political control much of the blame for the deteriorating financial position of the various undertakings. Goode alone refused to sign that report. Very soon Lang introduced his Ministry of Transport Bill which abolished Cleary's position and created a Board of Transport Commissioners under Goode's chairmanship; and Rogers was rewarded with appointment as a commissioner. 98

During the few months the amalgamated board was in existence it was subject to a ministerial power of direction and control. McGirr, the first Minister for Transport, issued many directions to the board; also he saw the minutes of all its weekly meetings and reserved the right to veto its decisions. To strengthen his case for deletion of the general control provisions later in 1932, Bruxner collected examples of McGirr's intervention. 99 Bruxner added that he was grateful for the power contained in Lang's act for one reason only: it enabled him to cancel summarily some of McGirr's directions. Apart from this he did not need the power at all. The old law, together with his new "umpiring" arrangement, gave the government adequate room to exercise essential policy controls, while discouraging interference in administrative

98. Apparently trimming his sails to the political wind, he informed Cleary (who returned after the dismissal of the Lang Government) that "other persons" had edited his reports, giving distorted impressions, etc. When he had protested, "Goode laughed". According to Bruxner, the departmental file revealed the extent of Lang's and Goode's efforts to "bolster up some charges against Mr Cleary". NSWPD (ii), vol. 134, pp. 799-800.

99. Listed at Table 9.
Among the directions recorded in Bruxner's second-reading speech on Transport (Division of Functions) Bill, *NSWP* (ii), vol. 134, pp. 804-5, were the following:

That the NSWRC should -

1. not apply the Salaries Reduction Act to wages staff of the railway coal mine.
2. withhold action to procure sleepers at reduced rate.
3. restore the 1917 strikers to their full seniority.
4. withhold action to terminate services of wages employees on attaining age of twenty-one years or adult clerks filling junior clerical positions.
5. refrain from taking further action in certain Arbitration Court proceedings.
6. not engage the services of S.E. Lamb, K.C.
7. implement the government's policy of preference to unionists.
8. ensure that all staff become and remain financial members of *bona-fide* unions.
9. not accept four unions registered with the Arbitration Court as *bona-fide* unions.
10. terminate services of all staff who by a given date had not joined a "genuine" union.
11. refrain from publicising board decisions on any matter of importance until the minister has had the opportunity of reviewing them and deciding whether "Ministerial announcements" should be made.

Some of these were repeats of directions Lang had previously given Cleary.
McGirr, now in opposition, voiced objections in the McGowan-Lang tradition. Bruxner's scheme was to him a return to a system in which the minister "was just ... a messenger boy to the man in charge. \( \text{He}\) had to go to the Commissioner to ask for information, and under the Act the Commissioner had autocratic power. That is a policy which I have never advocated. My party stands for ministerial control ..."\(^\text{101}\) Significantly McGirr was the Premier under whom Sheahan was to recreate the conditions of maximum intervention in 1950-3.

(d) Interlude 1932-50

In his nine years in the transport portfolio Bruxner proved by no means a weak minister. His philosophy was to leave the operating corporations alone as much as possible, using his ministry as "a conduit pipe"\(^\text{102}\) for the channelling of communications between them and parliament. He refused to receive deputations, and forwarded all parliamentary questions on to them to

\(\text{100.}\) For Bruxner's legislation, see above, pp.242-3. However, in keeping with the animosities of the time, the Sydney Labour Daily of 12.9.1932 called him the "ministerial autocrat" and quoted information that he had instructed that all questions involving finance be referred to him, that he had reduced an order for bogey refrigeration cars, and so on. The period was, of course, one of great financial stringency, but there is no question that the corporation heads welcomed the much greater respect he showed for their knowledge and status.

\(\text{101.}\) NSMFPD (ii), vol. 134, pp. 873-4.

\(\text{102.}\) Term used in discussion by senior officer of the ministry.
frame answers as they saw fit. But when he did have something important to say, he didn’t hesitate to make his views known. The 1930's witnessed governments the world over having to accept greater responsibility for economic matters; and as the decade progressed Bruxner found himself increasingly questioned about and blamed for acts of the railway management. Almost against his will, he found he had to perform an increasingly active role himself; and his government did make certain decisions affecting the railways. Such issues, however, received little publicity, for they were usually settled quietly and amicably.

Like Bruxner, Labour Minister O'Sullivan did not always see eye to eye with the corporation, and he made his views known on occasions. But also like Bruxner, he had not experienced defiance on broad policy issues. It was during O'Sullivan's long occupancy of the transport portfolio that efforts were made to restore the legalised ministerial directive power; but he stressed then that the intention was only to legalise the existing

103. Thus it refused to accept their proposals concerning the organisation of the Tourist Bureau (attached to them for a few years); and it ordered the issue of "home-duty passes" and free travel for ex-servicemen on Anzac Day. It is also reported that Bruxner personally closed the railways statistical office in 1939. NSWRC, Annual Reports, 1934-35, p. 7; 1937-8, pp. 7-8; 1939-40, p. 27. Also NSWPD (ii), vol. 197, p. 3796; and NSWPD (iii), vol. 1, p. 700.

104. As when NSWRC Garside disbanded a committee on railway efficiency headed by Winsor because it had given directions without consulting him or his branch heads; when he banned the sale of liquor on trains (he was a Christian Scientist and a teetotaller); and when he refused to alter certain administrative decisions at the minister's request — see review of Garside's career, SMH, 31.1.1952.
practice in which directions on "matters relating to Government policy" were given and accepted. 105

This was then a period of relative harmony, despite all the strains involved in the post-depression reorganisation, the war effort and post-war reconstruction. In contrast with labour ministers such as Lang and McGirr, O'Sullivan was mild-mannered and circumspect; 106 but his path and Bruxner's were both made easier by the co-operativeness of the commissioners they had to work with. Hartigan in particular was more concerned with smoothness of operation than dignity of office; and, even if the statutory position was often disregarded, who would say that such an association was not the more successful?

The eventual return of the legalised directive power to the NSWR in 1950 has been described to me by both union and corporate officials as a "phony" provision. As O'Sullivan had stated in 1943, and shown in his long period as Minister for Transport with such control over the tram and bus corporation, it was not intended to bring about any radical change. 107 Far more significant in terms of operative practice was the fact that Sheahan's arrival on the transport scene co-incided with it, as did the formation of the supervisory THC under Winsor's director-

105. See above, pp. 243-4.

106. And was therefore less popular with the unions.

107. Although, of course, in their perennial demands for such a control the unions had expected much more.
ship.

Bruxner had remarked many years before that "It is not what is in an Act of Parliament that matters but the manner in which the Act is administered". This was certainly true of the NSWR. McGowen, Lang and even the Nationalist, Fuller, had all intervened without legal authority; and the extent of active intervention by ministers enjoying that authority has varied markedly according to personality differences and to whether their own inclination is to side with the corporation or with its critics.

(e) Hectic Years: Sheahan's Ministry

Sheahan and Winsor were both vigorous, assertive and immoderate personalities, and conflicts with the operating corporations soon developed. No other minister in the history of Australian public enterprises can have been less tolerant than Sheahan of those features which distinguish corporations from departments. His refusal to recognise such a distinction antagonised the corporate officials; and he finished by according them far less respect than the average minister would subordinates in his own department. His case was to underscore once more Parkes' fears about the dangers inherent in having a full ministerial portfolio associated with semi-autonomous corporations. As we have seen, it often happens that when such ministers seek to observe the necessary restraints they are dubbed "rubber stamps"; but when they

103. NSWPD (ii), vol. 131, p. 8300.
seek to assert themselves (and their very existence attracts sectional pressures) all the malaises of divided management appear. Sheahan followed in the tradition of Shiels and Bent in Victoria, but unlike them he had the advantage of "expert" assistance to call on independently of the corporations, particularly in Winsor's organisation. This merely increased the tensions.

A book could be written on the issues which arose to complicate transport administration during the Sheahan regime. Certainly the post-war stresses continued, but they might have been countered more successfully by concerted action on the part of government and corporation. In fact this phase represents probably the highest point in ministerial eccentricity and capricious interference in the history of the political relations of the selected enterprises. However Sheahan's association with the NSW transport corporations endured for less than three years, and due proportion requires that only a short account be given here. I have therefore selected, almost at random, a few episodes for description.

In the literature of public corporations, ministerial

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109. Added to these ingredients were Ferguson's "Booh-Bah" activities on the THC - see above, pp. 111-2.

110. Some extracts from other speeches illustrative of Sheahan's attitude and actions and drawn from other episodes, are assembled in Appendix C.
interference in details usually has a somewhat derogatory connotation; and most ministers wish to conceal it. But not so Sheahan, who seemed genuinely to believe that his interference could be nothing but beneficial, and boasted about it. Thus he drew attention to his personal reorganisation of the Railway Investigation Branch "in the teeth of departmental opposition". He had read press articles suggesting that all was not well with that branch: "Would any hon. member suggest that in those circumstances I should sit idly in my chair, doing nothing? I took action!" 111

Then there were the committees on railway efficiency with which Winsor had previously been associated and about which Garside and O'Sullivan had disagreed:

This Government appointed Mr Garside in the hope that he would carry out Government policy, but immediately he became Commissioner he disbanded those committees, which had been responsible for saving the State at least £1,000,000. The Premier asked him to reappoint them, but he refused to do so. I ordered their reinstatement... 112

Again he intervened actively in arrangements for closing part of Martin Place, Sydney, for tunnelling operations for the eastern suburbs railway. Garside admitted frankly that his first verbal request had been overlooked — it was followed angrily by formal directions: "I did not want an apology, but I did want some action. I believe that whether I give a direction personally or in writing it should be followed by some action". 113

111. NSWPD (ii), vol. 195, pp. 1580-1; vol. 197, p. 3796.
112. NSWPD (ii), vol. 195, p. 1472.
113. NSWPD (ii), vol. 197, pp. 4194-5.
Parallel with his intervention was his readiness to criticise publicly the officers under his ministerial jurisdiction. He believed firmly that many matters had previously been neglected because of bureaucratic apathy, in the absence of ministerial control:

... while I am in charge of the transport services of this State, I will maintain at all costs my rights to visit any portion of the transport system that is under my control to see for myself what is occurring ... These matters are all receiving a much needed 'shake-up'. I have no doubt that during this process 'of shaking up' the corns of one or two persons have been trodden on rather heavily. 114

One of the persons thus "trodden on" was a senior official unlucky enough to be reported to the minister as having referred to Winsor and his staff as "the Gestapo". Sheahan created a further issue out of this - he "wrote to the Railways Commissioner and challenged this officer's description of the [THC's] officers". Garside replied, tongue obviously in cheek, that the officer claimed he had been misreported: he had not referred to Winsor's men as the Gestapo; instead he had described their methods as "Gestapo methods". About the same time Sheahan visited the establishments under the control of this officer; found that he was over sixty-five and decided that he and some others had "lost the zest for inquiry and for vigorous work". So, he informed parliament with relish, "soon he, with a number of other elderly gentlemen, will be leaving the railway service to make way for younger and more enthusiastic officers"; he had

114. NSWPD (ii), vol. 194, p. 415.
issued an order directing the retirement of twenty-seven overage officers, nineteen from the NSWR and eight from the tram corporation. Even Winsor had made representations favouring some of these officers, but he had overruled him on grounds of consistency: "The time for sleeping is over - now is the time for action!" 

Other criticisms of NSWR officials were either explicit or implicit in numerous statements such as "During my visits to the workshops of the transport services I found a number of things that require great improvement"; and in his handling of two complaints raised by the Mayor of Forbes. The same officer was involved in both the latter cases. First, he had recommended a reduction in the weekly trucking capacity on a particular route, and Garside had accepted the recommendation. Following the complaint Sheahan not only reversed the decision because he thought it would cause a drop in revenue "at a time when every penny counted", but also "had to deal with [the officer] in a disciplinary manner" because he believed he had given wrong information. The other case arose from a telephone call by the mayor, following a decision to take a milk-carrying louvre van off a Western District train one holiday weekend to make way for an extra passenger coach. Sheahan’s account continued: "I asked myself what I considered was a sensible question - 'Which is the more important, milk for the babies and children and people of the western districts, or a few

116. NSWPD (ii), vol. 194, p. 418.
extra passengers on a train?" In attempting to reverse this decision also, Sheahan was further angered by the discovery that Garside had instructed his branch heads not to accept any direction from the minister unless it was in writing and received through the NSWRC himself. Said Sheahan,

If I had to act in an emergency before a holiday week-end the damage could be done before my instruction could be carried into effect. Consequently, I called that officer to my office and spoke to him about his recommendation to reduce the truckings to 18,000. I know the reasons he gave for that recommendation and for taking the louvre van off the mail train. I did not accept either reason. I ask hon. members whether I, as Minister, am entitled to take a different view from that of an officer or am I to accept his recommendation willy nilly? I refused to accept it and I said, 'You must show your desire and ability to co-operate with the Government; if you do not, you will have to go to some other position in the ways and not one in which you want to make recommendations which are not acceptable to the Government'.

Since Sheahan's decision in the one case was taken on the ground that every possible penny of revenue counted, and his attitude in the other disregarded such considerations, it would have been very difficult to know what recommendations would please him. One of the most insidious forms of supervision is surely to direct that the only recommendations to be made are ones which will prove acceptable. This was an even cruder form of the Hogan Government's attitude Clapp had been so critical of twenty-five years before.

There had been a number of parliamentary requests that

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118. Above, pp. 305-6.
season tickets be reintroduced; but he was not sufficiently
sure of himself here to issue definite instructions. He had

... endeavoured to infect official minds with the realisation
that that is the desirable thing to do, but my views
have not been received with any enthusiasm. The transport
administrators have rejected my proposal and have pointed
out that it has been dropped in this or that city ... at
least I have taken action that shows initiative in calling
for suggestions from transport employees on the job who
have the practical experience that fits them to give sound
advice.119

He accepted advice from all sorts of interested parties. As a
result of what the conductor or ticket inspector told him he would
immediately fire off directions or commence inquisitions.
Almost inevitably came the suggestion that the transport corpora-
tions were overstaffed in their administrative sections, for
proposals were being made by the administrators for retrenchments
among operating staffs. The minister got similar complaints
about so-called excessive privileges of senior officers in the
use of official vehicles. He carried out a personal examination,
and concluded that "proportionately the administrative section was
far in excess of the revenue-producing section". The corporate
heads did not share his views, but he withheld approval for
retrenchments of "revenue-producing employees", and directed that
economy be observed in the working of overtime and that no vacant
positions be filled before the need for their continuance had been
examined. It was also claimed that he had insisted on approving

119. NSWPD (ii), vol. 197, p. 4191.
personally the filling of all positions over £1,500. 120

When it came to his notice that men who had gained
first and third places in examinations for railway inspectorial
positions had not received the promotion for which they had thus
qualified, he "raised the strongest objection to that procedure on
behalf of those men". And to a very generalised question about
whether the railways were training young men for inspectorial
positions in lieu of senior employees with longer experience —
by late 1952 the opposition were assiduously baiting him with such
queries, for he could be relied on to aggravate the relationships
further with almost every reply — he took the liberty of assuming
that the questioner objected to that course. If so, he entirely
agreed with him:

I do not know the details of this latest incident, but I will
examine the hon. member's question — if the hon. member gives
me the names of the officers concerned so that I shall be
able to pin-point my inquiries. This is a case in which I
consider I shall be justified, on the request of a member of
the Opposition, in ministerially interfering with the workings
of the department. 121

120. NSWPD (iii), vol. 1, pp. 532-3, 568; and vol. 2, pp. 902-3,
1065-6. Sheahan specifically admitted all except the last
direction; but this was after all a power reserved legally to
the minister in the Victorian act of 1861 and most corporate
statutes following it (subject to variation of the limit).
Out of all this emerged the legislative provision that the
Public Service Board might be called in to investigate the
staffing position in the transport corporations (above, p. 282,
note 185).

121. NSWPD (iii), vol. 2, pp. 1112. There were many other instances
in which he expressed himself as "happy to interfere ministeri-
ally in this case", thanked even opposition members for
information about NSW acts which enabled him to "politically
interfere", etc., etc. In his notable speech about the "apple-
sauce of intervention" (see Appendix D) he highlighted the
inconsistency of opposition members who claimed to object on
(contd. overleaf)
But the most contentious issue erupted in May 1951 when Sheahan was questioned about certain contracts for new trams, and the supply of rail trucks. He immediately volunteered the opinion that elements of transport contracting procedure amounted to "a grave public scandal" and that certain rail truck transactions had "all the elements of impropriety". Sheahan was here antagonising not only his officials but also ex-minister O'Sullivan. The latter demanded an inquiry, and the Premier commissioned the Auditor-General to inquire into the minister's "allegations of gross negligence in placing of Transport Department contracts".

Sheahan also busied himself with personal probing, and when he found a relevant file missing called the police in too. The Auditor-General's report was tabled but not printed. It is, however, clear from the ensuing debates that it defended the corporation managements against ministerial utterances. The principle to ministerial control but continually requested his intervention. But this much is to be said for their attitude: they had opposed the legalisation of the general "direction and control" power under which most of this activity was carried on; but as the fruits of ministerial intervention were being so liberally distributed they were now almost duty-bound to apply for their cut. However their stand on the question continued - with less justification - under more moderate ministers after Sheahan; and their argument that deficit results in railway finance co-incided with the legalisation of the ministerial power was quite inaccurate (e.g. NSWPD (iii), vol. 16, p. 471).

122. NSWPD (ii), vol. 195, pp. 1681, 1612.

and

123. Ibid., pp. 1813-16, especially account of proceedings in SMH, 4,5.1951. The paper referred also to O'Sullivan's earlier annoyance when Sheahan had acted in his place for a short period in 1949 and had "taken unnecessary liberties with his temporary post".
opposition asked how could the railway staff "have any great feelings of regard for the Minister", and regretted that he had made unfounded charges against persons who had no opportunity of defending themselves. They spoke of his "vendetta" against senior officials, alleging that one "high administrative officer" had demanded an apology from him. This was obviously a reference to Garside, for Sheahan's immediate reaction was to state that there was no fundamental difference of opinion between the two "except on the question as to whether he is receiving the advice that he ought to receive as commissioner. I consider that in some circumstances he has received bad advice, which I have refused to accept as Minister". He denied that any apology has been demanded; but immediately read out a letter from Garside dealing with his intervention in the matter of orders for Garratt locomotives, in which the latter had written that some widely-publicised ministerial statements "do not agree with the facts of the case, and I am sure you will see that they are unjust to the Chief Mechanical Engineer and to myself". He then read his own reply which contained the statement: "I do not propose to correct any of my remarks to the Assembly. In fact, the closer examination I have now made will only result in my repetition of them".

124. There were also demands for his resignation.

125. NSWPD (ii), vol. 197, pp. 3705-7, 3743-5, 3789-93. Sheahan did admit that on one occasion he had acted on incorrect advice from a unionist; fantastically he added, "Because I hoped to create in the department a spirit of co-operation, and I did not want any officer to think that I was wielding a big stick as Minister, I minuted the paper - 'I regret that I was misinformed on this matter and I apologise to any officer who may have felt that a reflection might have been intended to them'!" - ibid., p. 3793.
After Garside had permitted himself to be "retired", there was the unusual spectacle of Opposition Leader Treatt using him as the authority for certain remarks he made in a censure motion against the government. Lieut-Col Robson pointed out that it was "impossible to have an enormous organisation such as the Transport Department functioning smoothly and efficiently ... if there is at the head of it discord, argument and disagreement". The ex-army man seemed to see this most clearly: it was the advice Bruxner (also Lieut-Col) had been giving for a generation.

Sheahan is remembered today as the minister who "tried to turn the world upside down in ten minutes", and who made numerous enemies in the process; who intervened in staff disciplinary matters, busied himself issuing "a constant flow of directions", used his influence to obtain preferential bookings for friends, and dealt with subordinates without reference to the commissioner. Even Lang, stormy petrel of an earlier generation, remarked on the latter practice. Senior branch heads were placed in the unfortunate position of fearing, every time they picked up the phone, that it might be the minister to make a further trivial demand or to blast them about some other petty matter.

It will be recalled that the statutory change was designed merely to legalise a policy-administration distinction which had

126. Above, pp.81, 135-9.
127. NSWPD (ii), vol.198, p.5211.
128. NSWPD (ii), vol.197, p.3799.
usually been recognised in practice, even if vaguely delimited. With or without it, so much depended on ministerial personalities; and it was the advent of Sheahan which constituted the major revolution in relationships between corporation and minister. This change quite unexpectedly reversed over sixty years of tradition in the NSWR, and the senior officials, still in possession of considerable statutory powers (even though these were now subjected to discretionary overriding ministerial authority), found it difficult to adjust themselves to it.

Sheahan, of course, believed simply that he was "doing what Parliament always intended a Minister should do, namely, take control of his department and give service to the public". 130 Of his own role he said elsewhere, "I do not hold myself out as an expert on transport matters ... I am merely applying my humble abilities and the common sense that I believe is innate in me to the advice that I have been given by my officers." 131

His removal to another portfolio in 1953 marked the failure of his methods, at least for so long as a corporate rather than a departmental base was retained. 132 The cumbersome

130. *NSWPD* (ii), vol. 197, p. 4193. See also his statements on ministerial prerogatives and the dangers of bureaucracy, cited at Appendix C.


132. He has, however, remained the stormy petrel of the NSW cabinet in which he is now Minister for Health.
THC\textsuperscript{133} had already collapsed, and Premier Cahill took great care thereafter to select less provocative ministers for the portfolio. Bruxner would certainly have been entitled to say "I told you so".

Sheahan's successors, Martin and Wetherell, were prepared to defend the transport corporations against the critics and the concession-hunters. In marked contrast with Sheahan's loquacity, naivety and readiness to ally himself with these interests, they studiously preserved an attitude of reserve in their replies to parliamentary questions and representations, of loyalty to the staffs of the corporations, and of apparent respect for their commercial requirements. Said Martin in 1954:

The attack that is made upon the government transport services is really humbug ... The performance of the New South Wales railways this year, for example, is better than that of any other railway service in the world. They made over \$6,000,000 profit on operating costs ... Many facts about this transport situation have not been made clear to the public or to this House, and it will be my privilege, I hope, to make them clear from time to time. I repeat, the New South Wales railways have shown a wonderful performance ...\textsuperscript{134}

\textsuperscript{133} I have no space to describe its role during these hectic two years in any detail. Sheahan had said of it that it "has rectified many anomalies that have existed and has prevented the Minister from carrying out some recommendations that would have meant further disaster for the transport of this State". (NSWPD (ii), vol. 197, p. 3797). Acting in concert, he and Winsor initiated, e.g. recruitment of railway labour from Britain, extensions to the Enfield marshalling yard, changes in railway plans for Western Line electrification, and a review of requirements for machine tools and of servicing facilities. Some of these actions were no doubt beneficial; but they also forced a reluctant NSWJR management to finalise the Garratt locomotive order and then doubled that order, and they purchased the Baldwin "Mikado" locomotives against NSWJR advice—both types eventually proved unsuitable for local operations. To add insult to injury, the NSWJR had to share the cost of the THC with the other transport corporations.

\textsuperscript{134} NSWPD (iii), vol. 5, p. 462.
A vain hope unfortunately, for he died a few days later. But within weeks of taking over, Wetherell was retorting (when asked to consider the appointment of a board to place the NSWR "on a proper business basis"): "I have yet to be convinced that the Department of Railways is not conducted efficiently as a business undertaking". And he made it clear he didn't expect to be. As he remarked elsewhere, he knew some services were not all that they might be, but the transport corporations were doing their best in difficult financial circumstances.

(f) Hectic Years Continued: Winsor's Commissionership

The change of ministers and disappearance of the THC were not, however, sufficient to restore harmony. Once more it was a matter of personalities. Winsor had undoubtedly augmented the frictions of 1950-52, but his part had been subsidiary to Sheahan's. Now, with his transfer as NSWRC, he became one of the principal protagonists. For the next few years the centre of the stresses and strains in the minister-corporation relationship merely shifted with him to the corporation.

Winsor thrived on personal publicity, and had a habit of making his own announcements through the press. This habit throughout complicated relations with the "controlling" ministers, and was

135. The differences between Martin's approach and Sheahan's were brought out clearly in the parliamentary tributes - ibid., pp. 464-5.

136. Ibid., p. 711; and vol. 8, p. 242.
eventually to be his undoing. 137

As noted previously, he quarrelled with the government over the salary reduction involved in his own transfer, and later over the selection of McCusker progressively to deputise for him, then as his Senior Executive Officer, and finally as his own replacement. He also offered considerable resistance to his own retirement. The appointment of McCusker as his assistant saw Winsor fighting as hard as Clapp had ever done in Victoria. He ignored a ministerial request, and contested on legal grounds the direction which followed. Eventually a modified direction was issued. 138

There is space to deal only with two other episodes. One concerned the announced intention of the NSWWR to apply to the Arbitration Court for a reduction in penalty rates, as a counter-claim to a log of claims filed by the ARU. 139 Union circles marshalled their forces — what had happened to Winsor, a good Labour man put there by a Labour government, and himself a renowned opponent of wage reductions in the 1930's? Penalty rates were sacred to the labour movement, and the proposal therefore highly heretical. A postponement was secured; but the proposal was renewed in mid-1953. The pressure was put on again. The assis-

137. He quickly became known as a "headline hunter". See e.g. his controversy with the chairman of the Railway Appeals Board, argued out in the columns of SMH in July 1954. The minister had to step in to smooth over ruffled feelings in a conference of the parties concerned.


139. This followed a statement by the Premier that the railways were "nearly bankrupt" — SMH, 29.10.1952.
tant secretary of the Labour Council announced that he had spoken to the minister, "who, if necessary, would issue a Ministerial direction to Mr Winsor" telling him where he got off."140

A few days later Martin announced: "After lengthy consideration, Cabinet decided that as Minister for Transport I should direct Mr Winsor to withdraw the penalty rate section of his claims ..."

At the cabinet meeting Sheahan had bitterly attacked Winsor, stating that when minister he had found him very difficult to deal with! Comedy apart, however, other ministers claimed Winsor's submission of such an application to the court without reference to Martin was "incredible", and that he should be disciplined for having placed the government in an embarrassing position. Martin was also requested to instruct Winsor to seek government approval for all future decisions involving policy.141

The other dispute erupted in August 1955, when the *Daily Mirror* reported Winsor as having said that he had appealed to the minister a number of times for money to build a new tunnel at Scarborough on the Illawarra line south of Sydney, that he had had no reply, and that a disaster was imminent.142 This sensational announcement caused grave public disquiet and Wetherell denied (even then in moderate terms) that he had been approached.

140. This statement was reported, with Martin's initial direction to delay proceedings, under a front-page headline "ORDER BY MINISTER TO WINSOR", in *SMH*, 4.7.1953. Episode related also in *LITB*, "The NSW Government Railways", 1954 Addendum; and *NSWPD* (iii), vol. 13, p. 449 and vol. 16, p. 472.

141. *SMH*, 8.7.1953, which reported all this under the headline "WINSOR REBUKED BY MINISTER3".

for money especially for that work.\textsuperscript{143} Another paper asked Winsor and Wetherell to "subordinate their private 'hates' to safeguard the public",\textsuperscript{144} and a week later the two inspected the tunnel. They were in separate parties, and "spoke to each other only occasionally during the two-hour inspection and then only to ask or answer questions". The minister and the chief railway engineer announced that there was no danger, and Winsor reportedly agreed. Wetherell then spoke bitingly of "irresponsible and loose talk" by "some people who want to embarrass the Government".\textsuperscript{145}

Since the \textit{Daily Mirror} published no retraction of Winsor's original statement, Wetherell wrote asking him to report on the matter. Winsor replied that he had been questioned by a reporter and had answered in general terms that the tunnel had been a long-standing cause of concern which could become dangerous in heavy rains. This did not satisfy the minister because the paper had quoted the more pointed of Winsor's alleged statements in the first person. In a further report the latter claimed that the condensation of his remarks by the paper had "conveyed a different interpretation ... than intended by me". Wetherell informed parliament at this point that "The first sensational statement was

\begin{itemize}
\item \textsuperscript{143} \textit{Tbid.}, 10.8.1955. He claimed that the project had been included in a general works proposal, but without any indication of urgency.
\item \textsuperscript{144} \textit{SMH}, 11.3.1955 (editorial).
\item \textsuperscript{145} \textit{SMH}, 18.3.1955.
\end{itemize}
incorrect ... I am not saying by whom. The Commissioner said he was misreported. I do not know in what way he was misreported." He added that his own reply to Winsor had been faithfully recorded by the same paper; if it had not been, he would have felt it his duty to protest and ask for a retraction; and he would have expected the commissioner to do the same. In the minister's presence the Daily Mirror had given Winsor the opportunity to make a statement but he had declined to comment. Wetherell was still not satisfied, and asked him for specific answers to an itemised list of questions. This time Winsor denied he had made any of the statements attributed to him in the first person. Said the minister, tabling all the relevant correspondence: "Thus began one of the most sensational stories of our time which ends with the most sensational indictment by the Commissioner for Railways of a newspaper."

The Daily Mirror accepted the challenge, running a front page banner headline "YOU'RE LYING, MR WINSOR!" — the senior reporter concerned had made a statutory declaration to the effect that the commissioner had been correctly reported. The matter was then raised in cabinet, which expressed its complete confidence in the minister. A deputation consisting of the Premier, the

146. NSWPD (iii), vol. 13, pp. 56-9, 100-1.

147. Sydney Daily Mirror, 31.8.1955. This was Audrey Armitage, who stated that she had worked in London and Paris as well as Australia, and that her reporting had never before been questioned. Before the issue carrying the first sensational statement came out, she had phoned Winsor for confirmation of every quoted paragraph used; and later he had told her he would not deny his statement even though the minister was pressing him to do so.
Deputy Premier and the Minister of Justice was appointed to interview Winsor.148

The main business of the deputation was apparently to remind him that he had agreed on appointment to resign on his sixty-fifth birthday, and to request that he honour that agreement. What followed has already been described.149

(g) Current Relationships

With the main antagonists gone and Enticknap and McCusker together, the NSW made a fresh start. The former lost no time in making his own position clear. Discipline and loyalty had to be strengthened; this could be achieved by fair treatment, encouragement of team spirit, and distribution of "authentic, honest, and truthful information" about its activities. As he interpreted it, ministerial control did not mean interfering in the running of the railways; it was concerned rather with major financial questions and laying down "a general transport policy."150

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148. NSWPD (iii), vol. 13, pp. 145, 223.


150. NSWPD (iii), vol. 16, p. 498 and vol. 17, p. 1684. He claimed the opposition were deliberately ridiculing the transport system to embarrass the government, and that their campaign had inevitably caused morale to suffer. He also highlighted the inconsistency in their role: they were continually demanding intervention to secure uneconomic concessions; and it was therefore time they stopped their "parrot-cry" about the evils of ministerial control. When Winsor went back to the Daily Mirror to publish his own conclusions (series of articles under heading "RAILWAYS FACE DISASTER; THE WINSOR REPORT", 13, 14, 15, 16 and 17.8.1956), and Liberal member Askin pointed out that he also was now blaming ministerial control for many of the system's difficulties, Enticknap dismissed the assertion curtly as "hooey" and political propaganda.
When in Sydney early in 1960 I was informed by many sources that no formal direction had been given for some years; and that government leaders claim with pride (even if it annoys the unions) that relations between ministers and the transport corporations have never been better. The two conditions are of course complementary. It does not mean that ministers since 1956 have lacked influence, but merely that bitter experience taught the wisdom of Morrison's "old boy" basis.

Almost irrespective of the legalisation of "ministerial control", there has gradually developed a tendency on the part of the transport commissioners to submit all important proposals to the minister before making decisions, even though they still have many statutory powers in their own right. Their brushes with Sheahan (and Martin's generalised instruction to Winsor) taught them that it was easier to do this and avoid embarrassing after-the-event directions to vary decisions and reverse policies. It is taken this condition longer to emerge in the NSW, because of the strong tradition of autonomy dating from 1888; but emerge it has.

The government has numerous opportunities to make its wishes known by informal discussion. As in Britain, the

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151. A few minor incidents (in relation to transfer of a hotel site lease and to a series of transport strikes) have since been reported, but they do not affect the generality of these observations on the post-1956 trend.

152. Not without importance in these relationships has been the growth of contacts between government leaders and both departmental and corporate heads at the social level. Receptions are frequently held, with the transport commissioners meeting most ministers on Christian-name terms. As a senior state official put it, this makes government by suggestion easy. It also makes location of responsibility difficult.
power to give a direction hinges over such discussions, but is
now rarely invoked. It is usually enough for the minister to
drop a hint or make a suggestion. The commissioners then
agree to provide the required service or grant the required
concession. This is not to suggest that they are powerless.
They are highly regarded senior officers, and the sensible minister
listens to and values their opinions. But they are no longer
in any real sense apart from the government. Differences of
opinion - on budget allocations or any other matter - are
thrashed out at the conference table; no longer are they argued
out in public. There is a will to arrive by joint effort at
the best decisions in the general interests of the state. This
almost inevitably involves compromises. It is now a matter of
teamwork; neither side (in fact it is inaccurate to speak of
"sides" since 1956) has to consider its personal dignity
offended if the decision goes against it; and conflicts of the
sort common in the early 1950's are therefore unlikely to arise.
Both minister and ministry have full access to NSWIR files; and although the minister is himself circumspect, there are numerous contacts at all administrative levels between officers of his ministry and of the corporation. However, the relationship is still one in which the NSWIR clearly enjoys a higher status than the orthodox department. The ministerial power is essentially a discretionary one, enabling him to intervene if necessary but not vesting him with continuous comprehensive authority for all acts taken. Most of the statutory powers and duties remain vested in the NSWRC, who deals internally, normally to finality, and in his own name, with a wide range of administrative matters. Virtually through a process of trial and error the corporation has worked out the subjects on which the minister should be consulted. These include matters likely to contain seeds of political controversy, such as the more important industrial questions; radical departures from previous practice; and matters involving large

other differences from the departments include distinctive and separate stores, finance and personnel arrangements. Moreover the NSWRC is not bound by the usual rules of public service anonymity, and may make public announcements in his own right - this is apparent from the foregoing description of the Johnson, Cleary and Winsor periods. But then so does the minister make announcements concerning relatively detailed aspects of railway management. It is difficult to detect any system in this: there is not even consistency about who announces general fares and freight increases, even though, since government approval is definitely required here, one might expect the release to come from the minister. Unless minister and commissioner are closely in accord, there are seeds of trouble in this situation - as Winsor found to his cost.
expenditures. It is also now accepted practice to keep the minister informed on all important activities of the corporation.\footnote{And also (although there is in NSW no legal requirement for this) to submit proposed appointments of heads of branches and other senior administrative officers to the minister for confirmation.}
VII. WORKING RELATIONSHIPS

This account of selected phase and episodes in the relations between the corporations and their political supervisors is now continued for the other enterprises.

1. TASMANIAN TRANSPORT

(a) Commissioner for Railways 1910-38

Tasmania's 1910 legislation sought to apply the principle of non-political management to the TGR, and there was no legalised general ministerial power before the 1938 reforms. But Premier Lyons' lament that that principle "had been whittled away" has already been noted. Similar testimony came from two Ministers for Railways who apparently regretted what was happening but could not stem the tide. Thus J.A. Guy protested against parliamentary "tinkering" (e.g. attempts to make the commissioner spend money on something he maintained was not wanted); and later C. (later Sir Claude) James commented that unless an "independent" management were created the advantage of adjusting the railway debt would be lost. There was also the acknowledgement

1. Above, p. 252, note 103.
2. TPD (Mercury Reprints) 1924-25, pp. 72-3.
3. TPD (Mercury Reprints) 1931, p. 96.
by a Nationalist member that "Every concession that had been
got in the Derwent Valley had been got from Ministers, and not
from Commissioners". 4

Three matters are worthy of special mention. One was
the shaping of new works programmes to suit the employment
policies of the government. As Wishart Smith told the 1923
Stead Commission, "Early in 1915 during the regime of the Earle
Government there was a considerable amount of unemployment in
Launceston, and I was requested by the Government to find work
for unskilled labour". 5 Again, the extensive "Tin Dish" devia-
tion project on the main Hobart-Launceston line (which did have
the merit of easing the grade) was undertaken during the depress-
ion because of "the pressing need of providing work for the
unemployed." The work was carried out by the commissioner under
a system which "was a good plan to relieve unemployment ... but
it increased expenditure, and must have made the task of those in
authority unenviable". Men on the unemployed list from all over
Tasmania were "picked up" and each given a month's work. Just as
they were becoming accustomed to it, they had to make room for
someone else, and so on. 6 There was also the obvious political

4. TPD (Mercury Reprints) 1927, p. 26. This was, however, inten-
ded as a criticism of corporation, not ministers.

5. Commissioner's notes, consulted by permission of the TTC.

6. Hobart Mercury, 16.12.1931. New lines were of course built by
the Public Works Dept., but intrusion of such factors there also
had its effect on the capital cost of lines handed over on
completion.
reluctance to allow staff reductions despite the Commonwealth Grants Commission's comments on over-staffing and the penalties it subsequently imposed.⁷

The second matter also concerns employment, but in a more detailed sense. It is generally recognised that railway services have provided many easy billets for unskilled labour, and that politicians have sought to exercise patronage in such fields. Tasmania furnishes a good illustration of this: railway officials recall that D'Alton, who became minister in 1934, was "a power in the land", and that he nearly always got his way: one of his most common demands was that a position be found for a friend or supporter.⁸

The third concerned the proposal made by Commissioner F.P. St Hill early in 1938 to introduce one-class fares.⁹ He discussed this with E. Dwyer-Gray (who was the Acting Minister for Transport and Treasurer) and his reminder - "I would be glad to be informed that Cabinet is in accord with my proposed action in the matter of adopting a one-class fare on the basis referred to" - was clear evidence of his realism about the true value of

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⁸ It is stated that after an interview with him, the commissioner and secretary would "shake their heads in dismay". For years, however, the railway interest had been subordinated to that of the Treasury, and D'Alton's vigour and assertiveness also contributed to an improvement of the railway position vis-à-vis the Treasury - the writing-down, for example, occurred during his ministry. He was closer to the Lang tradition than most Tasmanian Labour ministers, and appears to have been kept well out of the way during Ogilvie's 1938 reorganisation.

⁹ Details from TTO file C.S.O. 161/9/38.
his legal power to take such action on his own initiative. The minister's replies were not only discouraging but also critical of St Hill's arguments. One reply, which concluded with the admission that this was after all a matter for the exercise of the commissioner's responsibility, is reproduced at Appendix D as eloquent testimony to the sort of influence a minister can bring to bear notwithstanding lack of legal authority. In this particular case, however, St Hill was near retiring age and therefore did not have to fear for his reappointment; and the minister involved did not remain long in the portfolio. St Hill's persistence was rewarded after a change of ministers.\(^{10}\)

Wilson's damning commentary of 1938\(^{11}\) had much to do with shocking the state into acceptance of the revolutionary Transport Act of that year. As already noted, the principle of non-intervention was written into that statute, and the ultimate ministerial power was limited to the post-facto right of appeal to full cabinet against decisions of the new TTC.\(^{12}\)

(b) Transport Commission

The most significant thing about this provision is that, although it has now been operative for more than twenty years, it

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10. Although often criticised for its readiness to experiment, the TRC pointed the way to other states both on this question and in the introduction of diesel locomotion.

11. See Table 10.

has been invoked only twice, and then on relatively minor issues.  

| TABLE 10:  TGR: EXTRACT FROM THE WILSON REPORT  |
| (pp. 8 - 9) |

"From the information received in many quarters, a perusal of official documents, and from general observation, although in terms of the Railway Management Act the Commissioner is allegedly free from political control in the management of the railways, I am afraid that if a true history of the railways of this State were written it would tell a sorry tale of political interference over the years, leaving in its train a legacy of unnecessary costs and inefficiency. To a more or less degree this applies in all countries where the railways are State-owned, but in none to such an extent, or with such unhappy consequences, as in Tasmania. Whatever feelings one may have on this matter, it is surely apparent from the experience of the past that this intolerable position must be remedied, and it is inconceivable that the State should engage the services of a highly paid and skillful Transport Administrator if he is not allowed to bring his skill and ability to bear in the task for which he was appointed, but is thwarted at every turn by political considerations and the domination of a Minister of the Crown for the time being who, with probably the best intentions in the world, may require this or that to be done against the better judgment of the specially-selected transport authority."

On the first occasion, in 1941, regulations were drawn up under the Transport Act prescribing the appeal procedure.  

The minister then submitted his appeal to disallow the TTC's action in agreeing to recognise the National Union of Railwaymen of Australia in Arbitration Court proceedings. The TTC put


15. Formed following a split in the ARU and widely regarded in labour circles as a "scab organization".
its own case and the Governor-in-Council then upheld the ministerial appeal. But the Arbitration Court's jurisdiction was superior to that of any state authority or legislation. The futility of the appeal was thus blatantly apparent. The union could not be prevented from lodging its claim, and this was granted by the court, although the Tasmanian government openly contested the hearing.

The second case, in the late 1940's, concerned the TTC's decision to increase bus fares on the route it was then operating to the Hobart eastern-shore suburb of Lindisfarne. The minister's appeal against this decision was also upheld; but the recoup provision then came into play and the difference was reimbursed to the commission.

That it has been found necessary or desirable to invoke the power on two occasions only does not mean that ministers have not had their way on other questions. Both commissioners under whom the TTC has functioned have demonstrated their

16. TTC Minutes, 1940-41, p. 56; memorandum Clerk of Executive Council to Commissioner for Transport, 17.4.1941; and Launceston Examiner, 18.4.1941.

17. See report in Launceston Examiner, 25.4.1941. The judge commented that he seemed "t. small politics running all the way through this".

18. The issue was of only peripheral importance to the TTC, for it was merely operating the service as a temporary measure. Before long it was transferred to a new corporation, the Metropolitan Transport Trust.
readiness to "co-operate" on matters of "Government policy".

Thus, at a conference held at Parliament House during the road services expansion controversy in 1947, a member asked whether he or the government gave the directions. He replied that he accepted full responsibility ... I take no directions from the Government. I have never had a direction from the Minister ... I cannot disregard matters of Government policy, but there is no conflict between myself and the Government on this matter. They are kept in close touch with what the Commission is doing.

And when asked whether he had refused any government suggestions, his reply was: "Yes, nine out of every ten".19 Twelve years later his successor summed up the situation thus:

The Commission is free to make policy decisions, and to conduct its administration without political interference ... However, the Commission must, of course, take Government policy into account when making decisions. The practice has been followed of consulting the Minister and the Government regarding major policy matters.20

In fact, although legally the minister is restricted to appealing after the event against decisions of the TTC (to which end minutes of its meetings are submitted regularly to both Minister of Transport and Premier), the practice has developed of submitting detailed proposals in advance on all matters judged to be of major importance.21

21. The substitution of this method of preliminary consultation for the statutory formula was confirmed recently when the Liberal opposition moved to censure the government on the TTC's action in dismissing fifty temporary railwaymen. The Premier's reply acknowledged that the TTC had not acted before submitting a recommendation to the government and obtaining its approval. Hobart Mercury, 22.9.1961.
The provision of a separate transport minister in 1956 was due partly to a reshuffle of portfolios to suit cabinet convenience, partly to a desire to have a minister located physically in the TTC buildings, which are some blocks away from other state offices. This physical proximity of course makes for close contact, although even since then some ministers have been much more interested in transport affairs than others. One medical man was merely marking time there until he could be moved to the health portfolio, whereas Mr J.B. Connolly, a retired bookmaker and widower living alone, made transport administration something of a personal hobby.

In general it may be said that ministers often suggest, hint or request, and the commissioners often agree to make suitable decisions, thus avoiding any overt recognition of political pressure. But it is equally true that their advice is valued and given careful consideration by most ministers, and that they do also still make many decisions on their own initiative. In so far as the ministerial relationship is concerned, then, the situation is little different from that now existing in the VR and the NSwR.

As indicated by the practice of circulating minutes directly to the Premier, it is easier in a small state for the

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22. Before 1956 the transport ministry was shared with some other portfolio (often the Treasury) which required the minister to accept much closer responsibility and therefore occupied most of his attention.
head of government to keep in touch with all branches of administration - he is generally more of a "boss", less of a team-leader. The virtual supersession of the Minister for Transport by Premier Cosgrove was demonstrated during proceedings which followed allegations that the latter had accepted contributions to party funds from private bus operators in return for assurances that the TTC would not put them off the road.

The case began before a royal commission in December 1947 and concluded at the Hobart Criminal Court early in 1948. Cosgrove was found not guilty and resumed the premiership from which he had temporarily retired. The following comments concern the attempts made, particularly before the royal commission, to establish whether he had any control over TTC activities. The case clearly indicated the existence of an extra-legal "old boy" relationship, and the need to rely on statements by interested parties complicated the issue; but no evidence of criminal intervention was produced other than the allegations of the bus owners.

The accusing parties testified that Cosgrove had informed them: "Although Mr Wilson is the Transport Commissioner, ... he has got to do as he is told"; and that he had telephoned instructions to Wilson in their presence. But three ministers who between them had occupied the transport portfolio continuously

23. Details from Hobart Mercury reports, 3 to 10.12.1947, 14 to 23.2.1948.
since 1939 claimed that there had been no interference and that no political control had been exercised during that period.

Wilson agreed that the TTC acted independently of political control, adding that "it aimed to keep that way"; it was definitely not subject to government "dictation". It was the TTC's own policy to extend its road services (although this was conveniently in accord with views expressed by a series of State ALP Conferences), and it took full responsibility for all acquisitions. However it did keep minister and Premier informed of "developments of which they should be aware". Thus he had asked the Premier to ascertain cabinet's feeling on a matter likely to have "certain repercussions", and had no reason to "resent" the Premier's memorandum advising that "the Government offers no objection" and returning the matter for the TTC's "sympathetic consideration".

He conceded that it gave him "a bit of a shock" to read a press statement by the Premier that the government did not intend to take over certain services; he had thereafter expected the Premier "to send for me"; but after a fortnight nothing more had happened so he proceeded with his own plans. He was frequently in the company of the Premier and dined with him and a mutual friend each Saturday night; yet had never discussed the

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24. On having meals together, cf. comment by Lord Simon of Wythenshawe (*The Boards of Nationalised Industries*, London 1957, p. 34) that "The Minister has ... always had close contact with the Coal Board ... partly through formal meetings, more often through informal meetings, sometimes over friendly meals".
Premier's statement. But he admitted saying on an earlier occasion that he "would not be such a fool as to disregard altogether the Government's policy".25

Here vividly illustrated by one of the more sordid chapters of Tasmanian politics is the difficulty in sheeting home responsibility where the strict formalities of the act are disregarded. This is obvious as a matter of administrative fact: it can be said without casting any reflection whatever on the Premier's character or on the correctness of the verdict - for road nationalisation was at the time a subject of much ill-feeling, on which the private operators and the Liberal Party were prepared to go to great lengths to discredit both TTC and government. But in such circumstances it is as difficult to prove non-intervention as intervention.

Notwithstanding all this, the Ogilvie reforms of 1938 were sufficiently drastic to remove many of the more capricious political influences that have elsewhere bedevilled railway administration. This has made easier the task of ministers as well as corporation. The greater financial freedom has already been noted: despite the break-down of the legal formula for rate-fixing as governments have insisted on using the device of below-cost rail freights to subsidise industrial development,26 and despite recurring deficits, the TTC is outside the budget and less

25. See also Wilson's statement cited above, p. 368.
subject to Treasury influences than the rail corporations of the mainland states.

The relative insulation operates in other respects also. Thus, although TGR General Manager C.G.E. Wayne noted that the railways were often described as a "political football", he was able to introduce important economies in spite of union opposition, under cover of corporate autonomy. Ogilvie's early death after the passing of his act, and the advent of war even as the TTC was being launched, were serious blows which operated to prevent full observance of that act. However in a general way Tasmanian Labour governments have remained faithful to Ogilvie's ideas. Indeed, this habit has often been to their advantage, as they have adeptly walked the tight-rope between party and union pressures on the one hand and the TTC's legal autonomy on the other. This very autonomy is frequently used with good buffer (or scapegoat) effect: it assists governments, when they so desire, to decline to be moved by sectional pressures for the good reason that they lack the necessary authority.28


28. The 1959 State AIE Conference passed this resolution on an ARU motion: "That Conference believes that each Government Department should be directly responsible to the appropriate Minister and Cabinet in order to enable policy and desires of Cabinet to be introduced without delay. Conference believes that Cabinet is severely restricted in that regard in its present relation to the Transport Commission, and instructs Cabinet to provide suitable amending legislation to enable the Transport Commission to be altered, or abolished, in order to give the Minister and Cabinet an over-riding authority". But this was opposed by Transport Minister Connolly, and deliberately ignored by the Reece (Labour) Government.
2. **THE COMMONWEALTH ENTERPRISES**

(a) **Commonwealth Railways**

The CR forms a bridge between the state and Commonwealth experiences. It has much in common with the state railway systems - legislation modelled closely on the Victorian; the continuing tendency to use the word "department" indiscriminately despite the numerous corporate characteristics (with the resulting tendency to confused thinking about its administrative nature and needs); and of course the functional similarity.

Its political relationships are, however, conducted in a less parochial environment. The external pressures (which act on corporation and minister alike) are fewer and command less support than in the states. There is not a great deal of political interest in CR operations: it operates through sparsely populated country, and there have been no general increases in charges since 1951. Another important difference lies in the fact that supervision of corporate affairs constitutes only a small part of the duties of the relevant Commonwealth minister. Unlike his state counterparts, his primary concern is always with an orthodox department.

But all this has not prevented a close relationship (and occasional conflicts) developing between minister and corporation. The first point to be noted is the location of the head office in Melbourne despite the centring of activities at Port Augusta. It was noted as early as 1919 that, although "the
entire management is in the CRC's hands subject to a few exceptions", nevertheless the Melbourne location was favoured principally because "the seat of Government is here and the Commissioner is always in touch with the Minister". In fact discussions are held as required between commissioner and minister (or his department), and there is a considerable volume of correspondence between them.

Features of this relationship over the years have included directions given by the government and implemented by the CRC on such matters as the conducting of surveys and the introduction of long service leave; the seeking and/or granting of approval for overseas visits by senior officials and for the purchase of a staff seaside holiday home; the dependence of the CRC staff housing scheme on the government's willingness to make funds available (for all CRC revenue is paid into the Consolidated Revenue Fund); corporate criticism of the government's indecision about the Northern Territory construction programme (which led to overordering of supplies and waste of material), and of its disincl-

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29. PAC, Report upon Commonwealth Railways, Melbourne 1919, pp. 3, 8. Although the seat of government was transferred to Canberra in 1927, the Central Office of DST is still located in Melbourne.

30. These contacts are often related to the corporation's role as agent for the Commonwealth in the technical aspects of railway standardisation, and related negotiations with the states, rather than to its managerial functions. The statutory distinction enabling the minister to take full authority in construction work (Act No.3 of 1917, 3,62) is purely a discretionary one. Such projects are few, and present CRC officials have no memory of the commissioner ever having this responsibility taken out of his hands.
ation to regulate competitive road transport in the Territory, and the recent very thorough consideration given departmentally and by cabinet to the CR proposal, eventually approved, for the purchase of Japanese rolling stock. Such episodes mostly have not grown into major issues; they have been handled discreetly and not exacerbated by the sort of open argument that has on occasions disfigured ministerial-corporate relations especially in the NSW and VR.

But each of the three commissioners who headed the corporation between 1917 and 1960 has been involved in an important dispute which has had some influence in the matter of reappointment. Bell appealed successfully to the Prime Minister to defeat his minister's attempt to unseat him, following a difference of opinion about the desirable route for a Northern Territory link. And Hannaberry's fight concerned the corporation's rights under the recoup system. This contentious issue first arose following political directions on industrial matters during the depression, and it re-emerged with post-war government intervention in the matter of the Leigh Creek coal freights. In the resulting arguments, however, the corporation has for the most part been disputing

31. Reported in various CR Annual Reports. Not all the approvals sought, etc., conformed with the specific statutory controls.

32. These proceedings were complicated by vigorous protests by local manufacturers.

33. See above, p. 96.
with the Treasury rather than its own minister. 34

It remains to consider here the probably unique episode featuring Gahan's relationship with his supervisory minister, Labour Senator J.S. Collings. 35 In accordance with the relevant specific reservation, the latter's sanction was obtained on 7 July 1943, for the appointment of H.E. Watson as CR secretary. 36 Watson took over the post; but on 19 July the minister informed Gahan a returned soldier had to be appointed. Gahan thereupon recommended a Mr Ford, but next day the minister directed that E. Harding be appointed. A week later he procured an Order-in-Council cancelling the earlier approval of Watson's appointment and sanctioning Harding's instead. However Gahan claimed that the minister was exceeding his statutory power, and refused to vary the original appointment.

With Harding away on army duty, the government sought to persuade Gahan to shift his ground with threats about possible non-reappointment when his term expired in November 1944. In February, Gahan wrote Collings:

my refusal to appoint Harding will not, in the long run, adversely affect him ... It was made obvious by you to me that it is intended that he shall be Secretary, and it was

34. This will be considered below as an indication of the effectiveness of the recoup system, below pp.453-7. There have also been a number of differences with the Treasury over the form in which CR accounts are kept - see e.g. CRC, Annual Reports, 1953/4, p. 5; 1955/6, pp. 2-3.

35. Then Minister for the Interior.

36. This was necessary because the post carried a salary above the prescribed limit of £500.
made equally obvious that, as a result of this refusal of mine, I shall not be reappointed after November next.

The threat was repeated in October, after Watson had commenced a High Court action seeking a declaration that he had been validly appointed. Collings then made Gahan aware of correspondence from the Acting Prime Minister (and also a pending cabinet meeting) relating to the "matter of the expiry of the term of Mr Gahan":

It would be unfortunate if Mr Gahan who I understand desires his reappointment to be considered by Cabinet were to give evidence not completely in accord with the case presented by the Commonwealth.

The trial judge had no doubt this constituted a threat:

although ... the letter does not appear to have influenced Mr. Gahan to disregard his duty as a witness, as he gave his evidence freely, independently and candidly, it is necessary to say that it is against the law for any person who has any authority or means of influence over a witness to use it for the purpose of affecting his evidence.

The government's contention that the CRC was "an instrumentality of the Crown", and that his officers held office during the pleasure of the Crown, failed. The judge analysed the relevant legislation, and found for Watson on the grounds that neither minister nor Executive Council had authority to interfere with the CRC in the appointment of his officers, and that the sanction required in this case could not be withdrawn once given. He suggested further that the defendants, Collings and the Commonwealth of Australia, had been guilty of contempt of court, and awarded costs against them.37

37. Details from Watson v. Collings and ora (1945), 70 CLR 51.
It therefore comes as something of an anti-climax to record that Gahan received his reappointment nevertheless. The issue received considerable publicity, but the implications for corporate autonomy were lost, e.g. in motions seeking to condemn the minister for "attempting, by threat, to compel an officer of his department to give false testimony ...".38

There are also frequent contacts between the CRC and his senior officers on the one hand and senior officers of the minister's department on the other, e.g. in relation to corporate submissions the minister has "fed down" into the department for examination. Legally, of course, all powers reserved by the corporate statute are vested in the minister alone - but his department is there to assist him with its specialised knowledge, and its officials sometimes have considerable influence in shaping the direction of his supervisory activities in the corporations. This practice has been the cause of mild irritation from time to time, as when the CR has found departmental advice about its affairs conflicting with its own.39


39. The extent to which this happens probably varies with the experience of the minister. It was noted that, after H.F. Opperman had replaced Senator S.D. Paltridge in 1960, even routine matters the minister had previously handled personally were "fed down". This drew a protest from the CR. The question of the relationships at the official level between corporations and "parent departments" (to use the British term) is one which deserves much greater study. Some further manifestations of relationships at this level will be recorded in the section dealing with TAA and the ANL. I was intrigued on one occasion to find DCA officers debating among themselves whether they had any more right to advise the Minister for Civil Aviation on TAA's submissions than TAA would have to advise him on theirs.
The 13,839 ton "Jervis Bay". From People, 25.10.1961

W.A. Watt.  

Minister for Shipping and Transport 1956-60 and for Civil Aviation 1956-

S.M. Bruce.  
Author, 1923 Shipping Act.

(b) Shipping under the Bruce-Page Government

Of the Commonwealth corporations included in this survey, only the AGSB of 1923 escaped some form of legalised directive power; and its career provides an interesting antithesis to much railway experience.

Until its last months as an active operator of a shipping line it enjoyed a large measure of formal autonomy in practice as well as in theory. Bruce repeatedly pointed out that the management of the line had been vested by parliament in the board and that "it would obviously be undesirable for the Government to interfere"; also that, "since the taking over of the Line and Dockyard by the Board, ... my Department has had nothing to do with either". And Page (as Acting Prime Minister) defended this attitude when the directors fell out over the closing of the UK West Coast Services, and Chairman Larkin appealed for government intervention on his behalf:

The Act of 1923 gave the Board practically a free hand so far as the running of the Line was concerned. The Government has scrupulously observed the intention of the legislature and has not at any time sought to interfere with nor to influence the Board in any matter falling within its administrative sphere ... The Government ... feels that this matter is one of detail within the scope of the operations of the Board, and, as such, the responsibility of coming to a decision rests with the Board. It is considered that the Government must adhere to the principle it has consistently adopted of non-

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40. E.g. replies to parliamentary questions and representations from external interests seeking his intervention - CAA, CP 99, file I 418/2/2; CP 103 (S.21), file L 212/6; CP 189, file L 212/1; etc.
interference in matters which concern the internal administration of the Line.41

Indeed, at a time when government intervention might have saved the enterprise,42 the government still stood aloof.

In the existing economic and political circumstances, the line was being crippled by basic structural elements in its own make-up;43 if left alone, its decay was virtually ensured.44 The paucity of ministerial powers therefore suited the government very well.

Towards the end it did intervene in two ways not envisaged in the shipping legislation, but only to deal the enterprise its death-blow.

The first of these was the Bunnerong contract episode, which concerned the AC3B’s dockyard activities. Sharkey and Campbell commented in their colourful (red) language that

If the Commonwealth Shipping Line perished through thuggery the demise of the Commonwealth Dockyards was a clearcut case of infanticide. The Commonwealth through its Attorney-General went into the High Court and swore away the life of its own offspring.45


42. And was requested by it: e.g. requests for relief from the costly requirements of the Australian registry in relation to crew wages, accommodation standards, etc. (which none of its competitors had to face), and from fixed interest charges on ships out of commission; also requests for fresh capital advances.

43. E.g. the financial and registry requirements, and also the top-heavy system of management, which included three full-time directors and two full-time general managers. On the first, see above, pp. 188-90.

44. Assisted, as the government was well aware, by the disruptive tactics of the unions and the squabbles of the directors.

Despite the axe these authors had to grind, this is no great exaggeration. However, if Bruce had included the usual ministerial contracts reservation in his 1923 legislation he could have achieved the same object much more discreetly – he could then have avoided the unedifying spectacle of the Commonwealth openly suing its own authority.

The dockyard,46 which had been vested in the ACSB in 1923, built a number of vessels for the line, and did much other nautical work for it, the navy, and other customers. But with the pre-depression slackening of shipping activity, its management had to look elsewhere for orders to maintain output and the level of employment. Thus the ACSB successfully tendered47 for the erection of six turbo-alternator sets for the Sydney Municipal Council at its Bunnerong power station.

Angered at this "government" intrusion into what it regarded as a private enterprise preserve, the NSW Chamber of Manufactures took up the issue. The government (which was not directly involved, for the ACSB was acting quite independently) also viewed the transaction as unethical, and promptly took up their case. Latham, as Attorney-General, sued the ACSB on behalf

46. At Cockatoo Island, in Sydney Harbour. This had been acquired by the Commonwealth from the State of New South Wales in 1912, and it operated during the later war and post-war years as a branch of the Prime Minister's Department, parallel to the branch which managed the shipping line and also exempt from the usual departmental staffing controls.

47. There were twelve tenderers altogether.
of the secretary of the Chamber of Manufactures in an attempt to have the contract voided. Bruce had previously argued that the ACSB would not be a state instrumentality, and had treated it as something quite apart from government and state, purely a business undertaking. Now, to prevent it acting as such, his government was claiming that as a Commonwealth agency it was committing the sin of doing something for which the Commonwealth had no constitutional power. Counsel for the ACSB sought to justify its action on the ground that the act gave it unrestricted contractual power; but asserted also that it could be justified in terms of the Commonwealth's constitutional powers in the trade and commerce, and naval and defence fields. But the court ruled against the ACSB.\(^48\) A few years afterwards the dockyard was leased to a private firm. To quote Sharkey and Campbell again, "So skilfully was the whole thing managed that the Dockyard had to meet the costs of its own funeral.\(^49\)

Even greater controversy centred around the final disposal of the line itself.\(^50\) The main acts leading up to the sale

\(^{48}\) The Commonwealth and the Attorney-General of the Commonwealth (on the Relation of Edwards) v. The Australian Commonwealth Shipping Board and Another (1926-7), 39 CIR 1. The other defendant was the Sydney Municipal Council. Prof. Sawyer considered that in this judgment "the Court showed a tendency to read Commonwealth powers in a restrictive manner" - Australian Federal Politics and Law, Melbourne 1956, p. 299. But on this occasion it was the interpretation the Commonwealth wanted.

\(^{49}\) Sharkey and Campbell, op. cit., p. 36.

\(^{50}\) On the general background, see above, pp. 2-10.
were these: the government, which clearly desired to put an end to the line, took care to obtain support from the Public Accounts Committee;\(^5\) it then obtained the endorsement of a joint meeting of the Parliamentary Nationalist and Country Parties;\(^5\) the Labour Party immediately moved - and lost on a party vote - a motion censuring it for its unsympathetic attitude towards the line;\(^5\) and the opposition returned to the attack on the estimates debate a few weeks later, charging that the government was acting not only unwisely but also illegally.

The latter point was particularly significant.\(^5\) It was common knowledge that the ACSB had not been formally consulted about the sale, and that the majority of directors were opposed to it. Bruce admitted this, but argued that the defeat of Labour's censure motion constituted parliamentary endorsement of the government's action.

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\(^5\) In fact the committee's first report recommended retention of the line; and it was only after replacement of the chairman and a further secret session that Bruce obtained the report he wanted. See PAC, *Reports on Commonwealth Government Shipping Activities*, Melbourne 1926 and 1927; and Mr H.P. Lazzarini's account at CPD, vol. 197, pp. 1881-2.

\(^5\) Melbourne Argus report, cited CPD, vol. 116, p. 1009. In his address to this meeting Bruce lent heavily on the second PAC report.

\(^5\) CPD, vol. 116, p. 1008 *et seq.* Final vote taken p. 1329. Hughes also opposed the sale - although a government party member he was of course founder of the line.

The opposition sought to highlight the inconsistency in his role. It demonstrated that parliament had vested control of the line in the ACSB by statute, and that Bruce, as author of that statute, had made much of the corporation's independence from the government. And it insisted that, "as an act of Parliament established this public utility, it can only be dis-established by another act of Parliament" - the existing act enabled the board to sell property with the Treasurer's consent, but this was not appropriate to the circumstances.55

The ACSB held the title to the ships, and it therefore had to execute the necessary legal documents. Labour speakers hinted that it was the duty of the directors to rebel: "the members of the Board", they complained, "do not possess sufficient backbone to refuse to give the Government the power it requires". But what else could they do with the cards so heavily stacked against them? By this time, moreover, they had been given the Bunnerong contract lesson.

Yet Attorney-General Latham was sufficiently concerned about the legal quibble to seek further justification for the sale, and it took rather a startling form. "The other way, if the Government is forced to adopt such a course", was to argue from the debenture situation. The ACSB was "a long way in arrears with

55. This view was endorsed by the Sydney Daily Guardian (23.11.1927), under headline "CAN BRUCE MAKE BOARD SELL C'WEALTH LINE", which claimed that he intended "to instruct the line to sell the ships by tender, taking their orders from him as to what tender they were to accept".
its payments", and could therefore be said to be in default. In such cases the mortgagee had the right to dispose of property on which security was given.

One should not look to the ACSB experience to shed light on general trends in administrative patterns and procedures. The circumstances were so bizarre that it was inevitably an aberration from the normal. The experience does, however, provide evidence of the lengths to which non-Labour governments have been prepared to go on occasions to rid themselves of unwanted enterprises, and a warning against too glib assumptions that the corporate form will always provide more beneficial conditions for management in the commercial sense. Notwithstanding Hughes' frequent intervention before 1923, the line had his encouragement; and for a variety of reasons, economic, political and administrative, it exhibited greater managerial initiative and enterprise during its departmental phase.

(c) TAA under the Chifley Government

In TAA's fifteen-year existence party attitudes have on the whole been more influential in setting the tone of political relationships than ministerial personalities. Although the


57. As have recently been made, for example, in the case of the Commonwealth Serum Laboratories, the background to which contains a suggestion of some similar elements (e.g. Canberra Times editorial, 12.5.1961).
course of events has not had much in common with the ACSB experience, at least the dislike of the non-Labour parties for competitive public enterprises has not altogether disappeared. TAA's position has in fact resembled that of the nationalised industries which survived the 1951 change of government in Britain: "having lost their fond father who looked after their early days, [they] found themselves under the care of a stepfather who was very doubtful whether to take on the responsibility of parenthood". Under Labour the corporations "struggled to carry out parental policy"; and since the government was anxious to prove its experiment a success, "the Boards found much more willing compliance than in the later days under Conservative Governments". And, although (other things being equal) it has usually been Labour which has sought to extend the range of controls over corporations in Australia, so it has proved with TAA.

There was clearly an identity of interest between the Chifley Government and the ANAC in getting the new enterprise firmly established, as well as a measure of mutual loyalty born of past political events binding Chairman Coles to the government. His colleagues were also "on-side". All this made for easy informal relations and mutual confidence; and Coles had direct


59. See above, pp. 100-1.
access to the Prime Minister as well as to Drakeford.60

Although the latter likened his role in relation to
TAA to that of state railway ministers,61 the special requirements
of the corporate form were recognised and honoured to a much
greater degree. This was clear when Drakeford defended TAA's
surprise early decision to reduce fares, even though this had
obviously shocked officials of his own department.62 It was
equally clear when he replied to criticism of TAA's expenditure
on radio advertising: "As Minister for Civil Aviation, I do not
attempt to interfere with the business arrangements of TAA.
That organisation is responsible for conducting its own affairs".63
And to opposition attempts to persuade the government to prevent
TAA's purchase of Convair aircraft, he asserted that

The Australian Government must allow the ANAC, which it
appointed, to exercise its judgment in the matter. This
body is ... independent of Ministerial control ... and
whilst major items of policy may be laid down by the Govern-
ment, there is little interference in the management of its
affairs. So far as I know, no interference has occurred.
I, personally, have not interfered.64

60. He used it, for example, in November 1946, after ANA had made
a number of minor alterations in its flight times to enable it
to collect certain air-mails before TAA; after conferring with
Chifley and Drakeford, Coles announced that TAA would be taking
over all the mails - Aircraft, Nov. 1946, p. 15.

61. Above, p. 256.

62. E.g., SMH, 20 and 21.9,1946. The decision was taken significantly
at a meeting of the ANAC held during the absence of the DOA
representative on it.

63. OPD, vol. 201, p. 521. He added in defence of the ANAC that the
sponsored serial referred to had won an award for quality and
that the advertising was contributing to the rapid increase in
TAA's trade, a fact which excited considerable jealousy among
its competitors.

64. OPD, vol. 197, p. 2248.
An early review of TAA's operations commented of staff recruitment that there was "some attempt at political recommendation" - but without any success, one understands. That staff selection was free of political influence was stated categorically by both Coles and Brain. Here TAA presumably benefitted from having a separate and powerful board standing between management and the politicians.

Under the Chifley Government the minister enjoyed various powers of approval on specific matters, as well as a directive power limited to the question of services. Where approvals were sought they were almost invariably forthcoming; and the directive power was twice invoked. Thus Drakeford ordered the establishment of an Adelaide-Darwin service in November 1947 and a Brisbane-Darwin service in April 1949. However, far from running counter to the commercial interests of TAA, which was actively seeking to expand, the main effect of these directions was to permit the enterprise to qualify for recoups in the event of losses being incurred on them individually and also in its aggregate accounts.

The relationships between TAA and the Labour government therefore conformed closely both to classical corporate theory (which requires a high degree of abstention by governments in mana-

65. Stanley Brogden, "This is TAA", Aircraft, Aug. 1948, p.15. The internal arrangement was originally that the general manager was given a free hand below £1000, but that the ANAC's approval was required to his recommendations above that level. The act required ministerial approval over £1500.

66. Goodrich, Economic Structure, pp.114, 116. These two routes involved replacement of services already conducted by Guinea Airways Ltd. and Qantas respectively.

67. For the legislative position, see above, pp. 256-7, 266-7.
gerial questions) and to legislative intent. But of course the enterprise was doing much better than its main private competitor; and since this suited the government very well, it had little cause to intervene.

But the situation did not appeal to the fundamental private enterprise philosophy of the Liberal-CP government which came to office at the close of 1949. It eventually decided to "rationalise" competition by providing government assistance to revitalise the private operator, and in the process TAA's political relationships underwent some striking changes. The Liberals, the traditional advocates of corporate autonomy, were compelled for a combination of economic and political reasons to intervene in airline management to an extent undreamed of by the Labour government which created TAA.

(d) TAA under the Menzies Government

Coles did not remain long after the appointment of TAA's arch-critic, the Liberal White, as first Minister for Civil Aviation under the Menzies Government. 68 There is no doubt that TAA found him less co-operative than Drakeford; but White was not an anti-corporate in the same sense as Sheahan. His deep but irrational involvement has to be explained in broader political terms - he was personally committed to the failure rather than the success of the enterprise. He was, however, out of the way when the government's new policy - which involved TAA's retention - had to be implemented.

68. Above, pp. 139-41.
1. "BIRD OF PREY".
From Sydney Morning Herald, 23.10.1947

2. "FLIGHT ELEPHANT".
From Melbourne Age, 20.3.1948.

3. "EARNING HER KEEP"
(The Liberal's Dilemma).
From Melbourne Herald, 30.11.1950.

4. "SOUN'N BARNET!"
(Public Opinion takes a hand).
From Melbourne Herald, 9.1.1953.

5. "HERBIE DOESN'T SEEM TOO HAPPY ABOUT THIS".
(Government assistance to TAA's main competitor in face of strong protests by Labour Leader Dr H.V. Evatt).

6. "TARGET FOR TODAY"
(Fleet Parity and the Viscount/D06B exchange).
white's three successors all seemed ready to follow in the Drakeford tradition in relation to managerial detail.

An interesting and typical case occurred during Anthony's ministry. He was obviously embarrassed when queried about a TAA official, H.J. Maley, who was sent to a conference in the United States and then refused admission to that country on security grounds. TAA then offered Maley a subordinate position; but Anthony admitted that in his view Maley had let his employers down badly, had made a false oath before the US vice-consul, and should have been dismissed. However he was careful to add that "I did not seek to impose that view" on the ANAC. Asked "Why?", he explained:

Because the commission is a statutory body. The less ministerial interference there is with the internal affairs of statutory bodies, the better it is. As Minister for Civil Aviation I do not tell Trans-Australia Airlines whom they should appoint to this or that post, who should be manager of a technical division, who should be dismissed and who should be engaged. That is not the function of the Minister. The duty of the Minister is to direct general policy, not to interfere with internal management.

Many similar instances could be cited.


70. CPD, vol. 217, p. 353. In the event Maley failed to accept the lower position.

71. E.g. asked to grant free travel to Victoria Cross winners, Anthony replied that the "Government does not itself administer any airline upon which concession travel could be granted ... Trans-Australia Airlines, which is the Government airline, does not operate under direction of the Government. It operates under the management of a commission which does not take directions from the Government on concessional rates, fares or matters of that kind. Therefore, the matter is out of my province" (CPD, vol. 221, p. 253). His agreement to "see what I can do about the matter" of TAA serving a "cold soggy sandwich" for lunch (contd. overleaf)
An episode during Townley's ministry, however, showed that informal contacts did on occasions produce results, or at least that the ANAC endeavoured to please the politicians where this did not involve major changes or much extra expense. Asked in 1954 to arrange for the stocking of Australian wines in TAA aircraft, Townley had replied that the matter was one for determination by the airline, but that he would pass on the suggestion. To a further request in 1956, he explained:

I saw the chairman of the commission, and it was arranged that the airline would carry these wines. I regret to say that after it had been doing so for quite a long time it found that no one was drinking them ... however, I will take the matter up again with the chairman of the commission and see whether he will perhaps give the suggestion another trial.72

But it is most unlikely that the minister would have insisted on such a matter of detail if the corporation had any good reason for declining to comply.

In this section so far I have emphasised the continued tendency of ministers to abstain in matters of detail. This suggests a policy-administration dichotomy in the Goodnow-Bland fashion. On this basis the important difference between Labour and non-Labour practice in relation to TAA is that the administrative function has shrunk with the elevation of numerous questions to policy status. But I have already suggested that this use

of the word policy confines rather than elucidates.\textsuperscript{73} It may therefore be better to say simply that the area of management in which ministers have felt the need to intervene has increased substantially since the change of government. This has been particularly apparent in the selection of new aircraft types, obviously a question of great importance to any airline.

It had been widely recognised in 1947-48 that TAA's future depended on the success of its "gamble" on the pressurised Convairs.\textsuperscript{74} Aviation opinion in Australia (outside TAA) combined to denounce the choice, forecasting abject failure. But the Labour government backed the corporation's judgment to the hilt by giving all necessary approvals; and when the risk paid off, gave all credit to the WAAC which "had the foresight to buy the latest type of aircraft".\textsuperscript{75}

The introduction to Australian airline service in 1954 of Viscount pressurised turbine-powered aircraft consolidated the equipment advantage the Convair had given TAA over its rival.

Had the Chifley Government remained in office, however, the

\textsuperscript{73} Above, pp. 65-9. It is of course a recurring theme in writings on public administration, and I have not been able to avoid it altogether in this thesis.

\textsuperscript{74} That it was a "very great gamble" was admitted by Cole - see Stanley Brogden, "TAA's Enormous Expansion", Airports and Air Transportation, iv, 73 (July 1949), p. 146. See also Brogden, "The Convair Delivery Story", Aircraft, Oct. 1948, pp. 17, 44-6; and my "Commonwealth Shipping and Airline Experience: A Review", Aust. Political Studies Association paper, 1961, pp. 13, 17. In this episode the public line showed much greater initiative than its private competitor, and its enterprise paid handsome dividends in terms of public support.

\textsuperscript{75} Drakeford in \textit{J}, vol. 127, pp. 2248.
competitive advantage would have been much greater. Soon after the advent of the Menzies Government, TAA sought approval for the purchase of six Viscounts; but cabinet decided that the proposal raised an issue of policy which could not be decided at that stage. The issue of policy was primarily the future of TAA itself, resolved for the time being with the adoption of the 1952 Civil Aviation Agreement.

At this stage TAA received ministerial approval for its plans, and the standardisation of fleets as between TAA and ANA was then almost assured by a clause in the draft agreement earmarking the government assistance to the private company also for Viscount aircraft. But at the last moment this objective of the government was defeated by ANA, which decided to cancel its own order for Viscounts and order more Douglasses instead; it obtained the insertion of the words "or other type" after the reference to Viscounts in the agreement. Subsequently TAA sought

76. GFD, vol. 213, p. 1459, and vol. 215, p. 1775. The aircraft on offer to TAA were sold elsewhere, and its introduction of Viscount services was delayed by more than two years - even then their popularity was such that TAA's early faith in them was completely vindicated. After the change of government TAA was also prevented from expanding its Convair fleet, due to the dollar shortage and what has been described as White's "intransigent attitude" (Brogden, "TAA is Fifteen", Aircraft, Sept. 1961, p. 17.) When Anthony stated in November 1952 that "The selection of the type of aircraft to be used by the operators is primarily one for themselves" (GFD, vol. 220, p. 4030), the emphasis was therefore already on the adverb.

77. To its own great disadvantage the private company erred in under-estimating the passenger appeal of turbo-prop aircraft. But it also had aspirations to be an international operator, and the longer-range DC6's were better suited for this purpose; further, it expected delivery some months before TAA could get its Viscounts. See Goodrich, Economic Structure, pp. 151, 165-6; (contd. overleaf)
ministerial approval to purchase one DC6 to enable it to compete more effectively with ANA on the long single hop to Perth; but this request was also refused, Anthony expressing concern that the operators should not be allowed to over-equip merely to gain some competitive advantage. 78

The specific contracts reservation was also used in 1958 to prevent TAA's proposed purchase of French Caravelle jets. On this occasion - just before the passage of the Airlines Equipment Act - both the minister and the Prime Minister were actively engaged in discussing re-equipment plans with the operators. Ansett (ANA's successor) had contested the Caravelle proposal, and sought to persuade the government to reject it. At first the government also refused Ansett's request for Electras. Its reversal of this decision after extensive lobbying by Ansett 79 forced TAA, in view of the established fleet parity policy, also

and ODP, vol. H of R 3, p. 299. As late as 1957 ANA was still myopically convinced that only an unfair extent of government preference to TAA could have caused its own deterioration. But in fact this was (as Sen. Paltridge was eventually moved to point out) a "misleading" explanation. For years the government's efforts had been applied to assisting ANA and restraining TAA. See e.g. P.W. Haddy (ex-ANA chairman), "These are the facts about ANA", published as block advertisement in all metropolitan dailies, about 7.10.1957; and Paltridge's reply, ODP, vol. S.11, pp. 408-9.

78. Goodrich, Economic Structure, p. 168. Eventually a short-term charter from the Dutch airline KLM was approved despite protests from ANA.

79. Who had been advertising Electra services weeks before.
to equip with Electras as effectively as if a ministerial direction had been given; and has been the subject of a great deal of controversy. 30

With something of an understatement Dr Poulton remarked that, "Following intense negotiation ... the airlines finally agreed, with Government approval, to each purchase two Lockheed Electra aircraft ..." He had already explained at some length the reasons why the government was "vitally concerned" and why TAA could not stand out. 81 And Senator Paltridge referred to a meeting between himself, Mr Menzies and the two airline chiefs at which the Prime Minister pointed out to the latter details of government aviation policy, commenting that they had agreed "in the light of [that] information" to reconsider their proposals. 82 Much was thereafter made of the fact that, unlike Ansett-ANA, TAA did not persist with its request; but it is surely fair to remark that it would feel the big stick that had been waved more keenly than its private competitor. 83 The verdict of one leading aviation writer was "compulsion". 84


82. CPD, vol. S.12, p. 941.

83. Its position was further weakened by the fact that Qantas, the other government airline, was also in favour of Electras; and DCA was warning of the inadequacy of most Australian aerodromes for internal jet operations.

TAA Equipment

Above: Super-Viscount Airliner

Below: Electra Airliner
The government had used its import licensing powers in its original decision to refuse Ansett permission to buy Electras. In the case of TAA, these powers offered a method of control alternative to the ministerial contracts reservation in the Australian National Airlines Act. Another restrictive power existed in the Customs (Prohibited Imports) Regulations, under which all imported aircraft had to be covered by a permit from the Director-General of Civil Aviation. The government's power was further clarified and extended in the 1958 Airlines Equipment Act. In terms of new aircraft, therefore, the contracts reservation in TAA's own act has been largely superseded by other formalised powers.

Another controversial equipment issue was the early 1960 exchange of two Ansett-ANA DC6's for three TAA Viscounts. This cross-charter resulted from complex fleet parity negotiations (before the Rationalisation Committee and elsewhere), which included the question of import licenses for additional Electra aircraft. TAA objected to the cross-charter proposal, arguing that it would have to give up three popular modern aircraft for two obsolescent ones. But whereas Ansett's third Electra license was

85. Customs (Import Licensing) Regulations, administered by Department of Trade and Customs.

86. For details of these regulations see CPD, vol. 312, p. 372; and vol. H of R 27, p. 1906. However between the signing of the 1952 agreement and the Caravelle/Electra issue, the relevant powers had only been exercised (as in 1955 when TAA, ANA and Ansett were all refused permission to buy US aircraft) when the shortage of dollar funds so necessitated - see Goodrich, Economic Structure, pp. 173-4.

87. Above, p. 279.
granted, TAA's was made conditional on its concurrence in the proposed exchange. The bait was a good one, and TAA agreed: if it had not, it would have been at a great disadvantage on the main trunk routes. As with the Caravelle episode, there has since been much debate as to whether this constituted a free and voluntary decision.38

The existence since 1952 of special rationalisation machinery39 has inevitably complicated the political relationships of TAA. The government had to force it to observe the original agreement, for under O'Hairman Watt it refused to sign as a contracting party. Watt claimed that, as a separate legal personality, there was no reason why TAA should voluntarily enter into an agreement contrary to its interests.90 The method of compulsion was the inclusion of a clause in the ratifying legislation insisting that the ANAC "shall do all such things as the agreement ... provides that the Commission will do".91 Senator McKenna remarked a few years later that "The truth of the matter was that TAA most violently opposed what the Government compelled

38. The Labour Party was particularly critical, and there was some unfavourable press comment. Thus the Sydney Sunday Mirror (31.1.1960) ran a splash headline: "KILLING OFF TAA - THEY CALL THIS A FAIR SWAP!". On TAA's initial attitude, see McDonald, op. cit.; also extracts from McDonald's special report furnished to the Minister for Civil Aviation on 8.12.1959 (just after his resignation as TAA chairman), cited OPD, vol. 3.17, p. 472.


91. Act No. 100 of 1952, s.5.
There was intense lobbying of members of parliament by both TAA and ANA during the passage of the legislation, and at one stage Mr. L. Byrne, then TAA's legal officer, was escorted from the visitors' gallery and his notes confiscated.

Under the 1952 agreement a few matters were discussed in private with rationalisation Chairman Latham, but there was only one formal reference to him of a matter on which the lines were unable to agree. This concerned an air-route zoning proposal by ANA. But in fact the issue was not even then determined by arbitration. Latham and Minister Anthony both preferred that the airlines should reach some mutually acceptable agreement rather than have a decision imposed on them. The matter was finally resolved in a series of discussions between the airline chiefs and Latham with Anthony actively participating from time to time.

More use has been made of the revised machinery of 1957. To 30 June 1961, there had been thirteen references to the Rationalisation Committee by Ansett-ANA, three by TAA and five jointly. Of these six were settled by mutual agreement or withdrawn before determination, and fifteen were decided by the Co-ordinator.

92. *CPD*, vol. S.11, p. 1384. This was in reply to the minister's "masterly understatement" that, "while effectively bound, TAA was not a voluntary party to the 1952 agreement".

93. See e.g. *Sydney Sun*, 30.10.1952. The Speaker was reported as describing these lobbying activities as "entirely objectionable".

94. The result was that TAA relinquished most of its Riverina services, while ANA agreed to keep off the Townsville-Mt. Isa and Melbourne-Corowa-Sydney routes - Goodrich, *Economic Structure*, pp. 157-9; and *CPD*, vol. H of R 1, p. 745.
There have also been five ministerial determinations of aircraft capacity under the 1958 Airlines Equipment Act. And as TA has pointed out, further controls over aircraft capacity now apply under the terms of the 1960 Viscount/DC6B Cross Charter Agreement, in whose drafting minister and department also participated.

As Goodrich has demonstrated, the changes of 1957-58 reflected a recognition of the growing need for government supervision to maintain the policy of two-operator rationalized competition. The position of the Co-ordinator is significant. The agreement gave him important powers but stipulated that he was to be ministerial nominee. In fact the minister nominated his own top adviser and servant, the Director-General of Civil Aviation. There can be little doubt that he was intended to fill the role of government referee, or that he would act in collaboration with his minister. The latter's recent attempt to deny any responsibility for (or knowledge of the circumstances of) the long-awaited decision obtained through the rationalisation machinery to admit Ansett-ANA to the Darwin routes seems naive.

97. Goodrich, Economic Structure, Part IV.
in view of both the particular nature of that machinery and the
general constitutional relationship between minister and permanent
head.

The ultimate right of appeal from decisions of the
Co-ordinator to the Chairman appointed under the 1952 agreement
had not been exercised before the Darwin decision. What happened
on this occasion is not yet clear, although it would appear that
TAA did appeal, that the Chairman resigned without hearing the
appeal, and that the decision was implemented notwithstanding this
negation of the corporation's rights. Such machinery is more
likely to safeguard the private operator in the event of a
socialist government seeking to favour its own airline. Under
present conditions TAA is the more restricted; yet any appeal
by it is virtually an appeal against the very government on which
it depends for its existence. Its competitor clearly possesses
greater ability to manoeuvre, to dispute, to organise pressure on
the government from private enterprise interests whose support it
values. Its directors do not depend directly on the government
for their appointments; neither must they sink or swim in the
airline business alone. Such factors are incapable of accurate
measurement, but they do underline the difficulties inherent in
the government's rationalisation policy.

The ANAC has written that its chairman has "frequent
personal discussions" with the minister, taking care to keep the

99. Ansett Transport Industries has numerous other interests as
in road transport, tourist services, hotels, etc.
latter well informed on "matters of current interest and importance"; and that these contacts have additional merit in enabling it "in appropriate matters ... to ascertain the Minister's views in regard to proposed new courses of action". This is clearly in keeping with the modern trend in public corporation management. It does not, however, submit minutes of its meetings, and until very recently the minister had not availed himself of his statutory power to convene meetings.

What of other powers reserved to the minister in TAA's own act? The directive power on services has not been invoked during more than a decade of Liberal-GP rule. Qantas may have been directed to get out of New Guinea in 1960; but TAA needed no such encouragement to take over. Ansett-ANA had made its interest quite clear, and had there been any lack of enthusiasm on TAA's part, its rival might well have received the necessary operating licenses. As TAA recognised, this would have meant a further decline in its relative position. In the absence of a formal direction, of course, the recoup is inoperative. However TAA's relations with the government are quite clearly governed first by the requirements of the peculiar competitive situation in which it operates (and the legislation relating to that situation). Its own constitutive legislation, which was intended (apart from a few subsequent amendments) to govern a monopolistic situation, runs a poor second.

100. Evidence to PAC, printed as Appendix 17 to AAPC Reports. See also G.P.N. Watt, "The Australian National Airlines Commission", PA (Sydney), xvi, 1 (March 1957), pp. 85-6.
The specific reservations of power over purchases of equipment and so on are observed subject to the qualifications already discussed; but there has been no occasion to invoke formally the ministerial power to authorise services to places outside Australia and its territories. TAA in fact took over two such services as part of the New Guinea reorganisation; but for reasons again connected with the Ansett competition, DCA has preferred to treat it as hirer of the existing Qantas licenses rather than operator in its own right. The minister is of course involved in all this; but once more the provisions of the National Airlines Act intended to govern such matters have been by-passed.

A series of administrative decisions has also affected the operation of the senior salaries reservation. By cabinet decision of 17 March 1950 a cabinet sub-committee known as the "Higher Salaries Committee" was created, and all ministers with statutory responsibility for approving salaries of chairmen and members of corporate boards were required to consult it before

101. To British Solomon Islands and Dutch New Guinea. It also operates a charter service to Portuguese Timor.

102. Details from DCA file 61/14/50. These arrangements apply to some extent to most Commonwealth corporations.

103. Under Ss 17(6) and (7) of the Australian National Airlines Act, the salary of the general manager is subject to Governor-General's approval; and all others exceeding £2500 (or £1500 before 1959) to ministerial approval.
making determinations. A "Permanent Heads Committee" subsequently developed to inquire into salary relativities and make recommendations to the Higher Salaries Committee. Then, on 5 January 1951, the latter extended its own jurisdiction to all officials of corporations receiving over £2500 pa, which limit has been raised progressively to £3000, £3300 and now £3750. The effect was originally that salaries above £1500 had to go to the minister, who in turn had to submit those above £2500 to the committee. Today ministerial jurisdiction operates in the range £2500-£3750, above which it is superseded by the cabinet committee.

Finally, the Permanent Heads Committee ordered on 22 March 1960 that it be consulted about salaries not covered by the higher committee but falling within the range requiring ministerial approval. This particular procedure was apparently intended to apply only to enterprises associated with DOA, and probably reflects the not-infrequent interferences by that department in airline staffing proposals, a situation which did not please the airlines and was of course known to the Public Service Board chairman and Prime Minister's Dept. and Treasury permanent heads.

104. Or "Officials Committee". It consists of the Public Service Board chairman and Prime Minister's Dept. and Treasury permanent heads.

105. That is, it reserved to itself the same right to examine and report on corporate staff proposals falling within this range as it already held in the higher range; but in such cases it would advise the individual minister rather than the cabinet committee.

106. TAA and Qantas Empire Airways Ltd.
Board. The public service influence in all this does not need stressing.

TAA proposals which did not gain approval included that for an increase in the general manager's salary in February 1953; and that for the granting of marginal increases to a number of senior officers in February 1955. DCA pointed out on the latter occasion that the increases suggested exceeded those granted its own officers, and the minister referred them back to TAA for reconsideration. It made a few adjustments, and on resubmission DCA's advice was that "It would appear that we have gone as far as we might reasonably do in this matter without taking responsibility from the Commission". It was suggested then that the statutory £1500 limit might be raised, because the inflationary wage spiral was bringing more and more officers into the range requiring ministerial approval. The opinion is held that no more than a few top positions need be submitted to preserve adequate control: for in general lower rates could only move in accordance with variations at the top.

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107. The minister refused to support this because it would have raised that officer above the top permanent heads and "there would be unending repercussions throughout the Public Service". This and following details of salary approval procedures from DCA file 61/14/50.

108. There have been some unusual twists in the operation of this staffing control. On departmental advice the minister deferred recommendations for further increases in 1956; but DCA later learned that Chairman Watt's recommendations had been resubmitted directly to the Higher Salaries Committee, and some at least supported by the minister and approved without its knowledge. Earlier there had been some embarrassment over certain Qantas proposals when Townley became Minister for Civil Aviation. He had approved them without consulting his department, and therefore without being told (or reminded) of the need for reference to the Higher Salaries Committee.
A further deviation from the statutory salary reservation is the practice of exempting pilots' salaries - which usually exceed the minimum limit - from its application. But the convention was strained in 1959-60, when the pilots' association threatened strike action. TAA came under considerable criticism for offering increases while the other airline operators were resisting all demands; and it then requested covering ministerial approval under the terms of the act. The increases were duly paid; but in the belief that this represented an attempt by the corporation to dodge responsibility for its own decision, the formal approval was refused.

Another unusual case concerned representations to the minister against TAA's industrial policy by the Commonwealth Foremen's Association. The minister asked his department to investigate; it was not sympathetic to the corporation's attitude and informally threatened a ministerial direction if this was not altered "voluntarily". When I queried this I was informed, after some thought had been given to the matter, that probably the minister didn't have such a power in legal terms; but that a letter from him beginning "in my view it would be desirable to ..." carried a lot of weight and would usually prove sufficient.

On the other hand, as indicated by Watt's refusal to participate voluntarily in the 1952 Civil Aviation Agreement and

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109. This is a convention borrowed from Qantas. Pilots are specifically exempted from the salary reservation in the "Financial Directive" from the government which serves that enterprise in lieu of a statute.
his deliberate by-passing of DCA on a salary submission, TAA does on occasions speak its own mind with considerable vigour. Watt also drew attention to the serious drift of staff resulting from governmental indecision in the years 1950-52; and complained about the burden of the air navigation charges TAA was paying but ANA had refused to pay. TAA also showed clearly that it was not happy about the government's 1957 decision to impose excise on kerosene; and it incurred government displeasure when it entered into a close working relationship with Guinea Airways Ltd of South Australia "without proper consultation". Again, Chairman McDonald publicly defended TAA's initial position in the aircraft equipment controversies of 1958 and 1960.

110. Brisbane Telegraph, 18.5.1950.

111. CPD, vol. 218, p. 448. This question was settled in the 1952 agreement.

112. This increased operating costs of turbine powered aircraft with which TAA was largely equipped. The private operator, on the other hand, then had no such aircraft, and had put pressure on the government to this end. The decision compelled TAA to fall in with its wishes to increase charges. See Goodrich, Economic Structure, pp. 193-4; also Ansett's reported statement, CPD, vol. 8, p. 502.

113. "Airline Manoeuvres", Australian Financial Review, 19.11.1959, p. 47. The arrangement had made that line virtually a subsidiary, and was intended as a counter to Ansett's "take-overs" of a number of other small operators; but it was effectively blocked when Ansett bought up a controlling interest in that company also.

114. Above, notes 80, 38.
As a final example TAA has in recent annual reports drawn attention to its disadvantageous position in respect of intra-state operations. His attention drawn to these comments, Senator Paltridge conceded that TAA "has always held the view, and always strongly pressed the view, that in its opinion no restraint at all should be placed on its operations in respect of intra-state services. Mr. McDonald said - and I have acknowledged it in this chamber on a number of occasions - that that was the view of the \( \text{ANA} \); but he added categorically that "The Government ... for policy reasons, has decided that that view shall not be implemented".\(^{115}\)

But, as already indicated, TAA's protests can rarely be as vigorous as those of its competitor. The present chairman, Chippindall, has been quick to join issue with Ansett when the latter contends that TAA is still receiving favoured treatment from the government, and seeks to inflame political prejudices against

\(^{115}\) CPD, Senate, 23.8.1960, p. 121. On another occasion he remarked, inferring that he would not want it otherwise, that "I do not feel in any way obliged to dovetail anything I say with something that appeared in the TAA report ... TAA being what it is - a virile and effective organisation - does not lose any opportunity to put its own point of view and to present its own particular case" - CPD, vol. S.17, p. 392. According to Labour spokesmen, however, the government has in pursuance of this policy directed TAA to withdraw applications to state licensing authorities (in cases where their willingness to approve was known, as in NSW) for licenses to operate on intra-state routes. TAA's Darwin concession had been widely regarded as helping to offset Ansett-ANA's intra-state advantage; and Brogden has stated that the "loss by TAA of sole rights to Darwin means that Ansett-ANA will, in future, carry about 85% of the non-competitive traffic on Australian mainland services" - "TAA is Fifteen", \( \text{op. cit.} \), p. 18.
He is on record as describing Ansett's latest claims as "bleating" and "utter rubbish", and commenting that "Ansett-TAA enjoys benefits far outweighing those of TAA". Notwithstanding, Ansett has succeeded in winning further government support by the arguments Chippindall ridiculed. The awkwardness of his position is apparent: consistency demands that he contest similarly the current government proposals; but he would be more than human if the habits of a lifetime as a departmental officer and thoughts of re-appointment in the not-so-distant future did not encourage a more cautious attitude at this stage.

The unorthodoxy of the airline situation is underlined by the fact that the Menzies Government now has a vested interest in the success of TAA's private enterprise rival. It is committed to the policy of preserving a system of two major operators and has a fundamental preference for private enterprise. But more specifically the guaranteeing of much borrowing by the private operator has given the government a direct and substantial financial interest in it. The government therefore stands to lose heavily if TAA again attains the dominance in the industry its superior enterprise and service earned it before 1952 and during the currency of the relatively ineffective agreement of that year.

116. E.g. Ansett's 1959 letter to businessmen demanding support for the "non-socialist" airline; also the well-known July 1961 "ANSETT LETTER" to parliamentarians and press giving his interpretation of "the facts" of the airline situation.


118. On the relevant appointment histories, see above, pp. 104-6.
Hence the deliberate attempts to restrain it in the interests of restoring and preserving the necessary balance. 119

(e) The Australian National Line 120

The ANL's legislation is modelled on TAA's; and for most of its existence it has shared the same minister with that enterprise. 121 As might therefore be expected, the basic provisions and attitudes shaping the relationships between the ACSC and its minister are much the same as those noted in the case of TAA. They have, however, been far less complicated by the special requirements of industry rationalisation; and suggest the pattern of relations which would operate if TAA were governed only by its own act, rather than those which do in fact operate.

As with TAA the minister is empowered to give directions

119. A feature which it has not been necessary to stress in this thesis, is that some at least of the controls the government has secured over TAA apply equally to its private competitor in the enforced duopoly situation. Despite the preservation of private ownership in a large sector of the industry and the cultivation of an appearance of vigorous competition, government controls are so extensive that the system has been called "pseudo-nationalisation": Brogden, The History of Australian Aviation, op. cit., p. 154. Thus a senior TAA official suggested to me that airline "policy" is now the prerogative of the government, and the actual operators public and private are little more than agents functioning within set terms of reference. It is in the way the controls are used that discrimination may emerge.

120. I am not concerned here with the period of provisional management between 1946 and 1956. This was public corporation management in name only, effective control being centred in ministerial officers. See above, p. 48.

121. Although not the same "parent" department, The ACSC took over the second shipping line from the ASB on 1.10.1956; and between 24.10.1956 and 5.2.1960 Sen. Paltridge was both Minister for Shipping and Transport and Minister for Civil Aviation.
concerning the establishment of new routes by the ANL; but also as with TAA there has been no such direction by a minister of the Menzies Government. The ACSC has reported this fact regularly in its annual report in accordance with the statutory requirement. But it also recorded that the minister "asked that the possibility of establishing a regular service from the Eastern States to Esperance and Albany in Western Australia be investigated". On this occasion the industry's internal and voluntary rationalisation machinery was brought into play, and a two-monthly service inaugurated with all the coastal operators participating. The ANL has not so far shown a loss, so there is no question of a recoup claim. It has in fact enjoyed a large measure of autonomy, although there is the same sort of personal contact between chairman and minister as with TAA, and infrequently the minister has suggested that it would be in accordance with the wishes of cabinet that the ACSC consider adopting a certain course of action. On such occasions it has usually been happy to agree.

There has, however, been formal ministerial (or departmental) intervention in the matter of rate-fixing. From its establishment during World War II until recently the rates of the second shipping line were kept in line with those of private operators both by preparatory conferences between the

123. See above, pp. 279-80.
operators to synchronise proposals and by deliberate ministerial policy.\textsuperscript{124} Under the ACSC act the approving of rates was a power statutorily reserved for the minister, and the position is now that recommendations for general increases are closely examined by his department and then submitted to cabinet for final decision; those for variations in rates for particular items are determined by the minister.\textsuperscript{125} Of the recommendations for general increases, some have been subjected to considerable DST "mutilation"\textsuperscript{126} before receiving approval; while the last application for a general rise, made in May 1960, was rejected in its entirety. At this point, the ANL fell out of step with the private owners, who increased their rates notwithstanding.

The minister has never used his statutory power to convene meetings of the ACSC; but on rare occasions he has attended meetings. The inaugural meeting in 1956 was of course largely a

\textsuperscript{124} Thus the private owners sought an assurance in 1949 that if they increased their charges the Commonwealth line would do the same, and after an examination the Chifley Government virtually approved the all-round increase. On the other hand the Menzies Government withheld approval to an ASB recommendation for increases in 1955 because of a reluctance to add to inflationary tendencies in the economy and in order to restrain the private companies. With the case proved, the increases were eventually granted nine months after application. \textit{CPD}, vol. 202, p. 868; and vol. 5.7, p. 601.

\textsuperscript{125} The ACSC has been given flexibility to make minor variations such as quoting special bulk rates on its own initiative; but here a watchful Auditor-General has insisted in the interests of legality that all cases of this nature must be submitted for ministerial endorsement even though after the event.

\textsuperscript{126} Word used in conversation by a senior DST officer.
ceremonial affair; but since then, if the minister has been available, and especially if political matters were on the agenda, the chairman has invited him to sit in.

The ACSC differs from the ANAC in that it does submit a copy of its minutes to the minister in order to keep him regularly advised of its activities; and two other points of difference are the compulsory reporting of ministerial directions (or lack of them) already noted, and the inclusion on the commission of the permanent head of the minister's department. The latter no doubt increases the play of informal influences. But there seems no reason to assume that it is a one-way process - on most matters the permanent head interprets government policies to the corporation; but equally he is able to interpret and support its requirements in his departmental role. His position must have been a difficult one when the recommendation for rate increases was flatly rejected in 1960, but the events are too recent to permit any objective analysis from documented material. The arbitration provisions of the Coastal Shipping Agreement have not been invoked, although the very existence of that agreement ties the ANL's hands in various ways.128

127. This distinction is of course between the ACSC and ANAC under the Menzies Government. Under the Chifley Government the latter was largely composed of departmental officers.

128. E.g., by imposing a tonnage limit on it and barring it from conducting its own booking, cargo-handling and stevedoring operations. See also above, p. 230.
The ANL is further from the political arena than TAA because of its greater financial resources and the relative lack of a competitive spirit in the shipping industry. Yet the two enterprises share a reputation for efficient management which must be the envy of many private concerns.
VIII. THE MAIN TECHNIQUES ASSESSED

It is now necessary to evaluate both the relative effectiveness of the main techniques of control and also the extent to which working practice complies with statutory intent. This will involve in addition some assessment of what I have called the "extra-legal" factors.

1. THE MINISTERIAL POWERS

(a) Specific Controls

In the discussion of the supervisory provisions of the 1883 bill it was shown that the Victorian legislators made a deliberate choice in favour of reserving ministerial authority in specific matters; and that the matters reserved reflected what were then important political issues. The Victorians argued that the method was constitutionally correct because it preserved the requirements of responsible government on the important matters, at the same time freeing the management from political intervention in purely material questions. Parkes in New South Wales and many others following him believed also that a reserve ministerial

1. I am here concerned mainly with the three techniques which have received general application in the selected enterprises: the specific and general ministerial controls and the recoup clauses. The other special methods of control referred to in chapter five were designed for particular industries or circumstances and do not lend themselves to generalisation.
power in the case of emergencies, or even general policy control, could be preserved by legislation containing a few such specific reservations but no general directive power. However it was also shown that these reservations did not prove adequate in the crisis which developed in Victoria in 1890-91; that Shiels sought to make numerous additions to the list of reservations; and that Deakin and Patterson succeeded in substituting for some the general directive power.

From this point on, the VR operated under a combination of the specific and the general techniques of control, and, as we have seen, this combination has extended gradually until it has become the basic pattern of control in most of the selected enterprises. Only in one case - and that an unorthodox one - has the specific method been dispensed with following application of the general method; and in this case the eventual reorganisation restored the duality. The inference is obvious: despite its greater potential coverage, the general power is intended for use in emergencies only; the specific power is still needed in relation to particular matters over which continuous control is desired.

The VR experience is especially illustrative because - quite apart from its broad historical precedence - it not only involved large numbers of specific reservations of power to ministers but also gave birth to many of those reservations popularly

2. The ASB functioning under the National Security Regulations.
applied in other corporations today.

It is clear that these powers were frequently used to upset corporate desires by ministers like Shiels, Bent and Tunnecliffe, as much for the purpose of demonstrating ministerial supremacy and avoiding the Gillies-Eggleston reputation for laxity as because of genuine need in the public interest. By and large, however, they have declined in importance over the years. This development has been acknowledged partly but not fully by statutory amendment.

Thus the senior staff salaries (appointments and promotions) reservation was belatedly qualified in recognition of the extension of Commonwealth Arbitration Court awards to a large proportion of the VR staff; and subsequently promotion at the higher level was deleted from the matters reserved. On each occasion the limits above which approvals were required were raised. Since most senior positions are filled by promotion, the coverage of this reservation was thus considerably reduced – in fact it has now fallen out of use altogether. Special submissions are still required for appointment without examination of persons of "known ability", for the holding of entry examinations, and the appointment of selection boards. But such references are now also infrequent. Only a few "known ability" cases

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3. Amending Acts Nos 5533 of 1957 and 5918 of 1955. The former also removed the need to seek ministerial approval for overtime payments. For the reasoning behind these amendments, see below, p. 422.
occur each year;\textsuperscript{4} while the number of examinations has been significantly reduced as new recruitment techniques have been adopted.\textsuperscript{5} Not only are such submissions few in number, but staff officers cannot recollect any rejection of a corporate recommendation since the early 1930's.

The external contracts reservation was liberalised by degrees in practice if not in law;\textsuperscript{6} it also finally disappeared in the 1955 amendment. And the limit above which the general contracts control operated was then raised from £5,000 to £10,000. The Sunday service reservation has certainly been used to upset VR plans on a number of occasions; but, while this and others such as country workshops closure and motor bus construction remain in the statute book, they could hardly be described as vital controls. Only a few well-established country workshops remain and it is recognised that provincial and union pressure would combine to defeat any new proposal for their closure. And the motor bus provision is virtually a dead letter because the VR is reducing its ancillary services. Stores are bought either through the Railway Stores Suspense Account or with funds approved in Loan Application Acts; and the operation of the normal finan-

\begin{itemize}
\item \textsuperscript{4} E.g. doctors and publicity officers.
\item \textsuperscript{5} E.g. the acceptance without further examination of school certificate qualifications in the clerical and apprentice grades and the practice of permanently appointing operative staff after two years' satisfactory temporary service.
\item \textsuperscript{6} See above, pp. 303-4, 314-5.
\end{itemize}
cial and contract controls has virtually superseded the stores purchase reservation. Similarly with the reservation on construction of sidings, etc.: major items of expenditure are well covered by other controls, and ministerial approval is no longer sought under this 1891 provision.

The surplus land control is observed, a special Order-in-Council being required for each sale or lease; but, as will shortly be suggested, this is little more than a red-tape machine, for the submissions are numerous but for the most part trivial, and the present property staff cannot recall any ministerial alteration or veto. Finally there is the need to obtain approval for by-laws and staff regulations: fares have always been a contentious issue and were separated from the general provision in 1955, but otherwise in the experience of the officers concerned there has been no recent case of political alteration or veto, and the railway recommendations are approved almost as a matter of course by Order-in-Council.

It is virtually impossible to present in statistical form the volume of informal references as between corporation and minister by which numerous matters are settled; but Table 11 gives such an indication of matters submitted for the full formality of a Governor-in-Council decision during the seventeen months

7. See also Table 11 (note b).

8. There are other reservations not dealt with specifically here, but they do not affect the general picture.

9. Where governments, usually Labour, have desired to extend e.g. furlough benefits to the railway service, this has usually been accomplished by the passing of special legislation.
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(a) Statistics from lists maintained by VR officer responsible for preparing all contract submissions.
(b) The large number of such contracts is explained by the VR practice of contracting by tender for supplies of common stock items for 2-year periods.
(c) Includes some in which the consideration involved is as small as £1; and many at e.g. £10, £15 and £20.
(d) Most such submissions seek approval for the operation of a special service on a particular Sunday (e.g. special football club excursions); only two involved general timetable alterations.
(e) Includes two cases described as "extension of supernumerary appointment".
With fewer submissions the supervision would therefore be more effective.

Yet Table 11 testifies that Victoria has not carried this commendable reasoning far enough. The retention of so many other reservations in matters of detail is a denial of the very advantages the corporate form is meant to give. The constant and so often petty nature of this form of supervision probably represents a greater deterrent to corporate efficiency, a greater preventive of a useful degree of corporate autonomy, than that reserve ministerial power, discretionary but general, which has been so lamented by Thurston and others.

There has been more discrimination in the application of the specific controls in some of the other selected enterprises. In particular the legislation constituting the Commonwealth's shipping and airlines shows greater drafting care in this respect; and the National Airlines Act has been subject to fairly frequent revision. Even so, four years elapsed between DCA's suggestion that the £1,500 salary reservation limit was too low, 15 and the consequent statutory adjustment. This limit in the case of the CR remained at £500 until 1950, by which time the salary of every adult employed on the North Australia Railway had to be approved by the minister. In 1917, when that figure had been set, only five positions had been involved! It was therefore raised

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15. Above, p. 405.
from January 1959 to May 1960 inclusive.

The very number of submissions surely proves the validity of the point Deakin and Patterson were making in 1891, that numerous references on petty matters of detail are not consistent with the corporate objective. At first glance we may not object to the submission of all proposed contracts exceeding £10,000 in value. But even here, when such submissions are as numerous as indicated in the table, we are entitled to ask whether the limit should not be raised further. Some Commonwealth enterprises subject to a similar type of control have considerably higher limits, and the NSWWR have never had to submit contracts of any sort under £20,000. In such cases there may well be questions of political importance or high finance in which governments could more reasonably claim legitimate concern.

It is impossible to see a policy element in many of the other submissions revealed in the table. Why, for example, are leases or transfers of small plots of land worth a nominal £1 or £10 p.a. rental (or even £100 or £500) of such vital importance to governments that the responsibility cannot be left with the highly-paid VRC? Surely reservations of this kind can serve no

10. E.g. the Snowy Mountains Hydro-Electric Authority, which has only to refer to the minister contracts exceeding £100,000 (Act No.25 of 1949, S.31). Others with high limits are the Australian Atomic Energy Commission - contracts exceeding £25,000 (Act No.31 of 1953, S.29); AGSc - purchase or disposal of assets exceeding £50,000 (Act No.41 of 1956, S.16(3)). In the case of the NR, however, the limit remains at the figure of £5,000 set in 1917.
useful purpose. They merely multiply unnecessarily operations of the most routine clerical character and waste time at all levels from typist to Executive Council. It would not be surprising if they also had a deleterious effect on managerial initiative.

As already noted, Victoria has removed (or made less restrictive) some reservations. The 1951 deletions acknowledged that the existing personnel reservations were out of date, and in particular that the overtime approval provision was "not workable" and had been ignored for many years. And the 1955 legislation altered the method of rates supervision to one in which the T.C. did not have to obtain an Order-in-Council for every minor change (i.e. approving the relevant by-law) but had freedom to act within the framework of any general regulation the government cared to make; and lifted the limits above which salaries and contracts approvals were necessary. Justifying the latter change, the minister argued significantly that while he was bombarded with so many submissions he could not be more than "a rubber stamp", for "it is impossible ... to sign all the requisite authorisations and also to consider each one individually".

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11. There is, of course, an opposite view (responsible for at least some of the subsequent additions to the list of reservations in particular enterprises) that checking is a virtuous operation in its own right because it reduces the possibility of error or of improper practice. See e.g. the 1952 addition to the NSW Reserve Reservations referred to above, p. 226, note 49.


With fewer submissions the supervision would therefore be more effective.

Yet Table 11 testifies that Victoria has not carried this commendable reasoning far enough. The retention of so many other reservations in matters of detail is a denial of the very advantages the corporate form is meant to give. The constant and so often petty nature of this form of supervision probably represents a greater deterrent to corporate efficiency, a greater preventive of a useful degree of corporate autonomy, than that reserve ministerial power, discretionary but general, which has been so lamented by Thurston and others.

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15. Above, p. 405.
to £350, exclusive of cost-of-living adjustments. This proviso has been interpreted to cover subsequent basic wage increases, so that the effective limit today is about £1300. The extra-legal methods also used by the Commonwealth for the senior salary supervision form part of a concerted post-war effort to standardise employment conditions as between corporations and the regular public service.

Hanson's opinion of the specific supervisory method was based mainly on his experience in the never under-developed countries, but it seems equally applicable in Australian conditions. "A law", he says, "... which requires that certain decisions of the Board shall be submitted to the Minister for his approval ensures that he shall become immediately aware of those decisions, encourages him to amend or veto them, and delays their operation until his approval has been formally signified".

Moreover,

If many decisions have thus to be referred, Board members are likely to be slow in developing a sense of individual and collective responsibility, the impact of 'politics' on the work of the enterprise will certainly be accentuated, and - at the worst - ministerial procrastination or inconsistency will reduce its efficiency and effectiveness to a very low level. Multitudinous 'approvals' have certainly not helped the Western Region Development Board in Nigeria - and this is only one of very many examples, quoted because it is familiar to the writer, of their deleterious effect.

17. Above, pp. 403-5; also pp. 281-2.
As the ANAC pointed out,\(^{19}\) if there is to be any meaning in the traditional corporate form the management must have a real measure of authority. This surely demands that the minister should not be bothered with leases worth £10 p.a. or timetable alterations. The vice is well illustrated by the TR experience, and also by the old Tasmanian Railway Management Act which left the commissioner's rate-fixing and contractual powers legally quite unfettered, and yet reserved for ministerial approval matters such as the application of small sums of money in the Railway Reward Fund for staff welfare purposes and the issue of permits for the erection of hoardings on railway property.

The specific technique can be used when carefully applied. This involves drastic limitation in scope, restriction to matters of genuine national importance, and frequent revision to adapt it to changing circumstances.\(^ {20}\) Unless these conditions exist, however, it will reduce corporations, in terms of the independence of action available to them, to the position of departments— or worse, for the departmental form, while insisting on the formality of total ministerial responsibility, nevertheless may well permit greater flexibility in the internal delegation of

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19. Evidence to PAC, Appendix 17 to AAPC Reports.

20. Assuming it is desirable that these matters (or at least some of them) should be common to all corporations under a particular government, there is merit in S. Encel's suggestion that such restrictions could be more conveniently applied and kept under review in a general statute covering the administrative relations of all corporations—"Public Corporations in Australia; Some Recent Developments", P\(^4\) (London), xxxvii (Autumn 1960), p.252.
decision-making powers than a corporation hedged in by numerous restrictions having the force of law.

Attention has already been drawn to possible implications of the practice of vesting regulation-making powers in relation to corporate activities directly in governments.21 Unfortunately the experience in relation to the selected enterprises is not sufficiently extensive to permit these speculations to be resolved. Governments have such a power in relation to three of the enterprises - Commonwealth shipping (both 1923 and 1956 statutes), TAA, and Tasmanian transport - but it has seldom been used. One of the few Tasmanian uses concerned the prescription of a procedure for the lodging of ministerial appeals. The only use in the case of TAA has been to define further certain staffing matters; and the regulations were issued as a result of a recommendation by the ANAC.22 And finally, the power has never been invoked in the case of shipping. This was suggested occasionally during the ACSB period: more than once by the Auditor-General, and also by a parliamentary questioner dissatisfied with the lack of an annual report from that corporation who asked whether Bruce would issue a regulation requiring submission of a report. Nothing eventuated, but it was fairly obvious that both the Prime Minister's Department staff and the Audit office believed the power could be used e.g. to insist on more extensive reporting,


22. Australian National Airlines (Staff) Regulations (Statutory Rules 1950 No. 98).
or to prescribe the form of accounts.

(b) The General Directive Power

(i) Use and delimitation: It has been shown that the general directive power was first admitted in the VR legislation, as a result of the Shiels-Speight conflict, in 1891; and that such a power eventually made its way into a large number of other corporate statutes, although for the most part so much later that it could as late as 1937 be interpreted as the hallmark of a near-unique and inferior type of corporation. All the selected enterprises are now subject to this power, although the actual formula may vary from case to case. It has not been possible to obtain a complete record of its use in these enterprises. In any case such a record would not be a reliable guide to its effectiveness, for it would say nothing of numerous occasions where the threat to use it has proved sufficient, or even where its very existence has influenced corporate decisions without any specific reference to it. Nevertheless it is clear that the VR and NSW have felt the impact of the directive power far more than the other enterprises. This is of course partly explained by their long histories, and in particular by the subjection of the former continuously to such a power for seventy years. But it is also attributable in part to the more concentrated political pressures of the large industrialised

23. See above, p. 204.

24. In the latter the legal subjection has been much more spasmodic.
... communities centred around Sydney and Melbourne. There is evidence for this in the frequent intervention of Labour ministers in those states in industrial matters. It is also noticeable that this use of the general power has been uneven, peaks occurring particularly during the regimes of the Hogan Government in Victoria and the Lang and McGirr Governments in New South Wales.

The comprehensiveness of the directive power in the rail corporations 25 has resulted inevitably in an overlap between it and other forms of political supervision. It has frequently been used to assist governments to intervene in financial administration or in matters covered already by a specific reservation. Indeed, where the directive power is unrestricted in its scope, it is clear that even if all the specific reservations (providing for continuous supervision in their limited sphere) were repealed the government would still have discretionary power to intervene where necessary in any of the matters now covered by them. It would be a post facto rather than an ante facto supervision, and the minister might not hear of all cases. But then it is not desirable in the corporate setting that he should be concerned to this extent with managerial detail.

The directive power represented an attempt to retain a degree of statutory independence for corporations while

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25 In TAA and the ANL, of course, it refers only to the operation of services - one of the most important matters in the management of a transport enterprise, however. But in these cases further powers of political direction are provided in the respective industry agreements and another airline legislation.
granting government the right to intervene where necessary on matters of genuine importance to it. This was still quite distinct from the full and continuous ministerial control which operated in the railway departments before conversion to corporate management, and which is still the constitutional hallmark of the ministerial department. Yet had such a power already existed, crises like those which affected the VR in 1890-92 and the Commonwealth Bank in 1930-31 need not have occurred. In each case, however, the crisis was necessary to show the weakness of the existing supervisory techniques, and the general directive power resulted.

This development solved important problems, in that it restored "last resort" powers to democratically-elected ministers, governments and parliaments. But it also created more. How could the power be made sufficiently wide to permit intervention at any point where the emergency circumstances or the national interest so required, and yet sufficiently defined in intent or coverage to prevent indiscriminate interference in corporate affairs? The Victorians were not alone in introducing the word "policy" in an attempt to clarify this intention.

The question which inevitably arises, and which has already been noted, is how to define policy. On one occasion

26. The latter will be considered further below.

the Crown Solicitor supported Clapp’s contention that a matter was not one of policy, but this did not deter the Hogan Government from invoking the “policy” power. In 1947 the western Australian government introduced a bill to reorganise that state’s rail corporation: it contained the provision that “the management was to be subject to the Minister as regards policy only”. In this form the bill did not pass. Another was submitted a year later after further reflection, which had included an attempt by legal authorities to define policy for the purposes of the bill. Said the minister in his second-reading speech:

... the Crown Law Department ... finally gave it up. To say that the commissioners shall be subject to the Minister in matters of policy must only lead to arguments. While a certain matter might be one of policy from the point of view of the commercial or primary producing men, the commissioner may say it is one of revenue to him, and therefore a matter of management. Under this Bill the commissioners will be subject to the Minister in all things.28

The difficulty can be well illustrated by two examples drawn from the experiences related above. First, Sunday observance was a major political issue in the 1880’s, and Victorian politicians believed they could not afford to ignore popular feeling about it. Hence the inclusion of a reservation of appropriate authority in the 1883 VR legislation. But today the running of an additional service on Sunday will not occasion much interest, and it is merely an anachronism that the government still

has to be consulted. Secondly, as recently as 1950 Commonwealth governments could assert that the selection of aircraft types was a matter of managerial detail for TAA, provided only that if American models were selected the necessary dollars were available. But within a few years all this had changed. For political, economic and technical reasons concerned with the airline industry itself, government has developed a vital interest in aircraft types. Their selection can therefore no longer be left unreservedly to the airline managements.

If we believe there is a clear policy-administration dichotomy, then we must conclude that the first matter has suffered gradual demotion, the second has earned quick promotion. These changing relativities are still apparent if, in the modern fashion, we believe that policy occurs at all levels of the hierarchy where discretionary powers exist and that the actual point of decision is determined merely by the political importance at a particular time of a particular matter. In either case it is clear that the interest of government in the affairs of corporations will not be static. Moreover, different political parties have different scales of importance: a bonus payments system, for example, appears as a question of policy to a Labour government but not to a non-Labour government, and so on.

That accurate definition is impossible was conceded by two of the leading adversaries of the last two decades in Australia, R.G. Menzies and Dr H.V. Evatt. Their exchanges during the debate on the Coal Production (War-Time) Bill in 1944 were especially
significant because both drew on the Vt. experience to prove their points. The occasion was the moving of an amendment by the Labour government to its own bill, giving the minister a power of direction in policy matters over the proposed Commonwealth Coal Commissioner. Mr Menzies objected that:

Nobody can tell you what a matter of policy is. As a matter of fact, in the Victorian Railways Act, where the commissioners were supposed to be set up as an independent body, there was a provision that the commissioners would be subject to the direction of the Governor-in-Council on matters of policy. And then someone had enough wit to ask, 'But what is a matter of policy?' The Railways Act in Victoria provided that wherever there was a dispute and the question was a matter of policy it would be settled by the Governor-in-Council. That was a very agreeable scheme. The Minister says, 'That is a matter of policy'. The commissioner says, 'That is not a matter of policy', and then the Minister acting in his capacity as Governor-in-Council, says that it is, and he decides the dispute in his own favour. The result is that the apparent protection conferred upon the Railways Commissioners is illusory. There is no machinery ... for determining what is a matter of policy. The Minister may, with perfect honesty, say to the commissioner that such and such a thing is a matter of policy - that he shall not employ Brown or Jones or Robinson, or that he shall employ Smith. Who is to decide whether it is policy or not?29

Dr Evatt replied:

I agree with the Leader of the Opposition in regard to the Railways Act of Victoria. It is impossible to define in advance what will be a matter of 'policy'. That Act is still the law, yet it would be quite wrong to say that the Victorian Government runs the railway service in that State day by day and week by week. Sometimes it intervenes.30

Notwithstanding this difficulty, it was essential "that general ministerial responsibility on the broad policy of the bill will

29. *úD*, vol. 177, p. 882. Then Leader of the Federal Opposition, he had previously served as Victorian Minister of Railways.

still remain with the Government.\footnote{Ibid., p. 881.} as a matter of "democratic principle."

The Government cannot possibly abdicate its responsibility completely by conferring upon the Coal Commissioner exclusively the authority to decide important questions of policy affecting the coal industry... The general day to day administration of this legislation will be in the hands of the Coal Commissioner who will exercise the discretionary powers that are vested in him. But there will be occasions on which it will be necessary, in the interests of the Commonwealth, that ministerial directions should be given. On such occasions the commissioner will have to accept the Government's decision.\footnote{Ibid., pp. 889-90.}

Here Evatt went to the crux of the matter. The general power may appear clumsy, but it is necessary to ensure that corporations are in the last resort subject to democratic processes. The history of the public corporation in democratic countries has been largely concerned with finding some compromise between the two requirements of managerial freedom and democratic accountability. This need lay behind the VR and Commonwealth Bank crises, both of which produced such a power (even though after a considerable delay in the latter case). Inevitably the difficulty can only be solved by creating a situation in which one side — corporation or government — holds superior powers in the relevant field of operations; and a democratic answer requires that this be the government. As both crises showed, any legislation which delimits ministerial powers to the extent that little or no flexibility remains for use in emergencies, is likely to prove inadequate when
such an emergency arises.

There is therefore much to be said for the general directive power. But it is doubtful whether the inclusion of the word policy can do any more than lead to arguments - as the Western Australian minister suggested. Experience indicates that the NSW clause (which omits it) in normal circumstances does not permit greater intervention than the Victorian clause (which includes it). It is again rather a matter of politics and personalities. Sheahan was certainly not concerned to observe any reasonable limit, but neither was the Hogan Government in Victoria. Most of those concerned with the selected enterprises have obviously had such a limit in mind when considering ministerial-corporate relations, but the word policy has scarcely contributed to clear thinking about the problem. I believe therefore that it would be preferable to adopt the phrase common to most of the UK nationalised industries, viz. "matters appearing to the Minister to affect the national interest". This places the responsibility squarely on the minister when a matter is so judged and intervention results. Some attempt has been made in respect of TAA and the ANL to follow this practice.33

Whatever form the directive power may take, the existence of the public corporation with all its differentiations from the orthodox department demands good taste by governments and ministers

33. The expressions are "in the interests of the development of Australia" and "in the public interest" respectively.
in withholding that power except in matters of genuine national
importance. Beyond this, political intervention is a denial of
the very purpose inherent in the creation of corporations.

Before World War II it was fashionable to advocate a
very large measure of autonomy for corporations. But world experi-
ience prompted Hanson to remark at the close of the 1950's that
the corporation, being an organ of government, cannot, in the
last resort, defend its autonomy against a government deter-
mined to 'bring it under the harrow' - unless, of course, that
government is so weak, ill-organised and feckless that it has
lost authority over its creations.34

The Munro and Shiel Government dealt promptly with Speight in
1891-2; that the Scullin Government could not do so with the
Commonwealth Bank in 1931 was due not so much to its fecklessness
as to the constitutional situation which permitted a Senate domin-
ated by the opposition parties to throw out its reforming legisla-
tion on the advice of that corporation.35 But the lesson surely
endorses Paul Appleby's advice to the government of India, described
by Hanson as "very nearly the last word ... on 'autonomy'":36

It should go without saying that true autonomy is out of the
question and not seriously proposed by any informed person ... 
government can always and should always be able to intervene
in any matter really important to the government. Advocacy of
autonomy simply highlights the need to educate responsible
top organs of government in the ordinances of self-denial which
would restrict their intervention to really important concerns.37

34. Hanson, op. cit., p. 343.
35. Although cf. above, p. 142 (note 136).
36. Hanson, op. cit., p. 351.
37. P.H. Appleby, Re-examination of India's Administrative System
with Special Reference to Administration of Government's Indus-
trial and Commercial Enterprises, New Delhi 1956, p. 4.
(ii) Damocles sword effect: The effectiveness of the general directive power is greater than any numerical record of its use would indicate. In Australia as in Britain, "This Damocles sword swings above the board table and need not fail to be effective". Sometimes a minister's threat to invoke it has the desired result. But even more often the threat remains unuttered: the distant possibility is enough.

The power exists in all the post-war British corporations, but up to 1957 had been formally invoked on one occasion only. This was the Conservative government's 1952 direction to the BTG concerning rail fares. Nevertheless, even in the single matter of price fixing, its influence was much greater than this might suggest.

Perhaps the best known example of informal pressure operating in the shadow of the general directive power in the British corporations was the case of the "Clow Differential".

38. Davies, "Ministerial Control", p. 152. Cf. Johnson's observation that, while the directive power was "the crux of ministerial control", it was "chiefly a stick behind the door" - "Accountability", p. 369.


The British Electricity Authority was asked by the minister to apply the winter surcharges recommended by the Glove Committee. No directive was ever issued; but, while the corporation made known its objections, it complied nevertheless. The same minister, Hugh Gaitskell (as Minister for Fuel and Power), got domestic coal prices excluded from price adjustments made by the National Coal Board in 1948, by the same informal methods.\(^4^2\) Dr. Dalton, sponsor of the general directive power over the nationalised Bank of England, stated of its informal effectiveness thus: "In practice, probably no direction will ever need to be issued. It will only be necessary to hint at [its] existence."\(^4^3\)

All this was well indicated in the case of the British air corporations:

These unofficial powers comprise a formidable collection. Thus ... they always seek his approval (and that of the Treasury) for orders of aircraft, and these amount to 30 per cent of their capital expenditure. They have agreed not to open new routes without the minister's consent. They fly on various routes, domestic and international, because he asks them to and they lose money in the process. They seek his approval for all fares and rates on non-international routes. They refrain, at his wish, from keeping aircraft specifically available for charter work. They come to him for permission

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\(^4^2\) This developed into a "gentleman's agreement" by which the board has undertaken to consult the minister before making any general changes in prices - G.H. Daniel, "Public Accountability of the Nationalised Industries", \(Pa\) (London), xxxviii (Spring 1960), p. 23.

\(^4^3\) Cited by T. Balogh, "The Apotheosis of the Dillettante", in H. Thomas (ed.), \(The Establishment\), London 1959, p. 114. Cf. the view that an innate respect for the authority of governments is in most cases sufficient to ensure that ministers carry the day, (contd. overleaf)
before creating or investing in a subsidiary company, and in effect, get his authority before the disposal of such an investment.

Or in the case of the British railways, where the minister, by means of continuous discussions, has a firm control over e.g. investment plans and fares: "it would seem unlikely that ... the Commission's formal proposals ... should vary in any great degree from what the Minister thought best ... when the public interest so requires, the Minister can call for action ... whether or not the statute specifically allows". A further example is provided by ministers adjudicating in wage disputes between corporations and unions.

Corporations will as a rule be careful to carry the minister with them in controversial matters, and to this end may have to modify their own plans. Decisions made in this informal way are essentially compromises, but they still appear as decisions of the corporation, so that for the most part the minister escapes responsibility and possible embarrassment. That ministerial-

well argued in H. Fairlie's attempt "to expose ... the legend of the BBC's independence and impartiality": "The BBC", in ibid., pp. 194-201.


45. An excellent example is given in D.V. Verney's study (in reference to the Swedish Post Office Board): Public Enterprise in Sweden, Liverpool 1959, p. 66. The case concerned the decision to cease Sunday mail deliveries. The board had taken the precaution of putting the matter informally before minister and cabinet to get their endorsement; but nothing was ever put on paper, and, the decision made, it accepted full responsibility.
corporate relations should so often work in this way is a matter of concern to all who believe in untrammelled ministerial responsibility as the democratic safeguard. It is also of concern to those who wish the financial results of public enterprises to reflect only commercial considerations.

But, whereas some desire to see the general directive power used openly and unashamedly by governments ("converted from a bludgeon to an instrument of national policy")46, others stress the importance of informal discussions and friendly co-operation rather than legal niceties.47 The foregoing account of Australian experiences suggests that close association between government and corporations has become increasingly necessary over the years; and that notwithstanding constitutional difficulties, the latter type of relationship may therefore generally be expected to produce smoother administration.

Whatever the law prescribes, ministers will attempt to exert influence, corporations as a general rule will avoid action they know will displease appointing governments. A large part of the minister-corporate relationship must therefore be informal and unrecorded. One of the lessons of the present study is that there is a considerable degree of similarity in this respect even


between enterprises subject to widely differing statutory provisions.

The Victorian attempt to define step by step the procedure by which the minister may intervene has caused delays, arguments and complications; it has not prevented a determined government getting its own way. The unqualified subjection to ministerial control and direction in the post-1950 NSW provision permits more room to manoeuvre within the law, and this is surely an advantage; but it goes too far in bringing the corporation in legal terms towards a departmental position. It is therefore worth noting that a third type of directive formula, which has evolved in another group of Commonwealth corporations, strikes a happier note.

(iii) The Bank Model: The 1936 Banking Commission considered the question - a vital one during the depression period, during which the Commonwealth Bank Board had not only prevented the Scullin Government from giving effect to its monetary policy but had in fact dictated a contrary policy48 as to what should be the desirable relationship between corporation and government. It rejected the two extremes: first, that conflicts could be eliminated by making the bank subject at all times to government direction; and secondly, that the bank should remain entirely independent and should in all circumstances refuse to accept govern-

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ment direction. Instead it sought to devise a middle course which would preserve the bank's important role, but at the same time ensure close and cordial relations between it and the government in the interests of consistency in public financial operations.

Its view on how this condition might be achieved found expression in Chifley's 1945 legislation; and the formula then devised has been maintained and improved by the succeeding non-Labour administration. It has been applied not only to the two corporations which grew out of the old Commonwealth Bank in 1959, but also (with minor variations) to corporations in fields other than banking. And with the formula providing the desirable reserve power, there has been a significant decrease in the number of specific reservations. The relevant details are included in Table 12.

49. In the latter case the remedy open to a determined government was of course to seek fresh legislation and, if necessary, reconstruction of the board.

50. Banking Commission Report, pp. 205-6. Prof. Bland's comment that this was the first inquiry into Australian public enterprise to face up adequately to the fact that the autonomous corporation conflicted with principles of democratic government has already been noted, above, p. 26, note 63.


52. Reserve Bank of Australia, and Commonwealth Banking Corporation.

In our view, the proper relations between the two authorities are these. The Federal Parliament is ultimately responsible for monetary policy, and the Government of the day is the executive of the Parliament. The Commonwealth Bank has certain powers delegated to it by statute, and the Board's duty to the community is to exercise those powers to the best of its ability. Where there is conflict between the Government's view of what is best in the national interest, and the Board's view, the first essential is full and frank discussion between the two authorities with a view to exploring the whole problem. In most cases this should ensure agreement on a policy to be carried out by the Bank which it can reconcile with its duty to the community, and which has the approval of the Government. In cases in which it is clear beyond doubt that the differences are irreconcilable, the Government should give the Bank an assurance that it accepts full responsibility for the proposed policy, and is in a position to take, and will take, any action necessary to implement it. It is then the duty of the Bank to accept this assurance and to carry out the policy of the Government. This does not imply that there should at any time be interference by the Government or by any member of the Government, in the administration of the Commonwealth Bank. Once the question of authority is decided, there should be little difficulty in preserving close and cordial relations between the Commonwealth Government and the Commonwealth Bank.

2. RELEVANT PROVISIONS OF COMMONWEALTH BANK ACT NO. 13 OF 1945 (S 9)

(1) The Bank shall, from time to time, inform the Treasurer of its monetary and banking policy.

(2) In the event of any difference of opinion between the Bank and the Government as to whether the monetary and banking policy of the Bank is directed to the greatest advantage of the people of Australia, the Treasurer and the Bank shall endeavour to reach agreement.

(3) If the Treasurer and the Bank are unable to reach agreement, the Treasurer may inform the Bank that the Government accepts responsibility for the adoption by the Bank of a policy in accordance with the opinion of the Government and will take such action (if any) within its powers7 as the Government considers to be necessary by reason of the adoption of that policy.
(4) The Bank shall then give effect to that policy.

Chifley explained that "This procedure is to be invoked only in matters of policy affecting the interests of Australia and there can be no interference in the relationship of the bank with its customers, or in matters of day-to-day administration" - OPR, vol. 181, p. 549. And there seems little reason to suspect that his intention has not been carried out in practice.


3. REFINEMENTS IN COMMONWEALTH BANK ACT NO. 16 OF 1951

Spells out procedure for resolving differences more fully:
- bank to furnish Treasurer with statement of its views; Treasurer to make recommendation to Governor-General, who may by order determine policy to be followed by bank; Treasurer then to lay before each House of Parliament within 15 sitting days a copy of the order and also statements by bank and government respectively.
- Requires also that "The Governor of the bank and the Secretary to the Department of the Treasury shall establish a close liaison with each other and shall keep each other fully informed on all matters which jointly concern the Bank and the Department of the Treasury".

The relevant ss of the principal act as amended were 9A and 9C. These provisions were repeated in Reserve Bank Act No. 4 of 1959, Ss 11, 13; and Commonwealth Banks Act No. 5 of 1959, Ss 11, 13.

Even if it does not altogether eliminate the word policy, this formula seems a more accurate reflection of Parkes' conception of a "dormant" ministerial authority for use "in any emergency or as the last resort"54 than either the method of specific controls

54. Above, pp. 219-20.
or the too-rigidly designed or the unqualified general power.
Further, it has the merit of seeking to write into law what does usually happen in practice. Thus, while it provides as effectively as any other for final corporate authority in "day-to-day administration" and leaves no doubt as to the location of responsibility where formal direction occurs, it legalises those alternative processes of informal negotiation, compromise and evolution of "common policies" which so often (even in the Australian banks) substitute for formal directions.

Whether it does all this "without prejudice to the rights and responsibilities of either Minister or the Board" is another question. It certainly puts beyond doubt the legal right of the corporation to differ from the government if in its judgment this should be necessary — democracy will not be offended, because the government still enjoys last resort directive power. It does not, however, solve the riddle of responsibility, for wherever "common policies" are determined government appears to escape accountability even though its role may well have been the major one. Under such a system, moreover, a recoup scheme would be impracticable.

But the deliberate attempt made to encourage co-operation and restraint must surely be held to balance out this difficulty.

55. And far more effectively than unqualified subjection formulae as in the NSWFR.

56. Morrison's requirement, op. cit., p. 265.
The greater flexibility is essentially a realistic interpretation of current practices in ministerial-corporate relations. It recognises that modern government as we know it is a partnership between political ministers and expert officials, both contributing importantly to the formulation and execution of policies. Under it the difficulties which have flowed from the awkward VR formula over the years (i.e., when the corporation has sought to stand on the letter of the law) are avoided; the difficulties flow from the too-sketchily drawn NSWR formula (e.g., when a Sheahan seeks to assume comprehensive power) are also avoided. Yet, despite the emphasis on co-operation, no one doubts that these public banks do enjoy a very special corporate status. There may well be a good case for wider application of the bank formula.

2. PROTECTIVE VALUE OF THE RECoup

Morrison's dislike of a recoup system has already been noted, and it has not as yet become a feature of the British scene. Nevertheless a number of British transport authorities visiting Australia have urged that governments should reimburse corporations for losses resulting from the subordination of business to political considerations. The principle they were

57. Above, p. 205.

supporting had of course been written into the Victorian legislation as far back as 1896; and like the pioneering features of Victoria's 1833 and 1891 acts, had also been copied for other Australian transport enterprises.59

It is first necessary to dispose of the fiction that "the power to claim reimbursement in the formal way mentioned is never exercised".60 It is certainly true that the provision has not always been fully honoured; but most of the selected enterprises furnish some evidence of its use. The VR and CR in particular have quite frequently lodged claims, and these have been the cause of considerable controversy from time to time.

The chequered history of the recoup device has been brought about largely by the existence of opposing points of view as to its value. One of the clearest political expositions of the favourable view was that given by Holman in persuading the NSW Parliament to adopt the provision in 1916 - yet it is in New South Wales that it has in fact been most neglected. The favourable view has also been expressed directly by the VRC from time to time in their annual reports and by numerous railway investigators; and indirectly but forcibly by all those who believed with Eggles-ton that commercial principles should be applied to the railways. After the first recoup had been paid to the VR as a result of

59. On the legislation, see above, pp. 258-67.

Orders-in-Council reducing freight rates on coal and grain, the then commissioner wrote of the "salutary" effect of the provision and commented that if it had been made retrospective the accumulated railway deficit would probably have disappeared.\textsuperscript{61} To the extent that the recoup provision has been observed, it has permitted railways to get closer to conditions of commercial management.

The unfavourable view is shared by many politicians who prefer to keep down the "political side" of the budget for which they have more direct responsibility and to make scapegoats of the rail corporations for as much of the budgetary deficit as possible. It takes the line that the deficits in the long run must be financed by the state, and that the recoup provision is therefore only a farcical matter of book-keeping cross-entries. This attitude is of course supported by the inclusion of railway finance in the general budget, i.e. it is all part of the one consolidated account. There are others who recognise the developmental or "service" aim of the railway undertaking, and therefore argue that it is not necessary for it to show a profit, that meeting its deficit is a legitimate charge on the taxpayer.

Both these views may be technically correct, but they ignore the difficulty that such enterprises are judged, whether reasonably or not, largely by their own balance sheets, and that recurring deficits attract indiscriminate complaints about the

\textsuperscript{61} VRC, \textit{Annual Report} 1899/1900, p. 8.
management itself and may well have an adverse effect on incentives and efficiency. It has also been argued that in making claims corporations have not proved the amount of the actual loss, but the VRC have answered that their act specifies decrease in revenue rather than actual operating loss, i.e. allowing for the existence of a margin above cost in normal charges.

The provision was first invoked in Victoria about 1899, and was soon subjected to parliamentary criticism. There were numerous requests to wipe out the recoup items from the annual estimates, and ministers such as Shiels and Bent (always suspicious of "irresponsible" public authorities) did their best to oblige. Both attempted to beat the VRC down on their claims, and the Irvine "Economy" Government (with Bent as Minister of Railways) took unilateral action to reduce by one half the amount of the recoup to which they were entitled under the 1899 order in respect of grain rates. The government having repudiated its legal obligations, the VRC assumed that order was no longer in force and immediately adjusted the rates.

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62. See also above, pp. 162-3, 170. The latter point was again made in 1952 by "two experts" who investigated the Canberra City Omnibus Service. They reported: "The morale of the management of an undertaking which is faced with large and recurring losses is always undermined" - see PAC, Fiftieth and Fifty-Second Reports, Canberra 1960, p. 40.

63. E.g. memorandum from VRC to Minister of Railways, read out in VPD, vol. 112, p. 3077.

64. They did not, however, fully restore the old rates. The use and abuse of the recoup provision in the years 1896-1906 is examined in my Railway Management, pp. 71-75, 79.
However, under the chairmanship of Tait, who had the difficult Bent to deal with and who saw the VR through what was probably the healthiest financial period in its history, the VRC voluntarily relinquished most of their recoup entitlement, and themselves adopted the view that such claims were unnecessary because deficits if any were made good automatically from general revenue. But under Clapp the recoup idea was reasserted; and in 1917 the claim was extended to cover losses on non-paying lines whose construction had been authorised by parliament since 1896. Since then some recoup items have usually appeared in the railway accounts, although as a condition of the writing down of the railway debt in 1936 the VRC had to forego all claims they were entitled to at that time.

After the first few years in which recoups were received, they adopted the practice of listing the causes and amounts of all such payments in their annual reports. Table 13, which lists details taken at five-yearly intervals between 1905 and 1935, is

65. This had not previously been done, although permitted by the 1896 act, partly because it had not previously been considered worth while keeping separate working records for each line — see Johnson Commission Report, pp.19-20; and VRC, Annual Report, 1916/17, p. 12.

66. After the 1936 adjustment, the VRC ceased to list recoup payments specially, and they have not since assumed the proportions of those which were then cancelled. However, payments have been made in respect of items such as the cancelled liability of the Darling to Glen Waverly Railway Construction Trust (£10,000 in 1937-8), losses incurred in the operation of the Kerang-Koondrook Tramway which parliament vested in the VRC under special legislation (e.g. about £30,000 in 1954-5), and more recently fares concessions granted to pensioners and certain reductions in freight charges. See also above, pp. 315, 318.
TABLE 12: VR: RECOUP PAYMENTS 1905-1935

(as listed under a special heading in Annual Reports and included in Gross Revenue figures - 5-yearly intervals 1905-1935)

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>Item</th>
<th>Amount (£)</th>
<th>Gross Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. 30.6.05</td>
<td>1. Carriage of agricultural produce at reduced rates</td>
<td>46,111</td>
<td>3,582,266</td>
</tr>
<tr>
<td></td>
<td>2. Carriage of Victorian coal at reduced rates</td>
<td>6,072</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. Purchase of Victorian coal at contract prices fixed by Governor-in-Council</td>
<td>2,556</td>
<td>54,737</td>
</tr>
<tr>
<td>B. 30.6.10</td>
<td>1. As A2</td>
<td>8,498</td>
<td>4,443,863</td>
</tr>
<tr>
<td></td>
<td>2. As A3</td>
<td>2,595</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. For conveyance of railways staff between home and work at reduced fares</td>
<td>6,000</td>
<td>17,093</td>
</tr>
<tr>
<td>C. 30.6.15</td>
<td>1. As A2</td>
<td>4,763</td>
<td>1,183,687</td>
</tr>
<tr>
<td>D. 30.6.20</td>
<td>1. As A2</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. Loss incurred on non-paying lines authorised by parliament since 1896</td>
<td>91,355*</td>
<td>95,563</td>
</tr>
<tr>
<td></td>
<td>3. Loss due to preference granted on goods of Australian manufacture pursuant to a direction given by parliament</td>
<td>1,924*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>* amounts claimed and included in balance sheet, but not paid by parliament at time of compilation of report.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. 30.6.25</td>
<td>1. As D2</td>
<td>135,289</td>
<td>12,830,283</td>
</tr>
<tr>
<td></td>
<td>2. As D3</td>
<td>1,764</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. Sum paid to South Australia in respect of operation of certain border railways</td>
<td>2,849</td>
<td>139,902</td>
</tr>
</tbody>
</table>

(contd. overleaf)
intended to give an idea of the kinds of intervention by governments and parliament which resulted in recoups, and the relative value of these payments in proportion to total railway revenue. The amounts do not represent adequate compensation to the VR for all political directions or acts of interference over the years. Nevertheless the recoup system has been of considerable assistance in improving the financial position in some years, it has extracted from politicians a somewhat greater sense of responsibility in dealing with railway affairs, and it has on occasions deterred them from interfering.

The annual reports of the CR provide a measure of the extent to which the provision has been honoured in respect of that corporation. For example in 1927-8 special drought rebates were

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>Item</th>
<th>Amount (£)</th>
<th>Gross Revenue (£)</th>
</tr>
</thead>
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<tr>
<td>F. 30.6.30</td>
<td>1. As D2</td>
<td>199,929</td>
<td>12,086,680</td>
</tr>
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<td></td>
<td>2. As D3</td>
<td>5,120</td>
<td></td>
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<tr>
<td></td>
<td>3. As E3</td>
<td>4,684</td>
<td></td>
</tr>
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<td></td>
<td>4. 10% reduction in freight charges on certain classes of agricultural produce</td>
<td>187,290</td>
<td>397,023</td>
</tr>
<tr>
<td>G. 30.6.35</td>
<td>1. As D2</td>
<td>142,330</td>
<td>9,498,705</td>
</tr>
<tr>
<td></td>
<td>2. AsD3</td>
<td>422</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. As E3</td>
<td>144,045</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. 25% reduction in wool freight charges</td>
<td>48,106</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Reduction in live-stock freight charges</td>
<td>181,734</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6. Payment of special rebates on wheat consigned to Geelong and Portland for shipment</td>
<td>8,567</td>
<td>525,204</td>
</tr>
</tbody>
</table>
granted and the cost borne by the Commonwealth; but in the years after 1932-3, when the government's desire to assist primary producers resulted in twenty per-cent rebates on wool traffic, only one quarter of the difference was made up to the CRC. 67 Again, in 1938-9 it was reported that "a 50% rebate, without compensation to Commonwealth Railway funds by the Government, has been granted ... fencing materials, materials for water supply, cement, galvanised iron, etc., where carried for present resident lessees and new lessees" in the Northern Territory. 68

The recoup also failed to eventuate on the major issue of wage reductions in 1931-2. In the previous year the CRC had recorded 69 that his "department" was not sharing in the ten per-cent depression wage cut granted other Australian railway systems, even though the Arbitration Court had made it clear that it would consider granting a similar measure of relief to other organisations and industries. In the following year he registered his complaint for the information of parliament. 70 He had verbally

67. CRC, Annual Reports, 1927-8, p.17; 1932-3, p.7; 1933-4, p.6; etc.

68. It was clear from the same report that some recoups were being paid in other cases where "applications are made to the Government for reduced rates and freights which cannot be recommended by the Commissioner, but where as a matter of policy, etc., the Government considers [they] should be granted", and also that the CRC was granting other concessions on his own initiative, in which case the recoup was not legally operative - ibid., 1938-9, pp. 9, 10.

69. CRC, Annual Report, 1930-1, p. 4.

informed the minister that he intended to lodge the necessary application on the expiry of the old award covering his employees, and had followed this up with written advice. The minister replied that "it had been decided by Cabinet that no action should be taken in this direction by the Commissioner until he is further advised". A few months later the CRC again approached the minister, but cabinet's decision was that the time was inopportune for such a submission to the court, and that the commissioner be directed accordingly. After relating these events, he cited the relevant recoup clause in full. His accounts were adversely affected by the direction of the minister and he had obtained the necessary certificate from the Auditor-General. He was therefore entitled to be paid an amount representing the saving that would otherwise have been made. He had lodged a claim with the government, but "the amount has not been provided in the Annual Appropriation Act and paid to me".

But this issue paled into relative insignificance beside the question of freight rates for Leigh Creek coal. At the end of World War II the very low freightage of ½d. per ton mile (6/- per ton for the full journey) was fixed by government direction with the object of assisting the State of South Australia to develop its coal resources. At first the heavy loss resulting from this "totally inadequate" charge was borne by the CR account. Subsequently the recoup claim was recognised by the Treasury, and the railway revenue reimbursed. 71

71. In reply to a parliamentary question, Treasurer Fadden stated that to the close of 1955/6 "the value of this concession was (contd. overleaf)
However the realisation that the existing narrow-gauge Central Australian line would be inadequate to supply the needs of South Australia's developing power industry led to the construction of a new standard-gauge railway from Port Augusta to the coalfields region and its re-equipment with modern rolling stock, at a cost of £11 millions. The new line was opened in 1956/7 and South Australia sought a continuation of the concession rates. The two governments agreed on a new rate of 11/6 per ton for the whole journey, which the CRC was obliged to observe even though it was only about one-third of the standard rate. He therefore submitted fresh claims in accordance with the recoup provision, but these were not met. The commissioner, Hannaberry, nevertheless calculated his earnings at the standard rate, showing in his accounts an offsetting item representing the difference between this and the concession rate - due to the corporation from the Commonwealth - under "Sundry Debtors". 72

Negotiations between the CRC and the Treasury were coming to a head when I was in Melbourne in 1959. A senior corporation official spoke admiringly to me about Hannaberry's courage in taking a strong line with the government on which he was dependent for reappointment, and forecast that the matter would soon be resolved one way or another. Shortly afterwards, about £3,750,000, the greater part of which was credited to Commonwealth Railways Revenue" - OFE, vol. H or R '19, p. 1750. Also references in most OR Annual Reports after 1944-5.

Hannaberry's resignation was announced.

The initial reason given for disallowance of his claim by the Treasury was that the new line and lower operating costs had changed the cost to the CR of handling the traffic, and that no recoup would be paid until sufficient experience was available under the new conditions to enable actual cost details to be ascertained.73 In fact the Treasury had by 1959-60 reportedly come to the conclusion that no actual loss was incurred.74

In May 1960 the issue came before the Public Accounts Committee, which was strangely advised by interested authorities.75 Thus the Acting Secretary of the Attorney-General's Department described the recoup clauses in the CR legislation as inoperative and "nonsensical".76 The Auditor-General propounded a view which denied the whole philosophy of the recoup: that the CRG had no

73. Fadden's reply, op. cit.

74. Compare the earlier VR argument, based on the actual wording of the provision (which was common also to the CR), that this was immaterial (above, p. 448), with Treasurer H.E. Holt's 1959 comment: "Although I admire the dogged optimism with which the Commonwealth Railways Commissioners inserts this charge in the annual accounts ... I can find no basis on which his sanguine expectations could reasonably rest" (CPD, vol. H of R 25, p. 2369). Subsequently a committee comprising Treasury and DST officials was set up to investigate the CR accounts.

75. Details from PAC, 50th and 52nd Reports, op. cit., ch. 4; and Hobart Mercury report of evidence before hearing, 3.5.1960.

76. A brief account of this amazing evidence - which proves either how lost a lawyer can be in the interpretation of legislation or how suspect some of our legislation must be, or both - is presented at Appendix E.
right to show such recoups as revenue, and that the profit and loss account should reveal "actual loss on operations" (if any) with the "subsidy" only then taken into account as a measure of unprofitability. And the Treasury made it clear that it also had little patience with that philosophy.

As a parliamentary agent the commission rightly noted the legislative intentions of 1917 - to which Hannaberry had drawn attention; and with which the official attitude is clearly inconsistent. It also noted that the government had on previous occasions met similar claims. It therefore did "not consider unreasonable" Hannaberry's actions. It concluded that an "important" principle was involved; that, if it is intended that the principle should apply to the CR, then some legislative revision is apparently needed; and that, even if actual reimbursement is not to be made, the extent of variations in CR results attributable to "deliberate Government policy" should be disclosed to parliament.

Meanwhile the practice of listing the Commonwealth as a "sundry debtor" was discontinued in the first report presented by the new CRC, and the accounts were finalised on the basis of actual

77. A similar complaint was made at this time against the Canberra City Omnibus Service, but the committee broadly endorsed that undertaking's view that "subsidies" received as compensation for political decisions unfavourable to its commercial interests and quite outside its control were valid "revenue" items - PAC, op. cit., pp. 39-41.

78. It also expressed concern about the delay in finalising the matter - "Notwithstanding the Commissioner's persistent objections and his published assertions ..".
receipts - i.e. without benefit of recoup.

The above-quoted belief that the recoup clauses are never used probably stems from NSW experience - for Holman's section 14A might well be described as the "forgotten clause". Most of the officials I questioned about railway finance in Sydney 79 seemed quite unaware of its existence and somewhat startled when I drew attention to it. Chief Commissioner Fraser informed the Fay-Raven Commission in 1924 that he got "very little" from it, 80 and there is no record of any formal use of the provision in recent times. 81 One official suggested cynically that some Minister for Transport had told the NSWRC to "cut the cake" - after all, the Treasury had to bear the loss in the end.

But this disuse of the statutory provision does not in fact give a true picture - for the parliamentary intention from which it resulted is honoured to a significant extent in less formal ways. The NSWR in fact receives certain direct payments.

79. In the Treasury, the Ministry of Transport and the NSWR.

80. There had been small payments to cover "emergency transactions" at government direction (e.g. in times of serious drought); but when it was pointed out to him that its terms would still cover losses on developmental lines as in Victoria, he commented correctly that this had not been intended by the framers of the clause - it had therefore not been used in this connection: Fay-Raven Report, evidence, p.11. Four years later the losses on developmental lines were of course covered by a separate provision - see above, p. 179.

81. Auditor-General W.J. Campbell (in Australian State Public Finance, Sydney 1954, p. 214) claims that it "has never yet been invoked".
from Consolidated Revenue as part-compensation for government-directed freight and fare concessions, and other payments from the Decentralisation Fund to compensate for specific reductions granted to encourage industrial development in country areas. The corporation has also received since 1953-4 an annual payment of £300,000 towards meeting the costs of increased superannuation pensions authorised by legislation. These are in addition to the developmental lines payment and the payment from the State Transport (Co-ordination) Fund, and all are taken into account before the final profit or loss is calculated. They are therefore in a very different category from any further contributions needed to make up deficits.

The TTC was afforded recoup protection in 1938, specifically in relation to losses caused by general ministerial appeals and by government intervention to vary its "economic" charges. As already noted, the appeal power has been twice exercised; only once was a loss involved, and the amount was duly recouped. But the position has been more complex in relation to charges.

82. In 1959-60 these totalled about £2 millions - see Auditor-General, Report, 1959-60, p. 29.

83. This recently created fund is administered by the Premiers' Department assisted by an inter-departmental Secondary Industries Committee. The NSW received £186,918 out of a total pay-out from the fund of £317,687, in 1959-60 (from Auditor-General, Report, 1959-60, p. 66).

84. See above, p. 181 (note 87).
There has been a long series of recommendations by the TTC and by various transport investigators for increases in scales of charges to bring them up to what might be regarded as the "reasonably economic" level stipulated by the act. But they have rarely been accepted without "requests" to defer action, lengthy negotiations, investigations by officials of the Treasury and other state departments, and eventual compromises at government insistence. As the TTC informed parliament, "governments have been loath to pass on to users of rail transport the whole of the extra cost involved ..."85 Yet the accompanying recoup provision has never been brought into operation.

One year after its establishment, the TTC had to consider the adequacy of existing rates, and the action taken, presumably influenced by a war-time philosophy that co-operation was essential beyond all other considerations, set a precedent for disregarding the statutory provisions. It decided not to increase rates without first consulting the government; and the latter considered whether to "bear the cost" itself (i.e. a direction to the TTC to retain the old rates, and payment of a recoup to compensate for the loss of additional revenue) and rejected the idea.86


86. *TTC Minutes*, 1940-41, pp. 3, 13. The TTC then decided to defer implementation of its proposals. But a year later further proposals went to cabinet in accordance with the earlier decision. The increases finally came into operation "with certain amendments" presumably requested by the government — *TTC Minutes*, June 1942-June 1943, p. 17.
When D.J. Howse came from New South Wales at the end of the war as Acting General Manager of Railways, he spoke plainly about the need for further increases. Under circumstances in which "Industry was being subsidised by the Government through application of low rates on the railways", it was unfair to regard the railways as running at a loss. The difference was the state's contribution to industry; and some credit for this should be shown in the railway accounts. 87 With Howse's prompting, the TTC recommended to the government - there now seemed no question of its acting alone as the act envisaged - an all-round increase of thirty per-cent; and during the ensuing negotiations the suggestion was made that if the government desired rates to remain as they were it should make up the difference to the TTC - its attention was in fact drawn to the relevant recoup provision. However this did not find favour, and the minister announced the subsequent compromise as a decision of the TTC! Even then the government would not agree to a flat increase because it believed this would impose hardship on particular industries, so that a complicated system of differentials was worked out. This was exactly what the recoup provision was intended for, but it was still not invoked. 88


88. Ibid., 8.3.1947, 3.4.1947, and 8.5.1947. The compromise was that consideration would be given to the closing of certain branch lines - which itself occasioned much controversy and delay - and that rates would be increased so as to raise total railway revenue by 12½%. 
Within a year Brigadier W.D. Chapman was reporting that "railway goods rates are entirely inadequate and the present rate structure unsuitable", recommending further substantial increases, and again showing that if it were still "a matter of Government policy to do otherwise than apply the rates based on cost, then the railway losses should be reimbursed by the Treasurer, as provided under Section 34 of the Transport Act". Some increases were then approved, but they did not go as far as Chapman's proposals; nor was any recoup paid.

The story of the 1950 increases began with a decision by the reconstituted TTC (obviously in a mood of legal righteousness) that substantial increases were necessary in order to comply with the statutory requirement that economic rates be charged. It ended with tacit agreement, which has not so far been challenged, to honour the law in the breach rather than the observance.

Still with an eye to discretion rather than valour, the


90. A "Joint" committee consisting of TTC and Treasury officials explained that a more exhaustive inquiry including representatives of the Department of Agriculture and the Division of Industrial Development would be needed to gain a full knowledge of the capacity of industries to pay additional charges. The conflict between transport needs and the state's policy of active encouragement for industrial development is here apparent. Report dated 7.9.1948; also TTC Minutes, 1948-49, p. 21.

91. Following details from TTC file TR 17; and TTC Minutes, 1949-50, pp. 14, 23, 29, 40, 43.
TTC had agreed to advise the Premier of its initial decision "in order that the Government may have notice of the Commission's intentions." Four days after this advice was tendered it was informed that the government desired no action to be taken pending a Treasury investigation. The TTC decided to point out to the Premier that under the Transport Act, the Commission was required to charge adequate fares and freights to meet costs of service and that the Railway finances were in such a difficult position that it was imperative that the proposed increases should be given effect to as early as possible. It was agreed also that the Premier be informed that the Commission felt that it would be reasonable to interpret his request to the Commission to defer application of its decision to increase freights and fares, as a direction within the meaning of Section 34 of the Transport Act.

The TTC raised the matter again some months later, to be advised that, while the government agreed some increases were necessary, it considered those proposed were "wholly uneconomic" because they could seriously affect the general economy of the state. An investigation would be made, but the TTC was not to take any action in the meantime. Subsequently the Minister for Transport forwarded the government's own "recommendations" to the Commission. It was then announced that, although the TTC had pointed out that many classes of goods were being carried at much less than cost and had...
therefore recommended substantial increases, the government felt that their application would adversely affect many industries; and that the increases finally decided on were the highest it was thought industry could afford to pay. 

After this the TTC secretary, A.K. Reid, prepared a memorandum arguing that the relevant section of the Transport Act was "completely idealistic and unworkable". He queried the possibility of accurately determining costs of individual operations; and showed further that even if "economic" rates could be so fixed, they would have the effect either of diverting the traffic to other forms of transport or destroying it altogether. He concluded that both the intended basis of calculation and the recoup provision (intended as "a safe-guard against political interference") were "purely theoretical and of no practical significance"; and that the section should therefore be repealed. 

But it has not been touched. It remains mute witness to the ease with which statute law can be circumvented. In fact the provision foundered primarily on the interpretation of the word "economic". The government insisted that it meant more than simply the effect on transport finance. But this appears a convenient rather than a literal interpretation: the drafters made their intention clear when they added the words "having regard to the costs of operation of each service", and also the compensatory

93. Memo dated 10.7.1950, on file TR 17.
recoup provisions which recognise specifically that such "economic" costs might be higher than some industries could pay. The problem of determining costs mentioned by Reid is surely not insoluble; and there is no evidence that the Auditor-General's advice was ever sought as envisaged by the act. It would seem that, on the ministerial side, the spirit to make this section work died with Ogilvie; and that the corporation gave up after receipt of Reid's submission and the departure from it of Wilson (who had helped Ogilvie prepare his legislation) shortly afterwards.

Today the TTC adopts the attitude that the government has to bear the burden of responsibility for the economy of the state, and that, since railway rates have a major effect on this, it should therefore enjoy the right to control rating trends.94

In the cases of TAA and the ANL the recoup provision has been both more carefully drafted and of less importance. It proved to be of some assistance to TAA in its early years, and was paid in respect of the few services operated at ministerial direction.95

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94. However, the Minister for Transport does have a personal vote which he uses to recompense the TTC in certain cases where he has ordered concessions (see above, p. 183); and in addition, some other minor expenses are repaid from the votes of other departments. Thus the minister's fund carries the cost of the concessions to blind passengers, the Department of Agriculture the cost of concessions on the freight of agricultural line, and the Chief Secretary's Department the cost of free passes for members of parliament. But other concessions of a similar nature have to be borne by the TTC itself.

95. OPD, vol. 213, p.1635. The provision would probably have had more work to do if the Chifley Government had succeeded in its aim of making TAA a monopoly. However it was disappointed in this, and in the competitive situation governments have continued to subsidise all airlines concerned for outback services under other administrative arrangements inaugurated by a cabinet decision and paid through the DOA vote. TAA shares in these (contd. overleaf)
But TAA has recorded overall profits since 1949-50, and under the refined system has not qualified for further payments even though these particular services may have continued to show losses. The provision has been applied in the same form to the ANL, but that enterprise has not qualified for any recoup because it has never shown a loss and never received a ministerial direction concerning its services.

The recoup principle is one feature of the supervisory system first constructed in relation to the VR which has not spread widely to corporations outside the public transport field in Australia. Nor has it been adopted in Britain, although there increasing interest is now being shown in the idea.

Most of the arguments have already been indicated. Against it are the views that corporations serve a social rather than a commercial purpose, that a recoup is no more than a bookkeeping entry in the public accounts, and that it may help corporations hide bad management; and also the alleged difficulties in calculating real operating costs.96

96. Elliot feared also that the existence of direct "subsidy" arrangements might present a temptation for increased political interference. With particular reference to Australian primary produce concessions, he suggested the true economic position could best be shown by requiring the industry concerned to pay adequate charges to the railways, being itself reimbursed by the government. Sir John Elliot, "Should Public Transport be Self-Supporting?", National Provincial Bank Review, No. 32 (Nov. 1955), pp. 7 - 9.
In its favour, it is claimed that many losses are attributable to political factors outside the control of corporate managements, and that the latter suffer thereby - the recoup is a just method of redressing this situation. It is, moreover, a worthwhile discipline that governments should be required to bear some financial responsibility for bending corporations away from courses of action which can be shown to be in their own interests. The record of recoup payments might also serve as a standing reminder of the costs of government-imposed policies.

The TAA-ANL refinement is probably an improvement on the older railway clauses; but if either had been practised regularly in the state railway systems over the years (and Auditors-General used more actively to provide an independent check in calculating the costs of intervention) those systems must surely have attained a healthier financial status. It seems clear that this in turn would have increased managerial incentives and produced improved levels of efficiency.

In 1950 the Economist was criticising the British National Coal Board for giving weight in its planning to social considerations - "it is not the Board's responsibility itself to weaken

97. In some cases a reminder of the recoup obligation has in fact deterred politicians from interfering.
the criteria of economic efficiency". And the 1956 Herbert Committee introduced a recoup flavour in asserting that it was not for the electricity supply industry to embark "in the supposed national interest" on any course other than the purely economic unless so instructed by the minister; that the "line between the Government and the industry should be clear for all to see"; and that the latter should accordingly be subsidised to the extent that additional costs were incurred as a result of political directions. It is significant that the Select Committee on the Nationalised Industries has taken a similar line in recent reports. Perhaps the recoup may yet come as a reaction to growing political intervention in corporate affairs in Britain as in the Australian transport enterprises.


101. New York adopted such a system for its City Transit Authority as late as 1959 - see above, p. 164.
The Australian experience shows, however, that there are important difficulties. First, it is easy - and often convenient - to forget that the recoup is a compensation device. Recipient corporations come to be regarded as pauper offspring subsisting on the charity of beneficent governments, and loose thinking about "railway costs met by governments", 102 or "Government expenditures for the benefit of railways" 103 leads to the view that recoups are not valid revenue items. The device is thus seen as no more than a concealed and therefore reprehensible form of deficit financing. But this is unjust to the corporations and inconsistent with legislative intent.

Secondly, the desirable limits of the recoup have not been adequately explored. In some cases it is restricted to losses on special services conducted by political direction: in others it applies much more generally. But it has never been paid where governments have rejected corporate recommendations for general rate increases. This raises the difficult questions of determining actual operating costs and assessing whether reasonable levels of efficiency are maintained.

Thirdly, where co-operation is the order of the day, how can politically-enforced acts be distinguished from voluntary decisions of the corporation? The distinction has of course been drawn on many occasions in Australian corporate history; but (except in

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legal terms) the corporations have over the years been losing their separate identities. As more and more acts flow from "joint policies", the recoup concept becomes increasingly difficult to apply.

It is quite consistent that those who favour the clear line between minister and corporation should espouse the idea, whereas the Morrisonian school (which favours informal contacts) should see little use for it. The recoup principle has much to offer where the processes of political control can always be channelled through published directions. But the Australian experience suggests that this is rarely possible.

3. EFFECT OF PARTY AND PERSONALITY

The main Australian political parties have tended to polarize around opposite approaches to the question of the desirable corporate relationship. The Labour Party has traditionally, since its emergence around the turn of the century, been suspicious of "irresponsible" public agencies - a suspicion it inherited at least from the Victorian liberals of an earlier generation - and determined in its efforts to extend the range of political controls over their activities. The non-Labour parties, which (except in Victorian state politics) have normally governed in coalitions,

104 A.H. Harson comments thus of the Herbert Committee Report: "As one who has never believed that it is either possible or desirable to 'take nationalized industries out of politics', I find the Herbert doctrine pretty doubtful" - op. cit., p. 212.
have been more inclined to respect the managerial autonomy of corporations. This fairly clear divergence between the parties would seem to be stronger in Australia than in the United Kingdom, where post-war debates have shown both Labour and Conservative Party membership divided on the various issues that have arisen. 105

In Victoria, where the CP has played an independent role and governed for quite long periods in its own right, railway officials of long experience have noted sufficient distinction between the approaches of ministers of the various political parties to be able to attempt a rough classification. Those from the CP have generally not been much concerned with questions of general policy, and leave the VRC a relatively free hand except where country interests are concerned. They keep a very close watch to see that the city is not favoured at the expense of the country, and are most interested in matters such as the rating of primary produce and details of services in rural areas. Labour ministers also have a sectional rather than a general interest. Their efforts have been devoted largely to improving staff conditions, resisting retrenchments, and having as much work as possible performed within the corporation, e.g. in its own workshops. 106 Liberal


106. It has also been noted that they are more sympathetic to the railway attitude (i.e. the state enterprise attitude) on questions relating to the regulation of road transport and transport planning and co-ordination generally.
Party ministers have not been tied to the same extent to any particular interest. More than the others, they do, according to their own lights, consciously endeavour to keep politics out of management, and to support the business requirements of the corporation.

These differences are not surprising, and are reflected broadly throughout Australian public enterprise experience. Even so, it is necessary to beware of generalisations, for the parties themselves have wavered on occasions. For example Bruxner's notable contribution to NSW transport administration showed a far broader appreciation of the problems involved than is possessed by the average GP politician. And the position taken by Lyons and Ogilvie in Tasmania was far from the traditional Labour view.

The extent to which personality differences have affected ministerial-corporate relations has been noted; it is clear that they can also cut across these rough party classifications.

The long state railway experiences have shown that some ministers

107. And their Nationalist and UAP predecessors.

108. Although they favour free enterprise on the roads and therefore do not usually sympathise with efforts to secure tighter regulation of transport.

109. A classic statement of this attitude was contained in the Menzies Letter, cited at Table 8.

110. It is debatable whether Tasmanian Labour is much more radical than, say, the South Australian brand of "Liberalism" - cf. J. Jupp, "The Australian Party System", paper presented at 1960 Conference of Australian Political Studies Association, Canberra, p. 2.
are personally interested, others are not; some are amiable and disinterested, quite happy to get answers to parliamentary questions and otherwise to leave the corporations in full control, and needing great persuasion by cabinet colleagues to interfere at all. The actions of some Labour ministers in this category suggested that they only moved when strongly pursued by the Trades Hall. On the other hand, particularly among the Liberals, there have been some live-wire businessmen who believed they could effect vast improvements and therefore attempted to interfere excessively. 111

In New South Wales, for example, there were striking differences in the approaches of Labour Party Ministers O’Sullivan and Enticknap on the one hand and Sheahan on the other. As for the Commonwealth, the case of TAA showed a remarkable difference in the attitudes of two Liberal ministers with which it has been associated: the temperamental anti-socialist White, ally of the private airlines; and the unemotional and more business-like Paltridge, who has been prepared to give credit where due and to recognise efficiency even if it does come from a public enterprise in a competitive situation. These are notable cases of differences between ministers of the same political persuasion; but doubtless there are others.

111. While a strong minister might not be as easy to get along with as a weak or disinterested one, however, even the senior corporation officials recognise that he has his value: they need a strong man to push their case in cabinet e.g. in the allocation of loan funds, and have noticed their fortunes in relation to other departments varying thus according to ministerial personality.
That personalities should play such an important role is in part inevitable, for the statutory provisions authorise the exercise of discretion at many points (e.g. whether to approve or veto, to issue directions or not). To this extent the play of personalities is within the intention of the law. But it is clear from the foregoing description of working relations that ministerial influence frequently goes beyond the set limits of discretion, resulting in substantial distortions of statutory prescription and intent.

The personalities of corporation heads are of course also important in determining the course of administrative action and the shape of ministerial-corporate relations. We may therefore conclude that the division of powers between minister and corporation depends, not only upon the legislative enactments, but also upon political circumstances and the relative strengths of personalities in the corporation and in the government at a particular time. As Senator McKenna aptly remarked:

> despite what a Parliament may provide in setting up one of these corporations, my own experience is that personal factors always come into the situation. One can visualise

112. As noted particularly in relation to the VR (above, p. 313). But there have also been significant developments resulting from the appearance of "strong heads" in other corporations, e.g. Johnson and Winsor in the NSW.
the type of authority where, owing to the prestige of the members - their capacity and strength of personality - they may exercise a far greater degree of autonomy than the Parliament intended ... one can also find a Minister whose interest, whose knowledge and whose strength - but, above all, whose substantive power of renewal of the term of members - enable him to dominate or coerce an authority to an extent not disclosed publicly ... In both cases the intention of the Parliament is defeated.113

113. CPA 1959, p. 188.
PART D

IX. ASPECTS OF ACCOUNTABILITY

It remains to consider those aspects of the political relationships of corporations which concern the rendering of accountability rather than the giving of directions and imposing of restraints. The emphasis in this chapter will be on parliament's role as "the ultimate guardian", although it is no more possible to isolate the parliamentary function in absolute terms than it is to separate the ministerial from the corporate function.

Neither immediate control by ministers nor ultimate guardianship by parliament can be effective without access to adequate information about the activities of corporations. The provision of such information is therefore one of the most important aspects of accountability, and I shall begin by outlining the formal arrangements for reporting by corporations. This is the only matter treated in this chapter to be spelt out in any detail in the individual statutes.

1. REPORTING BY CORPORATIONS

(a) The Legal Position

The Commonwealth Public Accounts Committee, in its AAPC inquiry, emphasised the importance of keeping the minister informed: indeed it regarded this as a "fundamental" democratic safe-
But it is clear in most cases that the informal contacts between minister and corporation are now sufficiently close to fulfill this requirement. The danger is rather that such arrangements may be too inhibiting, leaving no room for any real managerial freedom, in which case (as the committee itself remarked), the use of the corporate form "would merely complicate the machinery of administration without affording any advantage". The formal reporting arrangements are presumably much more important as a way of keeping parliament informed.

The most common statutory requirement is the presentation of an annual report. There is in fact a theoretical concept that the regular annual reports of corporations provide a measure of compensation in terms of accountability for the absence of detailed and continuous ministerial control and comprehensive parliamentary questioning of corporate activities. But this concept is frequently confused by lack of discrimination between departments and corporations in regard to the annual reports themselves as well as in regard to parliamentary questioning and other forms of supervision and control.

The original Victorian act of 1883 laid importance on the presentation of formal reports. It required the VRO to present "an annual report of their proceedings and an account of all moneys received and expended during the preceding year".

1. AAPG Reports, pp. 65-7, 75.
2. Ibid., p. 62.
3. Act 47 Vic. No. 767, s.58 (continued as s.105 of 1958 Act).
More than this, it required the submission of quarterly reports
detailing information on matters listed specifically in the act; and of certain other special reports and records. The annual
and quarterly reports were both to be laid before parliament by
the minister.

Speight and Gillies obviously considered these arrange-
ments went too far, for while they were associated the detailed
quarterly reports were not submitted. But when the VRC came
into open conflict with The Age newspaper and its political
henchmen in the Munro and Shiel Governments the situation rapidly
changed. After some unfair criticism the VRC adopted a secre-
tive attitude, and it came to be regarded as a matter of pressing
political concern to extract information from them in any way
possible. The atmosphere is well illustrated by The Age's comment
that Speight ("the Railway Autocrat") had "miscalculated his capacity
for resistance when he thought he could stifle an independent
investigator in search of information as easily as he could put the

4. Ibid., S.57 (continued as S.104(3) of 1958 Act). These reports
were to cover "the state of the traffic returns with the approx-
imate cost and earnings of trains ... in respect to
the traffic, and whether any special rates have been made and the
reasons for making such rates, and ... a statement of appoint-
ments and removals of officers and employees, with the circum-
stances attending each".

5. One of these - quarterly records of supernumerary employees -
reflected a contemporary problem; the relevant provision was
belatedly repealed in 1958 (Act No. 6183). Other special report-
ing requirements cover accidents, and matters determined by
deliberative judgment of chairman following disagreement with
his colleagues.
extinguisher on official curiosity. 6

The 1891 act which arose out of the conflict between government and paper on the one side and corporation on the other therefore contained additional provisions for reporting and political access to information. The first was the requirement that minutes of meetings of the VRC should be submitted to the minister. 7 The second gave the minister comprehensive powers to seek additional information from the corporation and to consult its documents and staff. 8

To a greater or less extent the other selected enterprises have followed the Victorian reporting practice. Parkes adopted the 1883 VR system for the NSW in 1888, 9 but for the Tasmanian and Commonwealth enterprises (except the CR) the quarterly reports have been dispensed with. Modern Commonwealth practice is usually to place emphasis on the annual report, but to

6. Melbourne Age, 8.3.1892.


8. Resulting from Shiels' earlier attempt to consult subordinate railway officers, and the VRC's strong objection on disciplinary grounds - they had claimed that they and not the minister were the legal head of the undertaking and that the correct channels of control should be observed - see Correspondence Between the Minister of Railways and the Railway Commissioners, VPP G16 of 1891. The relevant section is cited in full at Table 14.

9. Act 51 Vic. No. 35, Ss 44, 45 (continued Ss 39(1), 40 of current Govt. Railways Act 1912-55). Since 1930 the NSW has also been required to furnish monthly reports on any special charges fixed (Ss 24(3), 24(4) and 39(2) of current Act).
TABLE 14: SHIELS' INFORMATION CLAUSE

(Act 55 Vic. No. 1250, S.44; continued as S.106 of 1958 Act)

(1) The Commissioners shall furnish the Minister with all such reports, documents, papers and minutes as may be required by Parliament pursuant to any Act or pursuant to any order of either House of Parliament.

(2) The Commissioners shall also furnish the Minister with full information on all business of the Department to enable answers to be made to all questions asked in Parliament concerning the railways or to enable the Minister to furnish any returns required by Parliament or which he may himself require.

(3) The Commissioners shall provide and maintain for the Minister and the Board of Land and Works/fit and convenient offices in the offices of the Railway Department, and shall furnish the Minister with such professional clerical and other assistance as he may require.

(4) For the proper conduct of his public business the Minister shall be entitled at all times to put himself into direct communication with all branches of the railway service and all officers and employees, and also to see all documents, papers and minutes which he may require either for Parliament or himself and to be supplied with copies thereof, and also to avail himself of the services and assistance of any officer or employee.

add a provision requiring the corporation to furnish such additional "reports, documents, and information" as the minister may from time to time require. 10

The most extensive provisions were those written into the VR legislation after Shiel's had attended to it; and those written into the NSW statute-book during the short currency of the co-ordinating corporations of 1931-32 and 1950-52. 11 The least exten-


sive\textsuperscript{12} were those of the 1923 shipping legislation, which
required not even an annual report.\textsuperscript{13}

There is no suggestion in any of the relevant legis-
lation that the corporation reports may serve as a useful aid
in general public relations activities. Indeed, Australian
legislation rarely acknowledges the usefulness of such activity
as an aid to accountability.

(b) Reporting in Practice

Quarterly reports are a legacy from the early railway
legislation; but apart from the neglect in the Gillies/Speight
period, they have where required been regularly submitted.
Generally they contain only a bald statistical account corresponding to the matters detailed in the relevant statutory provision; and in most cases, although tabled in parliament, they have been neither widely distributed nor printed as parliamentary papers. Today they seem something of an anachronism. There is no inform-
ation in them that ministers cannot get when required by less formal means. Yet they regularly consume many hours of clerical labour which could probably be more profitably spent elsewhere. As already suggested, the minister is today frequently in touch with the corporations by correspondence and discussion, and the

\begin{footnotesize}
\begin{enumerate}
\item Except for the National Security (Shipping Co-ordination) Regu-
lations, which made no reporting provision. In fact that pro-
visional ASB submitted "annual reports" to the minister spas-
modically, certainly not regularly; they were classified as "confidential" and not tabled in parliament.
\item The only requirement was for an annual balance-sheet (Act No.3
of 1923, 9.22).
\end{enumerate}
\end{footnotesize}
formal reports are important not so much for what they reveal to him as for what they reveal to parliament and public. For such purposes quarterly reporting seems unnecessary and undesirable, for too frequent accounting and inquisition minimises the value of the corporate form; whereas the annual reports serve a useful purpose. The annual summaries of operational detail will of course also be of interest to the minister who has observed the proprieties and remained relatively aloof.

Little attempt has been made in Australia to analyse the content and effectiveness of annual reports of government bodies, even though pioneering English studies are available. There is no space to consider this question in detail, and the following comments are intended only to give the briefest indication of the position in relation to the selected enterprises.

The English studies have suggested an uncertainty as to the proper audience to whom the reports should be directed – minister, parliament, or general public? One at least ruled out the

14. Cf. the annual competition for private company reports now conducted by the Australian Institute of Management. The recent admission of public trading bodies to this competition is an interesting development – see Sydney Bulletin, 17/6/1961.

minister for reasons similar to those suggested above, but most considered that this uncertainty limited the usefulness of the reports. There were also complaints about their general barrenness concerning the political relationships of the corporations.

Except for the rather secretive Speight period, the Australian rail corporation reports have usually contained a great deal of information about services and operating results, new developments, and so on. They have combined both descriptive and statistical material, and for many years now have supplemented this with pictorial matter and sometimes quite striking graphical presentation of detail. They are, of course, uncritical of their own administration — they could hardly be expected to be otherwise; but there have been quite frequent references to episodes in government-corporation relations. Invariably of foolscap size, they are usually (but not always) printed as parliamentary papers.

It is obvious that for the most part the compilers have not had in mind the lay reader outside government and parliament. They have in fact been motivated by two long-standing considerations. The first is the need to render an account of operations to political supervisors. The second stems from a mutual arrangement among the various systems participating in the Australian and New Zealand Railways Commissioners' Conference. Under this arrange-

16. Notable examples were the comments by the CRC on the recoup question following the depression wage and Leigh Creek coal freight directions. Cf. also Speight's use of the 1890-91 VR Annual Report to carry on the fight against Shiel's.
ment the presentation of statistical material in the various reports has been standardised, so that the annual exchange of reports provides the respective managements with valuable comparative data and facilitates the setting and measuring of standards of service. This is without doubt a valuable exercise; but the sheer volume and complexity of the reports may be too much for some members of parliament, and may well discourage the interest of others. 17

The rail corporations of the larger states have, however, become increasingly conscious of the value of public relations as a weapon in their competition with other forms of transport, and this is beginning to influence reporting practices. Thus there has, over the last few years, been a deliberate reorientation of the NSWR reports away from the old-style parliamentary document towards the idea of a briefer, more attractively presented account of operations for distribution to important clients and interested members of the public. 18 They are now colourfully printed on art paper, with almost every page enlivened by photography, diagrams and/or artistic representations of trains, stations,


18. Inside the thick cover of the NSWR Annual Report for 1958-59 appear the following words: "This Annual Report has been prepared, not only to record the operating and financial results for the year, but also to inform the trading and travelling public of the progress made by the Administration of the New South Wales Government Railways in its modernisation plan designed to provide efficient passenger and goods train services". (Italics mine).
office buildings and items of equipment. They contain less descriptive and statistical material; but even in terms of parliamentary value probably as much is gained as is lost, for the average politician as well as the public is likely to be attracted by the greater readability, and aesthetic appeal of the new reports.

The change has met with the mild disapproval of some other rail administrations, for the NSWR reports have lost some of their comparative value. It is interesting to note that the VR had already adopted another means of reaching "the railway shareholders who are the entire public of the State". In most years since 1948-49 it has followed up the tabling in parliament of the annual reports with brochures designed to be of "easier reading and therefore wider interest", and these have achieved fairly wide distribution.

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20. Nevertheless ..., Phoenix rises, Melbourne 1951, p. 1. The titles have included: Our Busiest Year (1948-49), Busier Than Ever (1949-50), nevertheless ..., Phoenix rises* (1950-51), Phoenix Pauses* (1951-52), The Hundredth Year (1953-54), Looking Up (1954-55), Your Railways (1955-56), Ready to Roll (1957-58), Essential Potential (1958-59), Going Ahead (1959-60). They are published by the VR Public Relations and Betterment Board, Melbourne. The other rail systems have published occasional public relations brochures (e.g., NSWR - Railways at Work, Sydney 1957; OR - Trans-Australian Railway, Melbourne 1958), but these are not annual report summaries.

* "Operation Phoenix" was the name given the rehabilitation programme commenced following the 1949 Elliot Report/.
Modern Railway Equipment

Above: The Diesel-Electric Trans-Australian Express.

Below: Stainless Steel Electric Interurban Train, NSW Railways.
For the first few years the ANAC's reports were presented only in duplicated foolscap form; they have never been as generous with their information as the average railway report. But thereafter that corporation adopted a "popular" format, near quarto size on glazed paper, attractively presented with graphs and photographs. The ACSC has now presented five reports of a similar type. These are tabled by the minister in parliament, but are not printed as parliamentary papers; they are in fact printed by a private firm before formal presentation, although the minister may be consulted during their preparation. Their more convenient size permits wider distribution, and they deserve to have popular appeal. As if to emphasise that these reports are not intended only for minister and parliament, the ACSC has taken on occasions the further step towards popularising its report of summarising its main features in large press advertisements.

All seven corporations the Public Accounts Committee consulted were agreed that it was undesirable to submit minutes to the minister. Only in the case of one of the selected enterprises - the VR - such submission statutorily required; but this particular provision is not observed. However in two

21. Attributable in part to the competitive nature of TAA's operations.

22. E.g. Canberra Times, 17.10.1959. As previously noted, the ACSC is the only corporation involved in this study required by law to include details of ministerial directions in its annual reports.

23. AAPC Report, pp. 66, 75.
of the others (ACSC and TTC) minutes are submitted although there is no legal requirement for this. This further emphasises the difficulty in judging the working of administrative bodies from statutory provisions alone.

The arguments for and against such submission are basically similar to those already considered in relation to the specific reservations. The practice certainly ensures that the minister is aware of all decisions made by the corporation. But these decisions will include much detail with which the minister ought not to be concerned, and he may well be encouraged to develop his interest in them.\(^\text{24}\) The view the ANAO put to the committee is relevant: the minister should as a general rule keep right out of questions of detailed management, for which the corporation should accept responsibility, while the corporation should inform and consult the minister where a particular subject develops to the stage that it is judged to be of current political interest or of genuine importance to government. The submission of minutes does not observe the necessary distinctions, and is therefore an inappropriate way of keeping the minister informed.\(^\text{25}\)

The provision which exists in a number of the selected enterprises empowering the minister to obtain other information apart from the formal reporting arrangements:

\footnote{24. Cf. the argument of Cuttrix, above, p. 292.}

\footnote{25. ANAO Reports, Appendix 17.}
ment. Such a provision does no more than endorse working practice wherever the "old boy principle" is observed - although the current Victorian position (a result of Shiels' desire of more than half a century ago to draw the teeth of the VR corporation) is an extreme case.26 One of the confusions arises from the fact that in no case is an attempt made to link the matters on which information may be required with the range of ministerial powers. When politicians have the right to demand any information about a corporation, they are less likely to observe the intended restraints in their other activities. An attempt to draw such a distinction in respect of ad hoc reporting has been made in the case of the Irish Transport Board.27

A recurring source of friction has been the direct contact between ministers and subordinate staff of corporations. One must sympathise with commissioners like Speight and Clapp in Victoria and Fraser and Garside in New South Wales, all of whom objected to the practice. Whatever the Victorian legislation may say, if there is to be any meaning in the corporate form its heads should accept responsibility for advising the minister; and the

26. See Table 14. This is also the only current statutory provision in all the selected enterprises to recognise specifically the right of members of parliament to question corporate affairs.

27. S.16 of Eire's 1950 Transport Act, which sets up the Coras Iompair Eireann (or Transport Board), requires the corporation to furnish the minister "such information as he may from time to time require regarding matters which relate to its activities other than day-to-day administration and which appear to him to affect the national interest". From M. Scully, "Parliamentary Control of Public Corporations in Eire", PA (London), vol. xxxii (Winter 1954), p. 456.
latter should not feel at liberty to deal with corporate staff without their knowledge.

But this raises a further important question. It is more than mere coincidence or a matter of longer histories that such episodes have concentrated in the state rail corporations; for in part at least they reflect the difficulties faced by ministers who have no subordinate departments competent to advise them on the affairs of corporations. This distinction between the state and Commonwealth arrangements has been indicated above. Commonwealth ministers can (and do) call on specialist advisers in DGA and DST to cross-check corporate recommendations. Gradually the larger states are developing transport ministries to perform a similar role, but their railway ministers have generally been at a disadvantage. Hence their search for alternative and sometimes unconventional channels of information and advice.

Although not often specifically mentioned by statute, the right of ministers to engage outside investigators has not been seriously questioned in Australia. These external inquiries


29. Thus the Commonwealth corporations have not had occasion to resent ministerial dealings with their own staff; they have rather resented the role of the departments. In its evidence to the PAC, the ANAC showed concern about the "undesirable duplication of effort" which would result if the minister referred its problems "to his departmental officers for examination and comment" — *AAPC Reports*, Appendix 17.
have taken many forms, including royal commissions consisting of overseas experts in the particular field, inter-departmental committees, virtual "O and M" investigations by firms of management consultants, special reports by permanent public agencies (such as the supervisory NSW corporations, the Victorian Co-ordinator of Transport and the Auditor-General), many kinds of reports by individuals and teams from various walks of life, parliamentary committees, and even quasi-spy systems such as Bent's team of agents in Victoria and Mallam's strange assignment in New South Wales. Such inquiries usually occur as a result

30. They may also vary considerably in scope. Some are concerned with the whole framework of transport policy or other phase of administration, with comments on individual enterprises forming merely a part of a wider report; some cover the total range of operations of a particular corporation; some are limited to one or more sectors of its operations. One inquiry not otherwise mentioned in this thesis was the Sharwood investigation into the OR. This arose from allegations that the ORG was not giving certain of his officers a fair deal in 1939. The minister asked W.H. Sharwood, a retired officer of the Attorney-General's Department, to investigate and report on the substance of the allegations, and the ORG was completely vindicated. Another unusual case was the appointment of a firm of investigating accountants, Sir Edward Nixon and Partners, to report confidentially on the comparative financial position of the two competing airlines (TAA and ANA), before the government adopted its policy of rationalised competition in 1952.

31. Inquiries of this sort are more often than not initiated by parliament itself and will be considered further below.

32. See above, p. 293.

33. Mr H.O. Mallam, now a Labour MIA, was "installed in the Government Transport Department /i.e. the tram and bus corporation/ as an honorary observer and expert adviser by the then Premier, Mr. Cahill" (from Sydney Sun, 23.2.1960). The corporation was directed to give him an office and any information and other assistance required, but its officials say they had no knowledge of his objectives. C. also comment on the role of NSW Treasury inspectors, above, p. 115.
of some crisis in the affairs of the particular industry or enterprise. But to the extent that a minister has his own department to advise him in his dealings with the corporations under his supervision, he will be less dependent on them when things do go wrong.

Parliament, of course, has access to all the statutory reports. And the findings of some of the special inquiries (e.g. royal commission reports) are made public; but not all. It rests in the minister's hands whether to pass on details gathered in more informal ways. But parliament has available certain independent methods of gleaning information about normal government business, particularly parliamentary questions and committees. It is now necessary to consider the extent to which these methods have been applied to public corporations.

This examination will raise in turn the question of ministerial responsibility for the activities of corporations. Since these matters have rarely been prescribed by individual statutes and are instead governed by custom and precedent, the following treatment will be more generalised than much of what has gone before.

2. **DIRECT PARLIAMENTARY SUPERVISION**

   (a) **Parliamentary Questions**

   This subject has received much attention in relation to the British nationalised industries. The relevant experience is highlighted by Speakers' rulings and ministerial statements clearly discriminating between departments and corporations and denying the
eligibility of questions dealing with the day-to-day administration of the latter. This attitude was put neatly by Sir John Anderson:

In regard to matters falling within the Minister's powers of control, he would be liable to be questioned in Parliament in the usual way. On the other hand, in regard to all matters declared to be within the discretion of the authority, the Minister would be entitled and, indeed, bound, to disclaim responsibility.34

Morrison, who had so much to do with the application of the corporate form in Britain, had always advocated that corporations would be accountable to parliament through ministers on the matters for which the ministers were themselves responsible.35

This was easy to judge when only specific matters were reserved for ministerial authority; but much more difficult when the general directive power appeared. Was the minister only responsible when he gave a direction? What of cases where he had the power to direct, but either refrained from intervention at all or used less formal methods of persuasion? Gaitskell declared that the minister should accept responsibility for the "general success or failure of the enterprise"; and that "it would be perfectly appropriate for any Member to ask him, and expect a reply, why he has not made a direction on something which the


Member thought he ought to have made a direction. Much still depended on ministerial attitudes. According to one report Mr Barnes, Minister for Transport, was "the most skilful refuser and persistent evader of questions ... In contrast, the new Minister of Fuel and Power, Mr Noel-Baker, has proved the most willing of all ministers to provide information."

The Speaker's ruling of June 1948 that he would direct acceptance (subject of course to existing rights of refusal as applied to departments) of questions about matters he considered to be "of sufficient public importance" did not satisfy the back-benchers of either party; yet the Select Committee on the Nationalised Industries firmly rejected proposals to accept questions concerning administrative detail. It was the subsequent entrenchment of such a committee on a permanent basis which took the edge off the dissatisfaction about questioning.


38. See Johnson, "Accountability", pp. 374-5.

39. It did not eliminate it, however, — see G.H. Daniel, "Public Accountability of the Nationalised Industries", PA (London), xxxviii (Spring 1960), p. 28. For the only partly successful Canadian attempt to draw similar distinctions, see Musolf, Public Ownership, pp. 103-9; and for apparently even less successful Indian experience, see OPA 1959, pp. 163-4; and T.E. Chester, "Public Enterprise in South-East Asia", PA, xxxvi, 1 (Jan-Mar. 1955), p. 51.
How does Australia compare? Two decades ago Bland was pointing to the "refusal of successive Speakers of the House of Commons to allow questions or debate that assumed the BBC was a 'Government' organisation in the usual sense"; and contrasting this practice with the local tendency to ignore such distinctions.\(^{40}\)

Much later, under his guidance, the Public Accounts Committee made similar comments.\(^{41}\) And Mr T.H. Kewley has written that:

Parliamentary questions about the activities of corporations tend to be treated in much the same way as questions about the activities of ministerial departments ... Sometimes the Minister will give information supplied to him by the Board on matters for which he will not accept responsibility.

There has been little discussion about the principles which should relate to Parliamentary questions on the affairs of the corporations, nor has the Speaker given any specific rulings on the subject ...\(^{42}\)

The experience of the selected enterprises may be briefly indicated.

The NSWGR enjoyed a period of relative immunity under the Parkesian concept of corporate autonomy. Ministers objected that questioning was a contravention of the act, and either refused answers or were content to leave this to the discretion of the commissioners. By the turn of the century the "I am informed ..." formula was in use; and for decades Labour members objected to the practice.\(^ {43}\) Eventually they wore down the forces of resistance,

\(^{40}\) F.A. Bland, "Broadcasting in Australia", PA (Sydney), iii, 4 (Dec. 1941), pp. 182, 193.

\(^{41}\) AAPC Reports, pp. 9, 62.

\(^{42}\) Kewley, "The Statutory Corporation", p. 123.

\(^{43}\) See e.g. above, pp. 320-2; also Bruce Smith's comments that "This system of questioning even is a matter to which the railway commissioners may refuse to respond if they choose"; and that "I am so convinced of the unwisdom of answering detail questions (contd. overleaf)
and today the corporation is no more immune than its counter-
part in Victoria has been since Shiels' action in specifically
recognising in his 1891 amendment the right of members to
question any detail of railway management. As one observer
has written, Victorian corporations have been

subjected to very detailed scrutiny of some aspects of
their work through parliamentary questions. The right to
ask detailed questions of a Minister regarding a public
corporation has not been disputed and members have freely
used this method to obtain details they require.

In Tasmania the publicity value of questions is lessened by the
absence of an official parliamentary record, and the questioning
procedure is therefore not as well developed. To the extent that
it is observed there is rarely any refusal to answer, although
ministers (especially those associated with the TTC and the Hydro-
Electric Commission) usually imply that the responsibility is not
theirs.

Of the Commonwealth enterprises studied, there has been
a general tendency for ministers to disclaim personal responsibility,
and to make it clear they would have to refer to the respective
boards. However it is usually only where the supply of information
might be potentially disadvantageous to corporations in a competitive

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44. Above, p. 479. For fuller comment on early VR questioning
history, see my Railway Management, pp. 34-6, 70. It was an
order for information about the cost of two boudoir cars for
the Portland line which commenced the notorious Shiels-Spaight
Correspondence.

45. A.T. Williams, "State Enterprises - Victoria", in A.H. Hanson
situation that answers are refused.46

A body of convention has in fact evolved to differentiate two other Commonwealth corporations more clearly from the regular departments - and from each other. But these cases (the Commonwealth Bank and the Australian National University) both present special features; and, while it is true that deliberate thought has been given to their accountability, the practices adopted47 have not been extended to other corporations. Thus, when the filling of positions by the Australian Stevedoring Industry Board was questioned and debated in 1954, the Acting Minister for Labour and National Service assured members "that it is easy for me, and the department, to furnish any information required by [them] on any subject, whether in regard to [this] or any other organisation."48

One detects a note of complacency about this, as when a few years later Senator W.H. Spooner49 conceded briefly that

46. A typical reply relating to TAA is as follows: "Answers to these questions would disclose matters relating to the commercial activities of the commission which would assist the commission's competitors and, as the commission is not in a position to obtain similar information concerning its competitors, it is not considered appropriate to make the information available" - GPD, vol. H of R 23, p. 2167.

47. For a summary of these cases, see Appendix F.


49. Government Senate Leader and Minister for National Development, in which capacity he supervises a number of public corporations.
"These requests for detailed information are ... a debatable issue", but went on immediately, "we have in Australia by usage reached a reasonable sort of formula..." Thus ministers gave "pretty full and fair information," but when they did not do so regarding "a detailed transaction" members usually respected their point of view.50 In fact, as the Public Accounts Committee had conceded, corporate autonomy was scarcely consistent with the readiness of ministers to furnish full information.

Here as elsewhere most modern Australian corporations are not far apart from the departments. Yet in a sense this has avoided other complications. The relative absence of special treatment for the corporations vis-a-vis Britain goes some way towards explaining the lack of pressure in Australia for alternative methods of accountability such as consumer councils, regular expert inquiries, or special parliamentary committees. It was the inability to get answers to questions which "particularly frustrated" the British MP.51

There are, of course, wide differences of opinion about the value of questions as a method of extracting accountability. From British experience, Hanson considered them to be "in many respects ... fantastically unsuitable";52 while Mr Hugh Nelson,

50. CPA 1959, p.176. Nehru once objected to the Indian Parliament: "if we are to answer questions about the day-to-day administration of autonomous corporations, then such corporations are put on exactly the same level as a Government department" - cited ibid., p. 163.


52. Hanson, "Parliamentary Questions ...", op. cit., p. 61.
a leading advocate of the Select Committee on Nationalised Industries, described them as "casual, capricious, superficial, and inconclusive". On the other hand Mr Noel-Baker considered from his own ministerial experience, that questioning constituted "a very powerful instrument of public control"; and an American observer believed it to be "probably the most effective" of the techniques of parliamentary supervision.

The conclusion from the Australian experience must also be equivocal. The questioning device is available to all members, and its extensive use indicates that most welcome the opportunity it gives them to come to personal grips with the executive. Yet it is also all that Molson said it was: it is detail rather than principle that affects most members and their constituents, and not many questions are well-informed, concerned with administrative efficiency in the broad sense, or of sufficient potency to provoke policy changes and reforms. This is as true of corporations as departments.

The frequency of questions depends of course on the political interest attaching to a particular enterprise. Thus in the post-war years the Commonwealth's airline has received f--

53. Cited ibid.
55. Ibid., p. 373. Also P. Howarth, who writes that "A number of years spent in the Civil Service has brought me to the conviction that of all the checks on a bureaucrat's actions none is so effective as the parliamentary question" -- Questions in the House, London 1956, p. 6.
more than its railway. There has, however, been a subtle change over the period. Most questions concerning matters of genuine public importance (although of course there was no attempt to determine eligibility on this ground) would a decade ago have properly come within the sphere of authority of the corporation. Now, following the shrinking of that sphere and the increasingly important (and controversial) role of the government in directing the airline industry, the majority of these questions belong properly to the government.56

There are also direct communications between members and corporations, but these merely supplement parliamentary questions. Except for the Australian National University, however, there has been no suggestion that representations of this kind might become a substitute for questions, with the merit of satisfying genuine requests for information away from the political spotlight.57

(b) Parliamentary Committees

Largely as a result of Bland's advocacy, the 1942 broadcasting legislation included provision for a Standing Committee on

56. Whose apparent dishonesty in evading questions concerning the rationalisation machinery was noted above, pp. 400-1.

57. A number of British corporation chairmen gave evidence that they were willing to answer letters from MSP whereas they regarded parliamentary questions as inappropriate because these were likely to foster ministerial interference - see G. Gutch, "Select Committee on Nationalised Industries - The Report", FA (London), vol. xxxi (Spring 1953), p. 56. India has also attempted to reduce parliamentary questioning in this way - CPA 1959, p. 164.
Broadcasting. The intention was to furnish an opportunity for parliament to keep in touch (an opportunity which should minimise party differences), while leaving the ABC with greater managerial freedom than a department. But in fact the experiment was not successful, and the committee lapsed in 1948.58 Otherwise there has been little attempt in Australia to devise any distinctive committee system for corporations, and it is generally assumed that they come within the jurisdiction of the departmental standing committees.

The most important are those concerned with public accounts, public works and subordinate legislation.59 Committees of the first type have functioned from time to time in three of the

58. Role discussed in J. Rydon, "The Australian Broadcasting Commission 1922-1948", PA (Sydney), xi, 4 (Dec. 1952), pp. 194, 197-203; and I.K. Mackay, Broadcasting in Australia, Melbourne 1957, pp. 50-4. Mackay considered the committee would have worked better if its terms of reference had been limited to a consideration of annual reports; as it was it laid itself open to the charge of interfering excessively in the internal administration of the ABC. Moreover, the full parliament took little notice of its own committee's reports. There is also a Standing Committee on Parliamentary Broadcasting, but this has a much narrower function, being concerned only with broadcasts of parliamentary proceedings.

59. Australia does not have the Estimates Committee familiar e.g. in Britain. While most British observers have written this off as a means of supervising public corporations, its more powerful Indian counterpart (and also the Indian Public Accounts Committee) carried out "surprisingly constructive" inquiries into the Damodar and Hirakud river development schemes - see H.C. Hart, New India's Rivers, Calcutta 1956, p. 163. Professor Hart's study brought him to the surprising conclusion that of the two schemes, one managed departmentally and one corporately, "Actually, the 'autonomous corporation' proved more accountable", with less ambiguity in lines of control from the region of operations to the capital - ibid., p. 162.
four governmental systems with which this study is concerned, but they have varied greatly in powers and status.

The Victorian Committee of Public Accounts appeared first, in 1895; but (as it pointed out from time to time) its powers were severely limited. An occasional report showed evidence of fairly thorough consideration, but most were brief commentaries put together during a few short meetings. It lapsed in 1931 as an economy measure, reappearing in 1955. The NSW committee had the advantage of greater permanence in that it had legislative authority from the beginning, but its work has represented nothing more spectacular than the tidying up of a few loose ends in the regular financial statements. This is done at a single annual meeting, and the committee invariably accepts the departmental explanations as "satisfactory."

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60. In the 1960 Session the Tasmanian House of Assembly considered a draft standing order for the appointment of a Public Accounts Committee, but at the time of writing the matter is not finalised.

61. It had no statutory backing, deriving its authority only from a Legislative Assembly Standing Order; had to be reconstituted each session (being therefore a "select" rather than a "standing" committee); had no power to take evidence on oath; and had neither a direct link with the Auditor-General nor a special staff of its own. See e.g. Committee Reports, 1895, 1897, 1919.

62. Audit Act No. 26 of 1902 (as amended to date), S.16, which empowered the committee to inquire into and report on (i) any question concerning the public accounts referred to it by a minister, by the Auditor-General or by resolution of the Legislative Assembly; and (ii) "all expenditure by a Minister of the Crown made without Parliamentary sanction or appropriation". It was also empowered to suggest improvements in public business and accounts keeping. In fact there have been few if any referrals of the first kind.

The first Commonwealth committee was established under special legislation in 1913. 64 While it was patterned in some respects on the Victorian model, 65 it has enjoyed a higher status. 66 This committee also lapsed during the depression, but was reconstituted under fresh legislation in 1952. 67 It is not tied to the Auditor-General as is its British equivalent, although his reports provide the starting point for many of its inquiries. It now has a permanent secretary, and in addition senior representatives of the Auditor-General’s Office, the Treasury and the Public Service Board sit in at all its hearings as "observers", answering for their own agencies and empowered to offer information and opinions and to suggest further lines of questioning. For follow-up action it depends largely on Treasury and other official agencies, but its efforts have been rewarded by a number of reforms. 68

The committee has evoked greater respect in the Common-

64. Committee of Public Accounts Act No. 19 of 1913.


66. For example, its 1916 reports recommending centralisation of works and stores activities were followed by the creation of the Works and Railways Department and the Supply and Tender Board respectively. Moreover Bruce obviously attached a great deal of importance to gaining its blessing for his sale of the Commonwealth ships – see above, p. 384.

67. Public Accounts Committee Act No. 60 of 1951.

wealth administration than the device of the parliamentary
question. But this respect comes to it in its own rather than
parliament's right. In general its reports (or at least their
conclusions) are probably the best read of all reports to parlia-
ment. But there is ambiguity in the twin objectives of drawing
attention to the detailed working of aspects of financial adminis-
tration and providing material for ready use by parliament.

Because of the first, they remain technical and complex; this
rather defeats the second. The average member is only a little
better informed, and for the most part no more involved than before.

To what extent have these committees concerned themselves
with public corporations? The opportunities are much greater
than in Britain for the reason that much of their work is based
on Auditor-General's Reports, and that in Australia these embrace
the corporations.

Although the early reports of the Victorian committee
were little more than short generalised commentaries on the public
accounts, the initial report established an important precedent:
almost half of it was devoted to VR finances. Through to 1910

69. The fact that the committee had Professor Bland as its chairman
for many years contributed materially to this.

70. Davey, op. cit., p. 10.

71. For reasons already indicated, the NSW committee need not be
considered further.

72. The enterprise was invariably termed the "Railway Department",
the line taken was to demand fuller information in railway esti-
mates and more effective auditing arrangements, and (need we be
surprised?) the chairman was William Shiels - First Report,
Melbourne 1895, pp. 6-7.
the reports followed this brief generalised pattern, but the interest in the VR remained and there were occasional comments on other trading undertakings. From 1910 the inquiries were usually addressed to particular topics, and about half of the thirty-seven reports presented between then and 1931 were directed to corporations. A similar tendency is already discernable in the reconstituted committee. This is hardly surprising, for so much of the important work of the state governments is done by corporations; moreover, the railways remain to this day within the Consolidated Revenue Fund. But this interest also reflects some doubts as to whether conventional public accounting methods are suitable for undertakings of this kind, and — particularly in the pre-1931 period — the relative novelty of government trading enterprises other than the railways. The latter point is emphasised by the interests of the Commonwealth's first committee: twenty of the forty-eight reports it presented from its inauguration in 1914 until its disappearance in 1932 concerned corporations, including the CR and ACSB.

The reconstituted Commonwealth committee has undertaken some notable investigations into particular administrative agencies. But it also shows some desire to avoid too many inquisitions of this kind and to focus attention rather on questions of common concern to many agencies, believing that its influence will spread further in this way. Hence a greater proportion of its reports has been devoted to general procedures than was the case with the earlier committees. Indeed, as the number of federal corporations
has grown, the direct interest taken in them by the committee—
one of the most potent instruments of public supervision—has
declined. But, of course, under Land's leadership the committee
has itself been one of the staunchest advocates of political
restraint in relation to the corporations in recent years.\footnote{73}

The role of the other committees can be briefly outlined.
Public Works Committees exist in all four governmental systems,\footnote{74}
to consider and report on major construction projects. In this
capacity they have been closely concerned with railway expan-
sion;\footnote{75} but a legal doubt has recently arisen as to the Common-
wealth committee's jurisdiction over some other corporations.\footnote{76}

There are two committees on subordinate legislation: the
Federal Senate's Standing Committee on Regulations and Ordinances

\footnote{73. As we have noted (above, pp. 455-6), it recently considered
the recoup dispute between the CR and the Treasury, and
showed considerable sympathy with the corporation. This
formed part of a general report dealing with matters of
interest in the Auditor-General's Report for 1958-59, and
including also some important references to the Snowy
Mountains Hydro-Electric Authority.}

\footnote{74. Sir Henry Parkes played the major part in initiating this
committee in New South Wales in 1888—his public works reform
complemented his railway management reform of that year.
The Victorian committee replaced an earlier Railways Stand-
ing Committee in 1935 (although the latter had not been
restricted to railway projects).}

\footnote{75. Whether or not the individual corporations have carried out
the construction operations, this is of course one area in
which Australian governments and parliaments have most care-
fully preserved full authority.}

\footnote{76. See above, p. 284, note 189.}
created in 1932 77 (which impressed the Canadian John Kersell 78), and the Victorian Parliament's Subordinate Legislation Committee created in 1956. 79 Their terms of reference draw no distinction between departments and corporations, although by-laws are usually exempted because they are not regarded as achieving the status of regulations. There have consequently been very few cases in which the committees have had to concern themselves with the selected enterprises. 80

Special select committees are of course created from time to time to consider corporate affairs. Thus the Gibson Committee of 1941-42 was responsible for a valuable review of broadcasting services, 81 and influential in shaping amendments to the relevant legislation. The Ogilvie

77. Created by Senate Standing Order 36A, following Report from the Senate Select Committee on Standing Committee System, Canberra 1930.


80. Irrespective of the existence of such a committee, however, most subordinate legislation is subject to disallowance by parliament.

81. Joint Committee on Wireless Broadcasting (Senator W.G. Gibson, chairman), Report, Canberra 1942.

82. Deleted.
and Wedd Committees which preceded the 1938 and 1949 statutes creating and reconstituting the TTC respectively, and which facilitated a measure of reconciliation with the Legislative Council, were notable examples from the selected enterprises.

But there have also been more frivolous inquiries, such as those which examined the treatment of individual employees by the VRC and NSWRC in their earlier years. Like the ministerial inquisitions of Bent and Sheahan, they are to be regretted in the corporate context.

There has been no significant advocacy in Australia of a permanent committee to examine the reports and accounts of the corporations as now exists in Britain. There is a longer familiarity with public enterprise, and as already indicated, less success in according corporations a measure of immunity from the forms of parliamentary attention applied to the departments. Thus no particular frustration has developed needing to be soothed by the provision of alternative channels of accountability. Yet parliaments are not generally well informed, and their interest is frequently mischievous. A committee of this sort might well serve a valuable purpose provided it respected the special nature

83. Joint Committees on the Transport Bill 1938 and on the Transport Bill 1948 and Additional Transport Matters, respectively.

of corporations and avoided the errors of the Broadcasting Standing Committee of the 1940's. 85

There is also much to be said for Morrison's preference for periodical intensive inquiries by "expert committees" which include some members of parliament. These represent a kind of "efficiency audit" beyond the capacity of any group of politicians alone, but they also have not been espoused in Australia.

(c) Debates and Legislation

It is customary in describing parliament's supervision of public corporations to consider debating opportunities as well as questions and committees.

The debating of the affairs of corporations in Australian parliaments is in two respects similar to the questioning position. First, there has not been any concerted effort to draw distinctions between departments and corporations. Second, while the opportunities are numerous 86 the use made of them is governed

85. On this see above, p. 499. Senator McKenna suggested the establishment of a standing committee (or committees) to report to parliament at two or three-year intervals on the operations of each corporation; but he did not appear to limit its terms of reference to the annual reports of the corporations - CPA 1959, p. 189. The 1959 and 1960 Reports of the British committee suggest that it is going to perform a valuable service in clearing away some of the fog which normally surrounds relations between ministers and corporations.

86. The more important types of debate likely to be used for this purpose are summarised in Table 15.
mainly by capricious factors, such as the annual attempts of the state oppositions to make political capital out of the deficits in the railway accounts, and the bitter airline wrangle between proponents and opponents of public enterprise. Moreover they tend to be rambling and disjointed. Professor A.L. Goodhart's conclusion - "a debate, however interesting the individual speeches may be, can hardly be regarded as a practical instrument for managing an industry"\(^87\) - is equally applicable to Australia.

Parliament does of course receive challenging information from time to time: it may come e.g. in the annual reports of the corporations, or in the reports of investigating bodies or of parliament's own official "watchdog", the Auditor-General. Examples have been the quite numerous complaints by the VR and CR about their treatment by government, and the drastic reforms suggested by occasional royal commissions. Although not involving the selected enterprises, it is also appropriate to mention the refusal of the Auditor-General to certify the accounts of the AAPC, and his various reports on this to the Federal Parliament;\(^88\) and the specific complaints of the Tasmanian Public Service Commissioner about political directives which disregarded the provisions

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87. Goodhart, op. cit., p. 266. Goodhart cites Molson's description of a debate on the BTC, which ambled through an assortment of subjects such as coal prices, restaurant cars, road licenses, the Ulster steamers, interest rates and the Hotels Executive.

88. Extracts cited in AAPC Reports, pp. 15-16.
(i) Amending bills and other bills affecting the corporation:
The frequency varies considerably from one enterprise to
another: thus there have been only a few minor amendments
to the CR legislation since 1917, whereas there have not
only been frequent amendments to TAA's own act but also a
considerable body of other legislation affecting its opera-
tions.

(ii) Financial measures (i.e., budget, estimates and supply debates):
These have witnessed some important contributions, particu-
larly in relation to enterprises financed within the general
budget. Thus much of the discussion about Sheahan's role in
the NSW transport corporations occurred on the estimates
debates. The other enterprises receive less attention, but
members can usually find a way to refer to them if they wish
during the debates on the relevant ministers' departmental
vote. Thus TAA has been discussed on the DCA estimates.
Corporations like the ANAO and AGSC do of course appear in the
budget to the extent that their "dividends" to consolidated
revenue have to be accounted for.

(iii) Adjournment motions: These are frequently used for the airing
of grievances about corporations. This method was, for
example, used to ventilate annoyance about the Treasurer's
attitude to questions concerning the Commonwealth Bank (see
Appendix F). There is even less restriction on eligibility
of subject matter than with formal questions. However the
minister is not put "on the spot" in the same way. He may
not be in attendance at all, and if he is there is no
obligation to reply.

(iv) The address-in-reply: While this debate allows a similarly
unrestricted field, it occurs only at the commencement of each
session.

(v) Motions to disallow regulations or by-laws: This type of
action is rarely taken by Australian parliaments. However
the NSW opposition has attempted to reject railway charge
increases by this method, and the Tasmanian Legislative
Council has thus disallowed a number of regulations framed
by the TTC.

(vi) Want-of-confidence motions: Motion of this sort related
specifically to the work of transport corporations are not
uncommon in the state parliaments. Again little or no attempt
is made to discriminate between ministerial and corporate
responsibility.
(vii) The tabling of annual reports: Appropriate debates may take place on motions such as those ordering the printing of, or simply taking note of, reports. [For discussion of the formal position in the Senate, see J.R. Odgers, Australian Senate Practice (2nd ed.), Canberra 1959, pp. 244-47.] However TAA's annual report has on occasions been discussed on the DCA estimates debate or on the adjournment.

of the relevant Public Service Act. 89

But too frequently such complaints pass without parliamentary action. Occasionally the odd question is asked, but the pressure on government one might expect when provisions of an existing law are contravened rarely develops. Even in the notable case of the AARC, two years elapsed between the laying of a definite complaint by the Auditor-General and the occurrence of a debate which prompted the Public Accounts Committee to undertake its investigation. There were also considerable delays after the dispute was publicized before the committee decided to inquire into the Leigh Creek coal rates question. In most cases the executive has been left to please itself about remedial action, and parliament has proved ineffective as the ultimate guardian. 90


90. Cf. also the failure of the parliament to discuss the reports of its own Standing Committee on Broadcasting in the 1940's, noted above, p. 499, note 58.
In particular, the annual reports of corporations were designed to fulfil an important role in the process of accountability. But the opportunities they provide for members to familiarise themselves with the workings of the administration, and thereby to increase their own effectiveness, are rarely availed of. This is especially true of the states. Of Victoria it has been said simply that "Annual reports are not debated when tabled in Parliament"; and the position in the other states is little different. The Federal House of Representatives also accords them little attention.

While it would not be true to suggest that they receive adequate notice in the Senate, there are signs of a development of some importance in that chamber. It is understood that this has been largely due to the influence of Senator Spooner, who believes debates on corporate reports can serve as very useful "time-fillers" when it is waiting for bills to come up from the lower house. Thus he accompanied the tabling of the Atomic Energy Commission's 1959-60 Report with a brief statement drawing attention to its more important features and inviting debate on it. Subsequently the Australian National University's Report received similar treatment. Neither debate was brought to a conclusion, but their occurrence is an encouraging sign in a generally depressing scene.

91. Williams, op. cit., p. 435.

92. This was not necessary, as there is a special committee to consider the question of printing.
Parkes and his followers attached great importance to legislation itself as an instrument of control. Their idea was that parliament should write into law the broad policy it intended the corporation to follow. Thereafter its actions had to be sustained for so long as it was acting within the terms of that law, and the broad policy could only be changed by amending legislation. But by 1936 even the mainly-conservative Banking Commission was conceding that this was not enough — governments needed quicker and more flexible methods in times of crisis than they could be sure of achieving through the legislative process.

The importance of legislation as a form of parliamentary supervision depends on at least three questions. First, to what extent does parliament itself (as distinct from the executive) influence the shape of legislation? Secondly, how comprehensive is that legislation? And thirdly, is parliament able to enforce faithful observance of all its provisions? 93

The relevant Australian experience does provide a number of instances in which parliaments have taken an independent line. It was a notable feature of all three of the major pieces of nineteenth century legislation shaping the VR corporation that back-bench pressures secured significant modifications to the bills originally submitted — the inclusion of many more specific reservations in 1883; the substitution of the general directive power in 1891; and the complete remodelling of the agency of management in

93. Or, if they are genuinely out-dated, insist on their revision.
1896. The long delay in the inclusion of a directive power in the NSW corporation, the modifications to Holman's 1916 bill, as well as the restriction of the powers of the TTC in relation to road transport services and the addition to that corporation of the associate commissioners, were all attributable to active intervention by upper houses. Finally—to take an example from outside the selected enterprises—the constitutional and electoral accident which permitted the Commonwealth Bank to defy the recently-elected Scullin Government was the existence of a Senate opposition majority which conspired with the corporation to throw out all rectifying bills the government submitted.

By and large, however, such cases are the exception rather than the rule; and as the political parties have developed their solidarities, this has become increasingly true. When governments have majorities in the legislature, they can usually command the necessary operations, e.g. the initiating and drafting of statutes, and the processing of subsequent amendments.

A significant decline in the comprehensiveness of legislation is indicated in Table 16, which contrasts the creating acts for the selected enterprises. This is at best only a rough measure, but the inclusion of a count both of the number of sections in each (not a sufficient guide in itself, for the length of sections may vary considerably) and of the number of pages occupied by each (the page sizes are similar and styles of printing not markedly different) provides a form of cross-check.
When the railway legislation was first considered, parliament debated at length, and wrote into the acts, all sorts of minor instructions dealing with operational detail. Very little was left out, but today the opposite is the case. Acts of recent origin record only the broadest outline, and allow much greater discretion in forming policy and making decisions. Under them neither government nor corporation is as tied by such a clear indication of parliamentary intent. The case of the Snowy Mountains Hydro-Electric Authority is instructive: its 1949 act contained

\[94\] Snowy Mountains Hydro-Electric Power Act No. 25 of 1949. Others have, however, been added by subsequent amendments.
Parliament had in fact left gaps which government filled in by means of a "Financial Directive from the Treasurer ... issued by the Minister ...". The extreme is reached by the company-type corporations (Qantas and Commonwealth Hostels), where in fact parliament has not even laid down the broad guiding principles.

The enforcement question provides no more encouraging evidence of parliamentary effectiveness. On a few occasions there have been complaints that certain provisions have been neglected. But the case which comes most readily to mind - the objections, motivated by Shiels' anger to Gillies' disregard of provisions relating to keeping of minutes and submission of quarterly reports by the VR - relates also to the period before strict party disciplines developed. For every such case there are many where existing statutory provisions are flouted without noticeable parliamentary reaction.

All this suggests that there are perhaps two classes of statute law. The first is jealously guarded by parliament, the

95. Publicised by Snowy Mountains Authority in its evidence to the PAC - AAPC Reports, p. 104. This particular directive has since been withdrawn and the delay in its replacement has been criticised by the Public Accounts Committee.

96. The history of the recoup clauses provides many illustrations. The Commonwealth PAC has suggested modifications e.g. to the Audit Act and the CR legislation; but the matters involved have little party-political content and parliament as a whole is not interested.

97. Although it is possible that a single statute may contain elements of both.
courts and the community, because e.g. it affects individual citizens in their relations between themselves and with government. But the second — with which we are mainly concerned — is not so guarded because it does no more than prescribe the relations to be observed between administrative agencies. Since one is normally subordinate in the government hierarchy to the other and dependent on it for office, a breach of such law is unlikely to be taken to the courts. It therefore has little compulsive force, and becomes no more than a guide to administrative action.

Before concluding this section it is appropriate to comment briefly on the role of Auditors-General and Public Service Boards as "officers" of parliament. In fact parliament is in no position to direct subordinate administrative agencies or consult with them: it is forced to rely on the executive. It can merely accord these special agencies permanency of tenure, and then rely on fearless reports from them to inform it in its own relations with the executive. But, as already noted, such reports rarely command adequate attention or produce worthwhile action. In recognition of this, recent Commonwealth corporation legislation has insisted on special audit reports to ministers. Public Service Boards are also acting primarily for the executive.

98. But only New South Wales has done this for Public Service Boards.
in their work of co-ordination\textsuperscript{99} and sometimes investigation.\textsuperscript{100}

There seems abundant evidence of this kind to confirm the many fears of a movement in administrative control away from parliament to the executive. With the increasing scale and complexity of government operations, the former has largely lost the ability to determine or influence forms of administration and techniques of supervision. Parliament is becoming increasingly just the channel through which those electoral forces whose function is to make or break governments make themselves felt on infrequent occasions, decreasingly the "public watchdog" capable of supervising and if necessary censuring and remodelling agencies of administration.

The conclusions I have drawn in this section should cause no surprise; and they have been stated in other contexts too numerous to list. It could of course hardly be otherwise. As Parkes, Watt and other Australian politicians were pointing out many years ago, it is the function of the executive to govern on parliament's behalf. Despite the good work of bodies like the Public

\textsuperscript{99} E.g., the role of the Commonwealth board in co-ordinating employment conditions. And it is at the request of the NSW Premier that the chairman of that state's board calls corporate heads together in regular conferences with a view to co-ordinating staffing, supply and other procedures, and dovetailing courses of action - see W. J. Wurth, "The Public Service Board of New South Wales Since 1895", \textit{Journal and Proceedings, Royal Australian Historical Society}, xlv, 6 (1960), p. 309; also Public Service Board, \textit{Annual Reports}, e.g. 1955-6, p. 32.

\textsuperscript{100} Thus the NSW Minister for Transport asked the board to conduct a major inquiry into the organisation of the tram and bus corporation in 1952 - see also above, p. 282 (note 185).
Accounts Committee, parliament's supervision of administrative detail is essentially vague and inconclusive. As a debating forum, it is not designed to govern. It approves or disapproves - now usually the former - the government's legislative and financial programmes. Beyond this its effectiveness depends mainly on its control over the composition of the government itself, and over the activities of individual ministers who are its primary agents.

3. THE MINISTER AND PARLIAMENT

(a) Ministerial Responsibility

The convention of ministerial responsibility requires ministers to accept full responsibility to parliament for the acts of departments; the adoption of the corporate form involves a substantial relaxation of responsibility. There is fairly general agreement that its extent in the corporations ought ideally to correspond to powers of control vested by statute in the minister. But the position is complicated by the indefinite limits of the general power and additionally confused by the frequent substitution of informal pressure for the exercise of formal powers. Indeed the ministerial-parliamentary relationship defies clear definition, and no doubt largely for this reason it is avoided (except in the

101. The following comments assume that this involves the existence of punitive authority in parliament, i.e. something more than mere right to information. For a relevant discussion, see S.E. Finer, "The Individual Responsibility of Ministers", PA (London), xxxiv (Winter 1956), pp. 377-9; and G. Marshall and G.O. Modie, Some Problems of the Constitution (revised ed.), London 1961, pp. 81-2.
limited sense of willingness or otherwise to answer questions) in many corporate studies. As an observer of British and French corporations remarked, it "has always been the aspect of the Minister's functions to which he, Parliament, the Act of Nationalisation and the general public have given the least attention".102

In the selected enterprises there have been some instances of real or alleged mismanagement, or lack of co-ordination with other parts of the government machinery. My impression is that, where there has been no general power to direct or control, or no close ministerial-corporate working relationship, it has been easy for the minister to set himself right apart from the corporation. In most such instances ministers have forestalled any hint that they might accept responsibility by openly contesting corporate attitudes, seeking fresh legislation to curtail corporate powers, and removing the offending corporate heads.

It is consistent with the various movements of opinion from which weak minister corporations103 developed that the minister should not be blamed for general administrative failures. As Parkes pointed out so clearly, the idea was to allow a large measure of corporate autonomy, and the minister was intended to intervene only in emergencies or as a last resort. Thus the Public Accounts Committee exonerated Minister for Supply Howard Beale because he had taken action on learning of the gravity of the


103. Cf. Hilligan's term "public corporations, strong minister type" for corporations subject to a general power, as in the British nationalised industries.
AAPC's position. He would only have been culpable if he had failed to intervene.\(^{104}\) This was also the lesson of the War Service Homes affair in the early 1920's.\(^{105}\)

In such cases then, the minister is not held accountable for the direct consequences of mismanagement so long as his ultimate intervention seeks to remove their causes. But can it be said that the corporation itself is more fully responsible? Some attempts to argue along these lines have already been indicated.\(^{106}\) In one sense it is very doubtful. Such responsibility is expected to flow primarily through annual reports and use of the minister as parliamentary spokesman - but this is a responsibility containing only the element of providing information, and that to a limited degree. Parliament cannot direct or punish except through ministers; and the very infrequent visits of corporate heads to parliament to answer for themselves cannot materially alter this situation.\(^{107}\) Those who have faith in the corporate heads believe

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\(^{104}\) \textit{AAPC Reports}, pp. 12-13, 49. Cf. Prof. L.O. Webb's view that "the very purpose of creating the possibility of Ministerial control" is to permit "intervention and the taking of Ministerial responsibility when there is reason to suspect mismanagement" - "Statutory Corporations under Review", \textit{PA} (Sydney), xiv, 3 (Sept. 1955), p. 162.

\(^{105}\) See especially debate on the Appropriation Bill 1921, \textit{CPR}, vol. 98, pp. 13995-14044. In this case the minister did hold a general directive power.

\(^{106}\) Above, pp. 25-6.

\(^{107}\) Thus Speight was called to the bar of the Victorian Legislative Council to answer Shiels' criticisms, and Sir Robert Gibson (Commonwealth Bank chairman) to the bar of the Senate to advise it on the Scullin Government's legislation. Tasmania's Hydro-Electric Commissioner recently held "informal conferences" with assembled parliamentarians in the parliamentary lounge to advise them on new power development proposals.
the vacuum is adequately filled by their conscientiousness and public-spiritedness; those who have complained of irresponsible administration. There is at least a partial answer to this in the frequency with which crises in the affairs of corporations are followed by the removal of the heads concerned. But even here the position is complicated by the difficulty that the question of responsibility is so often affected by political considerations. 108

There has been no relevant experience from the present Commonwealth shipping and airline corporations, in which the directive power is limited formally to the question of services. In the latter case, however, the government exerts its influence primarily by manipulation of the competitive environment, and the minister has already denied responsibility for decisions of its rationalisation machinery. The differences that have arisen have again been political rather than managerial; while there have been opposition demands for resignation of the minister because of his alleged favouring of the private airline, there has been no serious questioning of the administrative efficiency of either corporation.

What of cases where an untrammelled directive power

108. Gillies intended the VR corporation to be apart from politics, so that all questions of railway management would be considered on their merits. But within a few years the main political parties had aligned themselves for and against the VRG. NSWGR Johnson was virtually sacked in 1914, but the chief cause was his determination to protect Parkes' act from Labour encroachment. Again, in 1930 the Commonwealth Bank was defying the elected government - yet in a sense it had parliamentary support. And so on.
exists? For his contribution to the administrative ills of the NSW transport corporations in the early 1950's, Sheahan was transferred to another portfolio.¹⁰⁹ This, indeed, is the sort of recompense a minister might expect following concentrated criticisms of departmental activity. The same tendency is revealed in two notable cases from overseas: Strachey, who was discredited at the British Food Ministry largely because of the Overseas Food Corporation's ground-nuts fiasco, also suffered transfer;¹¹⁰ while India's Finance Minister Krishnamachari resigned in 1958 following parliamentary criticism of certain large investments made by the Life Insurance Corporation.¹¹¹

Where there is a combination of close political interest and a comprehensive directive power it is impossible to draw a clear line between minister and corporation. Although by no means continuous, the former's supervision is necessarily more positive, so that he is more closely identified with corporate activities. It is therefore not so surprising that in these cases - and they

¹⁰⁹. Bent was similarly transferred in Victoria in 1903; but he regained the railway portfolio on becoming Premier a year later.

¹¹⁰. But not before he had disclaimed personal responsibility and secured the removal of some of the corporation heads - see also above, p. 124, note 91. It is possible that Strachey's transfer was earned by the latter acts rather than by the weaknesses in the corporation.

¹¹¹. See Asok Chanda, Indian Administration, London 1958, pp. 258-62; and M.O. Chagla, Report of Commission of Inquiry into the affairs of the Life Insurance Corporation of India, New Delhi 1958. In this case the minister's permanent head was also involved.
seem to be the emerging pattern – rewards and punishments resemble those pertaining to departmental activities.

But this is not saying a great deal, for even in the departments the convention of ministerial responsibility is capricious in application. This has been amply demonstrated by Professor S.E. Finer, who argues, from an analysis of occupancy of ministerial office in Britain during the hundred years 1855-1955, that less than a score of outright departures during that period resulted from the application of that convention. It therefore "generalises from the exceptions and neglects the common run".  

Finer explains his challenge to a long-standing constitutional doctrine thus:

Most charges never reach the stage of individualisation at all: they are stifled under the blanket of party solidarity. Only when there is a minority Government, or in the infrequent cases where the Minister seriously alienates his own back benchers, does the issue of the individual culpability of the Minister even arise. Even there ... the punishment may be avoided if the Prime Minister ... makes a timely reshuffle. 

Even where all else is exhausted:

Brazen tenacity of office can still win a reprieve ... For a resignation to occur all three factors have to be just so: the Minister compliant, the Prime Minister firm, the party clamorous. This conjunction is rare, and is in fact fortuitous. Above all, it is indiscriminate – which Ministers


113. Finer, op. cit., p. 393. On the latter point he adds that, compared with the odd case which is taken to prove the convention, "A prodigious number of Ministers are saved ... by timely removal into another office" – ibid., p. 388.
escape and which do not is decided neither by the circumstances of the offence nor its gravity. A Wyndham and a Chamberlain go for a peccadillo, a Kitchener will remain despite major blunders.114

It is not difficult to demonstrate the equally capricious character of the convention in Australia, either in the departments or the strong minister corporations. It is of course possible to find occasional precedents on the Crichel Down pattern to support demands for ministerial resignation. But the selected enterprises have themselves - in their departmental phases - produced two excellent examples of the opposite position. Few ministers can have been subjected to a more concentrated form of parliamentary and public criticism than was Bent's lot just before the creation of the first VR corporation. But demands for his resignation went unsatisfied, and his eventual removal from office was brought about only by the O'Loghlen Government's defeat at the polls. It also took an election to remove O'Malley from the Commonwealth ministry in 1913, despite bi-partisan criticism of his actions in relation to the Karri timber contract for sleepers for the Trans-Continental Railway. Returned later to the Home Affairs Ministry, and subjected to so much criticism that his case furnished all-party support for the establishment of the CR corporation, it was still only the caucus revolt against Hughes'
leadership which got him out of the portfolio. 115

Parliamentary (and party) attitudes on the one hand, and ministerial idiosyncrasies on the other, are variable factors. It is almost impossible to predict how they will interact until a particular issue arises. This can be shown also from the experiences of the selected enterprises in their corporate phases.

There was only a dispirited opposition to care about Lang's "historic minute" to the NSWRO in 1925: the minute represented an illegal exercise of power, but it also represented fulfilment of an election promise and earned him great popularity in the Labour Party which was dominant at that point of time. Federal Labour sought to censure Bruce for his unsympathetic treatment of the ACSB, but did not have the numbers and the censure failed. In 1890-1 the Victorian parliamentary majority gave Shiels every encouragement in his campaign against the VRO; and a generation later Victorian parliamentary forces combined to frustrate Eggs-leton's attempts to provide conditions for the efficient management of that corporation. Sheahan so obviously created discord in the NSW transport corporations that even his own party tired of him;

115. Disillusionment with ministerial activity has of course furnished the stimulus for many other corporations. A fairly recent case was the Tasmanian Forestry Commission, which was converted from a department in 1946. Other devices, apart from the "timely reshuffle", which have been used to get rid of ministers in Australia, while avoiding any suggestion that punishment is being inflated, are the holding of a fresh ballot for ministerial office (most Australian Labour parties and some non-Labour elect in this way), appointment to a diplomatic or other official post, and (very rarely) ennoblement. There have been two dismissals of ministers (one Commonwealth, one Tasmanian) who had exhibited Finer's quality of "tenacity of office" but who had exhausted the patience of their cabinet colleagues.
but he resisted all opposition demands to resign and his party was careful to avoid any suggestion that he was being punished. Each episode has so many features peculiar to itself that prescriptions about appropriate political and administrative behaviour are impossible.

Such episodes show, moreover, that parliamentary interest in corporations is little concerned with sound management. How frequently do we find members combining to gain concessions? How rarely do we find them combining to stimulate conditions for efficient operation or to enforce observance of the administrative provisions of their own legislation?

(b) The Influence of Parliament

It is probably inevitable that parliament's grasp of administrative activity should have slackened with the multiplication and growth in complexity of government functions, and perhaps Australian parliaments have given way to the executive more than most. Yet care is necessary in summarising the situation, and extremist views may well be discounted. The verdict that "it is of great importance that Parliament should realise that it is not competent to contribute anything whatever to the efficiency" of a nationalised industry seems both too sweeping and surprisingly undemocratic doctrine for a Labour Party member. Fears such


as those expressed by some politicians at the 1959 Conference
of the (British) Commonwealth Parliamentary Association, that in
creating statutory authorities parliaments have e.g. "given birth
to a Frankenstein monster that will one day devour the body that
established it", are surely also unnecessarily alarmist. 118

However Senator Spooner's view (spoken from the same
platform but from the comfortable position of a ministerial super-
visor of a number of corporations) that "a good deal of authority"
is vested in "the responsible Minister ... in the final analysis",
that "there are now few obstacles to using parliamentary procedures",
and that "parliamentary influence is increasing, not decreasing",
smacks too much of complacency, of an unwarranted degree of identi-
fication of minister with parliament. He argued further that
corporations "are influenced in their deliberations by the parlia-
mentary discussions that occur". 119 But in this also there are
many variable factors: the importance of the subject matter,
whether the general attitude of parliament is co-operative and
helpful or merely interfering, the attitude of the minister.

It is unrealistic to see in parliament a potential super-
visor of administrative practice in any detailed, conclusive sense;

118. [PA 1959, pp. 173, 191, 194, 195. A rather similar line was
taken by Professor 0. D. Keeton (The Passing of Parliament,
London 1952, pp. 151-2), who, however, saw as the danger the
departments which had "emancipated themselves from the control
of Parliament and the Courts" - the corporation was merely an
"emmanation of the Ministry", "by a pleasant trick of nomen-
clature ... called something else to make it more palatable
to the public at large", and "subject to control and super-
vision by the Departments on all questions of broad policy".

119. [PA 1959, pp. 174-6.]
and therefore pointless to lament that it does not fulfil such a function today. Goodhart remarked that even in respect of a departmental institution such as the Post Office, "Parliamentary control is at best sporadic and uncertain. A large assembly, organised primarily for purposes of debate, cannot deal successfully with technical problems". And Appleby advised the Indian Parliament specifically that its proper function was to make fundamental choices in broad terms, not to concern itself with pedestrian detail; he added that "legislatures everywhere ... are least competent when they attempt to deal with specifics in administration". But more often than not it is the pedestrian detail that interests members. Their concern for fundamental choices is in the main limited to the legislative process itself, and here the initiative today is almost entirely with the government.

Some comfort may be drawn from the likelihood that parliament's control of public enterprises is as strong - or stronger - than that of general shareholders over a limited liability company.

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120. Goodhart, op.cit., p. 263


122. See e.g. Sir Geoffrey Vickers (an early member of the British National Coal Board), "The Accountability of a Nationalised Industry", FA (London), xxx (Spring 1952), pp.71-80. He saw parliament, whatever its weaknesses, as "an infinitely more experienced debating body than the shareholders of any industrial concern", one which "has far more opportunity than a body of shareholders to express its views, its criticisms, its apprehensions, even its confidence and satisfaction if it should come to entertain these feelings". Of the company shareholders he remarked that they "have embarked their money in an enterprise which they cannot manage themselves; they cannot even super-

(contd. overleaf)
But even this is often mitigated by concentration on detail. Parliament's concern with fundamental issues in public enterprise is normally limited to the major cleavages of political opinion which sometimes occur, as currently in the Australian airlines system, and here objectivity is very difficult to obtain.

In its supervisory role parliament is important as a channel of communication between administration and electorate, and through criticism and suggestion it obviously does influence (whether for good or bad) those to whom it has confided executive powers. It can always withdraw those powers, either by turning out the government or securing amending legislation; yet it is clear that parliamentary initiative has declined with the growth of party solidarities and the increasing professionalism of politics. Gone are the days when a government would allow itself to be defeated rather than reply to what it regarded as entirely unjust criticisms of the character of a railway commissioner it had

vise the management or keep in constant touch with its affairs". Sir Ivor Jennings also took British Conservatives to task for their facile assumption "that shareholders are able to control policy and ensure efficient management" - Parliament (2nd ed.), Cambridge 1957, p. 353. And the London Times complained specifically that members were in error in seeking to do more than this: it claimed too many had the idea that the shareholders' meeting should be in permanent session, that directors should constantly be open to attack, and that they should answer a thousand-and-one questions which in fact would never be asked about a comparable private company - cited W. A. Robson, Nationalised Industry and Public Ownership, London 1960, pp. 181-2.

123. This is of course a generalisation, to which there are some important exceptions - thus the Commonwealth Bank has been unusually successful in avoiding detailed inquisition.
appointed, when a leading member would resign from parliament itself in protest against its extravagant policies, when back-bench members could easily transfer their allegiances from one leader to another to secure their wants, when a minister could suggest in all seriousness that the government of which he was a member should vacate the Treasury benches to let the opposition try to improve its performance. Today the potentialities of parliamentary control as an independent force lie in what it may do in times of great emergency, or when the entrenched party system is going through some crisis, rather than in what it normally does do.

Likewise with that complement to parliamentary control, ministerial responsibility. Removal from office is an extreme step rarely taken. But constitutional theory permits it, in fact prescribes it. The concept may therefore have a deterrent value. It is perhaps "a part of the theory of the constitution whose denial we ought not - in Mr Morrison's phrase/to be 'shouting to the world'."

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125. This was another episode from Parkes' career: see his Fifty Years in the Making of Australia, Ian History, ii, London 1892, pp. 128-9.

126. Cf. Hanson, "Parliament and the Nationalised Industries", op. cit., p. 152; Goodhart, op. cit., p. 261. It is necessary to qualify this observation to the extent of pointing out that Australian parliaments are able to exert themselves effectively, even though not always democratically, against governments, when opposition majorities occur in upper houses.

But it would appear that parliament, the vital link in the chain of accountability, is also the weakest link in that chain. The official managers of corporations unquestionably have large and important powers and authorities; so do the ministers, and the division of powers between them depends as much on informal arrangements as it does on law. But parliament is merely a third force with limited usefulness as the people's custodian.
PART E

X. GENERAL CONCLUSIONS

This concluding chapter is not intended as a detailed summary of findings in relation to the specific elements and issues of the Australian public corporation system dealt with in the preceding chapters. Rather it aims to draw together the main threads of the study by recapitulating as briefly as possible the main claims to interest in the relevant experiences of each of the selected enterprises, and then by noting certain general propositions about the political relationships of public corporations suggested by those experiences, and suggesting certain implications for the machinery of government as a whole.

1. THE SELECTED ENTERPRISES: RECAPITULATION

(i) Victorian Railways: This enterprise was the experimental laboratory for the launching of the modern public corporation in Australia. The number of "firsts" forms an impressive list: the first and probably the most articulate popular protest against ministerial control of a public enterprise; the first deliberate movement to take such an enterprise "out of politics"; the first autonomous railway corporation; within a few years, the first demonstration that such a corporation was inconsistent with the principles of democratic government, a demonstration which involved one of the most bitter fights between corporation heads and government in all Australian corporate experience and a very rare use of
the statutory suspension procedures; as a consequence of the last, the first general directive power; and within a few more years the first recoup clause.

The importance of this early Victorian experience is further indicated by the fact that so many of the forms and procedures which developed have been applied in other public corporations. But the VR also set a less worthy pattern (one which has since proved very difficult to break) in railway finance. This was the continuation of departmental accounting methods despite the many other corporate attributes.

The restoration of the executive board of three full-time commissioners in 1903 marked the end of the experimental phase. With minor exceptions (such as the special fund provision) the VR has since enjoyed a period of remarkable legislative stability. This very stability at law - one might even say stagnation, in view of the many present anachronisms (e.g. among the specific reservations of power to ministers) - has made possible a further demonstration of great significance from the Victorian experience, namely the effect of personality differences. For while the law has remained constant, the VR has been subjected to ministers ranging from those like Bent and Hogan/Tunnecliffe/Cain who sought to exercise a comprehensive control, to those like Eggleston who believed in and sought to defend the principle of independent management of public utilities. And the commissioners have ranged from Clapp, a man of considerable stature who managed to remain in office for almost two decades while standing up fearlessly for what he
believed to be the rights of his corporation, to others more compliant, more imbued with co-operative spirit, less concerned with the letter of the law.

The VR has not been much affected by plans for transport co-ordination; and, rather surprisingly in view of the important part personalities have played, there has been little evidence of patronage in appointments. Present proposals to relieve it of all interest negotiations on capital represent a development of considerable importance; but it is in many ways unfortunate that the opportunity is not also being taken to grant the corporation a commercial accounting status apart from the general budget. It has over the years set many precedents for other corporations to follow, but it does not appear to have profited much from corporate experience elsewhere.

(ii) New South Wales Railways: Despite functional similarities, and common problems of scale, the NSW experiences have differed in many respects from the Victorian. In the first place there has, owing mainly to differing political circumstances, been a more deliberate rationalisation of views about corporate autonomy. Parkes began from Victoria's 1883 act, but his modifications to that act and his determination that the spirit of his own be observed showed a deeper understanding of administrative requirements than was demonstrated by the Victorian pathfinders. He was the apostle of political restraint except in the "last resort", and his distinction between "active" and "dormant" ministerial responsibility still has much relevance. In opposing the
Parkesian view, Labour usually maintained that it did not want a full return to the old departmental system. But it believed ministers should have the power to insist on implementation of government policies. This was no more than Shiels had claimed for Victoria in 1891, but NSW Labour did not succeed in putting the general directive power over the NSWR on a permanent statutory basis until 1950. In the meantime the respective views were argued out time and time again.

Holman's rationalisation of the recoup (also borrowed from Victoria) in 1916 anticipated the movement for a more equitable system of railway finances which emerged between the wars. In New South Wales, however, the recoup clause has in a formal sense been neglected; and the subsequent removal of railway finances from the Consolidated Revenue Fund proved to be a half-hearted reform which conferred few benefits.

The NSWR corporation has suffered frequent reconstitution (progressing through variants of the executive board to single commissioner management), either because of administrative weakness or political manoeuvring; and there has been a veritable procession of political proteges marching into the top jobs and then assisted out again by devious means. The rail corporation has also been affected in important ways by successive transport co-ordination schemes. On two occasions there have been experiments with special supervisory corporations, but both have complicated administration and failed because of the discord they created and excessive political interference. The gradual evolution of the "Ministry
of Transport" is an interesting development, and much more will probably be achieved by it.

The relevant administrative provisions are not easily accessible in a single statute. They are contained in a labyrinth of assorted acts with varying titles, and important sections of the current Government Railways Act have been obsolete for thirty years. The untidiness of the NRSR legislation surpasses by far that of the other legislation examined in this study; and it has been accompanied since the 1930's by great confusion of terminology which has broken down the earlier parliamentary understanding about the special nature of corporations.

In one very important respect the NSW experience is similar to the Victorian - it provides vivid illustrations of the major changes in administrative relations which can occur irrespective of statutory provisions. There were notable instances of ministers (Nationalist as well as Labour) intervening beyond their legal powers, especially in the 1920's, and Judge Edmunds formed interesting conclusions about the contrariness of commissioners in deciding whether or not to bow to pressure. Again, no change of parties or of legislation could have produced greater differences in these relationships than the advent of Sheahan; while Winsor's career showed that personalities could be equally important on the official side.

(iii) Tasmanian Transport: Little need be said about the single-man rail corporation of 1910-35, which, although free of any legalised general ministerial power, clearly suffered more from political interference than many corporations subjected openly to
such a power. It did, however, provide the only case of outright dismissal of a corporate head.

The Ogilvie reforms of 1938 are of much greater significance. The main elements may be summarised thus: amalgamation of all state transport activities at that time in a single corporation; specific legislative prescription that that corporation "shall be absolutely free from political control in the administration of this Act" and that "economic" rates shall be charged; a recoup system covering the very limited powers remaining to the minister (such as the unique but rarely used appeal procedure); clear separation of the corporation's finances from the general budget; and payment to it of all state land tax revenues in recognition of the general benefits which accrue to the state from transport operations. I have suggested that this constituted the boldest state transport legislation since the turn of the century.

Ogilvie's aims have not been fully achieved and the TTC stands much closer to the minister than his act envisaged. Nevertheless the enterprise generally enjoys a more effective insulation from capricious political pressures than its mainland counterparts; and, despite recurring deficits, the separation of accounts both saves it from detailed financial control by Treasury and parliament and also confers greater administrative flexibility.

The corporation was involved in great political controversy in the late 1940's following expansion of its state-wide road passenger services. The issue was finally resolved by vesting certain specific controls over this phase of its activities in
parliament itself, and creating a degree of internal separation between its own operative functions and its regulatory functions (which of course affected its competitors).

For its first decade the TTC took the shape of a policy board whose chairman was also chief executive officer; it then became a functional board consisting of/latter as chairman and the two senior branch heads. Apart from the odd case of Barnard, the employee representative, there has been no obvious political bias in appointments.

(iv) Commonwealth Railways: The statutory arrangements for the political control of this corporation reflect the cumulative wisdom of state railway experience. These arrangements have remained unchanged for almost half-a-century; but, as the recent Public Accounts Committee hearing indicated, they have lost the support of Commonwealth officialdom. It seems that changes cannot be long delayed.

The CR corporation has functioned throughout its history under a single commissioner, and was subjected at the beginning to the three main elements of political control: the specific and general powers and the recoup. Its finances remain within the budget, although here it has an advantage over its state counterparts in that the interest arrangements are less burdensome.

It commands little general political interest, and has probably encountered less sectional pressure than any other of the selected enterprises. The examples it furnishes of ministerial-corporate disputes, though few, are therefore clear-cut, not compli-
ated by other issues. It is here that it makes its chief contribution to this study. It furnishes clear evidence that ministers have sought to use the power of reappointment to influence corporate actions; and also that single-seatdness does not necessarily make a corporation more subservient. In fact the first three CRC's all showed independence and fearlessness in their ministerial dealings, and two survived threats about non-reappointment. The third case – that of Hannaberry – gave rise to a detailed consideration of the recoup philosophy.

(v) Commonwealth Shipping: The first Commonwealth Shipping Line waxed and waned at a time when public enterprise (except for railways) was still a novelty and when the Commonwealth Parliament was uncertain of its administrative implications. There were, moreover, diametrically opposed views about the political morality of the line's very existence – for, unlike the railways, a monopolistic private enterprise provided alternative (if costly) services and vigorously opposed the intrusion of public enterprise into its domain. In the circumstances the line's chief interest for this study lies in the demonstration that departments and corporations can both be bent in unusual ways when the political stimuli are sufficiently bizarre, and that the success of a public enterprise depends at least as much on political attitudes as on prescribed administrative forms and procedures.

Hughes had no thoughts of a public corporation; but while the line was part of his department it was conceded much flexibility. This was its period of strength. Bruce vested it in a corporation
with the appearance of almost untrammelled managerial autonomy; but thereafter unsympathetic ministerial attitudes and also basic structural restrictions as in finance hastened its decay.

The second line functioned for a decade under a provision­
al corporation which was so weak that effective control centred in the minister's department. It was again a matter of politics that this arrangement endured for so long. Having reluctantly decided to retain the enterprise, the present government formed a new corporation on the TAA model, and this has proved both virile and profitable. Although it enjoys no monopoly and is subject to certain restrictions entrenched in an industry agreement, its operations are not as complicated by the political and competitive environment as those of TAA.

(vi) Trans-Australia Airlines: The scholarly image of the public corporation was much to the fore in the establishment of this enterprise. There was never any confusion with a depart­ment; indeed, Labour found political value in emphasising the basic distinctions. The corporation took the policy board plus general manager pattern and had clearly separate finances; and these arrangements have continued throughout its fifteen-year existence. The original political controls were refined versions of those already entrenched in railway legislation: specific and general powers and recoup. However, while these remain in TAA's own statute, their practical effect has been largely superseded by a new system of controls constructed under general airline industry legislation.
This is in part a further reflection of the traditional attitudes of the political parties to competitive public enterprise, in part a recognition of conditions peculiar to the industry. Labour wanted TAA to be a monopoly. But, backed by the Liberals, the private airlines defeated this aim in a court challenge. Hence there has always been competition between the public and one or more private operators, and their respective fortunes have reflected the fortunes of the political parties.

Venomously opposed by the Liberals and their business allies but allowed every freedom by the Labour government, TAA quickly rose to the dominant position. Politics notwithstanding, this was clearly due in no small measure to its own superior enterprise and initiative, a situation which can forever be used to counter oft-repeated generalisations about the inevitable effects of the "government stroke". And of course it severely embarrassed the Liberals when they came to power. They prevented TAA following up the equipment advantage it had earned; they purged it of its Labour-appointed heads and replaced them with good private enterprise men; they forced it into an "agreement" with its private rival to share government business and rationalise services; and they assisted the latter to build up its capital assets. But for years TAA continued to outdistance its chief opponent. The second agreement of 1957, together with further industry legislation, therefore gave the government stronger powers to restore the balance, and these have been used remorselessly.

Although TAA's operating efficiency has never been
seriously questioned, there has been relative deterioration in its position. This has been the result of deliberate government policy, and in the process it has suffered a substantial shrinkage in the area of corporate independence.

2. SOME GENERAL PROPOSITIONS

The following propositions have been selected from the more detailed conclusions drawn in the foregoing study as assessing some general relevance for the study of public corporations as a whole. Some are obvious, proving the validity of general assumptions already made; they will need little amplification. Others are perhaps not so obvious, and are argued at a little more length. The order in which they are presented corresponds as nearly as possible to the arrangement of the preceding chapters; it is not intended as a measure of relative importance.

(i) Structural Elements in a Control System: The selected enterprises show clearly that formal statutory autonomy can be vitiated by structural elements in the make-up of particular corporations. It is therefore not sufficient to rely on a listing of formal ministerial powers of approval and direction for a picture of the real control situation.

It is first necessary to state that, while they may have considerable importance for internal administration, variations in the organizational patterns of governing bodies do not appear to have any significant correlation with degrees and methods of political control. For example the evidence does not suggest that the one-man corporation will necessarily be more subservient than
the multi-member authority. The selected enterprises furnish many instances of corporations taking an independent and fearless line, especially during the long histories of the various rail systems — but these instances are well shuffled amongst corporations of both types. The crucial questions are who is appointed (not how many), and what security of tenure is conferred.

The distinction between policy boards and executive commissions provides many difficulties. It is obviously necessary that power to decide less important questions should be delegated to lower levels; but this can be done within the "management team" itself while preserving clear lines of authority. While the worthy intentions of politicians in seeking to draw a policy/administration distinction can be appreciated, their own actions reveal the limited usefulness of such a concept. It is in these terms that the separate organ is often justified; but against any potential value it may have must be set the more complicated administrative system which results. It seems doubtful that "policy" questions are consistently handled more effectively by corporations with such an organ than by e.g. the Snowy Mountains Hydro-Electric Authority, the National Capital Development Commission, many executive rail corporations, or others without it.

1. The importance of clear lines of authority is emphasised by experience with multi-member executive commissions. Such bodies have usually failed unless one member, either by virtue of his own stature or because he holds overriding statutory powers, is able to enforce a unity of control at the sub-political level.
The recorded experiences suggest alternative reasons for a separate organ between management and minister: it may confer special advantages where it is considered desirable to give a direct voice to a variety of interests or qualifications; it may succeed in "filtering off" petty political demands which would otherwise be made directly on the line officials; and, in controversial circumstances, it may permit the introduction of a political bias to act as a brake on management. The TAA experience suggests that these effects are not mutually exclusive.

The experience of the selected enterprises has underlined the importance of tenure. There is clear evidence that the possibility of non-reappointment has been used in attempts to coerce corporations to pursue desired courses of action. These enterprises provide no instance of permanent tenure for members of governing bodies to facilitate direct comparisons. But it is noteworthy that some with restricted tenure have shown considerable independence of spirit - in particular, two ORC's survived such threats without submitting on the points at issue.

Appointment by government is common to all the selected enterprises; but the frequency with which actual appointments made have exhibited political bias has varied greatly from one to another. In some a non-political tradition has been established and observed by all parties. But patronage has proved particularly useful where there are important divergences in political opinion about the desirable role of an enterprise.\(^2\) Governments of all parties

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2. This, however, hardly explains the position of the ICWR.
have on occasions resorted to it, although non-Labour governments have a considerable advantage in that their proteges are usually men of recognised managerial ability and with some claim to independent standing. Merit and patronage are not necessarily mutually exclusive.

This also has direct implications for operative control. If appointees are carefully selected, governments can afford to allow a considerable measure of apparent autonomy. Corporations whose leaders share with the members of government common backgrounds, common approaches to fundamental questions, may be relied on as a general rule to arrive "independently" at acceptable decisions; and in these circumstances formal control may indeed be slight.

The tendency has been to avoid using the statutory removal procedures, with their accompanying publicity. Ministers not surprisingly seek the cover of less obvious means, and are often prepared to play a waiting game. Their task is made much easier by the regularity with which appointments come up for renewal. The rare cases where the statutory provisions have been invoked have demonstrated that it is as difficult to define "inability" or "incapacity" as it is to define "policy". And far more often removal is required for political reasons.

Both experiments in direct interest representation in management failed because of the basic conflict between the groups represented and the corporate purpose of the agency. This common failure is particularly significant because the two employees
"representatives" had diametrically opposed views as to what their role should be. The relevant Tasmanian and NSW arrangements lasted four and two years respectively. This experience recalls the collapse of the Stevedoring Industry Commission through the disruptive tactics of the union representatives on it in the late 1940's. However other experiments in interest representation have had a much longer life in Australia (e.g. in commodity marketing). Success in these arrangements appears to be directly related to the measure of community of interest among the various parties involved. In large industrialised undertakings where staff are highly organised in militant unions, this is unlikely to apply as between employees and management.

The budgetary connection is also an important factor in the control system. Corporations tied to the general budget have experienced a more detailed political scrutiny of their activities than those with independent accounting arrangements, irrespective of tests of profitability. That the rail corporations are so organised can be explained primarily in historical terms: the failure of the pioneer legislators to face up to the financial implications of the corporate form. But - apart from the parochialism of many state politicians - there appears no good reason why this failure need be perpetuated. Corporations with separate

3. The failure of similar experiments in the Mexican railways was noted by A.W. MacMahon, "The Mexican Railways Under Workers' Administration", Fall, 1, 5 (Autumn 1941), pp. 453-71.

finance are today subjected to adequate control at vital points; and the additional opportunities for political inquisition in the rail corporations have mainly an irritation effect which militates against effective business management.

The dividend system applied to TAA and the ANL furnishes a more equitable basis for judging the financial results of a public enterprise. It does not affect political control at vital points, but it allows greater flexibility in management. It assumes, however, that governments are prepared to confer opportunities on public enterprises equal to those enjoyed by private enterprises. The general treatment of railways, and the crippling fixed interest obligations inflicted on the ACSR, deny the generality of that assumption.

(ii) Operational Control and Accountability: The early attempts to define ministerial powers in terms of specific reservations of authority have been found wanting, and the general directive power has been an almost inevitable development. But the latter is frequently clumsily applied. Some indication that it is not intended to be a continuous and comprehensive power is required, but to define it e.g., in terms of policy and finance serves little purpose. Terms such as "in the national interest" appear preferable. There is obviously a case for some continuing specific powers; but with the discretionary general power conceded, they should be kept to a minimum. Many currently existing specific reservations, especially in the state corporations, are merely frivolous and discourage managerial enterprise.
An important difficulty has been the neglect to associate reporting obligations of corporations with the statutory political powers. The effect has been to encourage political interest in fields over which there is no legal power; and this has led almost inevitably to the exerting of "extra-legal" pressure beyond the statutory limits.

A few experiments with special second-tier coordinating corporations inserted between the business corporations and ministers have proved unsuccessful. Once again it is shown that administrative systems work best when lines of authority are least complicated.

The special airline rationalisation machinery is in a rather different category and indicates what may be a new pattern of development in industries in which public and private operators compete. It avoids the construction of new administrative empires with their own vested interests - the danger is rather that of political bias, which will be very difficult to eliminate except where there is genuine political impartiality. The indications are that a Labour government will inevitably confer favours on the public enterprise, a non-Labour government on the private. There are many potential advantages in dual systems of this sort, and Labour interests are showing some awareness that there may be in the underlying ideas a possible alternative to full nationalisation. But it is by no means clear from the Australian experience that this

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5. As suggested by Dr E.C. Corbett in recent address to AJPS Group, Royal Institute of Public Administration.
basic problem can be overcome. 6

The recoup is a most useful device where corporate and political roles can be clearly separated. In such circumstances it may bridge the gap between the social obligations of a public service and the reasonable commercial requirements of a business undertaking, and bring together political and financial responsibility. But where it is difficult to separate those roles the problem of measuring the respective responsibilities may well be insurmountable. Australian parliaments have also shown muddled thinking about whether they are prepared to concede a profit margin in corporate charges when applying the recoup, and about whether it should apply to political refusals (e.g. of rate increases) as well as to positive directions.

The relevant experiences contain important lessons about the observance of statutory provisions intended to govern political controls over public corporations. The history of the recoup illustrates vividly the ease with which ministers are able to disregard prescriptions of this kind; this is shown also in many other elements of ministerial-corporate relationships in the selected enterprises. It underlines the limitations of studies which rely mainly on legislative analysis in their description of corporate systems.

6. An observant American visitor remarked to me that the respective concessions would probably balance out over the years with the swing of the political pendulum - but at present that pendulum seems stuck on the private enterprise side.
The importance of personality and party attitudes in setting the pattern of administrative relationships cannot be overemphasised. Frequently they distort the legislative prescriptions, and the relevance and accuracy of the latter are likely to depend in no small measure on the amount of room they allow for the play of such forces.

The selected enterprises indicate certain trends in ministerial-corporate relations which may be of general relevance. In fact a fairly clear pattern has been emerging over the last generation, despite the retention of numerous statutory distinctions.

Quite obviously Australian public corporations have on occasions in the past followed very independent courses. But the relationships have gradually been adjusted in the government's favour. In a democratic system, this is as it should be; but it is also in no small measure a result of growing governmental responsibility for the national economy as a whole since the early 1930's, and the corresponding pressures for more effective integration of government agencies themselves.

Owing to a very peculiar set of causes the VR had established the precedent long before. Notwithstanding this, that

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7. Notwithstanding Appleby's general contention that no democratic government has ever been seriously impeded in important desires by corporate autonomy: Re-Examination of India's Administrative System with Specific Reference to Administration of Government's Industrial and Commercial Enterprises, New Delhi 1956, pp. 4-5, 45.

8. I have used the word "government" rather than "minister" intentionally here: as the case of Bell, the first O.R. showed, the corporation may win the day over a minister if the latter is out of step with government as a whole.
enterprise frequently asserted its autonomy under Clapp between the wars; and it was only with his departure that it returned to the closer relationship with government, with its emphasis on co-operation, harmony, and formulation of joint ministerial-corporate policies. It is, for example, unlikely today that the VR would engage independently in a public exchange of recriminatory pamphlets with an influential interest group, on an important political issue, as it was doing as late as 1933-9, or introduce a new type of train in the face of government displeasure as it did a few years earlier.

In the NSW Bruxner began his long ministry in 1932 with the belief that his role was in the main one of restraining political pressures. But as the decade progressed he found himself forced to participate more actively. Notwithstanding the great upheavals while Sheahan and Minor held the stage, the situation there is now little different from that in the VR. The landmark was perhaps Martin's 1953 instruction to Minor that the government should in future be consulted on all "policy" issues. In the T&G also, there has been a growing emphasis on ministerial-corporate consultation and formulation of joint policies, despite the rigid separation envisaged by the relevant legislation. The consultative process is equally evident in the Commonwealth enterprises, and has been specifically advocated by T&G.

9. The VR issued a pamphlet entitled "Starve Your Railways and Then - What?", dealing with alleged unfair advantages enjoyed by motor transport. The Chamber of Automotive Industries responded, and the VR followed up with "A Reply to the Criticism by the Chamber ...".
Corporations now rarely make decisions on important issues without prior consultation with governments (even though in many cases they have undoubted legal right to do so), for they have learnt, in some cases by bitter experience, that the latter will eventually prevail. They may take a few tricks, but the result must now be a foregone conclusion. Open revolt achieves little; reasoned argument within the framework of ministerial power may achieve much more. It is better to seek to influence, to concede some points in the hope of scoring others, to agree when all else fails, and to live to carry on. Within these limits the official corporate role is recognised in its own right, by ministers not less than others, and it is no exaggeration to speak of the emergence of "joint policies".

The formal control provisions will be used when they fit the needs of the moment. But their ineptness or inadequacy will not discourage a determined government, and the more informal consultative process has become the focus of ministerial-corporate relations. There are of course differences in the frequency of contacts, and substantial areas of corporate autonomy remain. But there is a general similarity in the methods of political control at vital points - and the government is arbiter of what is vital. Modern governmental practice has proved a great leveller of statutory distinctions.

Indeed, ministerial control is as conclusive as parliamentary control is inconclusive. Australian parliaments have generally not sought to discriminate between corporations and departments in
their questioning and debating procedures, and their jurisdiction is therefore scarcely less effective over the corporations than over the departments. But notwithstanding power to influence, their interests often appear frivolous rather than constructive; and the indications are that, under force of the party system, they have increasingly abdicated their rights to the executive. 10

Ministerial responsibility for the affairs of corporations is correspondingly inconclusive. The indications are that, where there is no general directive power, ministers will have little trouble in passing blame to the corporation; and that where they have that power and it can be shown that they have been closely involved, they will be accorded department-type treatment — but this is not saying a lot. Herein, I believe, lies the crucial test for accountability: parliament governs in the main through ministers, but party is increasingly replacing parliament as censor of their activities. Even in the corporate area of government, the danger lies in the weakness of the parliamentary-ministerial link, for the ministerial-corporate link is no longer weak. This of course merges into a general problem for the administration as a whole. 11

10. Macleod drew much the same conclusion from his Canadian study: he compared the "systematic ... web of ministerial controls" with the "haphazard ... legislative controls" — Public Ownership, p. 140.

11. It is a moot point whether an extended committee system would significantly improve the processes of accountability as many suggest, for its interests are unlikely to be more discriminating than those demonstrated under existing parliamentary procedures. In present political circumstances, how could a committee drawn from both parties examine the affairs of TAA objectively or agree on what are the issues of national importance? These difficulties underline the importance of developing public relations activities within the corporations, the cultivation of a spirit (contd. overleaf)
3. **IMPLICATIONS FOR THE MACHINERY OF GOVERNMENT**

The public corporation was originally devised as a means of taking particular activities of the state "out of politics": this phrase, or variants of it, occurs frequently in the literature of the subject. In modern administrative thought it often goes hand-in-hand with the more recently formulated aim of providing conditions for managerial flexibility and initiative.

The selected enterprises have certainly indicated that the corporate form may confer the latter benefit (although this is by no means inevitable); but they have demonstrated even more clearly that it is alone insufficient to ensure insulation from politics. Public ownership of railways may not be in dispute, but factors such as the magnitude of their demands on national financial resources and the industrial pressure exerted by their highly unionised staffs ensure that they become no backwater. There will be no need to say more about the political interest in the airline and shipping enterprises. And, notwithstanding individual differences of focus from industry to industry, the very importance of transport services to the national economy compels general political concern.

Much the same has been said about the British nationalised

of direct accountability to public and responsiveness to their needs. This early ascendancy was in no small measure due also to its success in this field: it achieved the remarkable feat for a public enterprise - particularly one which was seeking to drive a private enterprise out of business and which the Liberals alleged was supported on every side by the Labour government - of enlisting the sympathy of the non-Labour press.
Clearly, as the popularity of the public corporation has increased, the chances of according it a non-political character have decreased. And in order to keep the whole field of administration in due perspective, it has to be remembered that a hundred-and-one departmental functions such as weather forecasting, collecting statistics, ownership and operation of aerodrome and air-traffic control facilities, and even (despite the immense political interest in the product) conduct of elections, are in practice virtually non-political.

That the corporate form is no sure recipe for immunisation from political pressures is admittedly a negative and no longer original finding. But it is an important starting point for any reconsideration of the respective roles of minister, department and corporation.

I find it necessary to draw two somewhat contradictory lessons from the experiences of the selected enterprises. The first - in conformity with conventional theory about administrative forms - reveals basic confusions which could with advantage be eliminated. But these very confusions provide part of the evidence for the second lesson: that there has been a gradual coming-together of departments and corporations, to which general constitutional and administrative theory has scarcely become adjusted.

Important ingredients of the first lesson are the cabinet arrangements for the supervision of corporations and the question of terminology. In the transport field as in some others, the Australian states have (except under the Parkesian philosophy) normally had special corporation portfolios; the Commonwealth, on the other hand, has merely associated its corporations with departmental portfolios.13 The latter system will be generally more familiar outside Australia, and I believe the Australian experience has shown it to be preferable. It is more precise in terms of constitutional doctrine, which assumes ministers to work primarily through clearly subordinate servants and advisers. It also carries the useful implication that corporations do not parallel departments; and the very existence of "parent departments" gives the minister access in a dignified and orthodox manner to advice he may need in his dealings with corporations.

Not only are the minister's powers in the corporations restricted by statute, but his amateurishness is underlined by the technical complexity of their operations. He will feel the need to check their submissions on important questions: as Eggleston once remarked of his ministerial role in relation to Victorian corporations in the 1920's, as a mere layman he never knew whether

13. This is the normal practice, although two exceptions may be noted: the existence of a separate repatriation portfolio even during the fully corporate phase of that activity; and the current entrenchment in official parlance of the title "Minister in Charge of OJIRI" — although the latter is merely an adjunct to some other portfolio.
they were giving him all the relevant facts. The ANAO has warned against the danger of duplication if DGA is required to cross-check its submissions (obviously this happens quite often, and the position needs to be watched); but it has not experienced the indignity of a minister without a department secretly consulting with its own staff or resorting to other forms of espionage.

Where corporations embrace as large a part of government activity as they do in the Australian states, the appointment of special corporation ministers is difficult to avoid. But in such circumstances – as the experience of the rail corporations has shown – confusion about the minister’s role is almost inevitable, facilitating attempts to treat the corporations as if they were departments and making more likely conflicts between ministers and senior officials. All this has a detrimental effect on operating efficiency. As will be suggested below, the difficulties could perhaps be overcome if the movement marked by the emergence of the embryo “transport ministries” were carried to its logical conclusion.

The rail corporations have rarely escaped being called departments despite the very non-departmental intentions of their founders and their many distinct constitutional features. This was largely a matter of tradition. There had been rail depart-

14. From discussion with Tasmanian historian Mr J. Reynolds, who was acquainted with Eggleston. The latter had great confidence in the WR under Clapp, but was at that stage apparently not so sure of the State Electricity Commission.
ments for a generation before the corporations were created, and the habits of speech proved difficult to break. There was of course no recognised alternative - the term "public corporation" was not then in vogue. The far-sighted Parkes carefully avoided the word department in his act, but was not able to stem the tide. The continuing existence of specially designated railway ministers in most states (and their eventual return in New South Wales) tended to reinforce the popular view that their charges were still departments.

The more recently created Commonwealth corporations have been spared both confusions. But in the railway systems they have militated against full achievement of the goals sought by the late nineteenth century reformers. It is a pity that the rail corporations themselves, and generally pro-corporate ministers like Eggleston, did not recognise the importance of words in fashioning habits of thought, and seek to popularise more appropriate terms. The confusion is such today that some politicians and even leaders of other corporations suggest in all seriousness that railway problems could be solved by conversion from department to corporation, thereby ignoring a rich heritage of administrative innovation almost a century long. Certainly the rail corporations have lost much of

15. And of course continuation of departmental methods of finance.

16. Such suggestions have not been uncommon in the NSW Parliament since the war. See also Sir Richard Boyer, "The Statutory Corporation as a Democratic Device", PA (Sydney), xvi, (March 1957), p. 36.
their initial independence. But this is true also of many other corporations, and it is still a fallacy to think of them as departments. 17

Notwithstanding this, it is necessary to re-examine the traditional assumptions about the nature of departments and corporations which have underpinned so many developments in administrative organisation in the mid-twentieth century. It is naive to assume that incorporation will automatically confer greater freedom from political pressures; 18 it is also naive to assume that managerial flexibility is an inherent and peculiar characteristic of corporations, and conversely that departments are incapable of adaptation. 19 The first point has already been argued; the second is demonstrated by the first shipping line which, in its pre-corporate form, enjoyed concessions denied many modern corporations, and by various adjust-

17. This lack of clarity in the use of administrative terms is apparent in many fields of state government activity, and is responsible for some of the peculiar hybrid organisations that have emerged. Confusions abound even in that legally very autonomous corporation, the TTO: it has recently moved into a fine new building in Hobart, but the terms "Transport Commission" and "Transport Department" are mixed with glorious abandon on its door-entrances, notice boards, foundation stone, etc.

18. As e.g. an International Bank Mission tended to do when it reported that strong political pressures compelled the Jamaican railways to act virtually as an employment agency, and that the situation could not be remedied so long as the enterprise continued under departmental operation — cited A.H. Hanson, Public Enterprise and Economic Development, London 1959, p. 342, note 2.

19. Thus Appleby remarked that through proper use of delegation "it is entirely possible to provide the flexibilities appropriate to any enterprise without invoking the word A.E. corporation/ or relying on administration through boards" — Public Administration in India - Report of a Survey, New Delhi 1953, p. 56. But cf. Hanson's fear that the tendency to conformity in "an entrenched bureaucracy" renders more difficult the adaptation of procedures within the civil service proper — op. cit., p. 342.
ments in staffing procedures to suit particular departmental institutions such as the Post Office and the Weapons Research Establishment. Against such departmental adaptations can be set, for example, the budgetary rigidities of some corporations. The potential abilities of both forms are considerable, and in the aggregate the area of irreducible difference is slight.

It is not only that corporations no longer stand where traditional theory positions them; this is true also of departments. The modern department has advanced far from the patronage-ridden, ministerially-dominated office the early railway reformers were seeking to avoid. It has in fact come much closer to current corporate practice. I suggest that it is the modern corporation — not of course the autonomous prototype which could and did on occasions defy government — which reflects the realities of public administration today, rather than the department in its conventional guise.

The corporate device recognizes that the official shares real authority; and it concedes, without denying, the ultimate supremacy of the minister, that opportunities for continuous public control are limited. On the other hand departmental theory rejects the official except in the capacity of servant, and preserves continuous parliamentary control. Manifestly this is largely a fiction. In the departments also the official now, if not before, plays an important and influential role.

The departmental trend is well illustrated by the case of
DCA. No one would suggest - and rightly so - that it is in a position to defy the government. But the importance of its own official influence is clearly revealed in recent airline developments. It supplies the expert technical assistance the government needs in its decisions about airline equipment; it conducts continuous reviews of airline economics and initiates appropriate policy changes; and it does much of the minister's work in supervising associated public enterprises. Its top officials contributed much to current industry arrangements (again without disturbing the government's right to bestow its patronage where it chooses); and its permanent head receives considerable publicity in his own right and has gained important statutory powers. Another Commonwealth department whose methods have in recent years received considerable attention because of the eminence of the minister and permanent head involved - the Department of Trade - exhibits similar tendencies.

20. E.g., his speech "filling out" the government's 1957 policy - Aircraft, Jan. 1958.

21. Even though the question of political responsibility for these powers needs further examination.

22. Cf. the description of self-imposed ministerial restraint in its workings, in Alan Reid's article on Mr J. McKinnon, "The Next P.M.?", Sydney Bulletin, 1944, p.61. And Sir John Crawford, the former permanent head, gave much evidence in his writings of public servant participation in policy-making, in his activities of decreasing official anonymity.
There are of course still departments where ministerial control is tighter, official initiative correspondingly less developed. But the importance of the role of the officials is still considerable. Most policies are joint ministerial-official policies, having been formulated by the same sort of negotiation and compromise as now occurs in many of the corporations.

Yet we still tend to assume that the minister's role in the department is very nearly all-important, that the official's role, even if more than a shadow, is far less important. And we tend to make opposite assumptions about corporations: that the official assumes much greater importance; the minister's role is drastically reduced. There are still considerable variations on each side, but I believe there has been a definite trend in modern administration towards evening out the extremes. The minister has increased in importance in the corporation, the official in the department. In neither would it be too far-fetched to speak of a ministerial-official partnership - not a partnership of peers perhaps, but far more than a sleeping partnership either way.

Minister and official have both gained in strength at the expense of the legislature; and the old independent corporations have progressively been incorporated into a single executive system.²³

It can no longer be seriously maintained that corporations are not

²³. Cf. Professor ... Robson's quarrel, from the standpoint of conventional corporate theory, with British ministers whose actions and statements underlie this development. He complains that, if what they say is true, "something has gone seriously wrong with the status of the public corporation"; and also that, if corporate heads permit ministers to treat them as though they were departmental officials, "then they must be held responsible for casting away much of the independence with
"creatures of government".

It becomes necessary to reconsider the criteria which guide decisions about the use of departments and corporations. Some government activities now seem to mark themselves out for the latter type of organisation: these are chiefly the trading enterprises and cultural and opinion-forming organs such as national broadcasting services. But even this is not inevitable: the Post Office is a huge trading enterprise, while New Zealand and other countries have used broadcasting departments. Taking Australian government as a whole, there are many anomalies. The Commonwealth, for example, has a scientific and industrial research corporation and an atomic energy research corporation, whereas agricultural, economic, mineral and weapons research are departmentally organised. Some states organise fisheries development, forestry and housing activities departmentally, others vest them in corporations. And so on. In this respect the current Australian machinery of government presents a most untidy picture, and the confusions this generates must surely react adversely on political and administrative efficiency.

In 1951 departmental control was deemed unsuitable for Commonwealth-owned hostels; they were vested in a government-owned company. I have for some time wondered whether, for example, aerodrome management was so different that it was especially suitable which Parliament endowed them". Nationalised Industry and Public Ownership, London 1956, pp. 144-5.
for departmental control when hostel management was not, and
have therefore been interested to note current British proposals
for a separate Airport Authority. Numerous other examples of
this "hiving off" process could be given. Again, the Menzies
Government legislated to create the Australian Wool Testing
Authority in 1957 and carefully explained that it considered
departmental control as in New Zealand inappropriate, notwithstanding
that one of its own supporters praised the New Zealand service
as having "proved very successful.

There is, then, an increasing tendency to disavow the
department. Can it therefore be said that activities such as
statistical, meteorological, electoral and diverse research
services (to use examples already quoted - many others could be
given) are significantly less ripe for conversion? Their political
content is low; and since the department is supposed to furnish the
best means of political responsibility and accountability, might
it not be that the transport undertakings, whose political content
is high, are the more in need of departmental organisation? I am
not necessarily advocating this, nor do I detect any signs of a
reversal of the corporate trend. But there are clearly many


25. As well as hostels, Commonwealth departments have since the war
shied in one way or another miscellaneous activities such as
broadcasting and atomic energy control, flax production, national
capital development, investigation services, universities assis-
tance, national library, Canberra brickworks, Northern Territory
housing, and serum laboratories. The act of "hiving off" has
often anticipated an expansion in the activity concerned.

26. CRD, vol. II of R 15, p. 1753; and II of R 16, p. 27.
inconsistencies in the current situation. These are attributable in part to the lack of a well-formulated general administrative theory; in part to political pressures and personal ambitions which, although frequently temporary in themselves, have lasting effects and often swamp any rational administrative arguments that may exist. 27 It is in fact probable that many of the arguments which have led to the creation of corporations would be equally compelling (neither more nor less) in other fields.

From all this two general observations appear to be warranted. First, rationalisations of the corporate form need to be particularised: we have to be sure of just what concession we wish to confer. This may be freedom from general public service staffing requirements, ability to operate a commercial accounting system, inclusion of interest representatives in management, and so on. 28 The last explains why a collegiate body is useful in commodity marketing; but, having reasoned this far (i.e. having discovered a ground for dispensing with one departmental characteristic), we usually take it for granted (and often with little justification) that all the other departmental characteristics are unsuitable. My impression is that the spotlight, at least in the trading enterprises, would usually focus on the rigidities of

27. Of the case of Commonwealth Hostels Ltd, whose creation was complicated by diverse factors such as a government's desire to find an out-of-the-way billet for an unacceptable permanent head, political circumstances which demanded a reduction in the number of "public servants", and arguments about the possibility of avoiding constitutional restrictions through use of the company form.

28. In competitive enterprises there is also the demand for exclusion from concessions afforded departments as in taxation.
certain detailed administrative procedures as in personnel, budgetary and supply procurement activities, rather than on the political connections. If this is so, might it not be preferable to investigate the possibility of general administrative reform with a view to granting greater flexibility in these areas and at the same time preserving as many as possible of the present advantages of the departmental form—which was, after all, designed to suit the requirements of government in a democratic country. In other words, it might be possible to eliminate certain general impediments on administrative initiative and at the same time restore a measure of consistency to the machinery of government as a whole. 29

The second general observation tempers the first with the earlier conclusions about the coming-together of departments and corporations. Since the expansion of the corporate system has been accompanied by its adjustment to comply more closely with the requirements of modern democratic government as measured by the departments, there seems little reason to lament it on grounds of political control and accountability. A corporation can always be bent by government; and, if the back-bencher has cause to feel impotent, he has little less cause in relation to the departments.

The public corporation was once distinguished primarily by its legal status and by its autonomy; but I suggest that its hallmark lies today in the subtle quality of controlled separateness, which is something less than autonomy but something more than the subservience usually attributed to departments. I suggest further that we may in Australia, after eight decades of experience with the public corporation, be gradually approaching a system of administration closer to the traditional German or Swedish pattern than anything we have yet been accustomed to.

In these systems the emphasis is on smallness and quality in the ministries, whose staffs of advisers are concerned with questions of political direction. The bulk of detailed, operative and routine work is hived off into separate but homogeneous bureaus outside the ministries but accounting through them. Although the Swedish machinery in particular has been described as a "striking survival of the administrative state of the eighteenth century", there are distinct advantages - for the headquarters staff: compactness and easier manageability, ability to concentrate on important questions and give the minister mastery of the political

30. Generations ago the immunities and restrictions of the Crown in relation to legal action were so strong that they furnished compelling reasons in themselves for the incorporation of public trading activities. But as they have been modified, separate legal incorporation has become less important; and, indeed, Australian courts have become confused about its very purpose. See e.g. J. Friedrich, "Legal Status of Incorporated Public Authorities", Australian Law Journal, xiii (May 1943), pp. 7-16; and Sawer, "The Public Corporation", pp. 10, 12, 36-44, 45-50.
side of his business while freeing him from detailed work; for
the bureaus: freedom within their own spheres, incentives to
self-reliance and managerial enterprise, and closer identification
of staff with a particular organisation and a particular purpose.\textsuperscript{31}

This arrangement may be presumed to confer a useful unity
in diversity which is lacking in our system of ill-defined
divisions and relativities and confused titles and lines of
responsibility. A sudden change is out of the question, for it
would be impossible to ungear existing administrative machinery.
But as the departments gradually shed more and more operative
functions, as more new functions are vested directly in corpora-
tions, and as the departments themselves are used more actively
to supervise the separate agencies, we do seem to be moving along
a path - even if a disorderly one - of administrative devolution.

In transport, New South Wales and Victoria are approaching
a similar position from the opposite direction. They found
themselves with ministers who had the usual loose responsibility
for public corporations but who lacked departmental assistance.
The small "ministry" initiated by Brummer in New South Wales has
grown in importance and has been copied by Victoria. Although

\textsuperscript{31} On these traditional systems, see e.g. Arnold Brecht and
Comstock Glaser, The Art and Technique of Administration in Ger-
man Ministries, Cambridge (Mass.) 1940, pp. 6-11; Arnold
Brecht, "Three Topics in Comparative Administration", in Public
Policy II (Yearbook of Harvard Graduate School of Public Admin-
istration), Cambridge (Mass.) 1941, pp. 292-3; Brian Chapman,
The Profession of Government, London 1959, pp. 19, 40-51;
still in relatively embryonic form it reflects the role of the Swedish or German ministry. A similar development is apparent in NSW conservation activities.

These are of course no more than speculations. But the Australian administrative system is gradually changing, and I have endeavoured to suggest the path these changes may be taking, and, indeed, along which they might be encouraged. Some untidiness is inevitable, but the challenge for administrative theory may well be to infuse a rational approach into the whole process.
## APPENDIX A: MEMBERSHIP OF GOVERNING BODIES

### VICTORIAN RAILWAYS

<table>
<thead>
<tr>
<th>Period</th>
<th>Chairman</th>
<th>Other Commissioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>1883-87</td>
<td>R. Speight</td>
<td>R. Ford</td>
</tr>
<tr>
<td>1887-92</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1892</td>
<td>R. H. Francis</td>
<td>W. M. Kibble</td>
</tr>
<tr>
<td>1892-94</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1894-96</td>
<td>J. Syder</td>
<td>T. H. Woodroffe</td>
</tr>
<tr>
<td>1896-1901</td>
<td>J. Kathiessen</td>
<td>&quot;</td>
</tr>
<tr>
<td>1901-03</td>
<td>W. F. Fitzpatrick</td>
<td>A. J. Agg</td>
</tr>
<tr>
<td>1903-09</td>
<td>T. Tait</td>
<td>W. F. Fitzpatrick</td>
</tr>
<tr>
<td>1909-10</td>
<td>&quot;</td>
<td>G. Hudson</td>
</tr>
<tr>
<td>1910-15</td>
<td>W. F. Fitzpatrick</td>
<td>G. E. Norman</td>
</tr>
<tr>
<td>1915-19</td>
<td>C. E. Norman</td>
<td>&quot;</td>
</tr>
<tr>
<td>1919-20</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1920-24</td>
<td>H. W. Clapp</td>
<td>&quot;</td>
</tr>
<tr>
<td>1924-33</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1932-39</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1940-48</td>
<td>N. C. Harris</td>
<td>W. M. Shannon</td>
</tr>
<tr>
<td>1949-50</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1950-55</td>
<td>R. G. Wishart</td>
<td>N. G. Harris</td>
</tr>
<tr>
<td>1956-58</td>
<td>&quot;</td>
<td>R. G. Wishart</td>
</tr>
<tr>
<td>1958-</td>
<td>E. H. Brownbill</td>
<td>H. Quail (a)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a) Period of single commissioner only.
(b) Died in 1917, but not immediately replaced.
(c) Classified as deputy chairman.

**NOTE** Where two commissioners have left office within a short period, no attempt has been made to include the interim composition as a separate entry in this or the following charts.

### NSW RAILWAYS

<table>
<thead>
<tr>
<th>Period</th>
<th>Chief Commissioner</th>
<th>Other Commissioners (or since 1907, Assistant Commissioners)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1888-97</td>
<td>E. M. G. Eddy</td>
<td>C. Oliver, W. M. Fehon</td>
</tr>
<tr>
<td>1897-1906</td>
<td>C. Oliver</td>
<td>D. Kirkaldie</td>
</tr>
<tr>
<td>1907-09</td>
<td>T. H. Johnson</td>
<td>&quot;</td>
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<tr>
<td>1909-11</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>1912-14</td>
<td>J. Harper</td>
<td>J. Harper</td>
</tr>
<tr>
<td>1914-16</td>
<td>&quot;</td>
<td>J. Fraser</td>
</tr>
<tr>
<td>Period</td>
<td>Commissioner for Railways (sole)</td>
<td>Assistant Commissioner</td>
</tr>
<tr>
<td>----------</td>
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</tr>
<tr>
<td>1932-48</td>
<td>T. J. Hartigan</td>
<td>F. G. Garside</td>
</tr>
<tr>
<td>1948-49</td>
<td>F. G. Garside</td>
<td>R. Winsor (a)</td>
</tr>
<tr>
<td>1949-52</td>
<td>R. Winsor (b)</td>
<td>R. Winsor (d)</td>
</tr>
<tr>
<td>1952</td>
<td>K. Fraser</td>
<td></td>
</tr>
<tr>
<td>1952-56</td>
<td>R. Winsor (c)</td>
<td></td>
</tr>
<tr>
<td>1956-</td>
<td>N. McCusker</td>
<td></td>
</tr>
</tbody>
</table>

(a) A four-man board envisaged in 1916 constitution, but Milne died during 1917 and was not replaced.
(b) All powers remaining to railway commission legally vested in chief commissioner alone - but effective control passed to STOB under Goode's chairmanship.
(c) The other members of the amalgamated Board of Transport Commissioners have been excluded from this study.
(d) Position unfilled from 1949; abolished 1952.

---

**TASMANIAN TRANSPORT**

<table>
<thead>
<tr>
<th>Period</th>
<th>Commissioner for Railways (sole)</th>
<th>TTU Chairman</th>
</tr>
</thead>
<tbody>
<tr>
<td>1911-23</td>
<td>G. Wishart Smith</td>
<td>H. W. S. Wilson</td>
</tr>
<tr>
<td>1924-27</td>
<td>G. H. Macfie(d)</td>
<td>H. W. S. Wilson</td>
</tr>
<tr>
<td>1927-38</td>
<td>F. P. St Hill</td>
<td>R. H. Barnes(d)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period</th>
<th>Associate Commissioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>1939-44</td>
<td>F. P. St Hill (b)</td>
</tr>
<tr>
<td>1944-49</td>
<td>W. C. Oakes (b)</td>
</tr>
<tr>
<td>1950-51</td>
<td>G. E. Baird (d)</td>
</tr>
<tr>
<td>1951-52</td>
<td>A. K. Reid (d)</td>
</tr>
<tr>
<td>1952-59</td>
<td>G. R. C. Wayne (d)</td>
</tr>
<tr>
<td>1959-</td>
<td>G. J. H. Davis (d)</td>
</tr>
</tbody>
</table>

(a) Previously Victorian Railways Commissioner.
(b) Part-time under 1938 constitution.
(c) Employee representative.
(d) General Manager of Railways ex officio under 1949 constitution.
(e) Administrator of Road Transport.
### COMMONWEALTH RAILWAYS

<table>
<thead>
<tr>
<th>Period</th>
<th>Commissioner (solo)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1917-28</td>
<td>N. G. Bell</td>
</tr>
<tr>
<td>1929-48</td>
<td>G. A. Gahan</td>
</tr>
<tr>
<td>1948-59</td>
<td>P. J. Hannaberry</td>
</tr>
<tr>
<td>1960-</td>
<td>K. A. Smith</td>
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</table>

### COMMONWEALTH SHIPPING

**First line under ACGB**

<table>
<thead>
<tr>
<th>Period</th>
<th>Chairman</th>
<th>Other Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1923-28</td>
<td>H. B. G. Larkin</td>
<td>Sir William Clarkson, R. Farquhar</td>
</tr>
</tbody>
</table>

**Second line under ACGB**

1 = chairman; 2 = vice-chairman; 3-5 = other commissioners.

From 1956:

1. J. P. Williams
2. K. W. Edwards (56-60)
3. A. G. Thompson
4. H. P. Weymouth (56-60)
5. D. G. L. Williams
TRANS-AUSTRALIA AIRLINES

1 = chairman; 2 = vice-chairman; 3-6 = other commissioners.

1946-50
1. A. W. Coles
2. W. C. Taylor
3. E. C. Johnston (a)
4. D. Neve (46)(b)
5. B. Fanning (46-49)(b)
6. G. T. Chippindall (from 49)(b)
7. A. C. Joyce (46)(c)
8. F. N. Watt (from late 46)(c)

1950-56
1. G. P. H. Watt
2. G. Packer (50-55)
3. W. D. McDonald (from 56)
4. E. C. Johnston (to 52)
5. J. W. James (52-56)
6. A. S. Blackburn (55-56)
7. G. T. Chippindall
8. W. D. McDonald (52-56)
9. K. H. Vial (from 56)

1957-59
1. W. D. McDonald
2. G. T. Chippindall
3. A. S. Blackburn
4. J. E. V. Murdoch
5. A. S. Blackburn (to 60)
6. K. H. Vial
7. Sir Reginald Groom (from 61)
8. J. E. V. Murdoch
9. A. C. Wackett
10. G. Packer

(a) DOA representative
(b) Post Office representative
(c) Treasury representative
(d) Position unfilled
### Appendix B: Summary of the Specified Controls

<table>
<thead>
<tr>
<th>Matters reserved for approval, etc.</th>
<th>VR</th>
<th>NSW1</th>
<th>TG1</th>
<th>TTC</th>
<th>CR</th>
<th>Shipping (ACSB)</th>
<th>Shipping (ACSO)</th>
<th>TAA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PERSONAL</strong></td>
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<tr>
<td>1. Appointments, promotions and/or rates of salary over prescribed limits.</td>
<td>1891-</td>
<td></td>
<td></td>
<td>1917-</td>
<td>1956-</td>
<td>1945-</td>
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<tr>
<td>2. Appointments without exam. of persons &quot;known ability&quot;.</td>
<td>1883-</td>
<td>1888-</td>
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<td>3. Appointments not falling within prescribed conditions.</td>
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<tr>
<td>4. Creation of permanent offices.</td>
<td></td>
<td></td>
<td></td>
<td>1917-</td>
<td></td>
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<tr>
<td>5. Arrangements with other authorities for sharing or transfer of personnel.</td>
<td>1891-</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>1938-</td>
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<tr>
<td>6. Retention of personnel beyond 65th birthday.</td>
<td>1891-</td>
<td></td>
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<tr>
<td>7. Payment of overtime.</td>
<td>1891-1951</td>
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<tr>
<td>8. General staff regulations (a)</td>
<td>1883-</td>
<td>1938-</td>
<td></td>
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<tr>
<td>9. Public notice of examinations</td>
<td>1891-</td>
<td></td>
<td></td>
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<tr>
<td>10. Appointments of examiners and/or boards of selectors.</td>
<td>1883-</td>
<td>1938-</td>
<td></td>
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<tr>
<td>11. Appointment of chairman, regulation of proceedings, etc. of appeals boards.</td>
<td>1922-</td>
<td>1916-</td>
<td>1917-</td>
<td></td>
<td></td>
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<tr>
<td>12. Appointment of members and regulation of proceedings of special superannuation board.</td>
<td></td>
<td></td>
<td></td>
<td>1910-</td>
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<tr>
<td>13. Application of sums in Reward Fund to staff welfare schemes.</td>
<td></td>
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<td></td>
<td>1929-1932</td>
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<tr>
<td><strong>CONTRACTS, PURCHASES, DISPOSALS AND LEASES.</strong></td>
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<tr>
<td>15. Contracts over prescribed amounts or periods</td>
<td>1891-</td>
<td></td>
<td></td>
<td>1917-</td>
<td></td>
<td>1959-</td>
<td></td>
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</tr>
<tr>
<td>16. Purchases, leases and/or disposals of assets (sometimes over prescribed amounts).</td>
<td>1891-</td>
<td></td>
<td></td>
<td>1917-</td>
<td></td>
<td>1959-</td>
<td></td>
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<tr>
<td>17. Disposal and/or lease of surplus land</td>
<td>1883-</td>
<td>1888-</td>
<td>1927-1938</td>
<td>1917-</td>
<td>(b)</td>
<td>(b)</td>
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<tr>
<td>18. Purchase or exchange of land</td>
<td>1891-</td>
<td></td>
<td></td>
<td>1910-1938</td>
<td></td>
<td>(b)</td>
<td>(b)</td>
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<td>19. Acquisition of Crown or other public lands of a state.</td>
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<td>20. Renewal of leases</td>
<td>1910-</td>
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<tr>
<td>21. Agreements on cross-use of equipment with private railways</td>
<td></td>
<td></td>
<td></td>
<td>1910-</td>
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<tr>
<td>22. Need to apply in writing to minister for additional stores, plant, etc.</td>
<td>1883-</td>
<td>1838-1928</td>
<td></td>
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<td><strong>WORKS AND SERVICES.</strong></td>
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<tr>
<td>23. General matters relating to surveying and construction of new railway lines (a)</td>
<td>1883-1891</td>
<td>1888-</td>
<td></td>
<td>1917-</td>
<td></td>
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<tr>
<td>24. Questions concerning handing over of new lines</td>
<td>1891-</td>
<td></td>
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<tr>
<td>25. Carrying out of special repairs, extensions, etc.</td>
<td>1891-</td>
<td></td>
<td></td>
<td>1917-</td>
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<tr>
<td>26. Payment of railway .</td>
<td>1891-</td>
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<td>1917-</td>
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<tr>
<td>1.</td>
<td>Application of sums in Reward Fund to staff welfare schemes.</td>
<td>1910-</td>
<td>1917-</td>
<td>1917-</td>
<td>1917-</td>
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<td>14.</td>
<td>Contracts for supply of materials from outside state or outside Australia (sometimes over prescribed limits).</td>
<td>1883-1955</td>
<td>1917-</td>
<td>1917-</td>
<td>1945-</td>
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<td>15.</td>
<td>Contracts over prescribed amounts or periods</td>
<td>1891-</td>
<td>1917-</td>
<td></td>
<td>1959-</td>
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<td></td>
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<tr>
<td>16.</td>
<td>Purchases, leases and/or disposals of assets (sometimes over prescribed amounts).</td>
<td>1923</td>
<td>1956-</td>
<td>1959-</td>
<td></td>
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<tr>
<td>17.</td>
<td>Disposal and/or lease of surplus land</td>
<td>1883-1888</td>
<td>1927-1938</td>
<td>1917-</td>
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<tr>
<td>18.</td>
<td>Purchase or exchange of land</td>
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<td>19.</td>
<td>Acquisition of Crown or other public lands of a state.</td>
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<td>20.</td>
<td>Renewal of leases</td>
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<td>21.</td>
<td>Agreements on cross-use of equipment with private railways</td>
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<td>22.</td>
<td>Need to apply in writing to minister for additional stores, plant, etc.</td>
<td>1883-1888</td>
<td>1917-</td>
<td>1917-</td>
<td></td>
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<tr>
<td>23.</td>
<td>General matters relating to surveying and construction of new railway lines (a)</td>
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<tr>
<td>24.</td>
<td>Questions concerning handing over new lines</td>
<td>1891-</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>25.</td>
<td>Repairing out of special repairs, extensions, etc.</td>
<td>1891-</td>
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<tr>
<td>26.</td>
<td>Fencing of railways</td>
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<td>27.</td>
<td>Construction of railways across public reserves</td>
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<td>28.</td>
<td>Use of railway before declared open</td>
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<td>29.</td>
<td>Closure of level-crossings, or of roads for railway purposes</td>
<td>1957-1916</td>
<td>1917-</td>
<td></td>
<td>1929-</td>
<td></td>
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<tr>
<td>30.</td>
<td>Closure and dismantling of lines.</td>
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<td>31.</td>
<td>Closure of country workshops.</td>
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<tr>
<td>32.</td>
<td>Alterations in Sunday services</td>
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<tr>
<td>33.</td>
<td>Construction, purchase, use, etc. of vehicles for bus and tram services or determination of routes.</td>
<td>1883-</td>
<td></td>
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<tr>
<td></td>
<td>VR</td>
<td>NSWR</td>
<td>TQR</td>
<td>TTO</td>
<td>GR</td>
<td>ACSB</td>
<td>AGSC</td>
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<tr>
<td>34</td>
<td>Construction etc., of road vehicles for carriage of goods to and from railway stations; and taking or acquisition of lands for use as depots for loading and unloading.</td>
<td>1930-</td>
<td></td>
<td></td>
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<tr>
<td>35</td>
<td>Conduct of services to places outside Australia or its territories</td>
<td></td>
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<td>1945-</td>
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**CHARGES AND FINANCE**

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<tbody>
<tr>
<td>36</td>
<td>Setting of, and variations in, rate schedules</td>
<td>(a)-1955</td>
<td>(a)</td>
<td>(d)</td>
<td>1917-</td>
<td>1956-</td>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Basis of calculation, limits and conditions of charges.</td>
<td>1956-</td>
<td></td>
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<tr>
<td>38</td>
<td>Additional charges for breaches of contracts for concession rates granted to persons agreeing to consign whole of traffic by rail</td>
<td>1930-</td>
<td></td>
<td></td>
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<tr>
<td>39</td>
<td>Form of annual estimates and/or of accounts</td>
<td>1333-</td>
<td>1833-</td>
<td></td>
<td>1917-</td>
<td></td>
<td>1945-</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Payments of interest or dividends, disposal of profits etc.</td>
<td>1928-</td>
<td>1939-</td>
<td>1956-</td>
<td>1945-</td>
<td></td>
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<tr>
<td>41</td>
<td>Repayments of capital</td>
<td></td>
<td></td>
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<td>1945-</td>
<td></td>
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<tr>
<td>42</td>
<td>Investment and/or banking of monies</td>
<td>1928-</td>
<td>1939-</td>
<td>1956-</td>
<td>1945-</td>
<td></td>
<td></td>
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<tr>
<td>43</td>
<td>Capital advances</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1945-</td>
<td></td>
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Notes to Appendix B

(a) In these cases this control includes within general by-law control.

(b) Included in item 16.

(c) The extent of the association of the operating rail corporations with the construction function varies considerably from system to system.

(d) Although no formal control over rate setting, cabinet has right to order remissions subject to a recoup provision.

(e) From 1945 TAA's charges were subject to any conditions that might be prescribed in the airline licenses issued by DCA; from 1952 TAA's own legislation appears to confer complete freedom, whereas fares are in fact controlled by the rationalisation machinery.

General notes: This appendix summarises only special controls vested in minister or government in the enabling act for each corporation. A few such controls are vested in parliament itself (see above, p. 226), and a few additional specific powers accrue to minister or government in other acts.
APPENDIX C: EXTRACTS ILLUSTRATIVE OF THE MINISTERIAL RELATIONS OF THE NSW TRANSPORT CORPORATIONS 1950-53

SHEAHAN ON DANGERS OF BUREAUCRACY

I ask hon. members to bear in mind that I was a public servant for a number of years before I entered into private practice at the bar, and my experience in those years has led me to the conclusion that bureaucratic minds do develop under the exercise of immense power in government departments ... In the ultimate result, who determines policy? ... an officer or the Minister? If an officer has the right there is no need for the Minister for Transport. If I, as a Minister of the Crown, were merely to "rubber stamp" everything that was put before me by departmental officers, parliamentary control of administration and constitutional government would fall to the ground ... I firmly believe that in all circumstances ministerial authority must be protected against the acts of bureaucratic minds. (NSWPD (ii), vol. 197, p. 3794)

... I am endeavouring, against great odds and at the risk of my own health, to do the job that has been entrusted to me. In no circumstances will I surrender my ministerial right to direct that the will of Parliament be obeyed and the interests of the public protected. If I ever become a carrier of bureaucracy, I shall not retain my portfolio. I prefer to be an exponent of democracy. I am almost ashamed of the lip service that has been given to democracy by hon. members opposite. We have asked me to intervene when it suits them or their constituents, but who, in matters of public criticism, will not support the principle that Parliament is paramount. (ibid., pp. 4196-7)

SHEAHAN ON MINISTERIAL AUTOCRATISM

That was the important message I, as Minister of the Crown, received about a matter on which three weeks earlier I had sought finality ... As Minister of the Crown, I would not accept a message like that ... I understand the position of Ministers. I understand that, no matter how highly placed an officer may be, the constitution demands that the ultimate responsibility resides in the Minister, and must be obeyed and not trifled with. I came to the conclusion that those officers were trifling with me because they thought that I was a Minister who might be used as a glorified messenger boy ... I do not propose in my ministerial capacity to be treated as a glorified.
messenger boy by any officer in the railways or in any other department, however highly he may be placed. (NSWPD (ii), vol. 195, p. 1446)

I want all ranks under my ministerial direction to realise that the Constitution gives me, as Minister, certain prerogatives which I shall unhesitatingly use in the best interests of the public generally. (Letter to Garde, cited NSWPD (ii), vol. 197, p. 3793)

The appointment ... was made by the Commissioner on his own authority, [which] demonstrates conclusively to the public that I have not interfered with the heads of departments in the efficient administration of their departments. I shall interfere only when I believe there is some usurpation of the Minister's rights and duties. I have done that in the past and will do so in the future, no matter how highly placed is the officer affected. (NSWPD (iii), vol. 1, p. 257)

3.MIYAHAN ON "THE APPLE-SAUCE OF INTERVENTION"

As Minister, I shall not be afraid to intervene and where necessary give directions for the efficient control and management of the transport system. Since I have held this portfolio, Opposition supporters have asked me to intervene and to give ministerial direction. They cannot have it both ways. They cannot talk about non-intervention and have the apple-sauce of intervention. They must make a choice, and if they wish me to intervene, Ministerial authority is the correct approach. (NSWPD (ii), vol. 194, p. 1070)

3.MIYAHAN ON "POLITICAL MYXOMATOESIS"

... I do not propose to come into the Chamber as a Pontius Pilate, washing my hands of the responsibility I have as Minister for Transport, nor do I wish to shed any of the activities that are by right mine in the discharge of my duties ... At the same time, I wish it to be distinctly understood that I am not suffering from political myxomatosis, and I do not propose to be the 'bunny' for every allegation made about the transport systems of this State. (NSWPD (iii), vol. 2, p. 1061)

THE CRITICS ON CONTROL AND RESPONSIBILITY

Anyone who has served in the army knows that a division cannot operate successfully if the general is fighting with his brigades or battalion commanders. The transport system generally can be likened to a division in an army, and it is being wrecked by public arguments between the Minister and his departmental heads. It is wrong that [such] arguments ... should become matters of public debate. There is no reason why their differences could not be kept within the department
Itself. (Mr Crawford, *HSFD* (ii), vol. 197, p. 4133)

If transport officers were free to get on with the job instead of being hampered by the interference of the Minister, the transport services would be in an infinitely better position than they are... Ever since he took his present portfolio he has accepted credit for anything that goes right... but is quick to lay any blame on his officers if things go wrong... Ministerial control automatically involves acceptance of ministerial responsibility. Time and time again in this Chamber... the Minister for Transport has blamed his officers for something that has or has not been done. He believes in ministerial control, and must accept the blame himself. His officers cannot come here and speak for themselves. (J. G. Black, LL.B., at *HSFD* (ii), vol. 197, pp. 4133-4. Italics mine.)
APPENDIX D: THE Dyer-GRAY LETTER
(An example of "extra-legal" ministerial intervention)

CHIEF SECRETARY’S DEPARTMENT
HOBART.

18th July, 1938.

Memorandum for:--
The Commissioner for Railways.

Referring to your memorandum of July 11th, in connection with the relation between buffet services and additional rolling stock, I notice that you express the opinion that if your proposal to adopt a one-class system were agreed to it could be arranged for the trains to be made up so that sufficient suitable carriages would be made available for the boat trains and the buffet services continued. Are you in a position to give me a positive guarantee that if the suggested change were made, the heavy expenditure which you state would otherwise be necessary to procure additional rolling stock to retain the present two class system, would be obviated?

May I draw your attention to the fact that your proposal for a one-class system is of a revolutionary character never before attempted in Tasmania, and little practised in any part of Australia, so far as I can ascertain. In addition, if the change were once made it could hardly be altered.

I have also to remind you that on a previous occasion I expressed the opinion that this change should not be made, even if considered desirable, until some definite decision has been reached in regard to the general transport position in Tasmania.

On the merits of the proposal I desire to inform you that, with Mr. Schneider, I discussed the one-class system with Mr. Hartigan, Commissioner of Railways in New South Wales, who definitely advised against it.

My own personal opinion (which, however, is capable of being changed if I am given sufficient reasonable grounds for changing it), is that this alteration is of an extremely questionable character. Have you considered the effect on the tourist traffic? Broadly speaking, it would seem to me to be
necessary to do two remarkable things: namely, firstly to reduce first-class fares, although the wealthier section of the community who mostly patronise first-class carriages, have not requested any such concession, and secondly, to increase second-class fares and consequently directly antagonise by far the most numerous section of your railway patrons.

I am informed, (but it is a fact to be established) that first-class accommodation can be provided at a much lower cost than the extra fares that are demanded for the service. While many passengers no doubt like first-class travelling on the general grounds of increased comfort, a considerable number also prefer to travel first-class for quite other reasons. If the first-class were to be abolished it appears to me that the Railways would lose, not only the cash difference between first and second-class fares as now existing, but that a number of those, whom I might describe as present first-class passengers would almost inevitably cease to patronise the Railways at all. If this view is correct, it would seem that the adoption of the proposal would not be justified by results, unless it can be shown quite definitely that the extra cost of providing first-class services is greater than the extra revenue derived therefrom. Even if this fact could be established there must still be considered the loss of passenger revenue by way of first-class fares being reduced to second-class fares, also because of the loss of traffic to other forms of transport, i.e. road and air, which would provide the service demanded by many first-class passengers to-day.

Again, I think it is probably true that many people, who are not necessarily the poorer members of the community, prefer at times to travel second-class; one reason for such occasions may be that they are dressed in tail-coiled clothing, and may feel uncomfortable in being compelled to travel next to passengers wearing clean clothes. It appears to be unavoidable that the abolition of first-class fares would have to be accompanied by some increase in the second-class fares in an attempt to avoid loss of revenue. Consequently, it would seem that the position would be that you would lose many first-class passengers by the proposed change, while the increase in second-class fares would almost certainly reduce the numbers travelling by rail, give other forms of transport a competitive advantage, and cause widespread dissatisfaction throughout Tasmania.

I have already referred to the inevitable adverse effect on the tourist business. Many tourists would simply not patronise the railway at all if they could not be certain of obtaining first-class travel with its accompanying comfort, romance and exclusiveness. You would lose those passengers who would not value the concession in fares at a cost of losing what they want. There may be particular journeys or particular services where the adoption of one-class travel would be financially advantageous, but in general my impression is that more revenue can be derived and greater services to the people be given by providing for two-classes.
My view, as previously expressed, is that this whole issue should be deferred pending the determination of the future of transport in this State.

I have written in these terms to you with the express reservation that I am prepared to change my tentative opinions if I am given reasonable grounds to do so, and in order that you may be able to place before me, properly and completely, any facts or arguments which will show that there is substance in your opinion that the change is desirable and will increase the revenue of the Railway Department. I recognise at the same time all the requirements of the Railway Management Act which make all such issues matters for the exercise of your responsibility and not mine.

One of my objects in writing this memorandum is that you may be fully informed of my tentative opinions in case you prefer to discuss the matter in conference between us.

E. DYAR-GRAY

MINISTER FOR TRANSPORT.
APPENDIX F: EVIDENCES ON THE RESCUE
1959 PUBLIC ACCOUNTS COMMITTEE HEARING

The following brief account is in amplification of evidences made at p. 403 above. It concerns the evidence given by Committee by Mr. J. Q. Evans, Acting Secretary, Attorney-General's Department, concerning the G30's disputed claim for a rescoup payment in respect of the government-directed freight concessions for Leigh Creek coal.

Mr. Evans advised (Fifty-Second Report, pp. 22-4):
(a) That neither Ss. 43-44 (general directive power and rescoup provisions) nor any other provision of the Commonwealth Railways Act supported the G30's claim.
(b) That, as "a matter of law", Ss. 43-44 "have no effective operation at all". (The witness conceded that the "moral position behind them is another matter").
(c) That, in particular, the provision that any such loss should be reimbursed in the annual appropriation act was "monomaterial because one act of Parliament cannot say what shall go into another ...". (In 1917 Watt had copied these provisions straight out of the Victorian act, and they have never been challenged for this reason in Victoria. But it will be recalled that Holman's modification of 1916 avoided the difficulty.)
(d) That, even if they were valid, they would not apply to freight rates because there weren't specifically mentioned in the two sections. This view denied the intended comprehensiveness of the general directive power, the fact that Watt had quite specifically stated in 1917 that both this power and the rescoup (i.e., his S. 43-44) covered matters such as fares and freight (a fact which the C.I.S. had pointed out to the Treasury end of which the Commonwealth was aware), and the fact that both the Victorian government and - until recently - the Commonwealth government had recognised this application of the provision.
(e) That the minister had no power to direct the CSL to fix rates, and that the proper legal course would therefore have been for the CSL to go on charging the full rate to the Electricity Trust of South Australia, leaving it to claim reimbursement from the Commonwealth. (However the CSL had been "informed" by the minister in writing that the new rate was to be 11/6 per ton; and to have adopted the suggested course would have required open defiance of the government.)

The strange influence of this evidence is that, if Ss. 43 and 44 are inapplicable, then the loss by the CSL of the power to claim rescoup is of little consequence because ministerial government are equally denied all powers of direction, and if they had even no direction the CSL would presumably have continued to receive full payment from the South Australian authorities throughout.
APPENDIX F: QUESTIONING PROCEDURE — COMMONWEALTH BANK AND AUSTRALIAN NATIONAL UNIVERSITY

The now familiar 1954 exchange concerning the cost of the new Commonwealth Bank building in Hobart produced an unusually open discussion of questioning procedure — for Australia — and has contributed materially to case history on the subject. The ministerial reply took the following form:

The question concerns the internal administration of the bank, which is a matter for the bank to determine. However the Governor of the bank has informed me that the total cost ... was about £1,000,000.2

So annoyed was Senator J. G. Gorton (now rising Liberal minister) with this "arrogant and uninformative answer" that he raised the matter on the adjournment, giving notice that

if a detailed, specific and informative answer is not provided ... I shall move that the Governor of the Commonwealth Bank be called before the bar of the House to answer a detailed and specific question asked by a representative of the people, in this House of the people here assembled, about the funds of the people. I shall do so in order to establish clearly the principle that these matters are within the function of either House of the Parliament, and that such a question asked in either House is deserving of a clear, specific and informative answer.3

The grounds of complaint were that, since "Statutory authorities such as the Commonwealth Bank use taxpayers' funds", it should be "competent for members ... to ask questions about those authorities and to expect to receive answers to the questions they ask"; and that, since the questioner sought details of cost of land, building, and fittings separately, the reply giving approximate total cost only was inadequate. It is, however, debatable whether the bank does use taxpayers' funds. It makes handsome profits, finances the government when necessary rather than vice versa, and is in no sense a drain on government revenue. Senator Gorton thought it necessary to explain how he arrived at this interpretation. There is a statutory requirement that half the bank's profits have to be paid to the national debt sinking fund. The argument was therefore that any extravagance or waste on the bank's part would decrease the
amount of this payment, placing a larger burden on the taxpayer; but it seems an awkward interpretation.

In reply Senator Spooner was concerned to show that a line had to be drawn beyond which a commercial institution could not be expected to provide detailed information. He suggested that if the questions at issue were answered in detail, they might well be followed by others such as "Who was the furniture bought from?" and "Was any special discount given ...?" It would then be only a short step to "Who are the clients of the Commonwealth Bank ...?" "What is the amount owing by a particular customer ...?", and "What securities are held ... for a specific customer?". These were all questions no banking institution could be expected to answer. The Bank "gives to everyone as much information as other banks give to their shareholders ... I could not allow the opinion that he expressed to go unchallenged, because there is a contrary point of view".4

Again in 1955 and 1956 Mr D. C. Fairbairn asked the Treasurer a series of questions concerning the ownership and use by the bank of a D93 aircraft, and also whether it is "considered that private members should receive answers to questions of this nature". Treasurer Fadden replied to the other questions in the "I am informed ..."4A manner, and to this one explained:

The Commonwealth Bank has been established by Parliament as a statutory corporation with the intention of giving it a substantial measure of independence. Certain procedures are followed in informing Parliament and the public as to the policy and administration of the bank. In conformity with generally accepted principles and the provisions of the constitutive act, the practice has been to furnish, in response to parliamentary questions, information as to the monetary and banking policies being followed by the bank and on related matters. It is, however, a question of some difficulty as to how far the bank should be called upon to provide detailed information on matters affecting its day-to-day management. Obviously a limit must be observed if the degree of independent responsibility conferred by statute upon the bank is to be maintained.5

Deliberate thought has thus been given to the accountability of the Commonwealth Bank, in this matter as well as in regard to the ministerial-corporate relationship.6 The position reached seems broadly similar to that of the British nationalised industries. But the bank presents two special features: the competitive sphere in which it operates, and also the confidential character of dealings between any bank (or finance institution) and its customers. These features are not applicable to most Australian corporations, and where they are absent there is far less insistence on operational secrecy.
The Australian National University (ANU) practice differs, recalling an Anglo-Indian notion7 that the channelling of questions direct from members to the corporations was the merit of keeping the latter out of the political spotlight. The ANU and the Prime Minister8 have worked out an arrangement whereby the latter answers that the matter is one for the university authorities and that the member might therefore care to direct his inquiry to the Vice-Chancellor "who I feel sure, will be glad to supply the answer". For its part the ANU has assured the Prime Minister that such requests will "receive immediate attention", and has suggested "with respect" that in this way "there will be less likelihood that private members of parliament and the public will come to regard the Minister ... as responsible in detail for [e.g.,] University appointments".9

The practice seems worth considering for other corporations, even though a university is able to press its autonomy to greater limits. The ANU still reserves the right to treat such cases on its merits, even through the non-parliamentary channel to provide information about the circumstances in which individual scholarships were discontinued. On one occasion, however, information about academic staff members was extracted on the floor of the house when J. J. Hard gladly associated himself with ABS programming, and directed his question to the Director-General, who (according to an ANU authority — but why?) "should have had no excuse for declining to answer ...".


2. Ibid., vol. 24, p. 206. Cited in Newley (as Minister for Customs and Excises), who originally sat the question, did not participate in the subsequent discussion.


4. Ibid., vol. 24, 1912-16.

5. Ibid., vol. 24, 1912-16.

6. Ibid., vol. 24, 1912-16. The question is then in the nature of "supplementary" and the very nature of the answer given is such as to suggest the need for their discussion with the House of Representatives.

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A. PRIMARY SOURCES

1. Unpublished MSS
2. Newspapers consulted
3. Official Publications, Reports and Papers
   (a) Australian Commonwealth
   (b) New South Wales
   (c) Victoria
   (d) Tasmania
   (e) Other

B. SECONDARY SOURCES

1. Unpublished Theses and Papers
   (a) Theses
   (b) Papers
2. Articles
   (a) Newspapers
   (b) Other Periodicals
3. Pamphlets
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- Sydney Daily Mirror
- Sydney Sun
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- Sydney Labour Daily
- Hobart Mercury *
- Launceston Examiner
- Canberra Times
- Brisbane Telegraph
- Adelaide Advertiser
- North West Australian

**OTHERS**

- Aircraft
- Air-Lox
- Australian Financial Review Bulletin
- Journal of the Institute of Transport (USW)
- Melbourne Punch
- Nation
- Smith's Weekly
- Sydney Truth

Some of the more important articles (as distinct from editorials and news items and comment) used from these papers are listed separately in Section B 2 (a) of this bibliography.

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