PUBLIC CORPORATIONS

UNDER THE COMMONWEALTH GOVERNMENT

OF AUSTRALIA

by

R. L. WETTENHALL, B.A., Dip. Pub. Ad.

submitted in fulfilment of the requirements

for the Degree of

MASTER OF ARTS

UNIVERSITY OF TASMANIA

HOBART

(June 1958)

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INTRODUCTION

My interest in public corporations was stimulated by a study of the European Coal and Steel Community undertaken during 1952. This international public corporation is of particular interest both administratively, because it has its own "Parliament", "Cabinet", and "Court" created to act as channels for liaison, accountability and control between the Community and its partner nations, and politically, because it represents one of the earliest positive achievements in the movement for a United Europe.

It became apparent to me that, although much had been written on the public corporation as the vehicle for nationalisation in Britain, no recent attempt had been made in Australia to present an overall picture of the use made of the corporation in this country. Many writers, such as Professor P.A. Bland and Sir Frederick Eggleston, have contributed valuable articles from time to time over the last thirty-odd years on various aspects of the corporation, while other historical accounts of particular corporations are available. Although it was suggested to me that I might examine closely one corporation or a small group of corporations for my thesis, I have preferred to try to present a cross-section of all corporations in Australian Commonwealth experience.

This has involved a brief consideration of the origins of the "corporation movement" in the Australian colonies, of various developments in theory which may or may not have affected the shape of actual corporations, and of the political background to the various creations and abolitions of corporations, as well as the actual administrative provisions themselves. I am well aware that the material in this thesis

will not satisfy anyone who is seeking a comprehensive account of a particular corporation. In a sense, and with a few notable exceptions, the individual studies that are in existence tend to be written from the point of view of the function of the particular corporation - banking, or broadcasting, or perhaps economics. My intention is rather to examine the Commonwealth corporations from the point of view of public administration, which I believe to be closely related to, and an integral part of, the wider field of political science.

There is no universally accepted definition of the public corporation. In fact, the term itself has not been widely adopted in Australia, where some of our current confusion on the subject is probably bred by the parallel use of a number of descriptions such as "semi-government body","statutory authority", "government instrumentality" and "statutory corporation". In this thesis I use the term "public corporation", which is in fairly general use in overseas literature on the subject. It seems almost impossible, in view of the many variations within the overall field of public corporations, to arrive at a satisfactory functional or administrative definition. Therefore, with some intentional exceptions (such as the Repatriation Commission as now constituted), I regard all the authorities established by Commonwealth Governments which have been given corporate status as public corporations. Most have legislative backing and are therefore also "statutory" corporations; some, however, do not, but by virtue of their public ownership, they must also be included in the broader category of "public corporations". Classes of authority which are excluded from consideration in this thesis, except by way of passing reference, are the commodity marketing boards which present special problems, bodies which

are primarily judicial in character such as the various administrative tribunals, and boards and commissions - frequently advisory - which do not possess corporate status. Usually the latter are closely integrated within "parent departments". Also excluded are the non-departmental public bodies functioning within the Territories under the control of the Commonwealth and deriving their authority from Territorial Ordinances (such as the Canberra Community Hospital, the Medical Board of the Australian Capital Territory and the Papua and New Guinea Copra Marketing Board). These have much more in common with administrative agencies of the Australian States.

This thesis is divided into three basic chapters, the "Australian Philosophy", the "Commonwealth Corporations", and a concluding chapter on the rationale of corporations for which I have borrowed the title "Analysis and Classification" from the article by Mr. D.N. Chester on which many of my final comments are based. The first chapter is divided into three sections broadly corresponding with the different stages in the theoretical development of the "corporation movement", namely : the early liberal contribution, the advent of the Labour Party and its effect on political attitudes , and the academic studies. The second chapter is divided into six chronological sections, balanced according to broad political phases and - as far as possible - the amount of material in each, namely : the early years, development, crisis, recovery and war, post-war reconstruction and limitation and reform. It seems important to me to distinguish in this way between theory and practice since these have not infrequently followed divergent courses. However under this treatment there must inevitably be some

over-lapping and cross-referencing, and a short index is provided specifically to assist in locating relevent references and thus overcoming the need to repeat various observations. A further reason for the distinction between theory and practice is that theoretical developments do not respect the constitutional boundary which usually results in a clear separation in practical administration between the Commonwealth and the States. It is therefore necessary to approach theoretical trends from the overall view, as opposed to the purely Commonwealth emphasis given the practical developments.

The amount of material included on each corporation is not intended to be an indication of the importance of that corporation to Australian development or public service. For example, I believe that the Commonwealth Scientific and Industrial Research Organisation . . . deserves high ranking among our corporations on the basis of value of its services to the nation. However, being widely accepted throughout the community and therefore non-controversial in character, it has experienced few of the changes due to political considerations which have been common in the affairs of some other corporations. Moreover it has suffered no administrative disasters and it has not therefore been the subject of any major administrative enquiry. For these reasons, less space is devoted to C.S.I.R.O. (and likewise to other corporations in a similar position) than to those which have been in the spotlight from the point of view of administrative change.

My method is to trace administrative developments, to assess the significance of the more important of these, and to attempt to get behind them to discover basic reasonings. This kind of treatment involves skimming over the detailed administrative provisions of most recent corporations, and highlighting only the innovations, for there

seems no need to repeat in each case details such as the normal legal provisions which accompany the granting of corporate status. Although a study such as this must inevitably include political questions, I have attempted not to be side-tracked into a discussion of the merits of the philosophies for and against state enterprise. My aim is to consider political implications only in so far as they may alter administrative organisation or affect administrative efficiency.

I make no revolutionary conclusion, for example, to the effect that public corporations are wholly good or bad. However my studies have led me to believe that there is much truth in the many arguments advanced to reveal the disadvantages associated with the use of corporations by a democratic community; that Australian politicians have been far too little concerned with the implications of the corporation - or, for that matter, of any other device of public administration; that, with some notable exceptions, there has been too much inconsistency both in the use and constitution of Australian corporations; and that as a result there is today a great deal of confusion about them. As will be shown in my concluding chapter, I believe that the corporate form is very desirable in certain fields of public administration, but that these fields should be clearly defined. I recognise that our public corporations have been responsible, and deserve great credit, for vast achievements in national development. However, I believe that public corporations are not as a general rule the ideal form of public administration, and that they should therefore be used sparingly and only after a clear and full examination of the administrative requirements of the proposed functions. I believe that there is a pressing necessity

for governments, parliaments and public opinion to bring themselves up to date; to realise that developments in administrative machinery have improved the efficiency of the departments themselves while retaining as full a measure of democratic control as is possible in our complex technological society; and to put behind them the widely accepted philosophy which leads for various illogical reasons to the unjustifiably wide use of the public corporation. I believe that before resorting to its use, there should be a full examination and justification of all the reasons why the departmental form is not acceptable for the activity concerned.

An attempt to define the field of the public corporation by administrative review would I believe be of great use - I shall suggest a functional classification as the framework on which such a review could be constructed. However, to gain acceptance of the findings of such a review, it will unfortunately first be necessary to eliminate the biases, misconceptions and crooked thinking on administration common at the political level today. This will be particularly difficult while our major political parties continue to dispute the limits of state activity - yet, no matter what its limits, state activity cannot reach maximum efficiency until a body of administrative principles governing its organisation is devised, understood, accepted and applied. To say that such a body of principles has governed the use of public corporations in Australia is to put one's head ostrich-like into the sand and ignore the facts of life.

The material on which this thesis is based, and from which I draw my conclusions, has been drawn primarily from a study over a number

of years of literature on politics and public administration, of parliamentary debates, of annual reports of the various corporations, and of reports of various commissions of enquiry. Recourse has been had to departmental files to fill in certain gaps, while other information has been gathered from public lectures and talks given by experts in public administration, law and other related fields. Interviews, discussions and contact with many people including the former Clerk of the House of Respresentatives (Mr. F.C. Green), the Chairman of the Australian Broadcasting Control Board (Mr. R.G. Osborne), the Tasmanian Managers of the Australian Broadcasting Commission and/Australian National the Airlines Commission (Messrs. F.W. Reed and D.C. Lord respectively), other officers of both these corporations, senior officers of other corporations such as the Commonwealth Bank, the Australian Aluminium Production Commission and the Snowy Mountains Hydro-Electric Authority, ex-officers of the War Service Homes, Repatriation, Development and Migration and National Insurance Commissions, officials of state and overseas public corporations, and others such as a Public Service Inspector engaged on investigations into the staffing requirements of the Australian Stevedoring Industry Authority, an ex-Public Service Commissioner of the Territory of Papua and New Guinea, and the Clerk of Papers of Tasmanian Parliament, have furnished both background and specific information. Finally my own experience of public administration is practical as well as theoretical, for I have served for ten years as an officer of the Commonwealth Public Service, first in a ministerial department claiming to be Australia's largest business organisation, the Postmaster-General's Department, and then in the Public Service Board, which is itself a statutory authority enjoying a large measure of autonomy.

Some untidiness in the final submission has been unavoidable - short of complete retyping - due to the living nature of my subject. As far as possible (up to early March 1958) I have endeavoured for the sake of completeness to incorporate recent developments e.g. in banking, and further relevant information which has been provided by various personal contacts, in the main text. This has, however, unfortunately involved some alterations and additions to the final draft as handed to the typist. Developments occurring later than early March 1958 will be summarised in Appendix G.

I have stated in this introduction that it is my aim to present a cross-section of Australian Commonwealth corporations. For reasons of time and space, many significant aspects common to all or most corporations can only be briefly referred to. However I am well aware that there is great need for investigation and report - in furtherence of my conclusion that there is an urgent need to clarify our thinking on problems of administrative organisation - on many such aspects. For example, there is need for a close study of appointments to the governing bodies of our corporations, including the qualifications, tenure, and political backgrounds of appointees. Another profitable study would be the nature, form and content of the annual reports of Commonwealth corporations and desirable improvements in them, such as that by Raymond Nottage in the article "Reporting to Parliament on the Nationalised Industries" published in the United Kingdom Journal of Public Administration for Summer 1957. A related topic worthy of detailed study is the role of the non-corporate extra-departmental agencies in administration - an indication of what could be done here is contained in the article "The Place of Committees in Administration"

published in the September 1957 issue of the New Zealand Journal of Public Administration. As a final example of the need for further research in this field, I would point out that the corporations of the various Australian States, particularly the smaller States such as Tasmania, have received far less objective observation and criticism than have the Commonwealth corporations.

CHAPTER ONE

AUSTRALIAN PHILOSOPHY

(a) The Liberal Contribution.

(b) The Labour Party and Current Political Attitudes.

(c) Academic Studies.

THE LIBERAL CONTRIBUTION.

Writing in the Journal of the Australian Regional Groups of the Institute of Public Administration in 1948, a leading British student of Public Administration, Mr. E.N. Gladden, had this to say of the development of the public corporation:

> "It is rarely that a current administrative problem evokes as much discussion and achieves such great interest as is at present being devoted to the development of the Public Corporation in its modern form .....
> The reader should perhaps be reminded that the Public Corporation is not a completely new type of government authority. It existed in the shape of the Boards, Commissions and Chartered Companies in an earlier age, and, before the system of modern local government which was inaugurated by the Municipal Corporations Act of 1835, the local services as far as they existed were often carried out by independent corporations, such as the Courts of Sewers, Improvement Commissions and Turnpike Trusts, and in fact the incorporated boroughs themselves, most of which had previously an undemocratic form. During the nineteenth century the trend was definitely away from the corporational form of government authority in favour of the democratically elected or ministerially directed unit; although even then, technical convenience favoured the setting up of a number of "ad hoc" organisations, such as the Harbour Boards, for special purposes ..... Indeed, the Public Corporation has a

long and impressive pedigree, and it would be an interesting quest for some enthusiast to trace it back to the Middle Ages". (1)

This passage provides a brief indication of the stage reached in British political thinking concerning the role of the public corporation in administration at the time when the Australian colonies were themselves developing the institutions of responsible government. The belief that administration should be responsible to the people, either through an elected minister or an elected local council, was firmly held as a basic principle of democratic government, but it was also vaguely realised that in certain circumstances some modification of this principle might be necessary for special purposes. The British emigrants who peopled this country brought with them mainly the contemporary British ideas on political institutions, and with this basic identity of philosophy it is not surprising that the colonists adopted in the main the machinery of government of their homeland.

Yet economic conditions were vastly different in the new colonies, and these frequently led to a shifting of emphasis in administrative matters. Thus local government has never played as extensive a role in Australia, and the preoccupation of politicians with questions of expansion and development has largly resulted in the neglect of those considerations aimed at improving the efficiency of administration, which have been given such widespread attention in Britain. Even so, the same economic considerations have sometimes resulted in Australia taking the lead

in the development of administrative techniques. Just how far such developments in the nature and the use of the public corporation have been the accidental result of other influences, and how far they have been based on a scientific study of the problems of administration, will be discussed in the following paragraphs.

Responsible government was attained by all the Australian colonies except Western Australia between 1856 and 1860. Although the device of the statutory corporation, as it is frequently called in Australia, did not appear in its modern form until after the achievement of responsible government, a number of incorporated public bodies nevertheless appeared in the field of education quite early in the century. These included the N.S.W. Church and Schools Corporation formed in 1828 and the N.S.W. Board of National Education formed in 1848. Then in 1857 (one year after attaining responsible government) Victoria created its Board of Land and Works. The corporate structure was also applied to local authorities, such as the early Commissioners for Roads in Victoria and the early Municipalities. (2)

The primary reason for the creation of these early authorities in the corporate form was a legal one. The legal personality of the "Crown" involved cumbrous procedures connected with Crown property; also there were strongly enforced limitations on the liability of the Crown to legal action. Although the Crown's legal position has since been modified in some respects, in the circumstances obtaining in the mid-nineteenth century it was recognised that identity with the Crown was most unsatisfactory for

the organisation of enterprises involved in frequent dealings with property and in litigation. The statutory corporation of course had its own legal personality which was theoretically unconnected with the Crown and therefore immune from its restrictions, although later judicial decisions have shown some uncertainty in this regard.

It was also dimly seen that, in certain activities, the close ministerial relationship involved in the traditional departmental form of organisation might be dangerous for the activity itself and embarassing for the politicians involved. The corporate structure, involving as it did the concept of legal separation from the Crown, was also favoured for this reason. Even so, the Governor and members of the Legislative Council were included on the N.S.W. Church and Schools Corporation, and a Minister of the Crown was made Chief Commissioner of the Victorian Board of Land and Works. As Professor Sawer points out, such activities were incorporated "for various reasons of practical and legal convenience, and also to give the body at least an appearance of isolation from contemporary politics." (3).

One of the earliest non-political enquiries into the use of the statutory corporation in Australia took place in Melbourne in 1860, when a Royal Commission was set up to consider the removal of the port of Melbourne from the jurisdiction of the department which then controlled it, and the establishment of a separate authority for that purpose. The Royal Commission drew attention to the various Harbour and other Boards in Great Britain, and used these as models in recommending the creation of a similar statutory

corporation. As a somewhat delayed result, the Melbourne Harbour Trust was created in 1877, with a municipal link provided by the election of some of its members by ratepayers (4). Although the practice of electing members to this Trust has since been discontinued, its then representative nature, as with its parent bodies in Britain, satisfied the basic desire for accountability in the democratic fashion, and the disputes which more recently have centred around the degree of autonomy of corporations did not then arise.

To this stage, the influence of British practice can be clearly seen in the Australian developments. Towards the end of the nineteenth century, however, the Australian corporations began to develop independently of British practice. The corporate basis of the agencies remained similar, but differences appeared in usage and in constitution. A similar trend is apparent in Canada, where early corporations such as the Harbour Trust of Montreal which was created in 1830 and subsequently renamed Montreal Harbour Commission (5), were modelled on their British counterparts. However the numerous corporations established during the present century, while having the same common heritage, have in many matters of detail become distinctly Canadian in character. The best example of the early independent development of corporations in Australia is afforded by the expansion of railway services - this development illustrates the dependence of the earlier settlers on government enterprise.

The early colonists shared the basic British economic philosophy of "laissez-faire." If anything this feeling was strengthened by local conditions. Early public works had been carried out by government-controlled convict labour; the convict

system was most unpopular in the colonies, and by an association of ideas, it bred a general hostility towards public works of any kind. Yet government enterprise was forced on unwilling governments. The early colonial parliaments faced the task of providing for the wants of rapidly growing and constantly changing communities which were continually presenting new problems and making new demands for services. The community leaders seized whatever instrument was most readily available to them, and this usually proved to be the State.

Private enterprise had been given every encouragement to provide rail transport facilities. However it proved impossible to get sufficient capital from private investment, for "there were far better openings in Australia for speculators than railways could hope to offer." (6) Despite liberal government advances, guaranteed dividends, free grants of land and other assistance, private enterprise proved unequal to the task. The Melbourne, Mount Alexander and Murray River Railway Company sold out to the Victorian Government for a nominal sum, while the Sydney Railway Company collapsed and left its uncompleted task to the Government of N.S.W. To develop the colonies, it was imperative that communications should be improved and extended; thus it was that in Victoria in 1856 :

> "..... after having tried vainly to get the railways to the goldfields constructed by private enterprise, the State borrowed eight millions sterling to construct the line. This decision was the forerunner of a vast expansion of State enterprise, undertaken at first in a mood of energetic decision." (7)

In like manner later Australian governments with distinctly non-socialist outlooks have been compelled,

for example, to enter directly into the business of providing irrigation services late in the nineteenth century, and power supplies early in the twentieth.

The first public railway authority in Australia seems to have been that created in South Australia in 1851 to complete the project of a private company which had failed in its attempt to construct a line from Adelaide to Port Adelaide. This authority was known as the Board of Undertakers, and had a large measure of autonomy which was shared by the Board of Railway Commissioners which replaced it in 1856. However the latter authority was abolished in 1859, and control of the railway system passed to the Department of Public Works. (8) The first public authority in N.S.W. was set up in 1855 as a Commission which was independent of any regular government department. Its Chief Commissioner made this significant comment in his report for the year ending 31 December 1857 (9) : "Some apprehensions have at times crossed my mind as to how far it would be possible to work the railway efficiently as a purely Government Department ....." He then went on to list the requirements he considered necessary for efficient management, and emphasised that the railway undertaking should have "freedom from political bias, and freedom from political interference in details." This must surely have been one of the earliest administrative pronouncements on the need for autonomous management of public enterprises! Despite this warning, the undertaking was included in the newly-formed Department of Public Works in 1859, the title of Commissioner being retained in name only by an officer of that Department. It is significant that the

independent authorities came into existence in both colonies before the granting of responsible government. Conscious of their newly-won powers, the elected Ministers of the Crown lost no time in bringing the railways under their direct control. Before long, this policy was to have adverse results.

Following the major gold rushes, there was a short period of readjustment. The colonial economies then experienced another period of rapid development, encouraged by the successful advocacy by liberal-minded leaders of a vigorous public works policy. This applied especially to railway building, for many new lines were badly needed. Unfortunately, the policy was extended to become an orgy of extravagance. The winning of votes became of greater importance than economic desirability in shaping developmental policy. The political significance of the railways soon became apparent. Dr. H.V. Evatt, present Leader of the Federal Parliamentary Labour Party, has pointed out that the use of public enterprise in providing railway services has enabled Australia to escape the "monopoly and exploitation which disfigured and disgraced railway control in the United States." However, he admits that some of the lines failed to pay their way from the start, and attributes this largely to the log-rolling of politicians who seemed determined to push forward sectional interests as the price for political support. (10) It is with the efforts to overcome the insidious practices of the log-rollers that we are particularly concerned.

Faced with self-made problems, the politicians at last recognised that they had to extricate themselves from the expensive

policy errors, the log-rolling and the corruption by which they had brought discredit to railway management. They gradually came to recognise that technical and commercial functions were better suited for administration without political interference, and there is little doubt that the organisations they set up to assume control of the Government railways in the Australian colonies during the eighteen-eighties were the pioneers of the modern commercial public corporation in the British world. Australian observers have, however, expressed differing opinions as to the relative importance of the developments in the various colonies.

Australia's first and foremost student of public administration, Professor F.A. Bland, gives N.S.W. the credit for having developed the idea of the public, or statutory, corporation. In a submission to the Joint Parliamentary Committee appointed to enquire into the operation of Broadcasting in Australia in 1941 (11) he stated that :

> "In Australia, particularly since the eighties of the last century, we have made increasing use of the Statutory Corporation. Sir Henry Parkes, who developed the idea, regarded the Corporation as a device for relieving the Minister from pressures and influences that were difficult to withstand. But he also saw in it a means whereby consistent long-term policies might be pursued in a systematic way by a quasi-independent authority unhampered by the normal play of political forces, and especially by the exigencies of annual government budgeting."

On other occasions, Professor Bland has again drawn attention to Sir Henry Parkes' pioneering work in this field. (12)

In his memoirs (13), Parkes himself referred to the purpose of the 1888 legislation, which he described as a measure "to make better provision for the management of the Government railways and tramways." He explained that the earlier administration was hampered by pressure from Members of Parliament "on behalf of needy kinsmen and unfortunate friends," and that the new system involved the appointment of the Railways Commissioners of N.S.W. to be a body corporate, with perpetual succession, and capable in law of suing and being sued and holding property in its own name; and with substantial authority over the appointment of its own staff. The legislation drew a distinction between management and construction, the latter remaining directly under the Minister for Public Works until the division was repealed in 1917. Parkes stated that "after much enquiry in different parts of the world, and the fullest consideration, the Commissioners were appointed..... The Colony was fortunate in its selection.....," and that "few acts of my public life have given me more unmixed satisfaction than this change in the management of the State railways." After demonstrating statistically the great improvement shown in net earnings since the change in management, he asked to be pardoned for

> "some feeling of pride at this practical vindication of the railway legislation of our Administration - it is worth the abuse we received from those who wished to make these great State properties a field for the exercise of their unwholesome influence, and the means of serving their friends and supporters."

Parkes had first introduced his bill in 1887, but in the face of much opposition it was not proceeded with. However he had persisted, and suceeded in the following year in having the Railways Commissioners Act placed in the statute book. He has been accused of demagoguery on many issues, but we must recognise in this measure his broad outlook on problems of administration.

Other qualified scholars have argued that Victoria led the way in the development of the statutory corporation. In 1932 Mr. F.W. (later Sir Frederick) Eggleston demonstrated (14) that political control of railway administration in Victoria had led to "an orgy of nepotism and political appointments" and that "intrigue, sectional influence and sectarian bitterness flourished." He gave James Service the credit for realising in the early eighteen-eighties, that some alternative method of directing and controlling business undertakings such as the railways was essential in the interests of sound management, and for suggesting the statutory corporation as the solution; largely as a result of his efforts, three Railway Commissioners with expert qualifications were incorporated in 1884.

Writing in 1954, Professor Sawer also credited Victoria with taking the first "consciously designed" step to "provide a suitable instrument for government in business; that was the Victorian Railways Commissioners Act 1883." (15) Mr. T.H. Kewley, Senior Lecturer in Public Administration in the University of Sydney, confirms that the Victorian Act of 1883 was the "first deliberate step" towards this goal. (16) Analysing the provisions of the 1883 railways legislation, both have shown that a

distinction was drawn between the functions of constructing new lines and operating completed lines. It was recognised that the former was "inescapably political", and this was therefore entrusted to a ministerial department, the so-called Board of Lands and Works. The statutory corporation provided by the legislation to assume control of the latter function was appointed in 1884, and within two years, the railways, which had shown repeated deficits, were showing a profit. Both observers comment that the Victorian system was later adopted by the other colonies with certain variations, beginning with N.S.W.

South Australia and Queensland also acted in this direction at about the same time as N.S.W. Under the South Australian Railway Commissioners Act of 1887, almost complete authority for the management and administration of the colony's railways was vested in a statutory corporation of three Commissioners; however Parliament reserved to itself the control of railway finance. Except that there is now only one Commissioner, the provisions of the 1887 Act, with a few other minor amendments, still apply. (17) In Queensland, railways administration was first under direct ministerial control. In 1888, the system in this colony was also changed to provide for removal of the railways from the sphere of political influence, and for the appointment of three Commissioners with full powers over both construction and management. The post of Minister for Railways was not abolished, but his powers were so defined and limited that his position became in effect that of intermediary between the corporation and parliament. As in South Australia, this corporation was later reduced to a single Commissioner. (18)

Victoria's action in entrusting the management of its railways to a statutory corporation thus preceded that of N.S.W., while other colonies were taking similar action almost simultaneously with N.S.W. Yet Professor Bland believes that N.S.W. developed the idea of the statutory corporation in its modern sense. An attempt to evaluate the relative merits of the Victorian and N.S.W. contributions was made by Professor Shann in 1930. (19) The Service-Berry Ministry in Victoria selected Mr. Richard Speight of the English Midland Railway Company to preside over the Victorian Railway Commissioners in 1884, and instructed him to work the railways at a profit. Professor Shann pointed out, however, that the Commissioners did not have a free hand in determining charges since fares and freight rates remained subject to Ministerial approval. Thus, although Speight and his colleagues were able to achieve some successes especially in the field of staff appointments, they were still subject to political interference in matters of major importance to the efficient operation of the railway system, and "log-rolling ..... only shifted from the lobbies of Parliament House to the corridors of the Commissioners' Office." Sir Henry Parkes's great contribution in N.S.W., according to Professor Shann, was that he not only adopted the form of independent management by Commission, but also made it a reality by defending the Commission's independence at all times and against all influence-seekers, whether "his colleagues in the ministry" or the "pettifogging local members."

It seems fair to point out that, as I have shown above, the statutory corporation was known and used in certain government activities before either the Victorian or the N.S.W. experiments in

in railway management during the eighteen-eighties. However, its justification had been mainly on legal grounds. The establishment of the Victorian Railways Commissioners in 1883-4 was important since it demonstrated for the first time the realisation that indiscriminate political interference can destroy the efficiency of government enterprises; the statutory corporation was advanced in Victoria as the solution to this problem. However there are many degrees of independence, and the Victorian legislation did not go far enough. Moreover, an organisational form is never sufficient to ensure success - it is always necessary for those most directly concerned to have the will to make it work. This will appears to have been lacking on the ministerial side in Victoria. Sir Henry Parkes' great contribution is that he adopted the form of the statutory corporation, adapted this to limit opportunities for political interference in the sectional as distinct from the national interest, and then, as Minister, became a powerful protector of the Commission's independence. The Assistant Commissioner for Railways in N.S.W. commented in 1940 that the Railway Commissioners Act of 1888, which Parkes instigated,

> "established an entirely new standard of administrative efficiency during the period from 1888 to 1897 while the original appointee, Mr. E.M.G. Eddy, held the office of Chief Commissioner." (20)

However, efficiency declined under the subsequent regime. Sir Henry Parkes died in 1896, the Commission thus losing its chief advocate; and later unwise appointments led to conflicts within the Commission itself.

Concurrently with the new railway policy, a movement was developing in the Australian colonies for the establishment of a

~~of a~~ career civil service removed from political patronage, after the British style . Around the turn of the century the statutory corporation, in its regulatory as distinct from commercially operative sense, was selected by most Australian governments to determine and control civil service personnel policy. The N.S.W. Public Service Board, created in 1895, was an early example.

After the eighteen-eighties the Australian colonies saw a further rapid expansion in government activity, and the public corporation was frequently selected as the instrument of control. A Board of Water Supply and Sewerage had been created in N.S.W. in 1880; however this Board was subject to any direction which the Minister might issue, and was little more than a government department in practice. (21) N.S.W. politics were soon to become dominated by the politically-awakening labour movement, and in the early days of Federation the State became a social laboratory for the passing of legislation providing for a controlled industrial system and various social service benefits. In this atmosphere politicians had little time or inclination to turn to a scientific evaluation of the various forms of management for state activities. For further developments in the theory of the public corporation, the spotlight therefore now switches definitely to Victoria.

The liberal politicians in Victoria towards the end of the century were consistent in their advocacy of the use of State authority for developmental works. They shared the single-minded political philosophy of nineteenth century Britain, whose political liberalism, based on undisputed moral values, led to the application of the scientific methods of the developing technologies to the

problems of form and control of government agencies. (22) The Victorian liberals adapted this philosophy to the economic needs of their developing community. Too much was attempted during the eighteen-eighties, the large sums borrowed by the State (e.g. for railway construction) contributing to a period of wild speculation and the collapse of the 'nineties. The struggle for federation also interposed at this time. However, at the beginning of the twentieth century, with federation achieved and many formerly contentious issues removed from the arena of State Parliament, a disastrous drought paralysed Victoria until 1903. This situation greatly reinforced the demand for State action, to which an interesting influence from a new quarter also contributed. This influence was the world-wide attention focussed on a series of experiments conducted in New Zealand under the liberal leadership of Ballance and Pember Reeves, which were generally regarded as "rash ventures in State Socialism". (23) Yet New Zealand retained its prosperity, and the example proved difficult to resist. In these circumstances, Victoria gained a new and more systematic development policy, introduced by W.H. Irvine and extended by George Swinburne and W.A. Watt. These men were statesmen, not philosophers, scholars or writers. Consequently their only personal contribution to the literature of public administration has been the acts they framed, and it has been left to Sir Frederick Eggleston and, more recently and more briefly, Professor Sawer, to record their great contribution.

As Premier of Victoria from 1902 to 1903, Irvine had vivid memories of the recent long period of depression. In advocating a fresh movement for economic development, he therefore insisted that

State finances should first be put on an absolutely safe basis. By effecting drastic economies in 1902, he cleared the way for sound financial management. He then launched his policy of development. Eggleston has described this in his Book "State Socialism in Victoria," which must be regarded as a tribute to the vision and wisdom of these three statesmen, as follows :

> "The State should resume and extend its activities of development, but its methods must be reformed; it should undertake strictly limited functions through carefully constructed incorporated authorities removed from political influence." (24)

When he retired from the Premiership, Irvine's policy was well-known and widely accepted, and it was vigourously applied by George Swinburne, Minister for Water Supply in the Bent Ministry which succeeded his own. In fact, irrigation is both typical of the Victorian developments, and yet of particular interest. This is because of the ability of two of the Ministers entrusted with its development.

The first of these was Alfred Deakin. His biographer, Professor Walter Murdoch, remarked that his fathering of State-sponsored irrigation projects was his most important work in Victorian politics "before the cause of Federation claimed him," (25) As an enthusiastic student of his subject, Deakin visited the United States, India and Egypt to study irrigation projects in those countries, and his report was accepted as something of a text-book on the subject. For the administrative

machinery he constructed, however, Professor Murdoch merely referred the reader to the debates of the 1886 Irrigation Bill before the Victorian Parliament (26); studies in administration did not sell books in 1923, any more than they do today! Deakin's scheme was to secure a sense of responsibility in the persons benefitting from the irrigation services by forming trusts to manage the various undertakings. These were local authorities consisting of representatives of the ratepayers, and their functions were to build storages, distribute water, and collect rates sufficient to pay their own expenses. Deakin introduced large-scale irrigation to Victoria; however his policy failed because the administrative machinery broke down. The task of reforming and expanding the State's irrigation services after the great drought was given to George Swinburne, who took over the Water Supply portfolio in 1904.

Swinburne was selected because of his engineering qualifications and his recognised constructive mind. He directed his attention to the problems of storage and finance, and found that the early Trusts were neither sufficiently aware of the technical requirements, nor economically able to bear the burden of irrigation projects. By concerted effort they had resorted to political action and had succeeded in getting many of their liabilities wiped off. Overall, it seemed probable that the failure of the system was due to the lack of adequate expert central organisation. Swinburne recognised that the legal position of water rights (the riparian rights) must be clarified, that administration must be strengthened by an efficient central independent authority, and that a system of

payment must be devised to ensure that all improved properties should bear a share of the cost. Eggleston credited Irvine with devising the type of authority required - "a commission of experts with original powers which they would exercise independently of politics." Swinburne himself devised the scheme of charging, and after detailed personal attention, he introduced the Water Bill of 1904 which established the State Rivers and Water Supply Commission, and prescribed its powers and duties. The Commission was an executive authority which could sue and be sued; it had full authority and was fully responsible, being unable to shelter behind the command of a Minister or the opinion of Parliament, a provision which was expected to ensure caution, security, economy and efficiency. (27)

A commentary on Swinburne's statesmanship and determination to secure the efficient operation of the statutory corporation he had created is provided by his appointment of its first Chairman, and his defence of his appointee against attempted influence by the Premier himself. Mr. Elwood Mead was the foremost irrigation authority in the United States; in addition he was the author of the standard work on irrigation institutions, and was a man with great force of character. Swinburne wanted him as Chairman. He refused to advertise the position, but corresponded direct with Mead. He persisted with his proposal despite reluctance on Mead's part, and after persuading him to accept, experienced even greater difficulty in getting him to Australia. Mead was so distinguished in his field in America "that there was some talk of putting him in the class of prohibited emigrant." Swinburne still persisted and Mead duly took up duty as Chairman of the Commission in 1907. Soon he was

touring country districts explaining various aspects of the new irrigation policy, and Premier Bent, stating that he was not going to have public servants going round the country committing the Treasury, publicly rebuked him. Mead complained to Swinburne, after which the latter made a public announcement to the effect that Mead had only spoken after consultation with him, and that he thoroughly approved of the statements made. Bent did not refer to the subject again. (28)

Swinburne resigned from the disintegrating Bent Ministry in 1908, but his faith in the statutory corporation as a device for the successful administration of government enterprise was carried on within the Victorian Parliament by W.A. Watt, who was Treasurer in the Murray Ministry which held office from 1909 to 1912, and then Premier himself from 1912 to 1914. Eggleston regarded Watt as one of Australia's most acute political minds; he had great influence in Parliament, which "prevented it from its characteristic error, slack finance". Watt consolidated the gains made by the Irvine and Bent Ministries, and extended the corporation form of management to other public utilities. For example, he created the Country Roads Board in 1913, and in the same year reorganised the Melbourne Harbour Trust, abolishing the elective principle and adopting a proposal previously put forward by Swinburne for the appointment of one permanent member and four others appointed to serve as representatives of the various interests concerned. (29) Later, after World War 1, the principle of the independent statutory corporation was also applied to the Victorian State Electricity Commission, a body which has frequently been hailed as an example of successful state enterprise. (30)

Irvine
. Swinburne/and Watt were all business men in private life. Consequently they regarded the application of business methods to public enterprise as a desirable and important corollary to the removal of political influence. They believed wholeheartedly that the type of public service organisation almost universally adopted for the traditional government department was unsuitable for the management of business activities. The statutory corporation was the answer to their search for a means of ensuring conditions of financial and managerial independence for such activities.

Paying tribute to their achievement, Eggleston wrote :

"The device of an independent Statutory Corporation to carry out State Schemes of this character has been used in Victoria more than in any other part of the world. In Victoria it developed from the idea of Trustees for the Savings Banks, and from the Harbour Trust which was in itself adopted from the constitution of Harbour Boards in Great Britain. The system has been a conspicuous success. The recognition of its importance and its possibilities in the administration of State Schemes which would otherwise be subject to all the defects of socialistic administration proves the foresight of Irvine and Swinburne." (31)

The lesson was not well learned nor consistently applied in the other States. Thus N.S.W. established its Water Conservation and Irrigation Commission in 1916 and its Hospitals Commission in 1929, but in both the Minister sits on the Commission as Chairman; the N.S.W. experience has shown, however, that a Minister cannot be a representative party man and a good administrator at the same time. (32)

The Tasmanian Government acquired the hydro-electricity undertaking of a private company which failed in 1914; management by statutory corporation was not adopted until 1929, and even then this corporation had defects characteristic of the Victorian Railways Commissioners of 1884.

After voicing his belief in 1932 that the selection of the public corporation as an instrument to operate State concerns was the most significant contribution of Victoria to State Socialism as a phase of political science, Eggleston expressed regret 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." (33)

Writing from personal experience, Eggleston also expressed regret that a later generation of Victorian politicians had ignored the lesson of their predecessors, and that the success of State enterprises was compromised by a return to conditions of political interference, by a refusal to recognise the independent managerial function of the corporations particularly in regard to finance, and by the generally destructive attitude of the individual citizen : this, in fact, is the theme of his book "State Socialism in Victoria". Twenty years later, Eggleston was to lament the fact that this book was relegated to the role of a "secret document", which few read and even fewer heeded. (34)

Professor Sawer attributes the first clear appreciation of the principles of the statutory corporation to Irvine, Watt and Swinburne, whom he describes as radical democrats. He has summarised concisely the merits they claimed for this form of organisation. (35) These were :

(i) "the technical legal advantages of a personality with perpetual succession, capable of suing and being sued by ordinary processes of law and of obtaining, owning and giving title to property ..... free from the cumbrous and inappropriate restrictions and immunities of Crown law;"

(ii) "the political advantage of administration free from the irrelevant issues of partisan politics at any time, with consequent ability to concentrate on short and long-term policies appropriate to the activity, and on technical and managerial efficiency;"

(iii) "the administrative advantage of building up a personnel structure free from the rigidities of ordinary civil service rules, giving more emphasis to efficiency than to seniority, encouraging an 'esprit de corps' within the organisation instead of a resort to parliamentary pressure to gain advantages, and adopting classifications suitable to the technique of the activity;"

(iv) "the possibility of representing in the control of the organisation various functional interests or outlooks appropriate to the activity .....;"

(v) "the advantage of removing from Parliament the temptation to indulge in log-rolling on behalf of consumers, beneficiaries, employees, and others; " and

(vi) "the possibility of careful accounting practice designed to run the activity as economically as possible, and, where it is a revenue-earning activity, to run it on "business" lines, that is making its income pay for interest on capital, depreciation, reserves for development, and running costs."

George Swinburne's interest in public utility services and in the extension of business methods to government administration did not end with his departure from the Victorian Ministry. His whole career was one of great public service. As his chief biographer, Eggleston, has shown :

> ".... it is the distinction of Swinburne's life that while he was never the spectacular leader and got through a colossal amount of work, he exercised a powerful creative influence on public opinion ..... He produced new ideas, elaborated them, fought them through against opposition, opposed vested interests, got his ideas accepted, and put them into operation." (36).

Before he left Victorian politics in 1913, Swinburne served as Chairman of the Victorian Parliamentary Committee of Public Accounts, and also acted as Chairman of a Royal Commission which recommended the acquisition of Melbourne's private tramways, the reduction of fares and the setting up of an antonomous statutory corporation to manage the undertaking on behalf of the State. In 1913 he accepted a seat on the newly-established Inter-State Commission, and served on this body until 1919;

after it was deprived of its basic judicial powers by a High Court decision in 1915, however, he accepted other work, first as chairman of a Committee to assist the Treasurer on war-time capital issues control, and then as Chairman of the Board of Business Administration attached to the Defence Department from 1918 to 1919.

He also served as a member of the early temporary Council of Industrial Research, and played an important role in the permanent establishment of the Institute of Science and Industry in the form of a statutory corporation. In this connection the Inter-State Commission, in a Report on New Industries submitted in October 1915, had recommended the establishment of a Commonwealth agency to study the problems of primary and secondary industry with a view to the systematic application of science to Australian industry. Swinburne lost no opportunity to support this proposal, and, realising the difficulties that would lie in the path of scientists if their work depended on the support of men whose popularity in turn depended on the winning of immediate practical results, he constantly urged the Government to establish the Institute on an independent basis. He pointed out that changing political fortunes might otherwise result in a reduction of the grant, insecurity for the scientists themselves, and postponement of crucial experiments towards which their work was directed. (37)

Swinburne also served from 1919 to 1926 as Commissioner of the Victorian State Electricity Commission, whose act was drawn up along the lines of his own Water Act of 1905; as Civil and Finance Member of the Commonwealth Military Board (1919-20); as Trustee of

the A.I.F. Canteen Fund (1919-27); as member of the Australian Delegation to the League of Nations Assembly (1925); and for long periods as Government nominee on the Melbourne University Council, as a member of the Victorian Council of Public Instruction, and as a Trustee of the Victorian Public Library and National Gallery. In the business world he held directorships in many companies operating in the fields of gas and water supply, hydraulic power, mining and insurance. He was elected to the Victorian Legislative Council in 1928, but died soon after taking his seat.

The career of Swinburne's chief biographer, Mr. F.W. (later Sir Frederick) Eggleston, affords many interesting similarities. Eggleston was also a Victorian Minister in charge of various public utility undertakings; like Swinburne, he never rose to the rank of Premier. As another true liberal, he believed in State developmental action, but insisted that this should be insulated from the disadvantages of detailed political control in the interests of sound management for the public good. A very clear thinker, he has constructed a body of literature which contributes a great deal to the philosophy of the public corporation, and if his conclusions are, as his critics point out, somewhat embittered, we must remember that his experiences were drawn from a later period than Swinburne's, a period when the conservatism of capital dominated political thought and contributed to the economic class bitterness of the depression years. In later life, Eggleston's services were also required by the Federal Government : he was Chairman of the Commonwealth Grants Commission from its inception in 1933 to 1941, a member of an Advisory Board on Investments (1939-41),

Chairman of a Committee appointed in 1939 to consider the amalgamation of Papua and New Guinea, Chairman of Australian Delegations to various Conferences of the Institute of Pacific Relations, Minister to China (1941-44) and Minister to the United States (1944-46). (38)

Swinburne's two major partners in the great Victorian liberal contribution to the philosophy of the public corporation both held directorships in various companies, both attained the Premiership of their State, and both later entered Federal Parliament. Irvine held office as Attorney-General of the Commonwealth from 1913 to 1914, was knighted in 1914, and became Chief Justice and Lieutenant Governor of Victoria from 1918 to 1936. Watt entered the House of Representatives in 1914 and before his retirement in 1929 had served as Treasurer, Acting Prime Minister and Speaker. Irvine had prepared the case for the first Double Dissolution of Federal Parliament in 1914; however, it seems that the contribution of both men to constructive political thought diminished as they became entangled in the partisan conflict which developed following the fusion of the old political parties and the rise of the Labour Party as the alternative government. In fact, one observer, commenting on Irvine's whole political career, has described him thus :

> "A strong conservative, he had all the prejudices of Ulster, and did not hestitate to show them in State and Federal politics. A dauntless political fighter, he was, however, respected by all." (39)

Watt, however, deserves credit for introducing the public corporation on the Victorian style to Commonwealth affairs : for it was he who, as Minister for Works and Railways, introduced legislation in 1917 to create the Commonwealth Railways Commission. Although, as will be seen in Chapter Two(a), this corporation consisted of a single Commissioner only, the legislation included many of the soundly-based principles used in its Victorian models.

To sum up, the Victorian liberals, particularly in the early part of this century, demonstrated the value of the public corporation as a device of government for managing enterprises of a commercial nature. As business men, they advocated the managerial independence of the corporation from all forms of political control. The managers they appointed were generally from their own economic class, and the system did not therefore offend their notions of democracy. As the political influence of the labour movement increased, however, there developed a new theory of political administration which had the opposite effect.

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THE LABOUR PARTY AND CURRENT POLITICAL ATTITUDES

Towards the close of the nineteenth century, colonial politics were dominated by often poorly-distinguished liberal and conservative groups. The great contribution of the Victorian liberals, whose unity and integrity were partly responsible for delaying the rise of the Labour Party in that State, has already been discussed. In other colonies, however, political opportunism and even corruption were bringing discredit to the old order, and new doctrines were being generated by various small groups of intellectuals who banded together to advocate such advanced and sometimes near-revolutionary ideas as a United Australia, an Australian republic, direct action and the right to strike, land nationalisation, single tax and social reform. Out of this intellectual ferment rose the Australian Labour Party.

Australian nationalist sentiment was most strongly felt among the wage-earning classes. Intellectuals such as W.G. Spence in N.S.W. and Victoria, and William Lane in Queensland, believing that organised strength was essential to secure social salvation, therefore built up powerful trade unions, and in this they were assisted by the worsening economic conditions of the early 'nineties. Lane, founder of the Australian Workers' Union, inspired the formation of the political Australian Labour Federation in Queensland, and in N.S.W. the Labour Electoral League, a similar body formed to give political expression to the trade union movement, returned Australia's first labour members of parliament in 1891.

This development of the organised labour movement is of importance to this study because of its advocacy of extensive public enterprise, and the attitudes adopted towards the public corporation as the means of organising such enterprise. Differing opinions have been expressed by various spokesmen of the movement on both questions from time to time, but the general effect has been the subordination of considerations of efficiency in the business sense, to the often-expressed desire to retain full ministerial responsibility over all State activities. Both in labour practice and in labour theory, however, there are inconsistencies, and these will be examined in the following paragraphs.

The policy of nationalisation was first raised in the Platform of the Australian Labour Federation adopted in Queensland in 1891 (1). This Platform included "the nationalisation of all sources of wealth and all means of producing and distributing wealth," and "the conducting by the State Authority of all production and all exchange." It also included references to pensioning, national saving and the maintenance of education and sanitary services, all by "the State Authority." In the absence of any definition to the contrary, it must be assumed that this term implied operation by a ministerial department in the usual sense.

Yet William Lane professed to be a Utopian Socialist. To a man of such beliefs, nationalisation involving ownership by the State is only a part improvement on ownership by private enterprise. Disillusioned in his attempts to found a true Utopian society in Australia, he organised and led an expedition of visionaries who sought

to found a socialist co-operative commonwealth in the jungles of Paraguay. Various accounts of the failure of this attempt were brought back to Australia and given wide publicity in an attempt to discredit Lane's motives. These tended to minimise the difficulty of establishing any form of settlement in the virgin South American jungle; however the story of "New Australia" also reveals glimpses of a dictatorial side to Lane's nature, which caused bitterness among his followers and contributed to the failure of the expedition. This, as with later larger-scale experiments particularly in Russia, suggests that human nature may always defeat attempts to establish a true Utopian or communist society, and the Australian press made capital of the situation. (2) This episode has a bearing on the later emergence of a syndicalist theory.

Even so, socialisation remained popular with labour platform-framers. The N.S.W. political movement adopted an Objective calling for "the cultivation of an Australian sentiment ....." and "the securing of the full results of their industry to all producers by the collective ownership of monopolies, and the extension of the industrial and economic functions of the State and the Municipality." This was also adopted as the Federal Objective by the 1905 Federal Conference. The wide attention accorded to the historic Reid-Holman debate on "Socialism" in Sydney in 1906 is indicative of the great theoretical interest attached to the subject. The debate concentrated chiefly on the extent and economic justification for socialism, although on the machinery side Mr. G.H. Reid, who had been both Premier of N.S.W. and Prime Minister of the Commonwealth, alleged that the "Government stroke" would ruin any socialised

industry. In refuting this suggestion, Holman pointed to the improved efficiency of the civil service, for example, "There was a time when the gag that the civil servant need have no brains was true; today it is not." Holman's reply shows clearly that he had not considered any special form of organisation apart from the normal departmental structure for the management of socialised enterprises. (3)

The degree of socialisation envisaged at that time thus involved no major reorganisation of the machinery of government, and was acceptable only to moderate interests, mainly the Fabian Socialists. (4) Marxist sympathisers left the official movement to form splinter organisations such as the Socialist Party, the survivors of these organisations later combining to form the Australian Communist Party in 1920. Moderate Official Labour, thrown at last into the business of practical politics with considerable strength but not sufficient to form the Government, wisely adopted a "gradualist" policy, offering support to any government which was prepared to grant concessions to labour opinion. In this mood, great advances were made, particularly in N.S.W. and Commonwealth legislation, towards better industrial conditions and other evolutionary social improvements such as electoral reform. General socialisation was, however, too extreme for the political temper of the community, and the practical politicians, as they have many times since, were content to back-pedal on this issue.

In one direction, however, after many unsuccessful attempts and finally a piece of swift political manoeuvring, the policy of

Socialisation was given practical effect, and the Commonwealth Parliament created its first public corporation. This was the Commonwealth Bank, and the circumstances surrounding its creation will be discussed fully in Chapter Two of this thesis. It is sufficient to say here that the National Bank was included in the N.S.W. platform as early as 1891. Holman, an early propagandist for the Bank, did see clearly on this particular issue that independent control would be necessary since direct political control could open the way for mismanagement or even worse. (5) Mr. King O'Malley took up the struggle and the party's Inter-State Conference in Brisbane in 1908 included the "People's Bank" in its Fighting Platform, adding that this should be conducted purely as a government department, absolutely free from political control. (6) The party in 1908 had no idea of the difficulty that was later to be experienced in reconciling these two concepts; and when Federal Parliament created the Commonwealth Bank in 1911, it also had little understanding of the administrative principles involved. The relevant debates show that in framing the bill, Andrew Fisher, Labour Prime Minister and Treasurer, sought merely to adapt an organisation he did understand - that of the private banks. He paid no attention to recent Victorian experience with appropriate administrative forms; in fact the whole Parliament seemed barren of such ideas, and even Irvine, now in Federal politics, was content to oppose the socialist measure on principle and not to offer constructive suggestions on how to make it work efficiently. Despite the absence of theory or planning, however, the original Bank did function efficiently, apparently due to the good practical sense of the first Governor of

the Bank and the Ministers with whom he came in contact.

Meanwhile Labour Governments were being formed in N.S.W. and Queensland, and were losing no time in expanding the area of public enterprise. N.S.W.'s first Labour Government was formed in 1910, with J.S.T. McGowan as Premier, Arthur Griffiths as Minister for Works and W.A. Holman as Attorney-General. The two last-named were staunch advocates of the use of public enterprise to defeat consumer exploitation by private monopolies and combines, and lost no time in establishing a State Brickworks. Holman became Premier in 1913, and after leaving the Labour Party with the Prime Minister, W.M. Hughes, on the conscription issue in 1916, continued as Nationalist Premier until 1920. Under his Premiership the Brickworks was followed in quick succession by other undertakings such as the State Metal Quarries, the State Monier Pipe and Reinforced Concrete Works, the State Sawmills, the State Bakery and the State Trawling Enterprise. Dr. H.V. Evatt regarded Holman's bold work in establishing state industrial enterprises to compete with private concerns as being "perhaps his most important contribution to Australian life." (7) State industrial enterprises were also appearing in Queensland under the Labour regimes of T.J. Ryan and E.G. Theodore during the period from 1915 to 1920. For many years Labour in Queensland had been more uncompromisingly socialist than in the other States, probably due to the early influence of William Lane. The network of state enterprise was thus constructed to embrace a wide variety of activites such as butcheries, fish shops and cattle stations. Such enterprises were, of course, examples of governments engaging in commercial activity,

and this was the purpose for which the liberal statesmen of an earlier generation had developed the autonomous public corporation.

Although Holman believed that it was necessary to give the managers of the various enterprises a reasonably free hand, and that all elements of political interference should be excluded, he was not prepared to concede to the N.S.W. enterprises the degree of statutory independence implied by public corporation management. Consequently the enterprises remained directly under ministerial control, with staff subject to the Public Service Board. Vacillation in ministerial policy, as well as the hostility of private enterprise and the censoriousness of the general public, made administration of these enterprises very difficult; and there were confusing anomalies in the arrangements for ministerial control - the metal quarries were controlled by the Minister for Public Works, the bakery by the Treasurer, the sawmills by the Minister for Lands, and the trawling fleet by the Chief Secretary (8). A broadly similar pattern was at first followed in Queensland.

Yet Holman legislated to ensure sound financial control of his enterprises. Each undertaking was treated as a separate venture, and was required to submit its accounts to Parliament in a form similar to the profit-and-loss balance sheet of any private concern. The capital cost was determined by an independent committee which included the Auditor-General, and the income of the undertaking was automatically available to cover expenses without the need for specific appropriation. (9) Eggleston, who supported the independent public corporation, wrote of the imperfections of socialist legislation

in the field of state enterprise; he might fairly have pointed out, however, that this financial freedom granted by Holman was an advance on much corporate legislation from the standpoint of efficiency in the commercial sense.

The Queensland Parliament legislated in 1918 to reorganise and co-ordinate the management of its various state undertakings. The State Enterprises Act of that year constituted a State Trade Office under the command of a Trade Commissioner who was a corporation sole, who held large powers of control over the activities of the various enterprises, and who was responsible to a Minister only in the restricted sense usually applied to public corporations. (10)

We must conclude that certain aspects of the administration of these state enterprises had been well thought out, and we must recognise that many of these enterprises were successful. The N.S.W. Auditor-General furnished much evidence to this effect, and commented thus on the management of the State Brickworks in his Report on State Industrial Undertakings for 1924:

> "The Brickworks undertaking undoubtedly demonstrates the ability of a captain of industry of high judgment, to make good in an honestly conducted business, even when hampered by drawbacks inseparable from ordinary departmental control. It is an unquestionable example of the fact that in the open market, a properly organised State business, competently managed, can more than successfully compete with private enterprise and reach an assured financial stability." (11)

Losses were, however, incurred by the State Bakery and the State Trawling Service. Similarly in Queensland most of the state enterprises were profitable, but the cattle stations proved to be a disastrous experiment.

Despite the recognition of the Managers' peculiar role in these enterprises, the retention in many aspects of normal departmental organisation precluded them from exercising the same degree of managerial independence as was provided for the legally autonomous corporations; it limited that continuity in policy and planning which was possible under a corporation; and it paved the way for the exercising of destructive influence by later Ministers who were open to external pressures or wished to furnish proof that a socialised activity could not be a successful one. With a few notable exceptions, then, the Labour legislation concerning state enterprises did not show evidence of that careful scientific evaluation of administrative detail so necessary to pave the way for efficient management. Dr. Evatt has remarked that Holman and Hughes showed little patience for detailed analysis of legislation (12); J.T. Lang has commented cynically that those engaged in the "rough and tumble" of Labour politics had had little time for theorising (13); and that very successful Labour organiser, J.H. Catts, spoke in obvious regret that his was a lone voice in the wilderness, at least so far as Federal Parliament and the Labour Movement was concerned, when he said in 1915 :

> "Organisation is in the management of human affairs what machinery is in manufacture. The creation of either requires

resource and ingenuity ..... It is the adoption of method as a science, as an economy of government, of business, and of individual experience. Its study, development, and application is an important governmental function in Germany, and a primary commercial activity in the United States. In both countries master minds have been induced to devote themselves to it especially ..... Unfortunately, organisation is not a strong point with us. To the observer and student, one of the most amazing, and one of the most depressing phenomena in Australia is the most appalling apathy , the appalling disorganisation, the appalling overlapping of effort and the appalling waste. It must exist in the nation, for it exists in its National Parliament, and what is Parliament but the reflex of the mind and purpose of the community ?" (14)

During the second decade of the twentieth century, advocacy of the public corporation, or at least of a greater degree of official independence for public commercial enterprises, seems to have become , except in Victoria, the almost exclusive prerogative of commissions of enquiry which were set up by various governments, but whose recommendations were rarely acted upon. Thus, the report of the Royal Commission on Postal, Telegraphic and Telephonic Services, presented in 1910, recommended the vesting of the Post Office in a Board of Management consisting of a General Manager as Chairman, a Postal Director, and a Telegraph and Telephone Director. This Board was to control all the activities of the Department, including staff and works, and the minister's

position was to be reduced to that of "the connecting link" between the Board and Parliament. (15) The Anderson Report of 1915 on the Business Management of the Postmaster-General's Department stressed the need to introduce "business methods", including appointment of a General Manager with statutory powers and a corresponding reduction in the Minister's powers, the meeting of all expenses from revenue, and the abolition of the "indefensible system" of Public Service Board control over staffing (16). A similar plea for greater managerial independence in the Post Office was made in 1919 by the Economies Royal Commission, which recommended :

> "..... that the administration of the Department be placed in the hands of a competent Board of three Commissioners, one of whom should be a financial man ....., one should be a postal expert, and one should be a telegraph and telephone engineer, ... the first mentioned to act as chairman." (17)

This Commission also drew attention to the savings which it considered would have resulted if the earlier expert recommendations had been acted on. Post Office management seems to be a perennial question, for similar suggestions are still being made by various expert authorities and interested groups. In the State field, Mr. G.M. Allard, Royal Commissioner on the N.S.W. Public Service from 1918 to 1920 recommended the vesting of the administration of the State Lands Department in a permanent Commission in an endeavour to overcome problems raised by vacillating political control. The same Commissioner, reporting on the operations of the State Timber Yards, recommended that the manager should be "in a position to conduct the business untrammelled by rules and regulations from which his

competitor is free," and the Minister should be "in a position similar to that of the directorate of a private trading company in being kept fully advised of the course of the business." (18)

Significantly, the Haldane Commission on Machinery of Government in the United Kingdom, in its report in 1919, declared its opposition to any departure from the traditional method of accountability, commenting that there should be no omission in the case of any particular service of those safeguards which Ministerial responsibility to parliament alone provides. (19) The Commonwealth Parliament was at this time, in the absence of a philosophy of its own, quite openly borrowing from State railways legislation in establishing the Commonwealth Railways and the War Service Homes Commission; and it was floundering in its efforts to devise a suitable organisation for its repatriation activities.

Varying interpretations have been offered of the Australian socialist achievements to the close of the First World War. The famous expression "Le socialisme sans doctrine" had been coined by the French observer Métin to describe the Australian situation after a visit in the early part of the century, and W.G. Spence excitedly declared that "Socialism is here! " in his book "Australia's Awakening" published in 1909. Other notable observers such as Sir Frederick Eggleston and Professors W.K. Hancock and R.M. Crawford, have devoted considerable space to a discussion of "State Socialism" in Australia, the latter suggesting, however, that the expression "State Paternalism" might be more appropriate. More recent critics have argued that the system cannot be regarded.

in any sense as a socialist one while private enterprise is retained and accepted by the society. Interpreting Australia for United States readers, A. Campbell Garnet considers that the various experiments conducted in Australia in public enterprise and social reform may at best be described as "piecemeal socialism" or "state capitalism," and that the latter sums up the Australian political philosophy which prefers to use state undertakings, not to curtail private enterprise, but to develop opportunities for it to function more profitably ! (20) Many have pointed to the early plank of the N.S.W. Labour Party which sought the establishment of a State steelworks, and then to the Labour Government's agreement with Broken Hill Pty. for the establishment of this industry by private enterprise, as evidence of the fact that the labour movement itself is content to co-exist in a capitalist society. Another American student of Australian affairs, C. Hartley Grattan, in reviewing Dr. Evatt's biography of Holman in 1940, described the latter's state enterprises as experiments of a "pre-industrialised economy." After describing water supply, forestry, fire protection, and harbour operation as "inevitable fields for government activity" even in countries dedicated to private capitalism, and reviewing the fate of Holman's enterprises, he commented :

> "As the theory of the superior validity of private enterprise in the industrial field gained power, so the disposition to scrap the experiments, whether they were profitable or not, and to oppose all new ventures, gained ground. It also seems to me highly significant that the Australian State which now operates the most miscellaneous group of industries, Western Australia, is also one of the least industrialised States." (21)

The development of a capitalist political theory was probably in large measure a reaction to the movement of labour philosophy towards the extreme left, which was influenced by the glamour and notoriety of the Russian Revolution, and associated proletarian movements in Europe. Spearheaded within the trade unions by militant groups such as the Industrial Workers of the World (IWW), this movement had a twofold result. First, the Australian Communist Party was formed in 1920, and secondly, in the following year the Brisbane Federal Conference of the Australian Labour Party adopted an all-out "Socialisation Objective," which went much further than previous objectives, and is of particular interest to this study because of the attention given to methods of achievement. This is the so-called "Syndicalist" era in Australia's public corporation philosophy.

Mr. G.D.H. Cole has commented that before World War I British Socialist theory was concerned far more about "the basis of compensation than about the forms and methods of future management and control " - it was automatically assumed that the State, on acquiring an enterprise, would put a Minister of the Crown in command, and conduct the activity under the usual civil service methods. During World War I, however, the problem came to the fore with the development of the doctrines of Syndicalism, and Industrial Unionism, which opposed State ownership and control, and instead wanted the workers to manage their own industries as trustees for the community. The companion doctrine of Guild Socialism accepted State ownership but repudiated State control. All three advocated management by self-governing National Guilds, which would represent the various grades of

workers included in the industry. (22) This notion of representative management followed the early Soviet Russian plan, but even the U.S.S.R. has in practice moved away from the cruder forms of workers' control.

The influence of this thinking is obvious at the 1921 Brisbane Conference. The new Objective, and the accompanying statement of "Methods", was submitted to Conference by an All-Australian Trade Union Congress. Definitions were fully discussed for the first time, with Theodore complaining that "no two delegates would agree as to what socialisation of industry means," and J.H. Scullin, later to become Prime Minister, explaining that the purpose of the new objective was :

> "to introduce socialism instead of nationalisation. Nationalisation is really State Capitalism ..... I do not believe the workers will ever make a success of nationalised industry, or industries controlled by the people collectively, unless they are made responsible themselves. As industry is nationalised, the workers will be given a say on the boards of control alongside the representatives of Parliament."

Conceding that Parliament would be necessary to nationalise the industry, Scullin added :

> "The industry would then become a group and each group would elect representatives to the Supreme Economic Council. So far as industry itself is concerned in the socialised State, the Council would really take the place of the political Parliament. The political Parliament would not disappear. It would legislate on other national questions".

Theodore, a political realist, led the opposition to these revolutionary

proposals, arguing that they would split the labour movement, and that they would sovietize Australian industry and prostitute Australian labour to communism. However the new Objective was carried by a substantial majority, and, as finally incorporated in the A.L.P. platform, reads as follows :-

OBJECTIVE

The socialisation of industry, production, distribution and exchange.

METHODS

Socialisation of industry by ;-

(a) The constitutional utilisation of industrial and Parliamentary machinery;

(b) The organisation of workers along the lines of industry;

(c) Nationalisation of banking and all principal industries;

(d) The municipalisation of such services as can best be operated in limited areas;

(e) Government of nationalised industries by boards upon which the workers in the industries and the community shall have representation;

(f) The establishment of an elective Supreme Economic Council by all nationalised industries;

(g) The setting up of Labour research and Labour information bureaux and of Labour educational institutions in which the workers shall be trained in the management of the nationalised industries. (23)

At about this time a plan of the economic organisation of Soviet Russia was published in "The Proletarian", the official monthly journal of the Australian Communist Party, for use as a model in framing an identical Australian system. (24) This plan is reproduced in Appendix A. Had these syndicalist proposals been acted on, Australian industry would have been managed by a network of public corporations after the style of France's nationalised industries. However, by 1927 the Australian Labour Party had seen the wisdom of Theodore's stand, and his Queensland colleagues Forgan Smith and Collings led a successful move for the revision of the "Methods" to delete all reference to the Supreme Economic Council and its subsidiary Boards in favour of a vaguely worded substitution :

> ".....the constitutional utilisation of the Federal, State and Municipal Government, Parliamentary and administrative machinery."

From this time syndicalism has been almost, but not quite, a dead issue in Australia. The N.S.W. Labour Party, which had been the only one to vote solidly against the Federal Socialisation Objective in 1921, adopted a similar but short-lived objective in 1931, in the midst of the confusion and turmoil surrounding the Lang regime. The more militant of the trade unions have continued to advocate at least employee representation on boards of management of nationalised industries, and the Commonwealth Government even indulged in some short-lived and unsuccessful experiments to this end during World War II in the coal-mining, shipping and stevedoring industries. Dr. F.R.E. Mauldon, in his detailed account of the Hunter River Valley in 1927, thus summarised the attitude which brought about the end of syndicalism as a popular philosophy in Australia :

"With the growing realisation during recent years that State ownership of industry gives very little new help in the solution of difficulties between management and employees, there is today but small enthusiasm amongst the miners for nationalisation. And even the most dass-conscious critics of capitalist enterprise in executive positions in the Federation question the miners' present ability satisfactorily to run the industry with democratic machinery. It is undoubtedly realised, although never publicly confessed, that factional and personal objectives would endanger the economic working of a socialised or syndicalised control." (25)

The Labour Party's federal parliamentarians reflected the rise and fall of the syndicalist movement. It seems likely that they sensed danger to their own interests in the appointment of "independent" corporations by the Bruce-Page Coalition Ministry, and in the debates on the Shipping Board and Bank Board legislation in 1923-24, they demanded inclusion of employee representatives in management. Over the next few years, however, their attitude seems to have changed; beginning with the Federal Capital Commission legislation of 1924, the Party's spokesmen almost invariably devoted their attentions to stressing the importance of maintaining full ministerial responsibility as a basic democratic safeguard. For this reason they opposed altogether the creation of autonomous corporations, and by 1930 they had evolved a definite policy on the issue, to which the Scullin Government was able to give some degree of effect. As this development is essentially a practical one, it is considered in detail in Chapter Two, in connection with the creation and abolition of corporations such as the Development

and Migration Commission. However, it has had a far greater effect on Australian political and administrative history than has the purely theoretical syndicalist contribution discussed above. This is just another example of the Australian habit of placing practice before theory. Australians generally have been impatient with the theorist and the planner; as Dr. Hugh Dalton wrote in Britain in 1929 :

> "It would be easy ..... to systematise Australian practice unduly, and to seek to present it as a comprehensive and well-rounded whole. It is not this. It is not a single great plan, but a series of varied and tentative experiments." (26)

The nineteen-twenties saw many cross-currents in Australian politics. It was also the period in which J.T. Lang reached the height of his political power in N.S.W. In his memoirs, that controversial figure recounts many examples of his hostility to senior public servants who allegedly presumed, to their subsequent sorrow, that he would follow in the footsteps of his predecessors and accept their recommendations. To Lang, the minister was de facto as well as de jure manager of his department - there was no problem of official independence; and if there was a distinction between the department and the corporation, it was simply that it was easier for the politician to manage the staffing of the latter since it was not protected by Public Service Board authority. This attitude left the way wide open for the exercise of patronage and other unwise interference, and "Langism" proved equal to the occasion. Lang wrote of his threat of dismissal to the Railway Commissioner in 1925 to secure that officer's compliance with his wishes on a staffing matter, and of his appointment of an Independent Labour Member to the Meat Board in order to ensure the

replacement of his doubtful support in the State Parliament by the certain support of the Official Labour Member likely to be elected to the resultant vacancy. There had of course been precedents, as Lang was quick to point out. As a condition of the Holman - Nationalist Coalition after the conscription split in the Labour Party, Holman insisted on the appointment of a loyal follower, the Labour Member for Broken Hill who could not possibly hold his seat under Nationalist colours, as Railways Commissioner. (27) In all these cases, the least important consideration had been the appointees' qualifications or suitability for the post - political reward and political advantage were paramount. And of course the political appointments of one Ministry were not always acceptable to the next. Professor Bland illustrated the ludicrous situation of the N.S.W. Western Lands Board, in respect of which the State's taxpayers were in 1935 paying for three sets of members, two of which had been dismissed with compensation because they were unacceptable to succeeding governments. (28)

As Nationalist leader, W.M. Hughes had retained his old labour faith in public enterprise, although it will be remembered that he was inclined to be neglectful of administrative detail. He had hoped to convert the new party to his beliefs, but in this he was not successful: the conservative elements triumphed, and after the eclipse of the Hughes Ministry by the Bruce-Page Coalition, federal government adopted the practices of big business. Where public enterprise was retained, the government endeavoured to reorganise it according to accepted business principles, and the terms "corporation" and "board of directors" came to be widely used in this field. Bruce, however, did

not believe in public enterprise, except in the developmental sense to increase opportunities for private capitalism; the period was one of concentration of economic power. The Nationalist and Country Party coalition governments of the 'twenties used the full weight of their propaganda machines in an endeavour to prove that public enterprise, where this competed with private commercial and industrial interests, had inherent defects and could not succeed. After considerable colouring of facts, and disregarding of the position of many private industries which were also facing great difficulties in the approaching financial crisis, they were able to close down many public enterprises. For example, until the 1957 change Queensland had had a Labour Government continuously since 1915 except for a short break in 1929-32, but the non-labour ministry found this single term sufficient to close down all the State's industrial undertakings. (29)

With increasing bitterness and extremism in Australian politics at the time, it is not surprising that there has been much controversy among historians as to the merits of the administrative work of the Bruce-Page Government. Professor Greenwood referred to Bruce's intellectual quality, and his capacity for "the most telling analysis of highly complex situations." He illustrated Bruce's views that the overall objective of expanding the Australian economy could only be attained if there was the closest co-ordination in planning, and that the time had come to use scientific and technical skills as "assistants of government policy." Pointing out that the Bruce-Page administration made extensive use of boards, commissions and similar agencies, Greenwood cited the Tariff Board, the Development and Migration Commission and the Council for Scientific and Industrial

Research as its three most notable achievements. He concluded that :

> "The political symmetry which ... he (Bruce) achievedwas almost faultless in its logic, though it did not always allow sufficiently for the less logical behaviour of human beings." (30)

The American Professor Overacker recognised the Council for Scientific and Industrial Research, the establishment of co-operative marketing machinery, and the creation of the Loan Council to co-ordinate Australian public borrowing programmes, as lasting achievements of the period, but criticised that government's launching of "reckless immigration projects" and its inflationary policies. (31) A more superficial observer, Don Whitingdon, described the "grandiose plans" of the government as being "remarkable more for their enthusiasm than for careful preparation and execution;" (32) while Socialist and Communist pamphleteers, embittered by the destruction of public enterprises, have devoted much convincing effort to proving that these can be successful if given "a fair go."(33)

The schism in Australian political theory matured during the financial crisis of the late twenties and the resultant depression of the early thirties. The activities of the Commonwealth's first public corporation, the Commonwealth Bank, played an important part in this process. The Bank Board had generally seen eye to eye with its creators, the Bruce-Page Government; with its pre-Keynesian financial outlook, however, it could not work harmoniously with the succeeding Scullin Labour Ministry. Labour writers have recorded with great bitterness the Bank's role during the depression, when it refused to finance the government's policy, and in fact dictated a contrary policy. The unprecedented appearance of the Chairman of the Bank Board before a Nationalist-dominated Senate, in an attempt to discredit the policy of the elected government, has frequently been

quoted since to justify the Labour assertion that full ministerial responsibility for administration must never be compromised; and the preoccupation of Labour theory with considerations of banking policy and banking nationalisation, to the general neglect of other issues, has dated from this time.

Summarising the impact of the various currents of Australian political thought discussed above on the theory of the public corporation, Professor Bland has commented :

> "Until the 'twenties of this century, it was possible to assert with some degree of truth that the Statutory Corporation had become the settled method of administering any public utility or service that required a more judicial or detached administration than was possible under party politics, or which demanded long-term planning for its success. Railways, banking, water conservation or supply, electricity, and public service personnel provide illustrations. During the 'twenties in N.S.W., a new temper was introduced into our politics, and it not only still influences State politics, but has affected other States and the Federal field as well. Under that influence, which savoured of "spoils to the victors," the Statutory Corporation in N.S.W. lost much of its quasi-judicial, detached and impartial nature, and became instead a facade behind which party politics exercised even greater influence than in the conventional government departments where certain rules of the game had to be observed. Not only has the prestige of the Statutory Corporation suffered, but people and parliaments have become confused about its status, its powers, its duties." (34)

Whereas the earlier liberal statesman had demonstrated the important benefits that could be obtained by entrusting public enterprise to autonomous statutory corporations, the labour movement has not generally shared this faith. To its trade union leaders "business" was anathema; one of the cardinal features of the corporation, as devised by the liberals, was that it should be organised on business lines, and therefore in this form it automatically stood condemned in socialist attitudes.

Yet - and here is the great contradication in the Labour contribution - despite this often expressed Labour belief in maintaining complete accountability for all administrative agencies (which reached its peak in clarity of expression during the closure of the Development and Migration Commission in 1930) Labour did not oppose on principle the establishment, by the Lyons Government in 1932, of the Australian Broadcasting Commission, which was quite openly modelled on the recently-created British Broadcasting Corporation. In fact, the Lyons measure differed only slightly from a bill prepared by the previous Labour Government just before its defeat.

The theory clearly enunciated in 1930 had thus been ignored. One must be excused for asking whether the only reason for clarifying and utilising the theory at that time was to get rid of a temporary irritation - the Development and Migration Commission, which had become something of a "white elephant." Its specific practical task achieved, the theory was immediately wrapped up and conveniently tucked away out of sight. The possible reasons for, and implications of, this development will be discussed more fully in Chapter Two(C) of this thesis.

However, the theory thus renounced in practice is more deeply rooted in Labour philosophy than is indicated by this particular sequence of events. Another Commonwealth Labour Government was to express similar sentiments in 1947 in justifying the closure of two corporations and the reduction in staffing autonomy of others; while it is also noticeable that the two Australian States which have had the greatest experience of Labour Government, N.S.W. and (continued on next page)

Queensland, have generally been more faithful to departmental administration. Even where they have resorted to corporations, in the twentieth century as distinct from the earlier "liberal era," they have been champions of accountability. The N.S.W. practice of appointing ministers as chairmen of corporations is a case in point. In New Zealand too, the Labour Government, which assumed office in 1935, did away with public corporations in the fields of railways and broadcasting in favour of departmental administration, and drastically reduced the autonomy of other corporations.

In the Commonwealth field, however, many of the public corporations created in recent years have been established by Labour Governments. It is perhaps not surprising that the Labour politicians who have created these corporations, despite their own basic philosophy on the subject, have shown little interest in thinking out their problems and implications. Sir Frederick Eggleston has contrasted their attitude to that of men like Swinburne :

> "One would think that politicians committed to a Socialist policy, or even to a moderate State socialism, would have realised that large projects cannot be successfully launched without the most elaborate planning and that they risk personal discredit, as well as a blow to their favourite policy, if they do not take the utmost precautions and secure the best advice. But the insouciance with which the Labour Government embarked on the Snowy Mountains hydro-electric generating scheme in 1949 shows that these considerations weigh very little with them." (35)

Thus a theory had been rather laboriously constructed, but recent practice is quite inconsistent and shows a typical Australian impatience with philosophy. Whereas the "corporation movement" in the nineteenth century had followed a clear and definite course, the influx of class politics and the extension of state activity following the advent of the Labour Party introduced numerous complications and divisions of opinion, and the earlier note of near-harmony became one of major discord.

However there have been, over the last twenty-five years, certain highlights related to this "corporation movement" which have emerged from commissions of enquiry into the operations of various existing authorities :

(a) The deterioration of state railway finances over the depression years led to the appointment of a number of such commissions. These invariably emphasised the unwise policy of governments in merging railway profits into Consolidated Revenue, and preventing adequate maintenance activities or provision for depreciation. The Royal Commission appointed to report on the control,administration, and financial position of the South Australian Railways in 1931 furnished a detailed comparison of methods of controlling public utilities, and of the qualities required of the executives of these industries. Despairing of obtaining such qualities by the normal method of political appointment it recommended the creation by Act of Parliament of an independent Selection Board to consist of -

(i) the Minister of Railways, as Chairman

(ii) the Leader of the Opposition, House of Assembly

(iii) the Chief Secretary

(iv) the Leader of the Opposition, Legislative Council, and

(v) the Public Service Commissioner. (36)

This radical suggestion was not adopted, but it actually preceded the United Kingdom's' much-quoted experiment with a panel of Appointing Trustees for the London Passenger Transport Board created in 1933.

(b) Another highlight was the 1937 Report of the Royal Commission on the Monetary and Banking Systems in Australia. This was the first Australian commission of enquiry to demonstrate a realisation that the independent corporation is inconsistent with democratic principles. Conscious of the bitter controversy generated by the high-handed attitude of the Commonwealth Bank during the depression, the Royal Commission suggested machinery to ensure that final responsibility should remain in the government's hands. Although this Commission was appointed by the Lyons Non-Labour Government, it had to wait for a Labour government to give effect to this recommendation. The Royal Commission also provided a reliable forecast of future developments, although few realised this at the time. One of its members, Mr. J.B. Chifley, in a dissenting minority report, put forward his views on the nationalisation of the trading banks; a decade later, as Prime Minister of Australia, he was to endeavour to translate his strong personal views on this subject into practical effect, only to see them founder on the rocks of an uncooperative judicial system.

(c) The Joint Parliamentary Committee on Wireless Broadcasting (the so-called Gibson Committee), appointed in 1941 to consider criticisms concerning the operations of the National Broadcasting Service, made a detailed survey and some important recommendations which helped shape the course of not only the Australian Broadcasting Commission but also other Commonwealth Corporations created in the immediate post-war period.

(d) Then the Pinner Committee, appointed by the Curtin Labour Government in June 1945, to review the organisation and staffing of Commonwealth Departments concerned with war-time activities, drew attention to the desirability of establishing uniform standards of staffing and similar salary classifications for all Commonwealth employees whether under the Public Service Act or not. This was one of the few informed comments on that tendency to breach the sanctity of the Public Service Act, which had become a widely adopted habit in Australian political practice. It was supplemented by a further clear statement of policy, in line with previous hostility towards public agencies outside the regular public service, by the Labour Government in 1947. Yet the same government soon proved itself prepared to give only partial effect to the policy it had outlined. Again, labour had enunciated its theory of opposition to autonomous public corporations, but again it was not prepared to translate this theory into practice.

(e) Finally, the Report of the sensational enquiry of the Parliamentary Joint Standing Committee on Public Accounts into the affairs of the Australian Aluminium Production Commission was

submitted in 1955. This report included sections dealing with the nature of the "Statutory Corporation" itself, and represented the first active interest shown by members of parliament since the beginning of the post-war development boom, in the administrative requirements as distinct from political results of government activity. Detailed reference will be made to this Report together with those of the Banking Commission and the Gibson and Pinner Committees, later in this thesis.

Broadly, the first of the five enquiries discussed above reaffirmed faith in the corporation free of political interference for the efficient management of public enterprises; the second and fourth recognised the need for ultimate ministerial responsibility to safeguard democratic principles; while the third and fifth endeavoured to find a logical compromise between the two requirements.

Apart from these enquiries there has been little recent clear-thinking concerning the public corporation. Politically, as has been shown, Australian attitudes over the past twenty-five years have degenerated into a state of confusion, and our public corporations as a whole reveal bewildering varieties of form and purpose. Professor Bland wrote in 1934, that despite fifty years of experience, no political appraisal had been made of their suitability as a device of government, and that the constantly recurring variations could not be dignified as experiments. (37) This is almost as true today. Discussing unsatisfactory legal aspects of Australian public corporations, Professor Sawer illustrated the case of the Queensland Fish Board, which consisted of four members and yet was designated "a corporation sole."

He suggested that the draftsman responsible must have been thinking of the succulent products to be offered for sale by the Board, and commented :

> "It may be doubted whether the draftsmen, who have thus imitated the personification of the British Crown, had much idea of the peculiar and unsatisfactory nature of 'corporation sole' theory at law." (38)

Few politicians devote as much attention to the administrative detail of the measures they initiate as did George Swinburne. Consequently the Parliamentary Draftsman becomes an important unit in devising the administrative scheme; and if his knowledge of legal aspects can be limited as the above passage suggests, then how much more limited must be his knowledge of administrative techniques !

In the State sphere, where Labour Governments have generally proved more popular, there is far less understanding of the public corporation today than there was fifty years ago. All sorts of authorities and activities are given the legal status of "body corporate" - even, on occasions, ministers themselves. This appears particularly true in the smaller States. In Tasmania, for example, there is no clear distinction, either in common or legal usage, between the terms "department" and "commission." Thus the Transport Commission is sometimes called a department, and the Forestry Commission is regarded legally as a department for the purposes of the Public Service Act. Illogically, in the case of the Government Tourist and Immigration Department, the reverse is true : although administered by a minister in the usual way, this department is completely separate from the "Public Service." The Hydro-Electric Commission is also completely separate in staffing and salary fixation, and is required to be

financially self-sufficient; yet its price policy is subject to Cabinet approval, and has on occasions been the subject of no-confidence motions moved in Parliament against the Government. In Queensland, the Government Statistician commented that the staff of the Main Roads Commission were brought under the Public Service Act in 1951, and "the Commission became a Department." (39) One might assume from this that the application of the Public Service Act in that State decides whether the organisation is a department or a public corporation. Yet we find bodies such as the Queensland Harbour Trust, which are typical of conventional corporations but which are subject to the provisions of the Public Service Act. In South Australia also, the application of the Public Service Act obviously has little relation to the distinction between departments and corporations; there the State Bank is subject to the Act, while the State Savings Bank is not. The concept of the public corporation is probably most widely appreciated today in the two most populous States, N.S.W. and Victoria. Yet most of the recorded abuses have occured in those States, and the former in particular has a habit of appointing ministers as Chairmen of corporations. Western Australia at present operates the widest range of State industrial enterprises - there full ministerial control, even over so-called corporations, has been supported by all parties, the typical view being that it is inconceivable that a Minister, being answerable to Parliament for the omissions and misdemeanours of management, should not have power and authority to remedy the defects. (40) The distinction between policy and detailed administration, widely appreciated in Britain to the extent that the Speaker of the House of Commons will rule out of order questions concerning the latter in

relation to public corporations, has not found general acceptance in the Australian States.

If the States are not prepared to concede the managerial independence of their corporations, either in regard to general administration or staffing and financial control, why do they persevere with them? It cannot be a question of the field in which they are to operate, as there are also many inconsistencies here. For example : most states have established Forestry Commissions,but South Australia is content to leave forests administration to a conventional department; and some states have established corporations to operate government insurance businesses but in N.S.W. the State Insurance Office is a "sub-department" of the Treasury. The one common feature seems to be that the corporations are all incorporated. This recalls the intention of the creators of the early colonial corporations to separate public business activities from the legal immunities associated with the concept of identity with the Crown. Yet in recent years, and despite this basis for the application of the corporate form to government agencies, Australian Courts have held that many corporations are in fact entitled to Crown privileges. The South Australian Railway Commissioner and the Victorian Forestry Commission have been so held; yet Courts have decided that the Victorian Railways Commissioners and the N.S.W. Forestry Commission are not entitled to Crown privileges. (41) Discussing the application of the "Shield of the Crown" to public corporations, Professor Friedmann has written that the problem is

> "..... unfortunately ..... still a matter of great importance in Australia, which has a multitude of public corporations but

> none of the unifying legislation which has clarified the status of the modern British public corporations. It is precisely because the dual status of the modern public corporation , its Janus head as a public authority and a legal person of private law, has not been sufficiently recognised in the Australian Courts that the judicial authorities on this subject are in a state of great confusion." (42)

We can only conclude that the States follow no commonly-accepted basic criteria whatever in their use of the public corporation.

Commonwealth practice in the form and use of the public corporation also reveals many inconsistencies, although in recent years some definite trends have emerged, e.g. in regard to personnel policy. Federal politics offer greater scope for the able politician, and many of the better-class State members gain "promotion" to the "higher" Parliament. We might therefore expect to find evidence of more clear thinking and greater attention to principle at that level. However Commonwealth debates have in recent years shown Labour members still prepared to defend the principle of full ministerial responsibility for all government activities; while Commonwealth legislation, much of it introduced by Labour Governments, has continued to establish public corporations.

Perhaps the wide gap between Labour theory and practice in Australia may partly be explained by the fact that British socialist theory has come to the opposite conclusion. Labour merely took over from the British Liberals that leadership in economic development which recognised the dangers inherent in the almost inevitable trend towards

monopoly in public utility services, which at first endeavoured to regulate these by private enabling acts for each concern, which later relieved this burden on parliament by creating autonomous quasi-judicial commissions to regulate and co-ordinate the various enterprises operating in the major public utility industries, and which finally extended the use of such commissions and related authorities to assume full control of the nationalised industries. In fact, recent enquiries have shown that the faith evidenced by the Attlee Labour Government (1945-51) in the public corporation as the vehicle of nationalisation was altogether too overwhelming and too naive. Australian politics are normally influenced to a large extent by British experience; and Australian labour leaders were very conscious of this British lead. However in Australia labour drove the liberals into a "big business" alliance with conservative interests, in which the true liberal philosophy has been largely, although not absolutely, submerged. This opposition of the two philosophies, as opposed to their continuity in Britain, is reflected in Australia's muddled thinking on the public corporation. It might be argued that this basic difference explains the opposing standpoint of British and Australian Labour theory on the public corporation, but that the Australian habit of adopting British government machinery has led to the frequent use of the public corporation by Australian Labour Governments despite the fact that this is contrary to their own policy. Certainly the circumstances surrounding the Labour support for the creation of the Australian Broadcasting Commission lend weight to this supposition.

It also seems likely that Australian Labour leaders in the period of reconstruction after 1945 paid attention to the views of their economic advisers on the subject of organisation of government activities. One of the foremost of these, Professor D.B. (now Sir Douglas) Copland, forecast improved organisation after World War II, due "inter alia " to the widespread experience of the statutory corporation and public utility company (which) have shown that government enterprise can be highly successful in at least some spheres." (43). That Professor Copland shared the British faith in the public corporation is shown by this statement, in connection with a study in 1945 emphasising the belief in the importance of compensatory government action to counteract fluctuations in the economy, that :

> "Examples such as the British Broadcasting Corporation, the London Passenger Transport Board, the Tennessee Valley Authority, and the State Electricity Commission of Victoria indicate the possibility of reconciling independence of management, efficiency and financial success with political expediency ..... The statutory corporation has practically all the advantages of the joint stock company in the public utility field plus the added advantage that its very structure, and the source from which it derives its authority, guarantee that it is working in the public interest." (44)

A competent observer of the British situation has described seven motives to illustrate the perplexities of twentieth century collectivism, which he considers must to some extent be held to explain the inconsistencies in the forms of twentieth century public control.

These motives are :

(i) the desire to substitute the service motive for the financial incentives of entrepreneurship in the basic industries,

(ii) the desire to achieve workers' control,

(iii) the desire to abolish competition,

(iv) the desire to secure the benefits of centralization,

(v) the desire to do away with rewards to private capital,

(vi) the desire to prepare the ground for economic planning,

(vii) the desire to substitute open public-spirited operation of monopolies and quasi-monopolies for their private, secret, and mercenary operation. (45).

If such motives have complicated the British scene, then there is little wonder that their application in this country, with its seven legislatures and governments, its greater economic dependence on public enterprise, its added parochialism, and its comparative absence of attention to administrative principles, has resulted in widespread confusion in theory and in practice.

On the other side of the political fence, the approach of the Australian non-labour parties has changed in emphasis as conservative elements have tended to outnumber the radical democrats of an older generation. The fusion of the old parties, which drove liberal interests into a position of hostility to large-scale public enterprise, was of course brought about by the advent of the Labour Party. Ministerial announcements accompanying the disposal of such enterprises today almost invariably refer to the completion of the task of development to which they were applied. This attitude has been clearly expressed

by Mr. R.G. Casey, who described public enterprises as "development stimulators" in an essentially capitalist economy. (46) The interesting implication is that the organisations formed to manage these enterprises cannot be expected to pay their own way, for once they are in a position to do this they are to be handed over as going concerns to private interests. A belief in the superiority of business methods, and in the case of activities such as commodity marketing in the desirability of the representation of appropriate interests in management, has resulted in continued support for the public corporation by these parties, but because of the public moneys invested in them, they too have been unable to provide conditions of full autonomy.

Yet the non-labour belief that these favoured business methods cannot be found in ordinary departments, although still strong, is not absolute, for in defending the Commonwealth Public Service against external criticism, the Liberal Party/Minister associated with the Public Service Board recently made the following statement in the House of Representatives :

> "Too frequently, Public Service critics tend to infer that there is such a thing as a businessman who exists outside of the Public Service and that the public servant himself knows nothing about business. I do not find that opinion shared by the people who have responsibility for the direction of big private enterprises and who know at first-hand the quality of the senior officials and effectiveness of the administration which they control. In fact, they are frequently so impressed that they attract officers of the Service into their businesses. There have been many examples of

this in recent times and we have lost staff as a result. Others fortunately, have stayed with the Public Service notwithstanding attractive offers which they have received from private enterprise.

When we can see from the reports of the Public Service Board that sections of administration such as the Taxation Branch and the Department of Social Services have been able to reduce staff in the face of dramatic increases in the volume of their business and that the Post Office staff increase is very substantially less than the increase of its business turnover, we in this House have little cause, I suggest, to worry about the management aptitudes and attitudes of our Public Service. Few businesses could show better performance. I conclude, Mr. Speaker, by expressing my great regard for the integrity, steadfast purpose, efficiency and loyalty of the Commonwealth Public Service - a sentiment which I confidently feel will be shared by all honorable members of this House." (47)

The overall effect of the developments described above has not been the general discontinuance of public corporations, but rather a drastic modification of their autonomy. As a result, the Labour Party's basic objection to corporations has lost much of its force. What has not generally been realised is that the traditional justification for the corporation thus no longer exists.

Recent studies in the workings of British corporations by expert committees, by the administrators themselves, by academic interests, by laymen and even by the labour movement (48), have revealed valuable information. In fact, in Britain the revelation

of weaknesses in the corporation form of management led to widespread disillusionment with nationalisation, and even the Labour Party is now committed to a policy of "Consolidation" rather than further nationalisation. However, those engaged in politics and administration in Australia seem to have paid little attention to these British lessons (49). Political argument centres around the nature and purpose of government as it has done for the last quarter of a century, and the study of administrative methods has been a neglected field for the great majority of those actively concerned with them. For constructive thinking on this subject, we must therefore turn to the students of the comparatively new academic subject of "Public Administration."

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(48) For example, The British Trade Union Council published a series of documents in 1944 on the problems of nationalisation, including a report on the management of nationalised industries. Australian Labour, being primarily concerned with constitutional and political difficulties obstructing its nationalisation programmes, has had little thought for the administrative problems.

(49) The only serious Australiam attempt to analyse recent British Socialist doubts on the effectiveness of public corporations as the vehicle for nationalisation, and to point out the implied but generally unobserved lessons for Australia, has been that of A. Davies, Senior Lecturer in Political Science at the University of Melbourne, whose findings were published in a collection of essays for the Victorian Fabian Society. See Davies, A., "Nationalisation", in Davies, A., and Serle, G. (Ed.) Policies for Progress (Melbourne, Cheshire, 1954). Other essays in this collection, however, also emphasise the constitutional and political rather than the administrative difficulties.

ACADEMIC STUDIES

With the rapid expansion of government services during the early part of the present century, and particularly during World War 1, there developed a pressing necessity to critically examine and overhaul traditional civil service organisation and procedures. At first this need was only dimly realised, but the 1918 Report of the Haldane Committee on the Machinery of Government in the United Kingdom acted as a valuable stimulus. The peculiar nature of civil service administration was coming to be recognised, and the Institute of Public Administration (now the Royal Institute) was launched in Britain in 1922. The quarterly Journal of the Institute, which has proved to be a most important medium for the study of this new subject, was first published in January, 1923.

The first reference in this Journal to the public corporation as an integral part of the subject of Public Administration is, rather suprisingly, a review of a Canadian study, "The Problem of Official Independence", by Professor R. MacG. Dawson (1). The reviewer recorded that distrust of the traditional civil service, which followed the American conception of office being primarily a party reward, figured largely in the background of public administration in that dominion, and that as a result the Canadian civil service had had little opportunity of demonstrating the achievements possible under a sound administrative system. It was thus inevitable that Professor Dawson should devote considerable attention in his study to a description of :

> "..... various novel or special organs of government erected outside the regular circle of Canadian public departments, and

specifically endowed with semi-autonomous powers and immunities in order that they might be in a position to render public services requiring aptitudes supposedly unattainable under the normal type of administrative control." (2)

Britain of course already had the Port of London Authority; the Tyne Improvement Commission and similar bodies; and the Forestry Commission was created in 1919 as the forerunner of many others and despite the warning given by the Haldane Committee against departing from departmental administration. The Journal's first account of a British public corporation was an article on the Mersey Dock and Harbour Board in the July 1925 issue. Then the Institute convened a Summer Conference at Oxford in 1926 to examine the question of obtaining the highest possible efficiency in the provision of public utility services. Some of the major papers read at this Conference were published in the Journal of October 1926, and from that time on the Journal has featured many valuable articles dealing both with particular corporations, and with general characteristics of the corporation as a separate species of public authority.

Regional Groups of the Institute of Public Administration were soon formed in the larger Australian States, and the Victorian Group made an early attempt to publish in journal form the papers and proceedings of its various meetings. The first issue appeared under the title "The Institute of Public Administration", in 1929, but after a number of irregular appearances the journal was discontinued. Australia was not to be for long, however, without a medium for publicising the various studies being conducted in the field of public administration. Stimulated by the interest of Professor F.A. Bland, the N.S.W. Regional Group of the Institute began publishing in 1937 a journal entitled

"Public Administration" and modelled fairly closely on the United Kingdom parent journal. After only a few issues, this journal was expanded to become the official organ of all the Australian Regional Groups.

During its full seventeen years of publication in its present form, this journal has contained many informative reports both on individual public corporations and on those general features which characterise the corporations as a whole. A reference to these various contributions, which have been made both by persons actively engaged in administering State activities and by University staffs and students whose purely academic interest ensures impartial objective treatment of their subject, may be found in a comprehensive index of articles which have been published in the Journal during the period 1937-1956 prepared by Mrs. M. Daniel and Mr. R.S. Parker and issued in 1957, as a companion volume to the September Journal of that year. The importance attached by the Australian Regional Groups of the Institute to the study of the public or statutory corporation may be gauged by the fact that that their Journal for March 1957 (Vol. XVI No.1) was a "Special Number" devoted entirely to the subject of "Public Enterprise in Australia" - for this is the field of the public corporation.

Having thus referred to the part played in furthering this study by the Institute Groups and their Journal, which is the primary although by no means the only vehicle for recording the results of such research, I shall now endeavour to discuss briefly the contributions of individual scholars. It is emphasised that the following treatment does not pretend to be exclusive; rather it should be regarded as a selection of the more readily available material.

Professor Dawson's Canadian study of 1922, and the early issues of the United Kingdom Journal of the Institute of Public Administration, may justly be regarded as pioneers in the academic study of public administration. As shown above, both demonstrated an early realisation of the important role of the public corporation. Australia's first such study was published in 1923, and its author, Mr. F.A. (later Professor) Bland, not only deserves to be ranked among the pioneers, but by virtue of his later extensive contributions, must also be regarded as one of the world's great scholars, both of public administration as a whole, and of the public corporation as an integral part of this subject.

"Shadows and Realities of Government " was published under the auspices of the Workers' Educational Association of N.S.W., with which Professor Bland was then closely associated as Assistant Director of Tutorial Classes, University of Sydney. This book discussed many aspects of public service organisation, and then examined various departments at the time operating in N.S.W. The term "department" was used in the wider sense to cover all kinds of public authorities. After recording the Australian acceptance of the principle of uniform non-political staffing organisation under the various Public Service Acts, Bland drew attention to the many breaches of this principle, by force of tradition and stress of political expediency, which led to the "mushroom growth of Commissions and departments independent of the central public service authority." (3) Describing the overall organisation of the public service in this early work he distinguished between the various departments grouped beneath the Cabinet, according to whether they operated directly under a Minister of the Crown, or whether they operated under the control of a quasi-autonomous Board

or Commission. Other differentiations, which might cut across this primary distinction, concerned the degree of staffing autonomy, the degree of decentralisation, and, in the case of "public utility departments", whether the management was representative of various interests, or nominated by the Crown. (4)

The book also contained a warning of the dangers inherent in the developing expertness of officialdom. To Bland,

> "..... the very factors which have contributed to improving the quality of public servants have also wrought a subtle change in the outlook of officials, and are tending to produce a bureaucracy ..... (which) ..... is mainly distinguishable by its irresponsiveness to the public will." (5)

He believed that "the indefiniteness and insufficiency of Parliamentary control and Ministerial responsibility for administration" were striking at the very foundation of popular government. As the twin processes of removing departmental staffs from political influence, by means of Public Service Acts, and of setting up independent boards and commissions to remove similar evils from the conduct of public utilities, were thus contributing to the creation of a bureaucracy, it was vitally necessary to work out the implications of this policy. (6) More than any other scholar in Australia, Bland has himself attempted to do this.

In so far as the "boards and commissions" are concerned, it will be remembered that the Labour movement was at this time committed to syndicalist objectives, and that its parliamentary representatives were soon to change their tactics and to develop an attitude generally

opposed to these boards and commissions on the ground that they did not allow for adequate democratic control of administration. One must be excused for speculating as to what extent their views were influenced by Bland's early writings on the subject; although, of course, Bland himself recognised that there was a place for the statutory corporation, and only desired to develop a set of administrative principles to govern its use. In "Shadows and Realities of Government", he outlined the contemporary confusion on the subject, showing that the corporations were created because of past political ineptitude; they had been given powers sufficient to reduce Parliament to administrative impotence; and yet they permitted dangerous veiled political direction through the use of patronage in the appointment of commissioners.

To overcome this confusion and abuse in the use of commissions, Bland suggested that it was urgently necessary to distinguish clearly between Parliament's supremacy in matters of policy and the commission's rightful independence in matters of day-to-day administration. He also suggested the formation of Parliamentary Standing Committees to discuss the activities of the various commissions, and thus to preserve the principle of popular criticism; and the appointment of Advisory Councils to allow expression of opinion by those interests especially affected by the operations of each commission. The first suggestion strikes at the root of the matter : the distinction between policy and administration has been widely accepted and embodied in statutes creating corporations in Britain, but Australian politicians do not generally appear willing to do this. Both the other suggestions have since been widely discussed and sometimes tried in practice - however they have proved difficult instruments to perfect, and this reflects Bland's own difficulty .

in satisfactorily reconciling the standing committee system with the recognised need for administrative as distinct from policy independence in the commissions. Bland was himself to have more to say on these questions.

His first work to deal specifically with the subject of management of public enterprises was published in "The Economic Record" in 1929 (8). He commenced by recording that Public Administration students at the University of Sydney had compiled a list of over sixty government boards, commissions, and enterprises operating in N.S.W. in 1928, which "exhibited wide diversities in methods of constitution, management, and relation to the Government machine;" and that when a paper on the subject was read before the Sydney Branch of the Economic Society of Australia and New Zealand, the discussion

> "..... almost exclusively revolved round the question whether the State ought to embark upon activities other than those which are essential for the existence of the organised community." (9)

He suggested that it would be more profitable to discuss "how" rather than "ought". Too often the fate of State experiments depended on memories of past governmental methods or merely on emotionally-tinged attitudes. Yet State activity could be economically and socially desirable, and it was therefore of primary importance to consider the problem of the instrument or agency, i.e. to discover whether this could be so constituted/as to devise efficient administrative techniques, and so silence the critics. New forms were being hastily and rashly adopted in recognition of the inappropriateness of conventional public service procedures, and these must be critically examined.

He contrasted the Australian policy of creating a special "ad hoc" authority whenever a new service was required with the British plan of vesting that service in the appropriate local authority, and suggested that the latter method was preferable as it kept down the number of government agencies and provided both for better co-ordination and greater accountability. He also examined the bewildering varieties of these "ad hoc" bodies in Australia (i.e. the boards, commissions and similar authorities), and concluded that in many fields "variety rather than uniformity seems to have been consciously sought." (10) He then pointed out that the Australian policy - if it might be so called - raised the very difficult problem of reconciling administrative efficiency and popular control, the solution to which depends on three conditions : a highly developed political capacity, a firm administrative tradition, and sound knowledge in the electorate, none of which were satisfied in Australia. The British Economic Mission recognised the defects of ministerial interference, and advised Australian governments to go no further with state enterprises. Bland would have preferred to see them improve their methods of managing such enterprises, and again suggested that the answer lay in the ability to discriminate between policy and administration, and to limit ministerial responsibility to the former.

Next he examined various experiments and enquiries into the management of public enterprises. He compared the reports seeking increasing independence for the Australian Post Office with the German system then operating, which recognised the post and telegraph service as a separate autonomous undertaking; he contrasted the half-hearted

attempts to immunise Australian railways administration from politics with the successful Indian attempt to secure complete separation of railway finance from the general budget; and he discussed the Buchanan Report on Port Administration in Australia, which recommended freedom from political interference, financial independence, and representation of interested bodies. Then followed an examination of the advantages and disadvantages of representative management, in which attention was paid to the views of British socialists Sidney and Beatrice Webb and Ramsay MacDonald.

In this section, Bland attempted to draw a distinction between "expert authorities" with executive responsibilities, and agencies "representative of different interests." The latter should exercise policy and supervisory functions only, with administration vested in expert officials, e.g. a general manager. In Australia, however, the representative basis was frequently applied also to executive authorities, and herein lay great danger. A partisan member on such an authority was primarily a delegate of the interests he represented, and could not be an impartial administrator. A topical question at the time of writing was employee representation, e.g. on railway commissions. Bland referred to the unsatisfactory nature of the N.S.W. Water Conservation and Irrigation Commission which functioned under ministerial chairmanship, and to the "disastrous results" of the addition of an amateur elected member to the Federal Capital Commission. He concluded that the only possible results of such an appointment could be disappointment to the Commissioner so appointed, chagrin to the interests involved, and irritation to the general public. Divided loyalties do not make

for efficient administration, and Bland preferred the introduction of the Whitley Council system to provide the employees with the opportunity to express their views to executive boards. (11)

After reaching this point, he mentioned many common abuses in the appointment of members of "expert" nominated bodies, and at this stage his argument rather surprisingly assumed a form which might best be described as modified syndicalism, at least in so far as monopoly enterprises were concerned. "Railways, Ports, Posts, and Water and Sewerage," he wrote, "would be more appropriately conducted on a basis of representation of interests ..... Only when the authority is representative can we delegate financial authority with complete confidence." (12) Thus the State railways might have a representative Board of Directors and a nominated Manager. Such a Board would ensure answerability to affected interests on matters of policy, but would not endanger administrative efficiency. However, he did not believe it was necessary to provide representation in undertakings such as the N.S.W. Brickworks; apparently the element of competition was sufficient to eliminate the abuses possible in monopolistic enterprises.

Finally he noted the tendency to merge the finances of government enterprises in general revenue and expenditure, illustrated the danger of this policy, and stressed the need for financial autonomy subject to co-ordination of borrowing activities; and he commented on the difficulty of ensuring that administrative personnel were selected solely on the basis of merit. In order to achieve this end he was prepared to compromise managerial independence to this extent :

"My own inclination would be to use the public service commission machinery to select all administrative, professional and clerical staffs, leaving the employment of the manipulative and casual staffs to the various managers. I believe it would also be possible and desirable to transfer the questions of remuneration and discipline to the public service commission. More is lost by the overlapping of existing personnel management than is gained by independence." (13)

Bland has written many other books and articles dealing with various aspects of the study of public administration, and in many of these has demonstrated his continuing interest in the public corporation. His book "City Government by Commission", for example, dealt with an early experiment in the appointment of a statutory corporation to replace the normally-elected Sydney City Council, with a resultant loss of effective public control over municipal administration (14); autonomous commissions have thus been established from time to time in various Australian States, usually as temporary expedients. The need for separating the finance of business and trading enterprises and the overall problem of accountability, were briefly referred to in his "Budget Control". (15) Then, he developed and refined his early ideas on the inappropriateness of traditional government machinery for the new Social Service State, and the consequent danger of a bureaucratic despotism, in "Planning the Modern State," in which he drew not only on his own experience but also that of other students such as Eggleston in Australia and Sir Arthur Salter, Mr. Herbert Morrison and Professor Dawson overseas.

In this book, which was first published in 1934, he examined at length the problem of official independence, and, after discussing many of the abuses and implications, concluded that the modern ministers are not in fact, and cannot be expected to be responsible for all government activities. He believed that

> "..... it is not inconsistent with the principle or the theory of representative government to remove certain functions or certain agents of government from the immediate control of Cabinet, provided responsibility can be sheeted home to the official for his acts." (16)

This of course is the basic problem of the public corporation : there are good practical reasons in many cases for creating them, but how do we then "sheet home" this responsibility? An important part of the answer lies in the impartial selection of officials, and Bland quoted other authorities, such as the McLachlan Royal Commission on the Commonwealth Public Service in 1919, in support of his previously-expressed view that the frequent exclusions from the supposedly unifying Public Service Board control open the way for the exercising of those sinister influences which the non-political agency was intended to eliminate. (17)

Later in the book he examined the peculiar requirements of modern government acting as an entrepreneur. Was it possible to reconcile the demand for popular control in the democratic sense with the need for efficient and economical management of state enterprises? Sir Arthur Salter, writing in Britain in 1933, had suggested that progress would lie in the development of semi-autonomous bodies within the State, imbued with the idea of the

public good and autonomous in the ordinary conduct of their affairs. This, of course, is the public corporation in the ideal sense, but Bland pointed out that lengthy Australian experience raised many doubts as to the practicability of this solution. Socialist reformers, determined to secure their objectives at all costs, neglected consideration of abstractions such as principles of organisation. Many types of statutory corporation had been created in Australia, but there had been no attempt to appraise relative suitabilities, and the constant variations could not be dignified as experiments as their workings were not observed nor their efficiencies estimated. He used Eggleston's experience of the disastrous effects of political tampering with these corporations to cast doubts on Mr. Morrison's faith in similar machinery as the vehicle for socialisation in Britain, and expressed the view that legislation alone was not sufficient to ensure effective autonomy. What was needed, but seemed so difficult to obtain under existing circumstances, was

> "..... the sanction of a public opinion that will feel a similar resentment at any attempt to interfere with the administrative discretion of these statutory corporations as the best informed citizens now feel at any attempt to tamper with the judiciary. They should feel that resentment because their own interests, or shall we say, their own liberties and opportunities, are being attacked ..... And it also should be clear how much the citizen is at present being defrauded by having to make up, in unnecessarily high taxes and charges, the losses which have been incurred as a result of capricious political interference with State trading and business enterprises." (18)

Before this ideal could be achieved, however, it was necessary both to inform and to activate public opinion. In the meantime, the principle of official independence had to be accepted perforce in the knowledge that grave dangers existed in any combination of democratic and socialistic legislation. Some enterprises could be made answerable by the representation of interests, and greater use should be made of municipal councils; other refinements were also possible, and, above all, it was vitally necessary to improve the methods of selection of the personnel of statutory authorities, for

> "..... nothing destroys the prestige and efficiency of the statutory corporation so much as appointments of persons whose principal claim to consideration is that they have consistently supported a political party." (19).

The significance attached to this aspect in particular was not surprising in view of the recent impact of the Lang regime in N.S.W.

Later in the same year, in an article entitled "Politics and Administration," (20) Bland endeavoured to give substance to his belief, already voiced in 1923 and 1929, that it was essential to overcome the general confusion between policy issues and administration, which he maintained were separate functions. To him, "Politics" involved the expression of the popular will, and "Administration" its execution; or the former dealt with what and when, the latter with how. After linking the development of this confused attitude with the emergence of the twentieth century Social Service State, he traced its effect on the statutory corporation. This "independent" device had been resorted to in an attempt to introduce business

efficiency into state enterprises - "but we overlooked the fact that the manner in which that independence was exercised would be bound to provoke demands for political control. The constant reorganisations.. (following changes of government) of recent years, therefore, challenge us to do some fresh thinking about the whole problem." A solution had been hinted at in "Planning the Modern State." We had built up a specialised system for the administration of justice which was independent of political control, and this system had been accepted by public opinion as a major principle of the democratic state. The problem could be solved if we could convince public opinion that there is an administrative function quite distinct from the political function, and then extend the principle already widely accepted in the case of the judiciary. Bland suggested that an "Administrative Tribunal", or perhaps even an "Administrative Supreme Court", might be established, before which, for example, a government which desired to alter the personnel of a corporation would have to appear and plead its case that the members had failed to discharge their duties with discretion and efficiency. Such a restriction would relieve the political element of government from much petty time-wasting activity and allow it to concentrate as it should upon the larger problems of policy.

Whether it is possible to draw such a clear-cut distinction between policy and administration as Bland suggests is open to argument, and a relevant debate on the Coal Production (War-Time) Bill in 1944, between the present leaders of the major parties in the House of Representatives, will be discussed later in this thesis. (20A) There can be little doubt, however, that Bland's efforts to promote the study of public administration in all its aspects were meeting

with considerable success; largely in recognition of this a Chair of Public Administration was created in the University of Sydney and he was appointed Australia's first Professor of the subject in 1935.

Addressing the Summer School of the Australian Institute of Political Science in the same year (21), he stressed that the state was continuing to assume new and positive functions despite all warnings, and that it was becoming more necessary than ever to solve the riddle of popular control and efficient administration. The system of checks and balances, on which constitutions had been drawn up in the days when the state's function was only to maintain law and order, was being disparaged as an obsolete obstruction in the way of leftist parties, and this movement had resulted in Fascist and Communist dictatorships in many parts of the world. Yet "discriminating and disinterested persons", viewing with alarm the apathy of the masses, believed that existing government machinery could be reformed to preserve the spirit of democracy. On the political side, such reform would include the restoration of the dignity of parliament in exercising control of the executive on the people's behalf, and a reorientation of cabinet and political parties towards important policy matters as distinct from petty interference in administrative detail; the standing committee system should be extensively used to strengthen parliament in relation to cabinet and to officialdom, with a view to its imposing restraints upon them.

On the administrative side, Bland here developed ideas he had previously expressed into a number of quite radical proposals for reform, which were intended to restore the application of the "Rule of Law" to administrative affairs. These included the creation of a

Supreme Administrative Council of State to be utilised as a kind of expert court of appeal to adjudicate on matters such as applications by the political executive to abolish or reorganise state agencies, appeals against decisions by statutory corporations to increase charges, and alleged excesses in the use of delegated legislation; and a Bureau of General Administration to centralise supervision over public service organisation, personnel and finance, both for the conventional departments and the statutory corporations. In fact, he believed that both these bodies might profitably combine in making recommendations to cabinet regarding appointments of members of the corporations in an attempt to eliminate patronage; and that they should function in intimate association with parliamentary standing committees in order to strengthen parliament itself. As the quality of administration ultimately depends on public opinion, there should also be a concentrated attempt to increase the sense of responsibility of the individual citizen by such means as advisory councils, devolution of administration to local bodies and encouragement of voluntary agencies. Bland's basic line of thought was that the granting of complete independence to the statutory corporations was undemocratic; that no single political party had the right to regard its own opinions as an expression of the national interest; and that the traditional system of checks and balances therefore had to be refashioned to ensure that due respect would be had for civil liberties in the modern high-pressure industrialised and commercialised state.

At the same school, Dr. F.R.E. Mauldon, delivered an address entitled "State Agencies of Administration in Victoria," in which he showed that Bland's view on the bewildering muddle of organisational

forms and terms could be applied equally to Victoria. His suggestions, aimed at introducing some clarity into organisation and terminology, will be referred to in Chapter Three of this thesis (22).

In another address before the N.S.W. Regional Group of the Institute of Public Administration in 1937, Bland dealt specifically with the implications of the statutory corporation. (23) He began by restating his views on the bewildering variety of types of corporation established in Australia, and the absence of any attention by governments to their implications or relative merits. In view of the pressure of socialist opinion on the one hand, and the advocates of a planned economy on the other, it could be assumed that state enterprise was here to stay. It was therefore profitable to examine how best to administer these state enterprises, and consideration of the statutory corporation was inseparable from any discussion on this question.

Bland then posed four "provocative questions", designed to bring out the implications which had to be faced. These were :-

(i) Do our objects in creating statutory corporations (to manage national undertakings) imply that government can be efficient only if it ceases to be popular? In modern politics, one who suggests detailed investigation of government measures is stamped as an obstructionist. The nineteenth century state was designed for other ends, and efficiency was only a by-product. But the emergence of state undertakings leads to confusion of objectives, some believing that efficiency must be the first principle and others being prepared to sacrifice this for other ends.

(ii) Do our methods of creating statutory corporations imply the existence of inconsistent political ideas? Neither efficiency nor popular control can be absolute, for social results must be considered as well as balance sheets.

(iii) Is the existing system of creating statutory corporations a means of deluding the people? The answer to this depends on public opinion. Unfortunately in the nineteen-thirties people had been "lulled into inaction by a system which operates quite differently from what they believe."

(iv) Is it desirable or possible to create statutory corporations which are autonomous? Advocates of the planned economy and the "positivist state", those who fear excesses of bureaucracy, and those who believe good government is no substitute for self-government agree that this is undesirable. Yet we have to face the hard facts of experience, and in the nineteen-thirties the democracies could not afford to be less efficient than the dictatorships. Ultimately, of course, the ability to create autonomous corporations depends on the conditions of appointment, and there is no room for the representative principle in a managerial board.

For good measure, Bland also threw in the problems of finance and personnel policy. He considered that, in its use of the statutory corporation, Australia had been trying to get the best of two opposed worlds, and it was an outstanding task of ~~the~~ his present generation to find the answers to these problems. He still maintained that the answer would have to include the political education of electors and representatives, a sharp discrimination between the functions of policy and administration, and the constitution of administrative tribunals

empowered to decide relevant issues in the light of public interest as distinct from the caprice of a political party.

Two years later, in a preface to his published collection of documents relating to public administration in Australia (24), he mentioned the serious absence in this country of text and reference books dealing with governmental methods despite an overseas reputation for being a pioneer in many relevant fields, and then went on to refer again to the statutory corporation. He pointed to the Australian "unwillingness to accept the implications of a policy designed to substitute expert management for the vagaries of political control." During fifty years' experience with statutory corporations in the management of vital public utilities, we have repeatedly asked administrative experts "to diagnose the reasons for the failure of these corporations to achieve expected results;" yet, up to the time of writing (1939), only the Royal Commission on the Banking and Monetary Systems seemed to have recognised that the independent corporation is inconsistent with democratic theory. However the "very volume of expert opinion" pointed to the need for inventing new machinery to ensure both efficient operation andpopular control as distinct from political control.

Up to this time, Bland's writings had concentrated to a considerable extent on developments in N.S.W., with which he was most familiar, and which were in many respects typical of the overall Australian scene. More recently, however, his attention has turned towards the Commonwealth field, in which new practices were emerging with the widening federal use of the public corporation. His submission to a Joint Parliamentary Select Committee appointed in 1941

to enquire into the operation of broadcasting in Australia furnished one of the first academic studies specifically related to Commonwealth corporations. (25)

Bland examined the factors underlying the creation of the Australian Broadcasting Commission, and concluded that those concerned had been much influenced by the British model (i.e. the British Broadcasting Corporation, created in 1927); hence the A.B.C. differed in many respects from the corporations familiar in Australia since the eighteen-eighties. The social purpose of a broadcasting service had been clearly recognised in Britain, and the Crawford Committee which studied the problem had stressed that the controlling body must be "a public body of dignity, independence and unusual responsibility ..... a public corporation acting as trustees for the national interest." Bland recorded that this was one of the earliest uses of the term "public corporation" in its modern sense - however he and other Australian writers generally preferred to continue using the expression "statutory corporation." Britain had created an autonomous corporation which embodied a form of management almost universally applied to public joint stock companies, i.e. a Board of Directors and a General Manager; and it had accepted the dignity, sense of responsibility and public spiritedness of the key personnel to the extent that successive Speakers in the House of Commons had refused to allow questions concerning its operations or to permit the assumption that it was a government organisation in the usual sense.

Bland then proceded to show that although this type of organisation was adopted for the National Broadcasting Service in Australia, it appeared impossible to get the required degree of

detachment in making top appointments or in otherwise dealing with the affairs of the Commission. He discussed difficulties that had arisen, and then distinguished eight different kinds of controlling authority which might be used in such circumstances. Briefly this classification, which will be considered in more detail in Chapter Three, was as follows :

(i) the ordinary department under the control of a minister,

(ii) a single commissioner with statutory independence,

(iii) an expert or specialist commission of three (or more),

(iv) a large representative commission operating through a managing chairman or a general manager,

(v) a semi-official, semi-representative board,

(vi) a representative board of directors operating through a general manager,

(vii) a non-representative commission operating through a general manager, and

(viii) an expert commission under ministerial chairmanship.

All eight types existed in the public utility field in Australia; not only had they been created willy-nilly with no appraisal of results, but also the supposed autonomy of the corporations had been abused to such an extent that parliament and people were utterly confused about their status, powers, and duties. Despite the success of the British model the operations of the A.B.C. had been subject to much criticism, and this experience emphasised 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." (26)

Bland's suggestions to improve the Australian broadcasting system included reorganisation of the A.B.C. as an independent commission with safeguards to ensure its conformity with the Crawford Committee specifications; and the appointment of a standing committee to create an "organic relationship between parliament and broadcasting," and of advisory committees "to do the same thing for the public." The provision of a standing committee under the 1942 amendment to the broadcasting legislation shows that his views were not without influence.

Bland's post-war writings show a distinct development in his thinking towards the view that the solution to Australia's administrative problems lies largely in the direction of improved and expanded local government, although, of course, he had in the past frequently expressed regret at the absence of any comprehensive system of local government in this country. His contribution to a symposium on Australia, published in the "United Nations Series" in 1947 (27), began with the assertion that the outstanding characteristic of public administration in Australia is an addiction to centralism. The substance of popular government was impaired by this weakness in local government, and by the resultant "overly free use" of the device of the statutory corporation to manage government business and other activities. A parallel result was the emergence of a near-bureaucracy, both in the regular public services and the corporations, and this was complicated both by the wide use of political pressure, "sheltering under the respectable mantle of austere political theory" in the context of argument concerning the nature and purpose of government, and by the readiness of the government employees themselves to invoke political alliances to their own benefit. Public control over the

administration was sadly lacking, and despite sixty years of experimentation there had been little political assessment of the implications of the various administrative methods, in which the statutory corporation figured so largely. Bland summed up the current situation as one of drift, and stressed the need for more effective local government to restore this public control.

In the following year, in an address on the subject of Decentralisation at the Summer School of the Australian Institute of Political Science (28), he amplified further his thoughts on the desirable localisation of government. Bringing government closer to the people, as contemplated by decentralisation, had its advantages. But this aimed at administrative efficiency alone; in itself it could not do much to improve the quality of democratic government. To achieve the latter end, it was essential to "afford more opportunities for the people to participate in making decisions that affect their way of life." This involved devolution, by which administrative responsibility for specific services would be thrown on elected local bodies. In a deviation in this address, he rather surprisingly repeated his faith in the parliamentary standing committee system to provide better popular supervision of public utility services entrusted to statutory corporations, despite the recent failure of the Commonwealth Parliament's Broadcasting Committee which he attributed to the fact that "getting the right man is often more difficult than inventing the most appropriate machine." Political interference had been proved disastrous both for the various enterprises and for the public, and the standing committee, which should be less swayed by party doctrines, should provide a more competent and impartial review.

If we were not willing to face up to this situation, we would soon be faced with the further complication of renewed demands for representative management - "the conflict between syndicalism and socialism".

Like all great thinkers, Bland had his share of critics, and on this occasion he was accused of twisting the word "decentralisation" to suit his own ends, and of being more concerned with improvements in a centralised system of government than with assisting that cause. These criticisms were possibly true - being a realist, he endeavoured to divert thought from a subject which seemed in Australia to lie only in the realms of fantasy, to considerations which involved merely the refinement of existing machinery; and in doing so he showed that his interest in the statutory corporation and its implications were as strong as ever.

In 1948 Bland retired from the Chair of Public Administration at the University of Sydney. He was soon to be elected as a Liberal Member of the Federal House of Representatives, and as Chairman of the Joint Committee on Public Accounts his lifelong interest in public administration was not lost but merely transferred from the academic to the political plane. The Committee's Twenty-first Report on the Australian Aluminium Production Commission, a landmark in administrative history, considers at some length the implications of the statutory corporation as a device of government, and represents a continuation of Bland's work in this field. This landmark is considered in detail in Chapter Two.

It may be thought that too much attention has been paid in this thesis to the ideas and writings of one man. However, he is without doubt Australia's greatest student of the public corporation, and it is pointed out that the Australian Regional Groups of the Institute of Public Administration saw fit to devote an entire issue of their Journal to the commemoration of Professor Bland's services on the occasion of his retirement. The articles and addresses referred to above are representative of a career of more than thirty years devoted almost entirely to lectures and addresses, and to the encouragement of interest in the academic study of public administration. His work may at times have appeared somewhat untidy and inconsistent, and some criticisms have already been recorded. He has been accused of faults such as underestimating the difficulty of separating politics from administration, ambiguity in his notion of official independence, being out of fashion in attempting to impose the idea of checks and balances on the twentieth century, and advocating a greater centralised bureaucracy in his proposed system of administrative tribunals than that which he hoped to overcome. Some of these criticisms may have been valid, but in academic and administrative if not political circles Professor Bland had gone a long way towards achieving his object of provoking thought on the subject of administrative practice and organisation. His apt description of his own method was recorded by Mr. R.S. Parker in the commemorative Journal :

> "I cannot pretend to be able to answer all the questions I have been asked. That, after all, was not my intention. My main purpose ..... was to ask questions, to raise problems, and to offer some comments which might provoke a discussion." (29)

In this memorial, Mr. Parker recorded that Professor Bland's work on the statutory corporation was among his "most penetrating analyses of current problems," and that in his attempt to answer the dilemma of popular control versus administrative efficiency "lies perhaps his most distinctive contribution to our thought about public administration." (30)

Sir Frederick Eggleston, whose valuable service in providing a literary record of the constructive work of the Victorian Liberal statesmen in the late nineteenth and early twentieth centuries has already been referred to, is another of Australia's foremost scholars of the public corporation. Eggleston's own faith in the effectiveness of the truly autonomous corporation for the management of public enterprises was clearly shown in his biography of George Swinburne (31). However his writings, after first-hand experience as a Victorian Minister of the Crown during the period 1924-27, provided a most informative study of the dangers to which this device was subjected by the frequent recourse of politicians to the exercising of patronage and other partisan influence in the affairs of the various corporations. His experience led him to repudiate very definitely the common contention that public enterprise was doomed to fail because of the lack of incentive and initiative on the part of the public servants themselves - where the state had selected competent and responsible men to manage its undertakings, and had given them the degree of autonomy envisaged by the designers of the statutory corporation, the result was almost invariably good. But parliament had been jealous of parting with its control and had usually retained some power over administration, the result being "unsoundness". (32)

Eggleston maintained that the faults and failures of state enterprise could ultimately be attributed to the general public, who used their influence over their political representatives to interfere with the policy and management of these concerns in order to satisfy sectional interests. A few examples drawn from Eggleston's wealth of personal experience are sufficient to illustrate the dangers to the sound management of the corporations inherent in this attitude. The huge deficits accumulated by the Victorian Closer Settlement Board and the State Rivers and Water Supply Commission were largely due to the lack of adequate charging for services - higher rates were not beyond the capacity of the land, but in all areas there were groups of settlers with sufficient political influence to prevent the levying of adequate rates; any political party which proposed such an adjustment would have been adversely affected in numerous ways. The same consideration applied to the collection of arrears of rates, which reached alarming proportions. The political influence of scattered groups of this kind was considerable, and the baser type of politician would harness such grievances to the realisation of his own ambition; this political instinct led to the neglect of economic problems. Thus much of the unpaid capital of these two corporations was"written off" by politicians to pacify their electorates. However writing off is an unsatisfactory concept - these politicians chose to ignore the fact that the amounts could not be deleted from the overall State debt, and grew petulant when the Auditor-General mentioned this! (33)

Concerning the Victorian Railways, Eggleston showed how an eminent English expert had reported that the railway deficit during World War 1 was due not to inefficient management but to the rising of

costs, and had recommended a corresponding increase in fares and freight charges. The Liberal Premier followed this advice, but in doing so presented his Conservative opponents, the traditional exponents of sound finance, with a golden opportunity to gain public support. They therefore censured and defeated the Government, fought and won an election on the question of railway fares, and on taking office reduced these by five per cent, thus augmenting the already large deficit. A government came close to defeat on an even more trivial matter concerning the railways. The Commissioners had granted free passes to voluntary fire brigade members to allow them to travel by rail to attend the annual demonstrations. Agitation commenced to have the period of the pass extended, but the Commissioners refused. On this petty issue a censure motion was threatened, and would have succeeded if the government had not intervened to effect a compromise. (34)

A final example to show that the democratic electorate has no thought for the future is furnished in Eggleston's memoirs, published in 1953. Here he mentioned his:

> "vivid recollection of the way in which Victorian bills to protect and develop the forests were vigorously opposed by the Country Party ..... Mr. Owen Jones, the head of the Forests Commission, came to Cabinet pleading for the reservation of a forest of eucalyptus globulus near Cape Otway. He said it would be a crime to let it go for settlement. It was spared for the time being, but when I was out of Parliament I motored through the district and saw gangs of men cutting down and burning the trees. Trees have no votes. There are now more of these bluegums in California than in Victoria. It is acknowledged that wind erosion on a grand scale is threatening north-west Victoria.

This was first realised in the early 'twenties and a plan was put up to Cabinet asking for a provision compelling Mallee holders to reserve a chain strip of trees around each farm. This was laughed out by the Country Party members." (35)

Eggleston recognised, in common with the earlier liberals whom he admired so much, that developmental works such as irrigation and closer settlement projects were unattractive to private capital. Yet these were of great national importance, and he conceded that in such cases, because of the inevitable interest of the Treasury in the provision of funds, some overriding government authority was unavoidable. However, his writings constituted a plea that the political sector of government should lift itself from the decadent condition to which it had sunk, that it should confine itself to the important policy issues, and that it should be content to progress slowly but surely by utilising to the greatest possible extent the findings of scientific investigations and the services of expert advisers. In brief, he believed that in such activities, political enthusiasms and ambitions had overstepped the bounds of wisdom, and that it was urgently necessary to stop the drift in government finance by introducing a more objective, more scientific and more restrictive attitude into this phase of state politics.

That such observations and lessons did not have application in Victoria alone is apparent from the similar strain of Professor Bland's work on the N.S.W. institutions, and from the dissertations of students such as B. Fitzpatrick and D.J. Amos in the Commonwealth sphere. Any comparison is merely a matter of degree, and although the political tone of the Commonwealth Parliament may usually be somewhat

higher than in the States where parochial considerations assume greater importance, the interference and lack of encouragement shown to Commonwealth enterprises, particularly during the period of the Nationalist-Country Party Coalition Government, revealed like tendencies. In these circumstances there is little incentive towards efficient operation. A similar trend is apparent today, for the recent prolonged political uncertainty regarding the future of the Commonwealth shipping and air lines surely could not have passed unnoticed by the staffs of the corporations involved.

In the case of enterprises such as the railways, which had graduated from the developmental stage and were capable of earning considerable revenue, Eggleston saw little or no excuse for the maintenance of political controls. He was firmly convinced that the efficient management of such enterprises depended on financial self-support. He wrote :

> "The very highest economic authorities have stated that in a service of this kind it is a matter of complete indifference whether the cost is charged to the railway users or to the taxpayers. This principle is absolutely unsound; in an economic system the charges made for each service tend to stimulate the activities which depend on, or spring from, that service; there is a natural interaction, which may be adjusted by conscious effort, but cannot be improved by arbitrary action to serve an uneconomic end."

He instanced the uncertain prospects of industries established on the basis of below-cost transport charges, and the vicious circle of land values which rise because of such undercharging, and thus themselves

prohibit any economic adjustment of charges. However,

> "..... the chief reason against operating the railways at a loss is the slackening of efficiency; 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."

But the wholesome political power of the taxpayer had been replaced by the bravado of politicians, and "large losses have been cheerfully faced to give concessions to big interests, and cheaper fares and lines to new districts." No efficient business would tolerate such practices. What then, he inferred, had become of the aim in creating statutory corporations of introducing business methods to public enterprise? (36) His view was that :

> "As an instrument for public operation of economic undertakings, the statutory corporation leaves little to be desired, but the austerity and restraint necessary to ensure success are regarded with hostility by the socialistic or labour politician, and in practice the system has partially broken down." (37)

Most observers have argued that the purpose of public enterprises is not merely to make profits, but also to render a public service, and that, if a choice between these two aims is required, it is right to sacrifice balanced budget sheets to permit continuation of community services. Although there is much to be said for this point of view, our thanks are due to Sir Frederick Eggleston for showing us

so vividly the dangers which may result from such a policy; and there is much logic in his argument concerning the effects of public intrigue, political blundering, and the absence of a balance-sheet-type measure of success. To him, however, these questions appeared to override the social service value of enterprises operating below cost. He therefore recommended a reduction in state enterprises, and the throwing of responsibility back onto the individual citizen, and away from the mantle of a paternal and indulgent state. This conclusion gave a hint to the direction in which his future interest lay, for besides a life-time of public service as an active participant in, and writer on, a wide range of topics such as financial enquiries, the standard of living foreign affairs and territorial administration, he has probably devoted more attention to the search for an Australian social philosophy than any other scholar. (38)

Eggleston's work on the public corporation is of inestimable value since it stresses the other side of the picture to that emphasised by socialists and idealists whose writings greatly outnumber those of the classical liberals of Eggleston's type. There can be no question that the answer, for our present-day community, lies somewhere between these two extremes, and Eggleston himself provided a partial answer to the quest for compromise, for as English Socialist A.L. Rouse recognised (39), Socialism has to be efficient to justify its existence. Eggleston was one of the few Australian observers to comment publicly on the high idealism, public spiritedness and sense of responsibility shown by senior public officials in this country, when permitted a large measure of initiative and freedom from irksome controls. In this, he preceded English authorities such as Sir Hubert Holdsworth, who praised the sense of duty of the administrators of Britain's nationalised

industries. (40) Bland shared with Eggleston the desire for improved political ethics in relation to the public corporation. Bland wanted this to avoid political appointments and to ensure selection of officials on ground of merit alone, but his work has been coloured by his warnings of the dangers of developing bureaucracy; Eggleston, after direct association with such officials, did not share this fear, but sought recognition of the principle of autonomy in the operations of the corporations. Even if their philosophies varied thus on questions of detail, they were on common ground in seeking a clear demarcation between the functions of politics and administration.

Eggleston's work has been discussed by other scholars, particularly in recent years; and his use of the expression "state socialism" has been fairly widely adopted, although subjected to some argument by those who consider that the term "paternalism" would more accurately have described the economic activities of Australian governments. Professor W.K. (later Sir Keith) Hancock, for example, included a chapter on "State Socialism" in his Modern World Series study "Australia", published in 1930 (41). In this he examined Eggleston's experiences as revealed in various articles released prior to the publication of "State Socialism in Victoria," and contrasted his philosophy with the earlier suggestions of Professor Bland. Hancock himself outlined the causes and effects of the "awkward dilemma" which Australian governments faced in reconciling the two aims of efficiency and popular control :

> "On the one hand, to achieve business success it would seem necessary to observe business principles; on the other hand, if State businesses are to be tied down by business principles, what particular advantage is there in running State businesses?" (42)

Hancock did not mince his words. Australians, he believed,

> "constantly confuse end and means, and they do this because their easy-going good-nature and intellectual laziness make them reluctant to refuse favours, to count the cost, to discipline the policies which they have launched ..... The failures ..... have been due less frequently to the miscalculations of administrators then to the pressures put upon the administrators by the politicians and upon the politicians by their constituents ..... how hard it is for a democracy to seek salavation through renunciation ..... ! (43).

Hancock pointed out that both Bland and Eggleston had suggested remedies for this situation. He described Bland's remedy at that stage as "realistic socialism," by which the reconciliation of the two aims of business efficiency and popular control was to be achieved by means of representative boards; and Eggleston's remedy as "realistic individualism," by which the state would leave the ownership and manggement of its great possessions to others and revert to its ancient function of maintaining law and order. Although these interpretations were over-simplified, and the contrast over-emphasised, Hancock's own remedy resulted from a very clear appreciation of the Australian philosophic need. He sought a straightening out of the confusion of ends and means which was characteristic of Australian government :

> "Sensible people say that a State should give up running businesses if it will not run them on business principles. Australian democracy has been taught to answer : 'But our State stands for something higher than business principles. It stands for ethical principles.' Herein lies the confusion. The end of the State is ethical - let us say 'the good life', the end of

> the railways is economic - let us say 'efficient service at cost price'. The economic end of the railways is a means to the ethical end of the State. If this distinction is blurred, the railways become the prey of selfish interests snatching for advantages in the name of Justice; and the State, perpetually vexed and tormented with problems of mere living, is not free to take thought of the good life." (44)

Eggleston's views were opposed by Professor W. Macmahon Ball, who paid considerable attention to the statutory corporation in an address on "The Political Implications of Planning" before the Summer School of the Australian Institute of Political Science in 1934. In discussing the goal of planning, the place of the expert and the problem of authority, he put forward the view that the best prospect of achieving a fully-planned economy lay in the development of statutory corporations. This sort of control was much favoured by the English socialists, and many had been established by Conservative Governments, particularly in Victoria. He believed that Eggleston had been interested only in individualism and the "tonic effects of individual responsibility," and that he had little sympathy for social and economic changes. He criticised Eggleston's narrow view of the measure of success, and himself outlined various possible goals to which the corporation might consciously be directed. It might be required to pay its way each year. Alternatively, however, it might be required to carry out developmental policy in the belief that immediate losses would be outweighed by ultimate gain to the community; or it could be directed towards some "extraneous social end" which could never be measured by a balance sheet. He believed it right that state activity should be directed towards both social and

economic ends. But here arose the complication, and in stating this his views were not far removed from those of Hancock : we must never identify one end with the other, and we must be quite clear in our own minds as to "whether we advocate a policy because it is economic, or in spite of its being uneconomic." Having reached agreement on ends, we must then "patiently learn to master the principles of an efficient administrative technique," and a possible solution, he suggested, might lie in perfecting the device of the public corporation and in utilising in its management the services of the emerging class of highly-skilled business administrators whose primary incentive is that of public service. (45)

The overall weakness in this sort of argument, which in effect attempted to provide a theory to justify contemporary practice, lay in the fact that the very directing of public corporations towards social ends associated with overall national planning in itself meant an inevitable restriction in their managerial independence. The legal justification having by now lost its force because of judicial inconsistency and the reduced area of Crown privilege, the remaining basic reason for preferring corporations to normal departmental administration had therefore disappeared.

In recent years the academic spotlight has been taken by contributors to the Journal of Public Administration of the Australian Regional Groups of the Royal Institute. Mr. Leicester Webb, then Reader in, and now Professor of, Political Science at the Australian National University, furnished an original and unusual interpretation of the change in the Australian attitude towards corporate autonomy after the financial depression of the nineteen-thirties, in a 1954 address entitled "Freedom and the Public Corporation." (46)

He first summarised the confusion of political philosophies in regard to the public corporation, both in Australia and abroad, during the present decade, with refreshing candour :

> "The history of public corporations is a bewildering one. At different times in different countries they have been regarded as the instruments of Socialism and as devices of political reaction, as a means of bringing enterprises under democratic control and as a means of delivering enterprises from the evils of democratic control; they have been acclaimed as the only solution of the problem of managing nationalised industries and denounced as a hopeless failure in the management of nationalised industries. The conclusion to be drawn from this diversity is, I think, that to classify administrative bodies in accordance with whether they have corporate status is about as useful as classifying animals in accordance with whether they have tails."(47)

Professor Webb then summarised the conventional arguments used to justify the public corporation in preference to departmental management; these included the corporate properties of freedom of operation, flexibility, business efficiency and opportunity for experimentation. Yet, he argued, if this much-vaunted freedom meant freedom on the one hand from political pressures and on the other hand from civil service staffing and financial controls, "then it has to be said that the modern type of public corporation seldom has any of these advantages." For the last twenty years, the trend, not only in A ustralia, but also in countries like Canada, the United Kingdom and the United States, has been to restrict the freedom of the corporations. This has been done by :

(a) tightening policy control by increasing the range of decisions requiring Ministerial approval and appointing Public Servants to the boards of the corporations;

(b) impairing financial independence in various ways; and

(c) insisting on staffing uniformity with Public Service conditions.

These restrictions have been the almost inevitable result of the extension of government interest in the economic structure of the community since the depression. Governments are now vitally concerned with problems such as national investment and the level of employment : hence public corporations cannot function in their own watertight compartments. Decisions must be made, not in the isolated context of the requirements of a particular industry, but in the light of their general economic consequences. As Webb pointed out,"the end of laissez-faire was the end of the autonomous public corporation," and "the conventional case for the public corporation - that it permits greater flexibility in management and therefore greater efficiency than is possible in a government department - has therefore largely gone by the board." (48)

He then asked whether this dwindling margin of freedom compensated them for "certain disabilities which arise from their internal structure." Such disabilities included the complex task of maintaining harmonious working relations between chairman and minister, and board and general manager. He believed that :

"..... the public corporation, once it has ceased to be an island of administrative autonomy, is usually at a disadvantage because of its cumbrous structure at 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 ..... 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 co-ordination with other agencies of government, and accountability to elected representatives of the people ..... 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 ..... The orthodox type of government department is, for a parliamentary democracy, by far the best form of administration yet devised." (49)

The retreat from the earlier philosophy of the public corporation, being associated with the state's acceptance of overall responsibility for the national economy, was not likely to be reversed as the state was not likely to relinquish this responsibility. In what circumstances, then, could the public corporation still serve a useful purpose? He believed the arguments he presented did not imply that the corporation was losing its usefulness, but merely that "its justification must be sought on grounds other than those of managerial efficiency." In federal states, for example, it provides a convenient method of managing enterprises which overlap the barrier between central and provincial governments. It also permits representation of interested groups in management, although in this field there is much room for improvement - Webb feared the problem of conflicting loyalties of the government nominee on marketing boards, while other observers have drawn attention to the same problem in the case of representatives of sectional interests.

Professor Webb suggested that a third field of usefulness for the public corporation "arises from the requirement that public servants shall not, individually or collectively, criticise publicly the actions or policies of the government." Thus :

> "..... departmental administration is inherently unsuitable for institutions of higher learning, for research institutions, and for services such as broadcasting which are required to provide the community with news services and to promote discussion of social and political problems."

He quoted incidents from the departmentally managed National Broadcasting Service of New Zealand to prove his assertion that the two forms of control will inevitably produce significantly different results wherever discussion of social values is involved, and that "no community should tolerate day-to-day Ministerial control of a cultural institution." The device of the public corporation is thus of extreme value in providing a framework within which cultural autonomy is possible. But the organisation itself is not sufficient : competent and courageous administrators are required to overcome the tendency for those influences which result from the curtailment of economic autonomy to intrude also into this field of cultural autonomy. (50)

Professor Webb's published interest in the statutory corporation has not been confined to this single expression of opinion. He has also contributed an article on the public corporation in New Zealand, in company with Professor G. Sawer's article on Australian corporations, to the Canadian symposium edited by Professor W. Friedmann. (51) Again, many of his views summarised in the proceeding paragraphs have been repeated, with added emphasis due to their relevance to a specific current problem, in further contributions to

the Australian literature on public corporations at the time of enquiry by the Public Accounts Committee of the Commonwealth Parliament into the affairs of the Australian Aluminium Production Commission during 1954 and 1955. (52) The latter contributions will be considered, in relation to the report of this enquiry, in Chapter Two / (f) of this thesis, while, at the risk of some repetition, his views will again be referred to in Chapter Three /, since they represent probably the most important attempt to rationalise the public corporation in the post-war Australian setting. (53)

Another academic contribution of great importance is that of Mr. T.H. Kewley, Senior Lecturer in Public Administration at the University of Sydney, and his associate, Miss Joan Rydon. A joint article in 1949 was devoted to the study of an inter-governmental corporation, the Joint Coal Board. (54) Later joint articles contributed analyses of personnel practice in the Commonwealth Government Corporations, and of the statutory provisions governing the organisation and operation of these corporations. (55) These articles were followed by a searching analysis by Miss Rydon, in two instalments, of the history of the Australian Broadcasting Commission. (56) This work involved a detailed examination of a number of issues clearly suggesting that post-depression trend away from the autonomous corporation which formed the keystone of . Webb's "Freedom and the Public Corporation," and it will be referred to in greater detail in Chapter Two of this thesis.

Early in 1957, Mr. Kewley contributed an introductory article to the special number of the Australian Journal of Public Administration devoted to "Public Enterprise in Australia", in which he

discussed the public enterprise setting for the Australian statutory corporations, and restated the main issues of continuing argument in this field. (57) In this introduction, he traced the early history of the Australian corporations, the numerous diverse functions for which this device had been utilised, and the more recent Commonwealth developments. In the latter connection, he referred to the competitive nature of many Commonwealth corporations, to the parallel existence of business activities run by ordinary departments, and to the occasional recourse to the mixed undertaking in which both government and private interests hold shares. After commenting on the recent tendency to subject corporations to an increasing measure of political control, he furnished a comprehensive analytical account of certain aspects of major importance to the study of the public corporation, i.e. the conditions of appointment and tenure and the composition of the governing boards, personnel, finance, and public accountability, including ministerial and parliamentary control. He concluded by observing that the trend towards restricted freedom had inevitably resulted from the increase in government economic activities, which, in the words of American writer Leonard D. White, required the co-ordination and control of the policies of corporations "to the end that the policy of the government as a whole shall be free from contradiction." This trend had emphasised the problem of reconciling accountability and managerial freedom, and/confusion created by various attempted solutions to this problem had resulted in a situation whereby :

> ".... the citizen has often to endure the worst of the two worlds of business and government, rather than to enjoy the best of these two worlds, as was claimed would be the case by some of the supporters of the statutory corporation." (58)

The public corporation has also proved a fruitful field of study for legal scholars. Thus Professor G. Sawer contributed a valuable summary of the Australian position to a symposium in 1954 edited by Professor W. Friedmann, who at that time held the Chair of Comparative Law at the University of Toronto, Canada. (59) This summary covered historical and administrative aspects, and, as was to be expected, also devoted considerable attention to the legal status of the Australian corporations. Thus, Professor Sawer showed that a recognition of the legal advantages of corporate status actually preceded the realisation of managerial advantages. He also showed that, with the gradual modification of the legal doctrine of immunity of the Crown, these legal advantages became less obvious and less distinct, with the result that Australian Courts today share the general confusion about the nature of the public corporation. An earlier interest in the legal position was shown by Professor K.H. Bailey, now Solicitor-General. (60)

Professor Friedmann, who edited the symposium to which G. Sawer contributed, is also a student of the legal aspects of Australian corporations in his own right. He developed this interest while holding the Chair of Public Law at the University of Melbourne, and in 1948 published a comprehensive analysis and commentary on the judicial position. (61) In this article he referred to earlier investigations by Melbourne University authorities into the question of liability of incorporated public authorities in relation to the shield of the Crown; demonstrated the loss of urgency of this problem to the extent that the Crown ~~itself~~ has been made liable (except in Victoria itself, where the Crown retained its immunity in tort); cited and discussed relevant decisions; examined the disconcerting arguments of

various legal authorities; and pleaded for the full legal liability of incorporated public authorities and for the abandonment of the fallacious judicial distinction between governmental and non-governmental functions. Writing later of comparitive judicial developments in the United Kingdom, Canada, and Australia, he observed that British countries broadly concurred in regarding the public corporation as the best method of combining the principles of public service and ownership with those of managerial responsibility and financial accountability. He outlined the general characteristics of the corporations, and briefly referred to problems of practical administration. He believed that :

> "There is no contradiction between the principle of the widest possible autonomy of management, and the right of the nation, represented by Cabinet and Parliament, to call the corporations to account on matters of general public policy, or the misuse of public money ..... The public corporation is an institution deliberately designed to integrate public enterprise with the common law system. The courts can help this purpose by a full appreciation and application of the principles governing the public corporation. They can hinder it by applying nineteenth century ideas to twentieth century problems." (62)

There can be no doubt that the courts have contributed to the general confusion regarding the nature of the public corporation (some examples of this were referred to in the preceeding section of this thesis), but one wonders whether Professor Friedmann's legal interests have not somewhat clouded his critical appreciation of the difficulties currently associated with discovering the "principles governing the public corporation."

A pleasing development is the increasing number of administrators who are sharing in this academic study of the public corporation. The very able analysis of the history and characteristics of the N.S.W. Railways organisation by Mr. F.C. Gerside, then Assistant Commissioner, is an early example. (63) Studies of particular corporations by their senior officers have appeared in the Journal from time to time, while Mr. L.R. East, Chairman of the Victorian State Rivers and Water Supply Commission, widened his interest to discuss the question "Why have boards and commissions?" (64). Mr. W.J. Campbell, Auditor-General of N.S.W., has also published a valuable analysis of the use made of the statutory corporation in his own State, particularly from the point of view of financial practice. (65)

Another outstanding contribution was the prize-winning essay "Official Independence and the Statutory Corporation," by J.E.Willoughby of the Metropolitan Water, Sewerage and Drainage Board, Sydney. In this essay, Mr. Willoughby examined the position of the judiciary, which represented "to the highest degree the phenomenon of official independence;" he then traced the effect of the growth of the social service state on traditional administrative organisation, outlining the movement towards the corporation and the later movement to restrict the autonomy of the corporations so created. He contrasted the "de jure" independence of many corporations in relation to statutory powers with the "de facto" limitations imposed by Cabinet's ability to threaten amendment or reconstitution, and saw a pressing need for acceptance of the implications of the public corporations into our theory of governmen With other administrators he discounted fears of bureaucracy; his fear was rather that of capricious political interference. However, he recognised that in a democracy official independence could not be absolute, since

responsibility was fundamental. The best kind of administrative organisation, he believed, would be one intended primarily to carry out its duties efficiently, but which in addition showed clearly where resided the responsibilities for policy-making and execution, which provided effective safeguards against political interference in the detail of administration, which facilitated continuous sympathetic understanding and interpretation of public opinion, and which permitted informed action "in the light of changing social needs and scientific and technical progress." It was also important to recognise that "the spirit and morale of the highest officials affects strongly and deeply the tone of the whole organisation." The task of satisfying all these requirements is obviously an immense one - Mr. Willoughby examined various existing types of corporation, attempted to assess the best features of these various types, and pleaded for a clear appreciation of the primary purpose of each :

> "Where efficiency is the p rime objective, it seems that independence should be increased. Where direct parliamentary control ..... is desired, then independence should be at a minimum." (66)

More recently, Sir Richard Boyer, Chairman of the Australian Broadcasting Commission, has contributed to the literature on the public corporation, first to refute certain opinions expressed by Miss Joan Rydon whose study of this corporation has already been referred to, and then to discuss the statutory corporation as a democratic device. In this latter contribution he examined the reasons for creating corporations and the much-debated conflict between democratic principle and governmental efficiency. He believed, however, that the statutory corporation :

> "..... has proven itself a democratic device which can be usefully employed to relieve our legislators of much of the intolerable burden of public administration."

The basic distinction governing the operations of statutory corporations was that they were responsible, not to their ministers as were the departments, but through their ministers to parliament - or, in other words, parliament required of its corporations the same degree of accountability as it required of its ministers.

The relative simplicity of this view conflicts strangely with that of many of the observers quoted above. It is a very satisfying interpretation of the way a corporation should work in a democracy, and has been supported by W.J. Campbell, the N.S.W. Auditor-General. Campbell wrote of the corporations as paralleling ministers in the executive branch of government, and working through them only for liaison purposes. He commented :

> "..... just as is the ministerial executive, so also is the corporation answerable to Parliament, which having created the corporation can restrict or enlarge its powers or terminate it at will." (68)

This could be described as the idealist view. However, it leaves unanswered the important questions of how this accountability is to be effected, and whether, since this is still required and a minister will presumably act as spokesman, the conventional department with its fully responsible minister is not an infinitely smoother device of public administration. Moreover, in New South Wales, the State about which Campbell was writing, the parallel and equal existence of corporations and ministers has not been achieved, for, as Professor Bland and others/

have pointed out, by political appointments and other serious modifications of corporate autonomy, the status of corporations has been compromised. Such an idealist interpretation also raises a further problem, demonstrated by the controversy which centred around the role of the Commonwealth Bank Board in the depression. This board opposed and hindered the work of the popularly-elected Government,

and yet it was obviously in harmony with the feeling of the Senate. Thus, by virtue of the accidental allocation of forces in a bi-cameral parliament (accidental from the point of view of public administration), it is possible for a corporation to reflect the majority will in parliament and yet for its policies to be completely unacceptable to the Government. This of course is a problem for the constitutionalist. It is sufficient to say here that this situation is by no means undesirable where cultural activities are concerned, but that it should not be allowed to interfere with the government's responsibility for the health of the economy. This throws us back to Professor Webb's views on the justification of corporations, expressed in 1954.

The above situation, whereby the Government was out of step with the majority will of the combined Houses of Parliament, is not, of course, the general rule, and it does not imply that the idealist interpretation of the role of corporations should not have wide application. Yet it is just as well that other observers have brought under notice the problems that can develop, and have on many occasions seriously damaged the working of numerous corporations. We cannot doubt that Sir Richard Boyer is in the best position to comment on his own corporation, and other evidence suggests that the Commonwealth governments / have / been more disposed to respect the peculiar characteristics of corporations, subject to the recent limitation of overall autonomy, than have / their / State counterparts. The general effect of the academic work on public corporations in Australia has been, however, to highlight the difficulties associated with the various attempts to reconcile accountability and managerial freedom.

This situation has perhaps been best described by American observers. Professor Pritchett, for example, entitled an article on the subject "The Paradox of the Government Corporation." (69), and Harold Seidman, after observing British Professor Robson's view that the public corporation was "one of the most significant institutional innovations of our time," commented that he "might well have added .... one of the most controversial institutional innovations of our time." Seidman went on to describe "the contradictions and strange paradoxes" of literature on the subject, and concluded that "if there is a single underlying theme ..... it is distrust of government." While this conclusion is more applicable to the United States and Canadian corporations, there is almost universal validity of his contention that public corporations are created for public purposes, that in this they are just like any other government agency, and that the difference is only in the method employed to perform their functions. The objective, in his view, should therefore be, not freedom from all government regulations, but only from those unsuited to business operations. (70) In Australia, of course, Labour politics have prevented the observance of even this modified principle of autonomy.

This philosophical paradox is as obvious in the political as in the academic field. Politicians have created the various corporations, and yet one of them, Mr. H.A. Leslie, is reported to have asked at the Public Accounts Committee enquiry into the affairs of the Aluminium Production Commission : "Is there a machine to protect us/against Government Commissions?" (71) Political actions and judicial decisions have contributed to our muddled thinking, and much of the resulting

literature, despite the best of intentions, seems rather to have added to this confusion. Friedmann was not the only writer to see the administrative issues in a simple light, and surely to overcome confusion there must be a general return to simple propositions, for only in that way lies clarity of thought on the subject.

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CHAPTER TWO

COMMONWEALTH CORPORATIONS

(a) 1901-1922 : The Early Years.

(b) 1923-1926 : Development.

(c) 1927-1931 : Crisis.

(d) 1932-1944 : Recovery and War.

(e) 1945-1949 : Post-War Reconstruction.

(f) 1950-1958 : Limitation and Reform.

1901-1922 : THE EARLY YEARS.

The Commonwealth Parliament, after its inception in 1901, lost little time in legislating for the management of its Public Service, and in doing so, it adopted the by then widely-accepted principles of uniformity of control by an independent non-political authority, and uniform staffing conditions. The Public Service Act of 1902 (1) exempted from its provisions only very special categories such as Justices of the High Court, Members of the Inter-State Commission, the Auditor-General, and members of the Naval and Military Forces.

Four decades later, however, the Public Service Board was able to record, after listing the Departments under its control, that :

"Many important Commonwealth agencies are not subject to control by the Public Service Board, for example :

Australian Broadcasting Commission,

Australian National Airlines Commission,

Commonwealth Bank,

Council for Scientific and Industrial Research,

Commonwealth Railways,

High Commissioner's Office, London,

Joint Coal Board,

Maritime Industries Commission,

Stevedoring Industry Commission,

Overseas Telecommunications Commission (Australia)

Officers of Parliament,

Commodity Boards under the Department of Commerce."

and to comment very mildly that :

> "As originally designed, the Public Service Act was intended to cover Commonwealth employment generally, with some limited exceptions. The successive establishment of these independent authorities has led to a multiplicity of Commonwealth staffing and wage-fixing controls, with consequent anomolies and inequalities in conditions of Commonwealth employment. Obviously such a position requires co-ordinating machinery, and the Board is making enquiries with a view to its establishment." (2)

Public Service reform was first seriously suggested by the Northcote-Trevelyan Report of 1854. After a half-century of agitation, the principles enunciated in that Report were widely accepted and practised in British countries - so that public opinion and the reformers sought new fields to conquer. A principle is always in danger when it is so widely accepted that people no longer bother to defend it, and thus each of the "independent authorities" created by the Commonwealth Parliament during the twentieth century has involved a further weakening of these wise and soundly-based principles. The development of the public corporation has brought with it a new set of principles which will be discussed in their application to the Commonwealth corporations in the following sections. However the existence of conflicting principles has confused thinking on public service organisation and weakened resistance to abuse even in many areas where one set or other of these principles is generally applied. The consequent compromising within the regular Public Service of the basic and allied principles of unified control and

non-political control of public services has permitted the appearance of a third sector which observes neither these basic principles nor the alternative principles of the public corporation, and which regrettably leaves the way open for the full exercise of political patronage with all its disadvantages. (3) However, although this third sector would be a profitable field for study, it is outside the scope of this thesis.

THE COMMONWEALTH BANK 1911-1924.

The Commonwealth Bank was the first Commonwealth public corporation. It was created by a Labour Government, and of course labour interests had very little to do with the administrative reforms of the nineteenth century. Yet the Labour Party was later to become the chief defender of traditional public service organisation - although its reasons for this had little to do with the observance of staffing principles, but delved further back to the era when the achievement of responsible government was the burning issue.

At the time of Federation State Savings Banks were already in existence, while the "national bank" had been included in Labour electoral platforms since 1891. Mr. King O'Malley, who has been called the "Father of the Commonwealth Bank", agitated incessantly for creation of the national bank from his entry into Australian politics in 1896. He was successful in having his proposal included in the policy of the Federal Labour Party, which, at its Inter-State Conference in Brisbane in 1908, naively proposed that the "peoples' bank" should be organised purely as a government department and at the same time be conducted on similar lines to the private banks, i.e. with absolute freedom from all political control (4).

The party in 1908 had no idea of the difficulty which was to be experienced in later years in reconciling these two concepts.

After its election in 1910, the Fisher Labour Ministry was persuaded by private banking interests that there were no profits in banking, and it dropped the bank from its programme. (4A) Most observers attribute the defeat of the Government on this issue by the rank-and-file in Caucus, and the forcing of the introduction of the Commonwealth Bank Bill, to the unshakeable faith of O'Malley, and to his patience and political organising ability through the so-called "Torpedo Brigade"; although O'Malley himself, in a national broadcast as the Australian Broadcasting Commission's "Guest of Honour" on 28 January 1951, attributed his final success partly to the sudden approving interest shown by Archbishop Carr, the Roman Catholic Archbishop of Melbourne. (5) Thus it was that, in moving the second reading of the bill under compulsion in 1911, Andrew Fisher (Prime Minister and Treasurer) made no reference to any difficulties in the current banking situation, but stated that "the question of a State bank has been prominently before the people of Australia for many years" and that "this is the time to legislate - a time of prosperity and financial calm." (6)

The legislation was attacked both inside and outside Parliament on the ground that it was a socialistic measure. A more specific objection of the Fusion Party Opposition (Liberals and Conservatives) to the Bill centred around the proposed Savings Bank functions on the grounds that State Governments were already operating Savings Banks and that unnecessary duplication of services

would result - in fact, by 1932, all State Savings Banks except those of Victoria and South Australia had been absorbed by the Commonwealth Bank. The Opposition also criticised the wide powers given to the Governor and suggested instead a Board of Directors - however they had no clear ideas on the division of powers between their proposed Board and the Treasurer. Replying to these criticisms, Fisher stated :

> "....the circumstances are new and peculiar. I do not think the fact that there is only one man makes the conditions dangerous - in fact they are stronger and safer because we are putting our trust in one man, with another man ready to take his place - in some respects he will have an autocrat's position ..... (but)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 for Parliament to be informed (of failures on the part of the Governor of the Bank,) and it can by legislation provide a remedy." (7)

This rather naive statement nevertheless shows that the Commonwealth Parliament had for the first time in its history considered the desirability of an alternative kind of public authority designed to

bring the freer management of private enterprise into the field of public administration. That the views held by the Federal politicians on the organisation and control of such bodies were immature and even infantile can be seen from a single example: on being questioned as to who would decide what constituted good or bad behaviour on the part of the Governor, Fisher replied that this was not explicitly stated in the bill, but he understood that the High Court would make any necessary decisions. (8)

The Commonwealth Bank Act of 1911 (9) provided that the Bank should be a body corporate with perpetual succession and a common seal and that it could hold land and sue and be sued in its corporate name - this phraseology has been copied by the Commonwealth Parliament for almost all boards and commissions entrusted with the management of public enterprises to give them a legal identity in their own right. A Governor was placed in charge with an Assistant Governor whose only specifically defined duty was to deputise for the Governor during his absences! They were to be appointed by the Governor-General for a term of seven years subject only to good behaviour, and they were eligible for re-appointment. The Act provided that their salaries were to be fixed by the Governor-General; the first Governor, Sir Denison Miller, was in fact appointed at a salary of £4000 p.a., this figure being fixed by agreement between himself and the Prime Minister - he accepted office on condition that the Bank was to be absolutely free from political control. (10) The powers delegated to the Governor were prescribed by the Act. He was completely free to engage his own staff, to fix their conditions of employment, and to establish branches of the Bank in any part of

the Commonwealth or its territories; and with the Treasurer's consent, he could establish overseas branches, and make rules for the good government of the Bank, for the classification of Bank officers, for the provision of a superannuation fund, and for any other purpose to facilitate the carrying on of the business of the Bank.

The Act provided for the issue of debentures by the Bank to finance its operations. These debentures were to be guaranteed by the Commonwealth. In fact, however, the Bank borrowed £10,000 from the Consolidated Revenue Fund, and as profits were made almost from the start this advance was soon repaid. It has never been necessary for the Bank to issue debentures or stock, and the Act has been amended from time to time to provide for the disposal of excess profits.

One historian has commented on the "almost autocratic power" placed in the hands of the Governor as a means of overcoming early fears that the institution would become subject to political control. (11) In fact, the Governor was given very wide powers in order to establish the Bank on a sound footing in competition with privately-owned banks, and the Government agreed to Governor Miller's condition of appointment that it should be completely free from political control. Three ways were left open for the Treasurer, or Parliament, to intervene :

(i) Certain of the Governor's powers were subject to the Treasurer's consent,

(ii) the Governor-General had power to make regulations affecting the Bank, and

(iii) the Bank was required to present detailed financial statements regularly for the information of the Treasurer and Parliament.

A comparison with more recent corporations will, however, confirm that opportunities for political intervention were indeed slight.

It is obvious that when the Federal Parliament created the Commonwealth Bank in 1911, it had little or no understanding of the nature of public corporations. In fact the founders of the bank sought merely a compromise between two forms which were then well-known, i.e. a ministerial department and a private bank. Some government organisations, forerunners of the modern public corporation, had already appeared in the Australian States, in the United Kingdom and elsewhere, with features which differentiated them from the normal department - yet the debates on the Commonwealth Bank Bill suggest that members of the Federal Parliament, lacking even the experience of other legislatures in this field, were groping in the dark to devise an alternative form of organisation for a public enterprise for which political administration did not appear to be suitable. From these modest beginnings have grown the very powerful Central Bank of today, and indeed, all the other non-departmental public authorities of the Commonwealth.

The original bank was simply a publicly-owned financial institution operating in competition with private institutions with similar rights and functions. Although at the time the legislation was widely regarded as being a socialist measure, later observers have agreed, while conceding the great work of the first Governor, Sir Denison Miller, in consolidating his position and paving the way for

future advances, that in its original form it was "not a bank which could be used to bring about 'socialism in our time'". (12) There was then no strong attempt to carry through a comprehensive nationalisation of the banking system, and Fabian observers Davies and Serle have expressed the general opinion clearly by describing the establishment of the Bank as "the rounding-off of liberalism." (13).

Thus the Commonwealth Bank was launched. It is probable that not even the visionaries like O'Malley could foresee the major role it was soon to play in the Australian economy, for in the early part of the century concepts such as central banking and governmental responsibility for the overall national economy were scarcely recognised. The Bank's record in World War 1, however, gave hints of things to come. An amending Act of 1914 (14) had given the Bank power to issue debentures up to a maximum of £10,000,000, and to take over other banks, but without making immediate use of either provision, it was able to render immense services during the war. It acted as the financial agent for the Commonwealth in London, it raised vast sums of loan money for the Commonwealth's war effort, it handled the gold trade and financed primary industries to the extent of £436,000,000, and on the urgent request of Prime Minister Hughes, cabled from London in 1916, it found £2,000,000 almost immediately for the purchase of the Commonwealth Line of Steamers. (15) At the end of the war, the Bank's standing as a financial institution, if not as a central bank in the modern sense, was firmly established; and a further amending Act of 1920 (16) transferred the Australian note issue from the Commonwealth Treasury to a separate "Note Issue Department" of the Bank with the proviso, however, that in times of national emergency the Treasurer could by proclamation resume control. This department was placed under the

control of the Australian Notes Board, which included the Governor of the Bank as "ex-officio" Chairman, and three Directors of whom one was to be an officer of the Commonwealth Treasury. Operating loosely within the framework of the Commonwealth Bank, this Board did not itself have the legal identity of a public corporation, but it is of significance because the terms of appointment of the three "Directors" were embodied in many later acts establishing public corporations. Initial appointments were, subject to good behaviour, for periods of five, four, and three years respectively, this staggering being designed to avoid a complete change of personnel at any one time and thus to preserve continuity in administration.

THE COMMONWEALTH RAILWAYS.

Other developments during the second decade of the Commonwealth Parliament were to lead before long to the formation of new public corporations. By 1917 the Commonwealth had accepted responsibility for the construction and operation of three railway systems in sparsely-populated parts of Australia. These were the Trans-Continental Railway, whose construction by the Commonwealth Department of Works and Railways was nearing completion; the line northwards from Port Augusta, which was constructed and serviced by the South Australian Government on the Commonwealth's behalf; and the line south from Darwin, which was controlled by the Northern Territory Administration.

The new Nationalist Government decided to place the three systems under unified control, and Mr. W.A. Watt (now Commonwealth Minister for Works and Railways), speaking on the Railways Bill in 1917, informed the House that the bill provided "for non-political

control by a Commissioner." He explained that the intention was merely to follow the practice of the State Governments which in every case had decided on non-political control as the more preferable for railways administration; and that as a result many of the provisions of the bill were borrowed from state railway statutes. (17) Thus the provisions relating to the removal of the Commissioner were copied from the Victorian railways legislation while the limitation of expenditure without ministerial approval to a maximum of £5000 was already applied broadly in all state railway systems - both provisions have been repeated many times in later Commonwealth legislation creating public corporations. Two interesting questions were raised during the 1917 debates. One member asked whether the proposal involved the creation of a new department and the Minister replied in the affirmative - it was not until many years later that members recognized the separate identity of public corporations. Then an Opposition spokesmen suggested that Parliament should have a say in the appointment of the Commissioner, the Minister replying with the rhetorical question "We have responsible government. How can Parliament appoint except by intrusting the Executive with the selection?" (18)

The Commonwealth Railways Act of 1917 (19) provided that the Governor-General was to appoint "a fit and proper person" to be Commonwea-lth Railways Commissioner, and added that a bankrupt was not eligible for selection. The Commissioner was to hold office during good behaviour for a term not exceeding five years, and was eligible for re-appointment. He was to be a body corporate with

legal rights and obligations similar to those of the Commonwealth Bank. The Minister was empowered to suspend the Commissioner for inability, inefficiency, mismanagement or misbehaviour, or refusal or neglect or failure to carry out any of the provisions of the Act. Following a suspension, the Minister was required to lay a full statement of his reasons before both Houses of Parliament, within fourteen sitting days; if within sixty days both Houses presented an address to the Governor-General seeking restoration of the Commissioner, he was to be restored to office - otherwise the Governor-General would confirm the suspension and declare the office vacant. The office was also to be regarded as vacant if the Commissioner engaged in any other employment; if he absented himself without leave; if he became bankrupt or permanently incapable of performing his duties; or if he became commercially interested in any contract or agreement made by or on behalf of the Commonwealth Railways. Salary was to be fixed by the Governor-General before each appointment, but this was not to exceed £2000 p.a. The Commissioner was empowered to appoint staff to hold office "during pleasure only," and to determine their salaries and conditions of employment. He could certify to the Minister that certain offices should be permanent, and could make appointments to these offices and submit lists of such permanent appointments to the Minister for gazettal. Variations of salaries above £500 were subject to the approval of the Governor-General. Retiring age was from sixty to sixty-five. The staff of the Railway Service were covered by the Arbitration (Public Service) Act; and an Appeal Board was constituted, to consist of a Chairman who was to be a special

magistrate appointed by the Minister, a member appointed by the Commissioner from the Railway Service, and an elected representative of the employees. This Board was to hear and determine appeals against dismissal or demotion; its decision was final, and it had power to take evidence. The salary of the Commissioner was regarded as a straight-out charge on the Consolidated Revenue Fund, into which all receipts were to be paid. Other moneys as required were subject to Parliamentary appropriation, the Commissioner being required to submit annual estimates in a form approved by the Minister.

In spite of the Government's contention that the Act provided for non-political control, the Minister's powers were fairly comprehensive. His approval was needed before the Commissioner could enter into any contract exceeding £5000 or purchase from overseas sources material costing more than £1000 or railway engines, rolling stock, or power. Similarly Ministerial approval was needed before the Commissioner could fix fares and freight charges, incur expenditure on special work or lease Commonwealth Railways property. The Minister was empowered to request the Commissioner to carry out matters of general policy, and the Act provided that "if any doubt or difference of opinion occurs respecting the provisions of this section, the doubt or difference may finally be determined by the Governor-General." It was further provided, however, that if such a direction adversely affected railway finance, the amount of the loss should be made good by Parliamentary appropriation. Parliament reserved for itself the right to approve the construction of new railways by special

legislation in each case and the right to review by-laws made by the Commissioner; while the Minister had specific power to compel the Commissioner to fence railways. Finally, quarterly reports were to be furnished to the Minister setting out approximate expenditure and receipts during the quarter, the general condition of lines and traffic accommodation, special rates fixed, and appointments and removals of permanent employees; annual reports and balance sheets were required for presentation to Parliament, showing in particular stocks on hand, depreciation of property, progress of railway works and an account of all moneys received and expended; and the Commissioner was expected to furnish any other reports or documents required by the Minister.

The detailed administrative provisions in the Commonwealth Railways Act contrast strangely with the vagueness of the Commonwealth Bank Act 1911. The reason for this difference would appear to lie in the fact that in each case Parliament had attempted to copy contemporary organisations with similar functions. Thus private banks with no provision for political control were taken as a model for the Commonwealth Bank, whereas, since railway development in Australia had always been regarded as a province of government, the models on which the Commonwealth Railways organisation was framed were characterized by greater emphasis on channels of accountability. The Commonwealth Railways function today with an organisation that is virtually unchanged (except for details such as an increased salary for the Commissioner). The Commissioner now controls the Trans-Australia Railway from Port Augusta to Kalgoorlie, the Central Australian Railway from Port Augusta to Alice Springs, the Northern

Railway from Darwin to Birdum, and a few miles of railroad within the Australian Capital Territory, from Canberra to Queanbeyan on the N.S.W. border.

THE WAR SERVICE HOMES COMMISSION.

With the end of the 1914-18 War in sight, the Australian people enthusiastically supported the Hughes Nationalist Government in its plan to make repatriation a national obligation. Thus it was largely due to pressure of public opinion that the Federal Parliament in 1918 rushed through a bill to make provision for homes for Australian soldiers in the dying hours of the Session. In this hurried measure the Government proposed to appoint a Commissioner who, subject to the Minister, should be responsible for the administration of the Act. The organisation was obviously modelled on that provided for the Commonwealth Railways in 1917. Replying to a questioner who asked whether the Commission would be a branch of the Repatriation Department, Mr. Groom, Minister for Works and Railways, stated that it would be "a separate branch working under the Minister for Repatriation." (20) As mentioned previously, the separate status of the public corporation was not then recognised in the Commonwealth Parliament.

Despite this obvious lack of understanding of the principles of the public corporation, Members nevertheless demonstrated a greater interest in the various administrative clauses of the bill than is normally shown today. For example, there was some discussion, during the Committee stages, of the relative merits of multi-member board and single Commissioner types

of management, of the desirable period of tenure, and of a suitable salary for the Commissioner. The original proposal had provided for payment of salary to the Commissioner at the rate of £1500 p.a., and also that the staff would be subject to the provisions of the Public Service Act. However the actual amount of the salary was deleted due to a "constitutional doubt" as to the authority of Parliament to prescribe such matters, the decision being left to the executive subject to a verbal guarantee given by the Minister not to exceed this figure; while the Government, despite some strong objections from the Opposition in the House of Representatives, also accepted a Senate amendment removing the staff from the Public Service Act, members having raised a number of objections of which the following were typical :-

(i) it was considered very difficult to remove incompetents under the Public Service Act, and the Commissioner should have power of appointment and dismissal;

(ii) it was necessary to ensure easy entry of returned servicemen, whereas the Public Service Act as it then existed provided mainly for the recruitment of youths leaving school;

(iii) the activities of the commission were likely to be of a temporary nature only. (21)

In view of later developments, it is also interesting to note certain statements made by Senator Millen, Minister for Repatriation, during the passage of this bill :

(i) The Commissioner's proposed relationship with the Minister was defined thus :

"Of course he will be subject to the Minister in respect to all large matters, and, indeed, to all matters which, in any sense of the term, may be regarded as matters of policy."

(ii) In reply to a question drawing attention to the "extra-ordinary powers which it is proposed to vest in the Commissioner by virtue of his corporate status, " he replied :

"This is rather a legal question than anything else. The clause is intended to provide that if by reason of any act that is done, a person has a grievance against the Commissioner, the latter may be sued. A similar provision applies to the Railway Commissioner and to many other public officials. It constitutes them a legal entity."

(iii) In answer to queries on the proposed salary, he explained: "It is essential to get a thoroughly good man for this job, and two things which will appeal to him are the remuneration and the tenure." It was the Minister's belief that the relatively poor remuneration offered justified the comparitively high tenure of seven years.

The Opposition's attitude was that, since the Government was to appoint the Commissioner, it would therefore take final responsibility for administration of the Act.

The War Service Homes Act 1918 (23) provided for the appointment by the Governor-General of a "fit and proper person" to be Commissioner. Bankrupts and uncertified insolvents were ineligible. The Commissioner

was to hold office during good behaviour for seven years, was given legal identity as a body corporate, and was made responsible for the administration of the Act subject to the directions of the Minister. He could be suspended for misbehaviour or incapacity, suspension procedure and grounds for vacation of office being identical to those for the Commonwealth Railways Commissioner. The Commissioner was empowered to appoint his own staff to "hold office during pleasure only," and all receipts, including moneys appropriated by Parliament, and expenses were to be accounted in a form approved by the Treasurer. The Minister's approval was necessary before the Commissioner could acquire any property valued at over £5000, and the Governor-General had power to make regulations under the Act.

The early operations of this corporation afford an interesting insight into the confusion which characterised contemporary Commonwealth political thought and legislation concerning administrative organisation; and the mismanagement which resulted probably contributed in some measure to the closer attention paid by members of parliament to such matters during the nineteen-twenties.

A sub-committee of Cabinet selected Lieut-Col. James Walker, D.S.O., from a number of persons who submitted applications for the advertised office of War Service Homes Commissioner, and Walker was formally appointed by the Governor-General on 6 March 1919. The affairs of the Commission were placed under the general direction of the Minister for Repatriation. Almost from the beginning of operations, Walker's administration was subjected to strong criticism,

and soon the original Parliamentary Committee of Public Accounts, following an investigation of the Commission's affairs at the request of the Government, submitted a/lengthy number of reports commenting on foolish instructions issued by the Commissioner, badly-chosen work supervisors, unwarranted sackings of staff, faulty construction of houses, and generally poor management. (24)

An amending War Service Homes Act of 1920 (25) extended the provisions supposedly safeguarding the ultimate control of the Minister. The requirement that the Minister's approval was necessary before expenditure of amounts over £5,000 could be incurred was extended to cover the exercise of any power by the Commissioner, not only the power to acquire land; a statutory limit was placed on the cost of houses constructed by or for the Commissioner; and the Commissioner was for the first time required to furnish to the Minister for presentation to Parliament an annual report to include -

(i) a report on the administration and operation of the Act, showing for each State
   (a) number of applications received and dealt with;
   (b) number of houses erected; and
   (c) average cost of each home erected,

(ii) a balance sheet showing cash and stocks on hand and an account of moneys received and expended, and

(iii) a balance sheet showing trading operations of industries and manufacturing concerns acquired by the Commissioner, and a profit and loss account for each.

Cabinet took the unusual action of appointing an Assistant Minister with the sole task of assisting the Minister for Repatriation in

supervising War Service Homes activities. These changes did not, however, curb the extravagances of the Commissioner, and on 11 March 1921 Lieut-Col. Walker was given leave of absence by the Minister for one week. Then on 18 March 1921 the Governor-General declared his appointment null and void on the pretext that he was an uncertificated insolvent and therefore ineligible for office. (26) The whole matter was reported to Parliament, which examined at length the maladministration of the Commissioner, and the location of responsibility for that maladministration, during the debates on the Appropriation Bill in December, 1921. (27)

Senator Millen, Minister for Repatriation and Minister-in-Charge of the War Service Homes Commission, admitted that "errors, numerous and serious" had been made, but he pointed out that there had been a tremendous public demand for the Government to construct homes for returned soldiers with all possible rapidity, and that consequently the new "department" had no time to train its staff or to gain experience before engaging in full-scale operations. The Senator stated: "I do not desire to shirk my share (of the responsibility), but I ask honorable senators, in fairness, to examine the question of where responsibility rests." He then referred to the many examples of mismanagement revealed in the files of the Commission and in the reports of the Public Accounts Committee, and described a number of issues on which he had been at variance with the Commissioner.

In December 1919 the Minister had issued the following direction to the Commissioner :

> "I consider the present estimation of our requirements too high and do not approve of considerable land areas being purchased for anticipated requirements over and above our building capacity. No land should therefore be purchased for more than our requirements for twelve months hence."

Yet examination of the Commission's files showed that within a few weeks of receipt of this direction the Commissioner instructed his Deputy-Commissioners in each State to proceed with the purchasing of sufficient land to provide for estimated requirements for the ensuing five years. On another occasion the Commissioner submitted a recommendation to the Minister for the purchase of property near Newcastle at £8,100 in these terms : "a good sound ready-to-build proposition, without doubt one of the best ..... it compares favourably with property in the vicinity." The Minister approved the purchase (since the amount involved was in excess of £5,000) after perusal of the report. Subsequent investigation showed that the land was swampy and quite unsuitable for human habitation and that it had changed hands one year previously for £2,600. The Minister asked : "I am not a valuer of town lots ..... What would any Minister do in such circumstances." Soon afterwards, the Commissioner recommended to the Minister the purchase of the Grove Estate near Hobart for an amount in excess of £5,000. The Minister turned down the proposal on the ground that he had been given insufficient data to make a favourable decision. Then, as the

Minister was proving difficult to handle, the Commissioner bought the estate in two separate transactions in order to bring the amount in each case below the £5,000 limit authorised by the Act. Many other cases of a similar nature were revealed. Moreover there was ample evidence that the Commissioner had disregarded the provisions of the 1920 Act by continuing to build houses in excess of the statutory maximum cost which had been imposed.

The Minister stated that the Commissioner had also entered into a number of large contracts for the supply of timber for home building, and had bought saw-milling plants, without his being consulted in any way. Finally the action of the Commissioner in attempting to lease two Fijian Islands for the purpose of getting timber supplies was revealed to the Minister by a private business man whom the Commissioner was endeavouring to outbid. The Minister immediately summoned the Commissioner and demanded full particulars of all existing and proposed contracts. Yet on the following day the Commissioner made a formal and definite offer for the lease in complete disregard of the Minister's intervention. The Minister then wrote to the Commissioner thus :

> "To me the purchase of saw-milling plants and other requisites to meet your timber needs is a matter of policy as distinct from the acquisition of material through ordinary channels ..... I had not the slightest idea you were taking such action until recently ..... It was, obviously, the intention of Parliament that in all matters of policy the Minister should stand as the final authority, and this practice is invariably followed in other Departments controlled by Commissioners ..... You will,

I am sure, recognise the desirability of refraining for the present from completing any other arrangements or contracts of the character referred to."

Senator Millen asked Parliament to examine the question of -

"....where responsibility rests ..... for acts which were distinctly forbidden by the Government, committed without my knowledge, and perpetrated in violation of definite instructions."

He continued :

"Where a Commissioner is appointed, the purpose is that the Minister shall lay down policy, and that the Commissioner shall be responsible for its execution ..... The Minister must have power - if he thinks at any time that matters are going wrong - to interpose. If he is of opinion that his policy is not being carried out he must certainly have the right to intervene. But, until he has reason to question the manner in which the Commissioner is performing his duties, he has no right to step in ..... Power and responsibility must go together. To say that one man has the right to do a thing and that another man is held responsible for the way he does it is to violate the canons of fair play and justice."

Although there were some critics the general feeling of members was expressed by Senator Gardiner (Labour - N.S.W.), who congratulated the Minister thus: "..... so soon as he realised that things were going wrong - blunderings for which he must take the responsibility - he at once assumed that responsibility." (28)

As a result of all this, the Assistant Minister, Mr. Hector Lamond (Nationalist - Illawarra, N.S.W.), introduced a bill in the House of Representatives the following year, aimed at "remedying some of the defects which have been found in the original Act," and at limiting "the powers which the Commissioner may exercise without reference to the Minister." The Government felt that most of the evils which had fallen on the "War Service Homes Department" were traceable to the fact that the Commissioner had practically unrestricted power with regard to general administration and to the acquisition of land and property. The measure was supported by most members, of whom Mr. Laird Smith (Nationalist - Denison, Tasmania) was typical. He believed that it was necessary to "restore to a Minister for Repatriation that which the House should never have taken from him." Mr. Fleming (Country Party - Robertson, N.S.W.) voiced the view of opponents of the measure, thus :".....the original Commissioner having proved, according to standards of business, a failure, there is no reason why the Government should restrict the opportunities of others." (29) This bill received the Royal Assent in 1923, and, as the War Service Homes Act 1923 (30) it contained the following provisions :-

(i) the maximum expenditure without Ministerial approval was reduced to £2,000,

(ii) the tenure of office of the Commissioner was reduced to a term not exceeding three years, with the proviso that the Commissioner would then be eligible for re-appointment for a further term not exceeding five years,

(iii) the area of Ministerial control was increased in other ways, by limiting the Commissioner's overall powers in regard to dealings with clients, local governments and so on.

Meanwhile, Col. J.M. Semmens, already Chairman of the Repatriation Commission, had been given an acting appointment as War Service Homes Commissioner, and in the First Annual Report of the Commission presented late in 1921, he recorded that:

> "After full enquiry, the Government decided to abandon the policy (of the Commissioner) of building houses, in anticipation of applications, and to confine construction to individual and definite applications for specified houses. It was also decided to abandon the scheme of construction by day labour and in substitution to offer all constructional work to competition by public tender. Under the day labour system numerous contracts to secure supplies of building materials were entered into and naturally with the change of policy in regard to construction steps had to be taken to arrange for the termination of these contracts on the best terms possible." (31)

In the Second Annual Report, the Acting Commissioner advised that £1,000,000 was needed to write off the commitments entered into by the previous administration, that a consulting accountant had been appointed to re-organise and place on a satisfactory basis the Commission's Accounts, that Adjustment Boards had been created in each State (except South Australia) to deal with the many complaints by victimised clients, and that Central and State Subsidiary Disposals Boards had been established to get rid of excess materials. (32)

Labour Members criticised the arrangement whereby Col. Semmens was occupying two important posts, one at £1,000 per annum and one at £1,500 per annum, making a total remuneration of £2,500, on the grounds that he could not be expected to give the required

attention to the duties of either position, and that the dual arrangement would lead to muddling in administration. Even a Government supporter, Senator Wilson (Nationalist, South Australia) in speaking on the Supply Bill (No. 3) 1922-23, drew the Minister's attention to press criticism on the subject, and pointed out that Col. Semmens, who before his appointment to the two commissions had been a public servant, and a battalion commander in the A.I.F., was now earning more than the Prime Minister. (33). Apparently, however, the Nationalist Government was determined not to run the risk of obtaining the services of a second Col. Walker. Cabinet supported the establishment of a link between the Commission and the Works and Railways Department; and therefore compromised by appointing the Permanent Head of the latter department, ex-officio, as War Service Homes Commissioner in place of Col. Semmens who asked to be relieved of this post in 1925. Under a re-organisation of the administration during the early nineteen-twenties the Commission arranged for State Instrumentalities to act on its behalf in Victoria, Western Australia, South Australia and Tasmania, and its own branch offices were closed except in New South Wales and Queensland. (34) It was, however, to come into prominence again after World War II.

THE INSTITUTE OF SCIENCE AND INDUSTRY 1920-26.

Another major Commonwealth corporation was conceived when the Inter-State Commission, in a Report on New Industries presented in October 1915, suggested the creation of a special Commonwealth "bureau" with a view to the "systematic application

of science to Australian industry." At the time Departments of Scientific and Industrial Research were appearing in the United Kingdom and elsewhere, and a temporary Council of Industrial Research was set up in Australia. As a result of the reduction in the powers and duties of the Inter-State Commission in 1915, this Council was enabled to share both the accommodation and the personnel of that Commission, and thus George Swinburne, that great advocate of the public corporation, became a member. Swinburne's constant urging for the permanent establishment of this body on an independent non-political basis, and the reasons therefor, have already been referred to.(35) The proposal received strong support from primary producers' organisations, Chambers of Commerce and university authorities, and a conference attended by Prime Minister Hughes and representatives of science and industry agreed on three essentials for the organisation :

(i) entire freedom from political control,

(ii) direction by three men, two to be men of scientific attainments and one a "practical" man, and

(iii) establishment of an advisory council, organised either centrally or on a state basis, and consisting of representatives of various branches of science and industry. (36)

The original bill, designed to implement these proposals, was not proceeded with, and the Government brought down amended legislation in 1920 to provide for the establishment of the Institute under a single Director. Reasons of economy were stated to have caused this change, although elsewhere the Minister for Trade and Customs (Mr. Greene) endeavoured to justify this on the ground that the council system would become too unwieldy. (37)

Under the Institute of Science and Industry Act 1920 (38) the agency was placed under the executive control of a Director who was to exercise his powers subject to any regulations or directions of the Minister. This clause was inserted as a compromise to the Labour opposition view that a "new spending department" should be directly under the control of a Minister to safeguard the expenditure of public moneys. The Director was a body corporate with a legal status similar to that of the early Commissioners. He was appointed for a term of five years and was eligible for re-appointment; he was to serve in a full-time capacity and his salary was to be fixed by the Governor-General; and although he could be suspended by the Governor-General for incapacity, incompetence or misbehaviour, confirmation of such suspension was dependent on the passing of a resolution praying for his removal by both Houses of Parliament. This provision, by requiring positive action on the part of Parliament in getting rid of the Director, rather than the mere non-disallowance of a ministerial decision as in the case of the Railways and War Service Homes Commissioners, furnished added protection for the Director's independent position. Staff were excluded from the Public Service Act and were to be appointed by the Governor-General on the recommendation of the Director. Moneys appropriated by Parliament to finance the activities of the Institute were to be spent only in accordance with estimates of expenditure submitted to and approved by both Houses of Parliament, and the Director was to furnish a detailed annual report to the Minister for presentation to Parliament. Provision was also made for the appointment by the Governor-General of a General Advisory Council and Advisory Boards

in each State, but qualifications for and conditions of such appointment were not prescribed. As will be shown later, however, the overall organisation proved inadequate, and the Institute was soon reduced to a position of near-impotence.

It will be noted that the four corporations established during the second decade of the Commonwealth Parliament all featured one-man control, whether because of the belief, as expressed in the Commonwealth Bank legislation of 1911, that the Governor's position corresponded to that of General Manager in a private corporation, or because of a desire for economy as expressed during the debates on the Institute of Science and Industry in 1920. It was not until early in the nineteen-twenties that any serious challenge to this practice arose. Meanwhile, however, the Commonwealth was experimenting with a unique type of administration for the rehabilitation of ex-servicemen.

THE REPATRIATION COMMISSION.

The War Service Homes legislation has already been discussed. In the first year of the war, Parliament had also legislated to create a War Pensions Board to consist of three members, one of whom had to be a qualified medical practitioner. The function of this Board was to decide and assess claims for war pensions, although in all cases its decisions were subject to Ministerial approval. The relevant Act was the War Pensions Act of 1914 (39); however the Board so created was not constituted as a body corporate, and therefore cannot be regarded in any sense as a public corporation.

Other activities intended to provide for the needs of repatriated ex-servicemen were instigated by the Federal Parliamentary War Committee, which constituted State War Councils in 1915. These Councils consisted of representatives of Federal and State Parliaments, chambers of commerce and manufacturers, and organised labour, and their function was to find employment for the returning men, and to grant relief and assistance to them and their dependents. An Australian Soldiers Repatriation Fund, to be raised primarily by voluntary subscriptions, was set up in 1916 to further this purpose; but the experience of the Fund's Trustees, who worked through the State War Councils, revealed that complications arising from the division of the field/government between the Commonwealth and the States would seriously embarrass their work. Therefore, they recommended that the Commonwealth should endeavour to secure fuller control in order to facilitate and co-ordinate the spending of the Fund. Accordingly an Inter-State Conference of Federal and State Ministers held in January 1917 resolved that, with specific exceptions, "the entire question of the re-establishment of returned soldiers and sailors, and the care of dependents of soldiers and sailors generally, be made the concern of the Commonwealth authority." (40) It was in pursuance of this resolution that the Commonwealth Parliament legislated to create the original Repatriation authority.

Australia is generally considered to have been the pioneer in this field. In introducing the Australian Soldiers' Repatriation Bill in 1917, Senator Millen, Vice-President of the Executive Council in the Nationalist Government, commented that "repatriation is an

entirely new proposition," and that its acceptance "as a national obligation reveals a new conception of public duty." Thus for the first time the Commonwealth Parliament had no comparable organisation to copy, and the agency it created had many unusual experimental features. In outlining the detailed provisions of the bill, the Senator added that the government, having accepted responsibility for the work, had to have control over the agencies carrying out that work, at the same time securing as large a measure of assistance as possible from private citizens. There had to be sufficient of the methods of a public department to ensure continuity and precision, but the Government sought to secure with this that assistance which would undoubtedly be rendered if a portion of the work and some of the responsibility devolved upon the community. (41)

During the Committee stages of the bill Senator Millen explained that the government had been faced with three possibilities in creating the organisation. These were :

(i) An ordinary department with paid officials under control of a Minister - this method would give adequate parliamentary control, "but would shut out altogether that association of private citizen life to which I attach much importance." It would cause the returned soldiers to regard the scheme with some suspicion due to the general distrust of the ordinary department.

(ii) A Commissioner, such as the Railways Commissioner - these men "get their sailing orders and we rely on their integrity and expert knowledge to manage a business concern. A definite responsibility is placed on them, but this could

not be done in the case of Commissioners for Repatriation because it cannot be said that any one is an expert in this department of our social life ..... We could only say that we wanted him to deal fairly with our soldiers."

(iii) The third method, which was adopted - "inviting the assistance of private citizens," particularly returned servicemen, acting as an advisory board to the Minister in the breaking of this new ground. (42)

The central organisation created under the Australian Soldiers' Repatriation Act 1917 (43), was loosely referred to as "the Repatriation Department." It consisted of a Commission of seven, including the Minister of State for Repatriation as Chairman. The other members were private citizens, at least two of them ex-servicemen, who were appointed by the Governor-General to serve in an honorary capacity, drawing expenses (e.g. for travelling) only. This Commission, which was a body corporate, was required to recommend to the Governor-General the making of regulations providing for the granting of assistance and benefits to discharged soldiers and to the dependents of deceased or incapacitated soldiers. Although not clearly stated in the original Act, it was intended that the Minister should act as the chief executive of the organisation. There was a large measure of decentralisation. State Repatriation Boards, each consisting of seven members appointed by the Governor-General and including at least two ex-servicemen, were required to execute the policy determined by the central organisation, to which actions of the State Boards were subject to appeal. Members of the Boards also were

private citizens serving in an honorary capacity, and each Board was a body corporate with its own legal identity. Local Committees, intended mainly to raise and spend money for repatriation purposes, were also appointed by the Governor-General, members again being private citizens serving in an honorary capacity. The staff of the Department were to be appointed by the Governor-General on the recommendation of the Minister. They were not subject to the Public Service Act but were engaged for the periods and subject to the conditions prescribed in the instruments of appointment. Officers transferred from the Public Service of the Commonwealth or a State retained all their existing and accruing rights. Funds necessary for the administration of the Act were appropriated from time to time by Parliament.

The Bill itself was treated as a non-party measure, and there was enthusiastic acceptance of repatriation on all sides of Parliament. There were, however, criticisms of the proposed machinery. Senator Gardiner (Labour, N.S.W.) for example, wanted the scheme ".... put under a separate department of our Public Service and thus kept free from the influence of anybody who is not responsible to Parliament;" and Senator Bolton (Nationalist, Victoria) expressed disappointment that the administration of a most important Act was to be placed "in the hands of honorary commissions, board and committees - organisations which, like corporations, have neither souls to be saved nor bodies to be kicked" - he described the scheme as "a direct invitation to a great deal of confusion." Many members preferred a paid Commission of three members, on the ground that the nation should be prepared to pay in order to get the best brains. Outlining in Committee the

Government's reason for the exclusion of the Department's staff from the Public Service, Senator Millen explained that it was reasonable to expect the work of the department to decline after a few years, and that if the staff were appointed under the security of the Public Service Act, then difficulty would be found in placing them in other departments. (44)

The original advisory Commission consisted of the Minister as Chairman (Senator Millen was appointed to this post), two ex-servicemen, the Secretary of the Australian Workers' Union as a representative of organized labour, a newspaper proprietor, and two others with business and commercial experience. This was the only occasion on which the Commonwealth Parliament adopted that practice more common in some Australian States of providing for a corporation under ministerial chairmanship. The State Boards each consisted of four business-men, two ex-servicemen, and one representative of organized labour. Over ninety per cent of the staff of the Department were ex-service personnel.

An amending Australian Soldiers' Repatriation Act of 1918 (45) provided for the extension of the benefits to the dependents of all returned servicemen, and for the centreing of all executive power in the hands of the Minister. Thus the Minister of State for Repatriation became a corporation sole with perpetual succession and a common seal, and the Commission and the State Boards were deprived of their separate legal identities in confirmation of their advisory and honorary roles. This step was taken since it was considered desirable to have power and property vested in the Minister in the event of a

possible conflict with the other members of the Commission. For the first time the Department was required to present to Parliament an annual report of its operations; and any officers of the Commonwealth Public Service transferred to the Department's staff were to be granted leave without pay and on termination of their employment by the Repatriation Department they were to be re-appointed to the Commonwealth Public Service with such advancement as the appointing authority thought just. The organisation could still best be described as a combination of departmental procedure and voluntary effort.

Then in 1920, Senator Millen introduced a further Australian Soldiers' Repatriation Bill, which provided for the incorporation of the separate War Pensions administration into the Repatriation organisation, and for the substitution of a paid Commission with certain executive duties, and paid State Boards, for the existing honorary bodies. The measure was due to pressure from the Returned Soldiers' and Sailors' Imperial League of Australia (R.S.L.).

The 1920 Act repealed all previous Repatriation and War Pensions legislation, and provided for the appointment by the Governor-General of a "Repatriation Commission which shall, subject to the control of the Minister, be charged with the general administration of this Act." The Commission was to be a body corporate with perpetual succession and a common seal, and was to consist of three members, one of whom was to be appointed from a list of at least three nominees submitted to the Minister by "an organisation of returned soldiers and sailors." Despite this rather loose wording

the debates on the bill showed general agreement that this provision was designed to ensure representation of the Returned Soldiers' and Sailors' Imperial League. The Governor-General was to appoint one of the Commissioners as Chairman and was to fix rates of remuneration. The term of office was three years, and members were eligible for re-appointment. Provisions relating to the suspension of Commissioners and to the vacation of offices were identical to those for the Commonwealth Railways Commissioner with the exception that performance of outside duties did not constitute a ground for vacation of office. The powers of the Commission were outlined separately in respect of pensions and of assistance and benefit schemes - in so far as matters of policy were concerned, they were to be to be exercised by recommending to the Governor-General the making of regulations. The Minister's approval was required before any executive action could be taken involving the expenditure of more than £5000. The Repatriation Commission was to appoint its own officers, otherwise staffing provisions were as for the original Department. The Commission was required to present an annual report of its administration and operations under the Act to the Minister for presentation to Parliament. Expenditure was financed by parliamentary appropriation.

Repatriation Boards of three members were to be appointed in each State by the Governor-General on the recommendation of the central Commission. Again "an organisation of ex-servicemen" was to submit a list of nominees from which one of the three members in each Board was to be selected. Members were to be paid such remuneration or fees as the Governor-General determined; and they could be suspended on

similar grounds to Commissioners although parliamentary review was not permitted. The Boards were required to decide each application for pension or other benefit according to policy laid down by the Commission. Their decisions were subject to appeal to the Commission, which could in addition review the decisions of a Board even though no appeal had been lodged. The Boards had no control over the administration of the Commission's staff and finances. The Local Committees established under the 1917 Act were retained.

For the sake of convenience some later developments in the Repatriation Commission, up to the time of its return to departmental administration, are discussed in this section. For example, in a series of amending Acts passed between 1921 and 1946 the rates and conditions of payment of pensions were changed many times. In addition, the 1921 Act added to the Commission's legal powers the necessary provision that it could hold property in its corporate name. The 1929 Act created the first War Pensions Entitlement Appeal Tribunal, with three members whose conditions of appointment and suspension were similar to those which applied to the Commissioners themselves, and the High Court held in 1933 that this Tribunal was a statutory body set up to carry out functions prescribed by the Act and not a court of law, i.e. it was an "administrative tribunal". The 1934 and 1935 Acts clarified the position of the State Boards and Local Committees and increased the control over the latter exercised by the Commission. (47) In view of the nineteenth century legal distinction which resulted in the creation of many public corporations, it is also interesting to note that when a doubt arose as to its constitutional position, the High Court ruled in the

case of the Repatriation Commission v. Kirkland in 1923 (48) that the Commission was so closely identified with a department of the government as to be indistinguishable from it, and that it was therefore entitled, with respect to the property vested in it pursuant to the Act, to the same immunity and privileges as the Crown itself would enjoy. This decision emphasises that the earlier clear appreciation of legal advantages in the corporate theory had been lost by legal as well as political minds in the general twentieth century confusion regarding administrative organisation.

A note on the degree of independence in administrative matters actually possessed by the Repatriation Commission is provided by the Commonwealth Public Service Board which, in its Tenth Annual Report for the year 1932-33, made this interesting comment : "The Board has also been requested by the Government to examine the matter of staffing arrangements in the Repatriation Department." The investigation was limited to the activities and staffing arrangements of the Commission in the States of New South Wales and Victoria and was carried out by an Inspector and an Assistant Inspector of the Public Service Board's staff. A confidential report was submitted by the Board to the Prime Minister, but in a letter to the Repatriation Commission the Chairman of the Board advised that the office establishments inspected were generally organised on sound principles; that administrative and executive lines of control were considered to be satisfactory; that procedures were mainly covered by suitable General Orders and Instructions; and that supervision was adequate. (49) The significant feature, of course, is the action of the Government in instituting such an investigation.

The three men who had borne the brunt of the work of the Repatriation Department (the terms "department" and "commission" were used interchangeably during the nineteen-thirties). were Col. J.M. Semmens (who has already been discussed in relation to the War Service Homes Commission), Chairman 1920-1935, L.E. Tilney (ex-N.S.W. public servant, and also a Returned Soldier), 1923-1935, and Major M.B. Ryan (R.S.L. nominee)1926-1935. On their retirement, the annual report of the Repatriation Commission for the year 1934-1935 commented as follows :

> "Viewed in retrospect it is remarkable that such splendid individual and collective organised public service should have been given by officials mostly unversed in Public Service routine, and whose pre-war experiences were of such widely differing and varied natures ..... there is a certain gratification in the knowledge that the Department is on sound and workable lines." (50)

The newly-appointed Commission stated in its report for 1935-36 that it was "a matter for very deep concern to the Commission that the staff has no retiring or furlough rights such as are enjoyed by the Commonwealth Public Service." (51) The next report commented that the Government had approved the extension of superannuation benefits and furlough rights to the staff of the Commission. (52) This fact is significant since it is evidence that the Government recognised the permanence of repatriation activities; the primary reason for exclusion of the staff from the Public Service had therefore vanished.

REFERENCES

(1) Act No. 5 of 1902.

(2) Public Service Board, 23rd Annual Report, presented on 19-1-48, in Commonwealth of Australia, Parliamentary Papers, Session 1946-47-48, Vol. II, p. 1022.

(3) For example, the Public Service Board's 23rd Report adds that certain factory and industrial staffs employed by Commonwealth Departments come directly under ministerial as distinct from Public Service Board control. Another example is furnished by the present system of recruitment for the Public Services of Australian Territories: thus the Public Service Commissioner at Port Moresby is surprisingly limited to the more routine functions of personnel management, while all recruitment to the Territorial Service is by personal decision of the Minister. The trend is even more noticable in some State Public Services, viz. in Tasmania senior positions have been removed from the provisions of the Public Service Act from time to time to enable the Government to appoint e.g. defeated politicians.

(4) Jauncey, L.C., Australia's Government Bank (London, Cranley and Day, 1933), p. 49.

(4A) These events are recorded in ibid, pp. 56-57.

(5) Recorded by Crisp, L.F., The Australian Federal Labour Party 1901-51 (London, Longmans Green, 1955), p.274

(6) Commonwealth Parliamentary Debates, 15 November 1911, p. 2644.

(7) Ibid., pp. 2644-45.

(8) Recorded by Jauncey, L.C., op. cit., p. 63.

(9) Act No. 18 of 1911.

(10) See Jauncey, L.C., op. cit., p.71.

(11) Smith, A.N., Thirty Years : The Commonwealth of Australia 1901-1931 (Melbourne, Brown Prior and Co., 1933) p. 122.

(12) Fitzpatrick, B., A Short History of the Australian Labour Movement (Melbourne, Rawson's Bookshop, 1944) p. 117.

(13) Davies, A., and Serle, G., "The Background of Current Politics," in Davies, A., and Serle, G.(Ed.), Policies for Progress (Melbourne, Cheshire, 1954) p. 3.

(14) Commonwealth Bank Act No. 24 of 1914.

(15) Recorded by Amos, D.J., The Story of the Commonwealth Bank (12th revised ed., Adelaide, McAlister, 1948) p. 6.

(16) Commonwealth Bank Act, No. 43 of 1920.

(17) Commonwealth Parliamentary Debates, 25 July 1917, p. 431.

(18) Ibid, 2 August 1917, pages 759 and 764.

(19) Act No. 31 of 1917.

(20) Commonwealth Parliamentary Debates, 19 December 1918, p. 9862.

(21) Ibid, 18 December 1918, pp. 9647-9651; and 20 December 1918, p.9918

(22) Ibid, 12 December 1918, p. 9111; 13 December 1918, p. 9244; and 18 December 1918, p. 9648.

(23) Act No. 43 of 1918.

(24) These events were discussed at great length in both Houses of Parliament (during Supply and Budget debates, etc.) - see Commonwealth Parliamentary Debates 26 February 1920 to 10 December 1921; and a number of reports by the Joint Committee of Public Accounts, published in Commonwealth Parliamentary Papers, Session 1920-21, Vol. V, pp. 17-84.

(25) Act No. 35 of 1920.

(26) See "Statement of Reasons for declaring the appointment of Lieut-Colonel James Walker to be null and void," in Commonwealth Parliamentary Papers, Session 1920-21, Vol. IV, p. 295. The Government found it necessary to pass the War Service Homes Commissioner Validating Act No. 4 of 1921, to legalise matters handled by Walker while holding the office for which he was later proved to be ineligible.

(27) For the Minister's speech see Commonwealth Parliamentary Debates, 8 December 1921, pp. 13996-14019.

(28) Ibid, p. 14024.

(29) Ibid, 27 September 1922, p. 2738, and 28 September 1922, pages 2852 and 2867.

(30) Act No. 18 of 1923.

(31) Report of the War Service Homes Commission (6 March 1919 to 30 June 1921), in Commonwealth Parliamentary Papers, Session 1922, Vol.II, p. 1293.

(32) Annual Report of the War Service Homes Commission for the Year ending 30 June 1922, in Commonwealth Parliamentary Papers, Session 1922, Vol. II, p. 1321.

(33) Commonwealth Parliamentary Debates, 13 September 1922, p. 2147.

(34) Annual Reports of the War Service Homes Commission for the Years ending 30 June 1926, and 30 June 1928, in Commonwealth Parliamentary Papers, Session 1926-27-28, Vol. II, pages 349 and 406 respectively. Examples of State Instrumentalities involved were the Workers' Homes Board of Western Australia and the Agricultural Bank of Tasmania.

(35) See supra p. 37.

(36) Jansen, V., "The Development of the Commonwealth Scientific and Industrial Research Organisation," in Public Administration (Sydney) Vol XIV No. 3 (Sept. 55), p. 167.

(37) Commonwealth Parliamentary Debates, 7 July 1920, p. 2578; see also Jansen, V., op. cit., p. 168.

(38) Act No. 22 of 1920.

(39) Act No. 34 of 1914.

(40) The Round Table No. 37, December 1919, pp. 172-3.

(41) Commonwealth Parliamentary Debates, 18 July 1917, pp. 184-85

(42) Ibid, 26 July 1917, p. 488

(43) Act No. 37 of 1917.

(44) Commonwealth Parliamentary Debates 19 July 1917, p. 270 and p. 275; for statement on staffing provisions see also Commonwealth Parliamentary Debates 25 March 1920, p. 820 (i.e. Debates on Amending Act).

(45) Act No. 15 of 1918.

(46) Act No. 6 of 1920; see also Commonwealth Parliamentary Debates 25 March 1920, p. 808, on question of representation of ex-servicemen.

(47) See list of Amending Acts in The Acts of the Parliament of the Commonwealth of Australia 1901-1950 (Sydney, Law Book Co. of Australasia, 1953), Vol. IV, p. 3593 : For the legal decision on Appeals Tribunals, see R. v. War Pensions Entitlement Appeals Tribunal; ex parte Bott (1933) 50 C.L.R. 228.

(48) 32 C.L.R. 1.

(49) See Commonwealth Public Service Board of Commissioners, Tenth Annual Report, presented 20 November 1933, p.19; and Reports of Repatriation Commission for years ended 30 June 1934 and 30 June 1935.

(50) Report of Repatriation Commission for year ended 30 June 1935, in Commonwealth Parliamentary Papers, Session 1934-35-36, Vol. II, pp. 506-7.

(51) Report of Repatriation Commission for year ended 30 June 1936, in ibid, p. 536.

(52) Report of Repatriation Commission for year ended 30 June 1937, in Commonwealth Parliamentary Papers, Session 1937-38, Vol. II, p. 256.

1923-1926 : DEVELOPMENT

One would have expected to find that the events of the Walker regime had been used by parliamentarians to justify the appointment of multi-member boards and commissions to manage public corporations, on the ground that it had proved to be dangerous to place too much power in the hands of one man. If the debates during the nineteen-twenties are to be believed, however, this was not the case, the only result of the Walker affair being the gradual hardening of the Labour Opposition's dislike of public boards and commissions in any shape or form. The first multi-member executives appeared either

(i) because of a wide variety of tasks and heavy responsibilities which in certain cases were considered to be too much to entrust to the knowledge and experience of any one man (i.e. the question of possible abuse of power did not arise) or

(ii) because of the belief that a board would not be as dependent on political goodwill as a single Commissioner whose re-appointment depended on the Minister's pleasure (or, conversely, from the extreme Labour point-of-view, in order to facilitate the control of public enterprises by strong private capitalist interests allied with the Nationalist and Country Parties, and therefore by no means non-political (1)), or

(iii) because of the desire to give a voice in executive management to non-governmental interests (e.g. Repatriation Commission).

The Repatriation Commission has already been discussed. The first Boards of Directors were those set up to manage the Commonwealth Shipping Line in 1923, and the expanded Commonwealth Bank in 1924. The conversion of the Directorship of the Institute of Science and Industry into the Council for Scientific and Industrial Research in 1926 is also indicative of this changing outlook, while the three Developmental Corporations which had a limited life during the middle inter-war period provide an interesting insight into the crystallising political and administrative theory regarding the public corporation form of administration. In fact, perhaps the clearest official statement/on the subject came with the abolition of the Development and and Migration Commission in 1930. It is also interesting to note that in two of these Developmental Corporations, municipal functions usually associated with elected local authorities were complementary to the functions of planning and development.

ever made

THE AUSTRALIAN COMMONWEALTH SHIPPING BOARD.

It is necessary to record something of the history of the national shipping service to set the events surrounding the Australian Commonwealth Shipping Board in their true perspective. Even before Federation, the Australian people had feared the almost inevitable substitution of combination for competition in the shipping services on which they were so dependent. As early as 1906 a Royal Commission Report gave substance to these fears by recommending that the Commonwealth Government should acquire a fleet for overseas trading. The Report weighed the advantages and disadvantages of public ownership, referred to the British Post Office and the Australian State Railway systems, and concluded that the element of competition should provide

the incentive to ensure the efficient management of the proposed Commonwealth Line; however it made no attempt to suggest details of management, and drew no comparisons between the examples of departmental and corporate management to which it had referred. (2) This recommendation was in general accord with Labour policy, and a national shipping line was promised by the Labour Party during the elections held immediately after the outbreak of World War 1. Although Labour was successful in the elections, nothing was done until Prime Minister Hughes' visit to England in 1916, at which time he was finally convinced of the acute shortage of shipping which not only menaced food supplies of the Allied countries, but also threatened the livelihood of Australian primary producers.

Hughes took the bold step of purchasing a fleet of fifteen ships, whose immediate task was to transport Australia's wheat surplus. In taking this action he consulted only the Deputy Prime Minister and the Treasurer, the latter arranging for the Commonwealth Bank to make available in London an overdraft of approximately £2,000,000. The secrecy of the transaction was excused on the ground that any open discussion would have sent the price of the ships soaring; and no legislation whatever was involved, the money concerned being drawn from loan funds raised by the Bank.

Some years later, the Australian correspondent to the journal "The Round Table" wrote of Australia'a reaction to Hughes' venture :

> "The coup d'état was publicly announced in Australia late in June 1916, and was received with general enthusiasm by the Press and public, although prominent shipping men did not hesitate to predict that the experiment would be a failure." (3)

Yet an earlier article in the same journal reveals that the political fever, which was to damage and finally destroy the line, was evident from the start. Recording the suspicion that there was more politics than economics in Hughes' action, it voiced a popular view that the shipping line was :

> "..... one good gift which Mr. Hughes is bringing home to the Caucus comrades who may be inclined to gaze disapprovingly at other articles in his wallet."

Hughes was, of course, shortly to be expelled from his party over the conscription issue. The Sydney "Worker" had described the deal as something to help the ex-propriation of capital, and Mr. Cook (Leader of the Opposition), in referring to this comment as "gloating", had asserted that "the buying of the Strath line may be carrying out the Labour Party's policy, but it is not carrying away our wheat." (4)

The Commonwealth or "Austral" Line was quickly established, with its head office in London, under a Manager directly responsible to the Prime Minister himself. Through a policy of competing with private companies at existing freight rates, it earned considerable profits in its early years of operations. In order to fight this new competition, the private companies drew together and formed the London Shipping Conference under the leadership of Lord Inchcape. After the war, the Austral Line continued as a thorn in the side of the "Inchcape Monopoly", and the latter resorted to a deferred rebate system in an attempt to overcome the competition. Under this system, rebates on freight charges were available to traders who could show that over a period after the actual shipment involved they had not used the services of a shipping line outside the Conference. The Conference

also enlisted the support of Australian interests opposed to public enterprise in any shape or form, in building up hostility to the line and pressing for its use on unprofitable services. Incensed by what he called "a monopoly of the worst type", Hughes began a large-scale local ship building programme in the realisation that the existing ships were old, slow, and lacking in refrigeration space. He secretly ordered the construction of the five "Bay" liners in Britain in 1919, while twenty-one ex-enemy vessels were also added to the line. Then, late in 1921, Lord Inchcape offered to buy out the line on behalf of the Shipping Conference. (5)

There has since been much argument about the benefits Australia was receiving from the Commonwealth Line. Hughes presented a financial statement showing that the line had earned £7,441,819 in profits up to 30 June 1921, but, as Commonwealth Treasurer in 1922, Mr. S.M. Bruce (now Viscount Bruce of Melbourne) strongly criticised this statement, largely on the ground that Hughes had not made adequate allowance for depreciation. (6) Yet figures produced in 1919, and quoted by Communists L.L. Sharkey and E.W. Campbell (7) showed that the Commonwealth Line had been shipping wheat for about £6 per ton, compared with charges from £10 to £15 per ton by the private lines, and that in many other ways the line was providing a beneficial public service by transporting Australian primary produce either more cheaply or on generally unprofitable routes where the private lines were not interested. Most participants in, and observers of, these events were either strongly for or strongly against public enterprise, and it is therefore difficult to obtain an objective assessment on this question. It is only these extreme socialists, for example, who have

bothered to point out the great and valuable stimulus which the Commonwealth's shipping activities provided for the development of a shipbuilding industry in Australia. The late Professor E. Shann, who could be expected to furnish a reasonable assessment, described Bruce as "a capable critic", and wrote rather caustically of Hughes that, although he was no longer Labour leader when the war ended, "he had not forgotten his Kaiser-like enthusiasm for a fleet on the ocean flying the Australian flag and observing the Australian seaman's log of wages and conditions." Nevertheless, he saw the experiment of the Commonwealth Shipping Line as a "splendid adventure". (8)

Up to this time, Parliament's interest had been primarily to criticise the unconstitutional methods by which Hughes founded the line and bought the ships without consulting it. Faced with the Inchcape offer of purchase, however, the majority of members concluded that this offer revealed the Conference's uneasiness and thus proved that the line had acted as a shield for Australian interests - even the majority of the Nationalist and Country Party members were in favour of its continuation. It would appear that the acceptance of this majority parliamentary opinion at the time by the Australian contributor to "The Round Table" in December 1922 is perhaps the most valid assessment. Indeed, as late as 1927, when the disposal of the line was imminent, the Commonwealth Parliament's first Public Accounts Committee recommended its continuation both because it had been responsible for actual freight reductions and because it had exerted on the private operators a restraining influence which was beneficial to the nation (9).

Although Hughes was now Prime Minister of a Nationalist Government, he remained true to his basic labour principles; while Bruce, through an early career in the world of private capital, had a diametrically opposed attitude to state enterprise. When he displaced

Hughes as Prime Minister in 1923, by a pact with the Country Party, the shipping line was thus deprived of its chief protector, and it was in this atmosphere that it was constituted a public corporation.

Almost immediately the new Coalition Government assumed office, Bruce announced that he did not think the record of the Commonwealth Line justified its continuation as a government venture, and produced his own financial statement converting the net gain of £2,000,000 shown by the previous administration into a book-keeping loss of £3,000,000. (10) He proceeded to prepare legislation designed to vest the assets of the line in a Board which was to be organised along the lines of the private corporations with which he was so familar, and which was to have power to dispose of any of its assets subject only to the approval of the Treasurer. Thus the Commonwealth Shipping Bill was introduced in Parliament in 1923 to provided for management of the line by "a separate control freed from political influence." Speaking on the second reading of the bill, Bruce stated :

> "The Board will be like the ordinary board of directors of a company, free from political interference in the management of the line; but it will be judged by the results of its operations, and will report to the Parliament that will have created it, and which may take any action to put an end to its functions, or in any other direction that in its wisdom it may determine to be advisable." (11)

Some years later, however, he was to ignore Parliament altogether in putting an end to the Shipping Line.

It is interesting to note that the Government sought discretion within the terms of the proposed Act to appoint three,

four, or five members to the Board as it thought justified from time to time. This is the only occasion on which the Commonwealth Parliament has allowed the executive to use its discretion in this way (cf. the modern British practice, where frequently minimum and maximum limits only are prescribed by statute, the actual number within those limits being determined by the Minister). The debates on the bill also revealed one of the few instances when the Labour Party's declared syndicalist policy of the day was raised in the Federal Parliament - in a long speech stressing the importance of the Whitley Council experiments in Britain, and other moves in the same direction, Mr. Charlton (Leader of the Opposition) unsuccessfully sought the appointment to the Board of an elected representative of the employees of the Shipping Line, his argument being that the granting to the employees of a voice in executive management would ensure harmonious industrial relations. (12) Later experiences have, of course, cast considerable doubts on the validity of this argument.

The Commonwealth Shipping Act 1923 (13) thus provided that the Australian Commonwealth Shipping Board was to consist of not less than three, and not more than five directors, all appointed by the Governor-General. In the first instance one member was to be appointed for five years, one for four years, and the remainder for three years: all further appointments were to be for terms not exceeding three years. Members were eligible for re-appointment, and held office during good behaviour, provided that a member was deemed to have vacated office if he became bankrupt. Rates of pay were fixed by the Governor-General. The Board's powers to dispose of ships, land, offices, ship-yards,

wharves and other premises, could be exercised only with the Minister's consent. The annual report consisted of a balance sheet only, which after certification by the Auditor-General, was forwarded to the Minister for presentation to Parliament. The Board appointed "such officers and servants as it thought necessary for efficiently conducting its business." The 1923 Act also gave statutory recognition to the "Australian Commonwealth Line of Steamers;" and it vested in the Board all right, title and interest of the Commonwealth to the ships of the existing line, and to Cockatoo and Schnapper Islands in Port Jackson.

The financial provisions were significant. The Treasurer was to advance such amounts as he thought necessary to provide working capital from Consolidated Revenue. He could also guarantee bank overdrafts so long as the total advance to the Board did not exceed the original amount determined, which amount could then be increased only by resolution of both Houses of Parliament. The Board was to issue Commonwealth debentures in prescribed form to cover all advances. In effect, the Government vested its property in the new Board, which was obliged to issue debentures in return to be held by the Treasurer. According to Sharkey and Campbell (14), these debentures amounted to £4,750,000, and the rate of interest charged was five per cent; Bruce thus virtually acquired a mortgage, which could be foreclosed at any time if the Board defaulted on its interest payments; and the Board had to increase its charges to pay this interest. In addition the Shipping Line, now divorced from the Crown, had to pay taxation, and the Board itself meant additional administrative expenses. Thus the Line which was serving the nation beneficially was forced by Government policy into a difficult financial position. While there is no doubt that Sharkey and Campbell had a particular axe to

grind, the Bruce-Page Ministry appears, during the mid-twenties, also to have been grinding an extremist axe, and it is not hard to imagine the effect of open and continued hostility to public enterprise by the Government leaders on the morale and efficiency of the personnel of the Commonwealth Line. The results of this political influence will be discussed in the next section.

THE COMMONWEALTH BANK 1924-45.

The year 1924 saw a major reconstitution of the Commonwealth Bank. The impetus given the development of the Bank by the 1914-18 War has already been mentioned. The Queensland State Bank was absorbed in 1920, and the Commonwealth Bank's share of savings bank business increased accordingly. However its general banking business was limited by a policy of not competing aggressively with the private trading banks, and it still had no direct control of the note issue despite the fact that the Governor was Chairman of the Australian Notes Board and had a casting vote on this body. Professor Giblin suggests that three factors seem to have influenced the Bruce-Page Government in its decision to expand the Commonwealth Bank : first, the notion of central banking was given great stimulus by various post-war imperial and international economic and monetary conferences; secondly, there was a growing need to take positive action to check the economic drift appearing in the form of sterling depreciation and a general shortage of money for investment purposes; and thirdly, inharmonious relations existed between the Government and the Notes Board, whose policy contributed to the shortage of money. (15) It has also been suggested that earlier action would

have been taken but for the decision to let well alone during the capable governorship of Sir Denison Miller, who died in June, 1923; while socialist writers unite in attributing the change to the desire of the Government to remove the Bank as a source of potential danger to private capital interests by taking its management away from an independent public official and placing it in the hands of representatives of the private capitalists themselves. (16).

In introducing the 1924 legislation which provided for the substitution of a board of eight directors in place of the single governor, for the vesting of control of the note issue in this board, and for other technical changes to facilitate the working of the Bank, Dr. (now Sir) Earle Page (by then Treasurer) predicted that the bank would quickly be transformed from a mere government institution in competition with the private banks into an effective Central Bank which would be "the keystone of the financial arch of Australia." (17) Professor L.F. Giblin asserts, however, that apart from the control of the note issue, the 1924 legislation did little in itself to turn the Bank into the desired but then little-understood central bank. Central banking in Australia, he wrote :

> "..... did not grow naturally as the result of practical experience and accumulating tradition. Neither was it the sequel of patient expert enquiry into the need for central banking and the techniques appropriate to the economy concerned. Nor was it allowed to grow quietly and gain experience before venturing on strong controversial action. On the contrary, it has been in the hurley-burley from its beginning; every stage in its development has been the subject of violent dispute in Parliament and press." (18).

Professor Giblin has provided in his book "The Growth of a Central Bank" a detailed and comprehensive account of the economic and political events which shaped the development of the Bank during its second stage from 1924 to 1945, and this thesis will attempt to cover only those administrative developments which have added to theory and practice concerning the use and organisation of public corporations.

The Labour Party, which founded the Bank under a single Governor in 1911, has not always been hostile to the idea of a Bank Board. Thus an observer was able to record in 1933 that W.G. Higgs (then Labour Treasurer) had suggested a board of directors or advisors as early as 1916 on the understanding that the members would "be like judges placed beyond the reach of outside influence", and to comment that "all along Labour had regarded the Bank as an economic institution rather than as a political convenience." (19) During the debates on the 1924 legislation, Labour did not object to the proposed board itself, but merely to its composition. The Party then proposed an alternative board to consist of the existing Governor, who would be Chairman with a casting vote, together with three Deputy Governors; Labour feared the representation of squatting and commercial interests would be harmful to "the peoples' bank", and would have preferred to see directors appointed because of financial knowledge and experience, as well as representatives of employee interests. Labour's opposition to the Board system of management developed rather in the decade following this legislation, as the new Bank Board, including as it did three company directors, a merchant, a retired chairman of the Associated (private) Banks in Queensland, and a manager of the New South Wales Wheat Pools, gradually revealed itself as being far more harmful to

the Party's interests than could ever have been imagined in 1924. (20)

Professor Giblin's research has produced the valuable information that Mr. James Kell, who had been acting Governor since the death of Sir Denison Miller, was kept in the dark on the details of the proposed legislation until a few days before its introduction in the House of Representatives; that he immediately urged that the draft should be changed, inter alia, to enhance the authority of the Governor by making him Chairman of the Board of Directors; that, while the second-reading debate on the bill was in progress, he offered "further somewhat drastic criticism"; and that as a result he was sharply rebuked in writing by the Treasurer for attempting to interfere with settled Government policy and for criticising Parliament's conduct of business. (21) This episode is of particular interest in view of later deliberations into the desirable relationship between the Government and the corporation's administration, a subject which has received greater consideration and clarification in relation to the Bank than to any other Commonwealth public corporation. There has since been much argument as to whether the private banks were consulted in connection with the 1924 legislation, and on this question the Government itself issued conflicting information in the two Houses. Whether or not this was so, the events of the next decade were to demonstrate a lack of understanding of central banking and wider economic principles on the part of most members of the Bank Board, and this development tended to confirm the fears of the Labour Party that the appointees would be representative of business groups hostile to its policy and interests.

Two Senate amendments of considerable consequence were accepted. (22) First, the original bill provided that the Bank Board would consist of a Governor, the Secretary to the Treasury, two representatives of industry and commerce, two of agriculture, and two currency experts. Senators argued that the best available men should be chosen, irrespective of their special interests, and amended the bill to provide instead for the appointment of "six persons who are or have been actively engaged in agriculture, commerce, finance or industry." The wording of the amendment left the way open for the establishment of a much narrower and less comprehensive board than was originally envisaged. Secondly, the original bill proposed to retain that provision of the earlier act relating to the notes issue to the effect that control of this part of the Bank's function might be resumed by the Treasurer by proclamation should he consider circumstances warranted such action. The Senate deleted this provision, which, if retained, would have permitted the Labour Government during the depression to give practical effect to its financial and public works policy, instead of involving the Government and the Bank in a head-on collision which helped generate that extreme bitterness in Australian politics which is still felt today whenever the banking issue is raised.

Broadly, the change to Board administration was justified by the Treasurer, Dr. Earle Page, on the following grounds (although Professor Giblin has since disputed the application of this reasoning to the 1924 situation (23)):

> "..... it is now widely recognised that the government of a central banking institution should include all that varied experience and

mature judgment can supply. It is too much to expect that all the necessary qualifications can be found in one man." (24)

As mentioned above, the Board of Directors, first constituted by the Nationalist-Country Party Coalition under the Commonwealth Bank Act 1924 (25), consisted of eight members, including the Governor of the Bank who was to be Chief Executive Officer but not necessarily Chairman of the Board, the Secretary of the Treasury, and six others who were appointed by the Governor-General and who were or had been actively engaged in industry, commerce, finance or agriculture. The Chairman was elected annually from among the members of the Board. The position of Deputy Governor remained, but the occupant was not a member of the Board. The six nominated members received initial appointments of seven, six, five, four, three and two years respectively, all subsequent appointments being for seven year terms; they served in a part-time capacity and received £600 per annum, or if elected as Chairman £1000 per annum. Like the Governor and Deputy Governor, whose conditions of appointment were unchanged, they held office during good behaviour, and they were required to make a declaration of fidelity and secrecy. Directors and officials of other banking enterprises were ineligible, while conditions of vacation of office were as provided in the case of the other early corporations. The Board was empowered to appoint an Executive Committee of not less than three of its members to carry on the Bank business between meetings. The 1924 Act also provided for the appointment of a London Board of Advice of three members to watch the London money market, it allowed Bank officers the right of appeal against the actions of any Bank authority other than

the Board of Directors itself, and it set up an Appeals Board, on which Bank officers were represented, for this purpose. Other provisions relating to the appointment of officers, the furnishing of returns, etc. remained unchanged.

In appointing the members of the original Bank Board, the Government adopted a rather unorthodox representative principle. By virtue of the Senate amendment, it no longer had to ensure inclusion of interested parties or professions; but it did follow an unofficial pattern of regional representation. Professor Giblin has pointed out that throughout the life of the Board, representation was fairly evenly divided between N.S.W. (with Queensland) and Victoria, with the Riverina (and later Canberra) included to provide a "neutral" vote. This distribution was apparently used to make it possible to assemble the Executive Committee of three members quickly, either in Melbourne or Sydney, for urgent decisions between regular meetings of the Board. Another important aspect of the Bank Board brought out by Professor Giblin was the relationship between the Governor and the Chairman : for if the Governor was not appointed Chairman, this relationship would become a critical factor in the operations of the Bank. After the strange early retirement of the unco-operative Mr. Kell, Sir Ernest Riddle became Governor and Sir Robert Gibson became Chairman. The former's interests were directed towards ordinary banking, and the Bank offered plenty of scope for his activities in this field. It was therefore left to the Chairman to concern himself with developments in central banking, and by 1929 "the complete subordination of the Governor to the Chairman was firmly established." (26) It is

significant, however, that a later proposal, the Central Reserve Bank Bill of 1930, was specially framed to prevent any reoccurrence of this division of powers, which could have proved embarrassing if two strong personalities had been involved.

THE FEDERAL CAPITAL COMMISSION.

We now come to the first of the developmental corporations. After its acceptance by the Commonwealth Government, the Federal Capital Territory (now the Australian Capital Territory) was controlled by the Home Affiars Department from 1909 to 1916. In the latter year this department disappeared, and works and administrative functions within the Territory came under the control of the Department of Works and Railways and the Department of Home and Territories respectively. Mr. Stewart (Country Party - Wimmera, Victoria, Minister for Works and Railways) stated in 1924 that "the affairs of the Territory now require the attention of two Ministers and the employment of two departmental staffs under separate control." He added that the Government felt that the existing arrangements should be superseded by a single local authority subject to the control of the Minister for Home and Territories. (27) Thus the Seat of Government (Administration) Bill was introduced to provide for the establishment of a single authority to be known as the Federal Capital Commission, with a complete range of municipal functions including construction works, provision of community services and general administration.

In his second-reading speech, the Minister outlined a number of reasons for the government's decision to establish commission government in the Territory. (28) This reasoning went as follows :

(i) The dual system of control was proving cumbersome and the need for a single authority was generally accepted.

(ii) The need for a large measure of freedom from day-to-day political control was emphasised, with certain qualifications. The Minister explained :

> "The Government has endeavoured in this Bill to strike the happy mean. It has sought to give the Commission reasonably full powers so that it may discharge its duties without being unduly hampered, and at the same time to retain sufficient authority to ensure that the Commission shall at all times be under parliamentary control ..... Generally, the whole future of the Territory, financially and otherwise, is really the responsibility of the Commission, (however) the Bill contains some restrictions on the Commission's powers."

Revenues were to be credited to a Seat of Government Fund which was intended :

> "..... to dissociate the Commission's financial operations from the ordinary affairs of the Government. The Commission will have independent funds and it will be required to make the best use of the revenue and resources of the Territory."

(iii) The belief was held that persons with a wide variety of valuable knowledge and experience could only participate in executive control of operations under the Commission form of management. Mr. Stewart explained that :

> "..... the members of the Commission will be appointed for their special knowledge of such matters as architecture, engineering, general construction, town planning, finance and general administration."

The new attitude of the Labour Party to the question of commission management was outlined by Mr. Charlton, Leader of the Opposition, in reply to the Minister's second-reading speech, thus :

> "The control which it is proposed to give the Commission should be retained by this House ..... this Bill gives power to make regulations, and although provision is made for such regulations to be laid on the table of this House, and for objection to them to be taken within thirty days of presentation, honorable members know that very often little notice is taken of them. Consequently administration is left entirely in the hands of the Board or Commission which frames the regulations. While the Government retains control, matters which honorable members consider should be ventilated can be brought up in this House, and the persons concerned can be dealt with if necessary, and first-hand knowledge ..... can be obtained ..... the time has arrived when, except in special cases, we should no longer delegate our powers to such bodies."

He continued :

> "Governments should be prepared to accept the full responsibilities of office. They should be obliged to administer the legislation passed by Parliament, and they should accept responsibility for mistakes. We have had too many blunders by recent Commissions to

justify the appointment of another one."

Here he referred to the mismanagement of the affairs of the War Service Homes Commission, and also criticised recent instances of ineffective 'Ministerial' control in relation to the Shipping Board and the Military and Naval Boards. He went on :

> "Theoretically these Commissions are under the control of Ministers, but actually they have very little authority over them ..... It is idle to say Parliament has control. Even Ministers are unable to obtain the information that honorable members desire to procure." (29)

To a suggestion on the grounds of economy that a single Commissioner only should be appointed, the Government replied that no one man could possess all the desired qualifications. Labour members claimed that the Government was merely looking for jobs in which to "shelve" certain of its less disciplined supporters, but the Minister denied that pre-selection of Commissioners had taken place. (30)

In those days interest in the merits of Commission government extended beyond the confines of Parliament House. Thus the "Register", an Adelaide newspaper, referred to this Bill in a leading article as :

> "..... an extension of the pernicious system of handing over the business of Government to commissions which are only remotely responsible to Parliament, which involve the creation of additional billets, and which, being largely independent of the Minister, may be used by him as a means of evading responsibility for extravagance and inefficiency." (31)

Newspapers tend to emphasise the sensational, and contentious political

arguments satisfy this requirement. In 1924 the question of commission government was rapidly becoming a live political issue - today, unfortunately, it is left to the academics.

The Bill originally provided that the Commission should appoint its own staff, although some officers of the two departments who were already stationed in Canberra were to be transferred to the Commission subject to the Minister's concurrence. Officers of the Commission were not to be subject to the Commonwealth Public Service Act, although provision was made, in the case of transferred officers, for the preservation of existing and accruing rights. Objection was taken to this proposal, however, on the grounds that the Commission's staff, if excluded from the Public Service Act, would be deprived of the opportunity to seek promotion in the other departments and that the horizon of their "career-service" would thus be restricted. It was also claimed that the greater flexibility in administration gained by the interchangeability of staff between departments under the Public Service Act was an advantage. Subsequently an amendment, bring/ing the staff of the Commission under the Public Service Act and giving the Chairman the powers of a Permanent Head under that Act, was actually proposed by the Minister and included in the Act which ultimately received the Royal Assent. (32) This formula is quite common in Australian State legislation, but unusual in Federal Statutes.

The Bill further provided that the Minister was to publish a plan of the proposed layout of Canberra and its environs, and the Commission was bound to follow this plan in all its operations. Parliament alone was empowered to approved changes to the plan.

An interesting sidelight revealed by these debates in 1924 was the general agreement that the transfer of the national capital to Canberra was an unfortunate move and against the best interests of the Australian people. Members of both parties voiced this opinion, but stated that as Parliament was already committed nothing could be done about it.

Under the Seat of Government (Administration) Act 1924 (33) the Governor-General appointed three Commissioners, one to be Chairman, and all to serve in a full-time capacity. Original terms were five, four and three years, later appointments being for terms not exceeding three years. Commissioners were eligible for re-appointment, and if previously public servants, their existing and accruing rights were to be preserved. Preference in appointment was to be given to returned servicemen. The Chairman was to receive a salary not exceeding £3,000 per annum, while the other members were to be paid prescribed fees, the total amount of which was not to exceed £4,000 per annum. Grounds for suspension and parliamentary review before dismissal, and also for vacation of office, were similar to those for the Commonwealth Railways Commissioner. As mentioned previously, staff were recruited under the Public Service Act, the Chairman having the status of a Permanent Head under that Act; the Commission was however required to utilise as far as possible the services of staff of the Department of Works and Railways in carrying out constructional work. The Commission was a body corporate in the usual terms.

Revenues were to be paid into the Seat of Government Fund, which was to be applied towards the payment of salaries and other operating expenses; however Parliament was to repay to the Commission

all moneys expended on the construction of Parliament House and the Governor-General's Residence. The Commission was empowered to raise loans, provided that the amount and terms of each loan were approved by the Treasurer, and that the loan itself was approved by resolution of both Houses of Parliament. Any surplus was to be applied to the reduction of liabilities and thereafter to the Consolidated Revenue Fund. Accounts were subject to inspection and audit by the Auditor-General and also to examination by the Committee of Public Accounts. The Commission was to prepare annual estimates in such form as the Minister directed, for the approval of the Minister and the concurrence of the Treasurer, and any expenditure outside these estimates could be incurred only with the Minister's and Treasurer's approval. Special parliamentary approval was needed before the Commission could embark on a project costing more than £25,000.

The Commission was required to prepare an Annual Report to the Minister for presentation to Parliament, containing an account of its control and management of the affairs entrusted to it under the Act. Quarterly reports were also to be furnished, setting out approximate expenditure and receipts during the quarter, the progress of works under the Commission's control, and details of staff appointments and separations. In addition further reports were to be furnished as the Minister required. The Act provided that the Governor-General could make regulations, not inconsistent with the Act, for carrying out the provisions of the Act. The Commission itself could make by-laws subject to the Governor General's approval.

An amending Act of 1926 (34) changed the title of the Chairman to Chief Commissioner, and gave the Minister the power to convene a meeting of the Commission at any time. The interesting circumstances under which this power was to revert to the Chief Commissioner in 1929 will be discussed in Section (c) of this chapter.

THE NORTH AUSTRALIA COMMISSION.

Another of the developmental corporations was the North Australia Commission, created in 1926. The Northern Territory, which had previously been administered by the South Australian Government, was transferred to the Commonwealth in 1911. During the following fifteen years the Commonwealth Government was forced to concentrate on war and reconstruction, and consequently the affairs of the Territory were neglected. Then, in 1926, Senator Pearce, Nationalist Minister for Home and Territories, outlined a new policy aimed at developing the Territory. For reasons similar to those outlined in the debates on the bill to establish the Federal Capital Commission, the Government decided to establish a developmental commission to be known as the North Australia Commission.

The following extracts from the Minister's speech are significant :

> "We should ask ourselves whether we really think that the parliamentary machine as it is constituted today is the proper means for carrying out development ..... The success that has attended the appointment of the Federal Capital Commission is justification for the Government and Parliament delegating some of their business powers to men selected because of their special

fitness to carry out such duties, and Parliament, without depriving itself of the ultimate power of control of the purse, will have some guarantee that the tasks it wants carried out will be carried out effectively and promptly by men competent to undertake them ..... We wish to ensure continuity of policy, and we believe that the appointment of a Commission vested with the authority outlined will result in the initiation of useful developmental schemes extending over a period of years." (35)

Many speakers thought that the people of the Territory should be given a voice in its government, and Senator Thomas (Labour - N.S.W.) argued that "..... if we agree to the appointment of the North Australia Commission, the Minister will be able to evade his responsibility." (36)

The North Australia Commission, created by the North Australia Act 1926 (37) was a body corporate with the legal status common to such corporations. Its duties, which extended only to that part of the Territory to be known as North Australia, included :

(a) the maintenance and operation of railways, subject to any agreement made between the Minister and the Commonwealth Railways Commissioner,

(b) the construction and maintenance of roads,

(c) the erection of telegraph and telephone lines,

(d) water boring and conservation,

(e) operation of ports and harbours, and

(f) the administration of Crown lands.

The Commission was to prepare a scheme for the development of North Australia, and subject to the Minister's approval, it was to carry out the works involved. If the Minister did not approve the scheme it was the Commission's duty to prepare and submit a new scheme; in addition, the Minister was empowered to request the preparation of a plan for any particular phase of development at any time. The constructing of railways, or of any other public work costing more than £25,000, was subject to the passing of a special authorising act.

The Act divided the Northern Territory into two distinct divisions, North and Central Australia. The latter was wholly under the control of the Minister for Home and Territories, through a Government Resident at Alice Springs, an Advisory Council and a separate territorial service; while in the former, the same pattern of administration was provided for those local government functions which did not come under the jurisdiction of the Commission.

The constitution of the Commission was similar to that of the Federal Capital Commission with the following exceptions :

(1) All appointments were for terms not exceeding five years.

(2) Provision was made for agreement with States adjoining the Territory for their assistance in the development of the Territory, and in pursuance of such agreements, membership of the Commission could be increased by the addition of a representative of each State concerned.

(3) Rates of remuneration were fixed by the Governor-General.

(4) The Commission appointed its own officers, who were not subject to the Public Service Act or to the Territorial Public Service Ordinances. They were to be engaged for specified periods

and subject to prescribed conditions. Provision for the grant of leave without pay to officers transferred from the Commonwealth Public Service was identical to that for the Repatriation Commission. The creation and filling of offices at a salary of over £500 per annum was subject to the Minister's approval.

THE DEVELOPMENT AND MIGRATION COMMISSION.

The third of the developmental corporations, and the one which was at the same time the most significant and the most controversial, was the Development and Migration Commission. It was inspired by enthusiastic schemes for empire migration, as a means of strengthening the growing Commonwealth of Nations and developing and expanding its resources, which sprang from the Imperial loyalties rekindled during the First World War and the growing acceptance by the dominions of the dictum "populate or perish." An Empire Settlement Committee established during the War recommended the creation of Imperial machinery to control and finance settlement and development, but peace found the empire components, flushed with their new adulthood, unready to participate in joint administrative machinery of this kind. However the co-operative spirit was confirmed at the Imperial Conference of 1921. An Empire Settlement Act was passed by the United Kingdom Parliament in the following year to authorise British participation, and the Commonwealth and certain State Governments signed an agreement providing for the proportioning of costs between them. The States, who handled the absorption and settlement of migrants, produced and implemented generous but hastily conceived schemes, whose unfortunate results quickly revealed the danger of rushing into

expensive development projects without a comprehensive and expert preliminary survey of all factors necessary to ensure success. Revised Migration Agreements with the British Government in 1925 and 1926 had the effect of liberalising finance and permitting greater attention to the provision of services complementary to land settlement schemes, but Prime Minister Bruce asserted that ultimate success depended on satisfactory marketing arrangements. He vigorously advocated preferential tariffs on the British market for Australian farm products, and in partial answer the United Kingdom set up an Empire Marketing Board in 1926, which performed valuable work in promoting empire trade with the assistance of an Economic Committee through which direct liaison with the dominions was maintained. For its part the Australian Government first created a combined Ministry of Markets and Migration in 1925, and it then followed this with the constitution of the Development and Migration Commission in 1926. (38)

Basically, this Commission was designed to introduce order into the spending of the money available under the Migration Agreements (especially the so-called £34,000,000 Agreement). The Commonwealth had the overall responsibility for this money, and found it necessary as a result of bitter experience with previous lack of planning and investigation by the States, to appoint a body which could consider and advise on the State schemes, and which would be

> "..... composed of men of such a high standard of knowledge as to command general respect, and of such security of tenure as to be beyond the reach of pressure." (39)

The Commission was also required to assume direct control of the staff previously employed on migration duties in the Department of Markets and Migration, which as a consequence was redesignated the Department of Markets.

The attitude of the Bruce-Page Government to the question of commission administration had already been shown in the debates on the Federal Capital Commission and the North Australia Commission. The hardening view of the Labour opposition was repeated in the debates on the Development and Migration Bill in 1926 by Mr. Lazzarini (Labour - Werriwa, N.S.W.) thus :

> "We are deliberately handing over the general functions of Parliament to an outside body ..... By introducing this measure the Government is asking Parliament to sign a blank cheque. Of course, if necessary, amending legislation may later be introduced, but it frequently happens that in such cases its introduction is too long delayed." (40)

The Development and Migration Act (41) provided that the Commission was to be a body corporate, and to consist of four members appointed by the Governor-General, one to be Chairman and one Vice-Chairman, and each to "devote the whole of his time to the duties of his office." Terms of appointment were :

Chairman	-	not exceeding seven years.
Vice-Chairman	-	not exceeding six years.
Others	-	not exceeding five years.

All were eligible for re-appointment, and if previously public servants, their existing and accruing rights were to be preserved. Remuneration was fixed by the Governor-General, who could remove any

Commissioner for proved misbehaviour or incapacity. By now, the idea of permitting parliamentary review of any suspension by the Minister, which had placed Commissioners in a position somewhat akin to members of the judiciary, was losing favour. An office was deemed to be vacant if a Commissioner became bankrupt or if he became commercially interested in any contract or agreement made by the Commission. Staff were not subject to the Commonwealth Public Service Act, but were appointed by the Commission subject to "prescribed conditions"; the maximum period of appointment was five years, and officers were not entitled to "compensation for any termination of appointment howsoever arising." The Consolidated Revenue Fund was appropriated to the extent necessary to remunerate the Commissioners, while for other purposes the Treasurer was empowered to advance money to the Commission. Accounts were subject to audit and inspection by the Auditor-General, an annual report was required, and the Governor-General had the usual power to make regulations.

The Commission possessed greater legal independence in regard to its migration functions than to its developmental functions. The Act provided that insofar as the development of resources and the establishment of new industries were concerned, it could act only after the Minister had given approval for each specific project or investigation. On the other hand migration schemes prepared by the Commission were to be accepted by the Commonwealth as final unless both Houses of Parliament by resolution agreed to differ from the opinion of the Commission; in the preparation of such schemes, and in the supervision of immigration activities, it was not subject to Ministerial supervision. In many ways it could be said that this Commission approached the zenith of corporate power in Australia. However its decline actually played a more significant part in the history of the "corporation movement" than did its rise to power. The later events will be considered in Section Two(c) of this thesis.

THE COUNCIL FOR SCIENTIFIC AND INDUSTRIAL RESEARCH:

Despite the unusual degree of security granted the Director of the Institute of Science of Industry, his dependence on ministerial regulations and directions and rigid parliamentary control over finance had reduced the Institute to a position of near-impotence. No finance had been provided for the erection of laboratories; while the States were luke-warm in their support, claiming that in view of the need for inter-governmental co-operation in the work of the Institute, control centralised in a single Director was unsuitable. (42) Accordingly, the Nationalist-Country Party Government forecast a re-organisation of the Institute in the Governor-General's speech opening the 1926 Session of Parliament, and it obtained a report on desirable reforms from British expert Sir Frank Heath.

This report attempted to suggest means of expanding the Institute with a view to increasing its usefulness, and enabling it to co-operate with similar organisations in other parts of the Empire. After outlining the desirable functions of a reconstructed Institute, Sir Frank Heath went on to detail what he considered to be the necessary pattern of organisation. His view was that the Institute should consist of the responsible Minister (who was to be the Prime Minister) plus an Advisory Council to the Minister. The Council should consist of a Chairman and two other members appointed by the Governor-General for six year terms (these three between them to constitute an Executive Committee of the Council), together with the Chairman or his deputy of the Advisory Committee in each State. The State Committees were to be appointed by the Governor-General on

the nomination of the State Governments, and were to consist of scientific and industrial experts. He believed that the full Advisory Council should meet twice a year, and that, at an annual meeting, it should prepare and submit to the Minister a programme of work for the next year, and estimates of the costs involved. He also recommended a desirable sectionalisation of the scientific staff of the Institute, which he considered should be constituted as a body corporate, and renamed the Department of Research in Science and Industry. (43).

Sir Frank justified his preference for a multi-member Institute with this plausible argument:-

> "The present Act appears to me to have been unduly influenced by the psychology of war, which leads to highly centralised control and tends to seek a solution to urgent difficulties calling for proper decisions in the granting of wide powers to a single strong man. But democratic communities in normal times are impatient of one-man control, an impatience likely to be emphasised when the activities of the organisation it is intended to create must inevitably operate within the boundaries, and for the benefit or the reverse, of a number of sovereign States, while if it is to be successful it must secure the active co-operation of those States and their peoples. There is, moreover, no sphere of work in which a centralised direction and control is more hostile to the free spirit of enquiry than that of scientific investigation, which must proceed with a constant and keen appreciation of local conditions and needs. Accordingly the basis of the proposed reorganisation is sought in a co-operation of all the States with the Commonwealth in the formulation of advice through carefully selected men

> of responsible position and wide outlook ..... The organisation of scientific effort on a national basis can as little be compassed by one man as the organisation of national defence." (44)

Justifying the need for an independent organisation, he drew on British experience to show that it was

> "..... very advantageous to free scientific work from the embarrassments of departmental administration, which is often of regulatory kind under statutory control, and from any possibility of suspicion that its findings are under the influence of administrative exigency."

He might well have added " - or political caprice," On these grounds he deemed it most important that the organisation should be separate from any "administrative department." (45)

The influence of these recommendations is very apparent in the Science and Industry Research Act of 1926 (46). In a gesture worthy of George Swinburne, however, the Government dispensed with Sir Frank's notion of an Institute or "Department" under a ministerial head as the administrative entity, and instead constituted the Council itself (i.e. the proposed Department minus its political head) as the body corporate. State Committees were also to play an important part.

The Commonwealth Council for Scientific and Industrial Research, as it was called, was still required to advise the Minister on matters of policy and finance, but it was also given many specific powers and duties in the scientific and industrial field. It consisted of :

(a) three members nominated by the Minister and appointed by the Governor-General, to hold office for terms not exceeding five years, and eligible for re-appointment; one of these was to be appointed as Chairman. This number was increased to five by an amending Act in 1945. (47),

(b) the Chairman of each State Committee, and

(c) such other members co-opted by the Council, with the consent of the Minister, by reason of their scientific knowledge, for a specified period.

Remuneration of members was fixed by the Governor-General and the Consolidated Revenue Fund was appropriated to the necessary extent. Members could be removed by the Governor-General for proved misbehaviour or incapacity; their position in this regard was much less secure than that of the old Director. The Council appointed its own staff and fixed their conditions of service, subject to the Minister's consent; under the 1920 Act staff had been appointed by the Governor-General on the Director's recommendation. Its activities were financed by the appropriation of a lump sum by Parliament "for the purpose of scientific and industrial investigation" (in the first instance £250,000), but this money was to be spent only in accordance with estimates of expenditure submitted to and approved by both Houses of Parliament. The Council was required to submit an annual report to the Minister for presentation to Parliament containing "a summary of work done and proceedings taken by the Council."

For many years the Council concentrated on work affecting the primary industries of Australia, and even today such work plays a

majpr part in the activities of the Commonwealth Scientific and Industrial Research Organisation which succeeded the Council in 1949. The activities of the Council and its successor are widely recognised today to be of inestimable value to Australia; yet it has been pointed out that the Council would probably have failed if it had been dependent solely on Treasury funds. As early as 1929 it was being backed by private financial support, and during the depression year 1932-33 forty per cent of its expenditure was contributed from sources outside the Treasury, quite apart from the substantial value of gratuitous services and assistance in kind. Valma Jansen, historian of the C.S.I.R. and C.S.I.R.O., has recorded that :

> "This contribution gave the C.S.I.R. a unique position among governmentally controlled institutions in Australia, because it meant that private interests were influencing the policy of C.S.I.R. by directing research into particular fields of investigation through the provision of finance for special work". (48

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(2) Report from the Royal Commission on Ocean Shipping Service, in Commonwealth Parliamentary Papers, Session 1906, Vol. III, p.p. 1037-1054. The Report alluded to similar action being contemplated by the Governments of New Zealand and Natal. However, Professor E. Shann (in An Economic History of Australia (Cambridge , University Press, 1930) p. 403) suggested that the Report was somewhat coloured by the fact that the members of the Commission were drawn largely from the Labour Party "in these days of Socialist enthusiasm, little restrained by the responsibilities of office."

(3) The Round Table, No. 49 of December, 1922, p. 186.

(4) Ibid, No. 25 of December 1916, p. 175.

(5) Ibid, No. 49 of December 1922, pp. 187-193.

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(7) Sharkey, L.L., and Campbell, E.W., The Story of Government Enterprise in Australia (Sydney, Australian Communist Party, 1945), pp.28-30.

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(9) The Round Table, No. 49 of December 1922, pp. 193-194; and quotation from Report of Committee in Commonwealth Parliamentary Debates, 7 June 1956, p. 1352.

(10) Quoted by Sharkey, L.L., and Campbell, E.W., op. cit. p.32.

(11) Commonwealth Parliamentary Debates, 4 July 1923, p. 650.

(12) Ibid, 6 July 1923, p. 801.

(13) Act No. 3 of 1923.

(14) Sharkey, L.L., and Campbell, E.W., op. cit., p.33.

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(16) See for example Jauncey, L.C., Australia's Government Bank (London, Cranley and Day, 1933), p.157; and Fitzpatrick, B., The British Empire in Australia (2 Ed., Melbourne University Press, 1949) p. 275 and p. 300.

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(18) Giblin, L.F., op. cit. p. vii.

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(21) Giblin, L.F., op. cit., p.14.

(22) Giblin, L.F., op. cit., p.20.

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(24) Commonwealth Parliamentary Debates, 13 June 1924, p. 1289

(25) Act No. 15 of 1924.

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(27) Commonwealth Parliamentary Debates, 3 April 1924, pp. 303-304.

(28) Ibid, pp. 304-306.

(29) Ibid, 8 May 1924, pp. 503-506.

(30) Ibid, 3 April 1924, p. 297 and p. 304; and 15 May 1924, p. 713.

(31) Adelaide "Register", 13 May 1924.

(32) Commonwealth Parliamentary Debates, 22 May 1924, p. 874.

(33) Act No. 8 of 1924.

(34) Seat of Government (Administration) Act No. 32 of 1926.

(35) Commonwealth Parliamentary Debates, 21 January 1926, p. 238.

(36) Ibid, 27 January 1926, p. 361.

(37) Act No. 16 of 1926.

(38) For a detailed account of these events see Bland, F.A.; "Development and Migration," in Pacific Relations Series No. 3, Studies in Australian Affairs (Melbourne, Macmillan, 1928), pp.49-75.

(39) See article "The Development and Migration Commission", in Australian Quarterly No. 4, December 1929, p.121.

(40) Commonwealth Parliamentary Debates, 29 June 1926, pp. 3598-9.

(41) Act No. 29 of 1926.

(42) Jansen, V., "The Development of the Commonwealth Scientific and Industrial Research Organisation", in Public Administration (Sydney), Vol. XIV No. 3 (Sept. 1955), p. 168.

(43) Heath, Sir Frank, "Recommendations for the Reconstruction of the Commonwealth Institute of Science and Industry", in Commonwealth Parliamentary Papers, Session 1926-27-28, Vol. V., p. 1197.

(44) Ibid, p. 1201

(45) Ibid, p. 1203.

(46) Act No. 20 of 1926. In the companion Science and Industry Endowment Act No. 21 of 1926, the Government established a fund of £100,000, the income from which was to be used by the Council in awarding grants and scholarships to persons engaged in scientific research.

(47) Science and Industry Research Act No. 25 of 1945.

(48) Jansen, V., op. cit., pp. 169-170.

1927-1931 : CRISIS

1926 was the Jubilee Year of the Commonwealth of Australia. With the virtual creation of three new public corporations during the year, it also marked a peak in what Professor Greenwood has described as that "tremendous use of boards, commissions and other agencies" made by the Bruce-Page administration in its attempt to develop "a scientific approach to industry, production and government administration." (1) At the end of the year, the Commonwealth administration consisted of ten ministerial departments :

Attorney-General's,

Defence,

Health,

Home and Territories,

Markets,

Postmaster-General's,

Prime Minister's,

Trade and Customs,

Treasury, and

Works and Railways;

and nine major public corporations :

Australian Commonwealth Shipping Board,

Commonwealth Bank,

Commonwealth Railways,

Council for Scientific and Industrial Research,

Development and Migration Commission,

Federal Capital Commission,

North Australia Commission,

Repatriation Commission, and

War Service Homes Commission.

There existed also a small number of other autonomous bodies created by the Commonwealth Parliament, such as the Auditor-General, the Commissioner for Taxation, the Tariff Board and the Public Service Board itself, which operated within the framework of parent departments for administrative purposes. During the early nineteen-twenties, the Commonwealth had also become a major shareholder in company with private enterprise in two "mixed enterprises" in the developmental field, Amalgamated Wireless (Australasia) Limited and Commonwealth Oil Refineries Limited; while the years 1924-26 saw the creation by the Commonwealth Parliament of its first three permanent Commodity Marketing Boards, the Dried Fruits Control Board, the Dairy Produce Control Board, and the Canned Fruits Control Board. These Marketing Boards were forerunners of many other boards, constituted as corporate bodies to permit the inclusion of representatives of appropriate interests, such as producers, processors, traders and sometimes workers, together usually with a Government nominee as Chairman; in many ways they must be regarded as public corporations, but for reasons of space and time they have been excluded from this survey, except for a brief explanatory note At Appendix D.

This rapid increase in the number of public boards and commissions staffed outside the Public Service Act led to the drafting of the Officers' Rights Declaration Bill in 1928. Describing the purpose of the legislation, Senator Sir George Pearce (Nationalist, Western Australia - Vice-President of the Executive Council), pointed out that there were many separate acts providing for the employment of persons in Commonwealth business, and yet outside the scope of the Public Service Act. These acts all gave the authorities concerned power to determine the conditions of employment of their own staff,

but usually provided in addition that if the persons appointed (either as members of the authority itself or as the employees of the authority) were previously officers of the Public Service, their existing and accruing rights were to be preserved. The wording, however, was not always identical, and in some cases the provision had been overlooked altogether. Accordingly, certain difficulties had arisen, and this legislation was intended to make uniform provision in regard to the preservation of rights of Commonwealth officers transferred to these other authorities. (2) The rights involved were sick leave, furlough or payment in lieu thereof, superannuation, child endowment (now discontinued) and the marriage allowance to females. Officers involved were no longer required to resign from the Public Service, but became instead "unattached officers" during their period of employment as or by the authority concerned. On termination of that employment, they were entitled to reappointment in the Public Service with such advancement as the Public Service Board thought fit.

The Officers' Rights Declaration Act, as amended to 1953, (3) schedules specifically the Acts creating the following authorities, whose members or staff are excluded from the Public Service Act, to which its provisions apply :-

Commonwealth Bank (and staff)

Council for Scientific and Industrial Research (and staff).

Court of Conciliation and Arbitration, and the Conciliation Commissioners.

Development and Migration Commission (and staff).

Federal Capital Commission.

North Australia Commission (and staff).

Northern Territory Public Service.

Public Service Arbitrator.

Public Service Commissioners.

Superannuation Board.

Taxation Commissioners and others holding statutory office within Taxation Administration, e.g. Members of Valuation Boards.

These provisions have since been extended to cover almost all the modern Commonwealth public corporations by the insertion of a clause in each individual Act to the effect that it should be regarded as if it were scheduled in the Officers' Rights Declaration Act.

Meanwhile the attitude of the Bruce-Page Government was clear. It endeavoured enthusiastically to apply methods of scientific investigation to the development of Australia, and it found the public corporation a suitable device for this purpose. It encouraged such public activities in those fields which have been described by later "Liberals" as development stimulators, but on the other hand, being firmly committed to that school of philosophy which believed in the morality of private capitalism as compared with the immorality of socialism, it seized every opportunity to limit those state activities capable of offering competition to private enterprise. Indeed, as has already been hinted (4), that stormy figure of N.S.W. Labour politics, Mr. J.T. Lang, went so far as to apply a Marxist interpretation to Bruce's liking for boards and commissions : these, according to Lang, permitted Bruce to render valuable aid to the capitalists by vesting control of public services in their hands and thus furthering the exploitation of the workers.

The position of the Labour Opposition was also clear. It had reversed from its advocacy, in the immediate post-war period, of syndicalist workers' corporations managing nationalised industries and superseding parliament. Its outlook was still socialist, but it was strongly asserting the basic democratic principles of responsible government : as public corporations involved a modification of these principles, they were rapidly losing favour with the Labour Party. In its attitude towards public corporations, in fact, the Party's policy had moved on to a position closer to "democratic socialism" than that which is today officially described by that name. With the declining popularity of the Nationalist-Country Party Coalition Government, and the approaching financial crisis and depression, the stage was now set for the effective strangulation of one public corporation, the legal abolition of three others, and a series of events involving a fifth which were to have prolonged and influential effects not only on the national economy as a whole, but also on political theory and practice concerning the public corporations themselves.

THE AUSTRALIAN COMMONWEALTH SHIPPING BOARD CONTINUED:

The Australian Commonwealth Shipping Board faced not only political but also economic difficulties. Most of the large profits earned during the war were lost in the business depression, and the Government was easily persuaded to ignore the fact that numerous private concerns were facing similar difficulties. The ships began to be sold by Bruce himself, on the principle that any sale was better than none at all. For example, although the British Government had valued the

ex-enemy vessels at £337,000, Bruce calculated his own version of their value at £197,000, and he is alleged to have paid the British Government approximately £300,000 to gain a clear title to them before selling at scrap-iron prices. The seven ships remaining in the Line in 1928 were relatively new, having been built from three to seven years before at a cost of £7,500,000; yet Bruce sold these for £1,900,000 to be paid off in instalments. Ironically, they were added to the Conference Lines, and Australia received a first instalment of £580,000. Then Lord Kylsart, who handled the business, "very conveniently went bankrupt", and Australia had neither the ships nor the money. Sharkey and Campbell may have employed emotionally tinged language in describing these events, but one must be excused for sympathising with their following comment :

"Bruce carried on like a mad floor walker at a remnant sale." (5)

The final sale was authorised and effected by the Government itself, and the legality as well as the wisdom of this action drew strong censure from the Labour Opposition in Parliament. Quoting the Prime Minister's announcement that the Board was not consulted by the Government concerning the sale but that the Government did not anticipate legal or other difficulties, Mr. Frank Brennan (Labour - Batman, Victoria), described as "extraordinary" and "amazing" the action taken by the Government in selling without consulting the authority in whom the ownership and control of the vessels had been vested by Act of Parliament. The weak justification of the Attorney-General, Mr. Latham was that the Government's hand had been strengthened by two parliamentary debates on the matter, and that, as mortgagee ,the Government had the right to foreclose on the Shipping Line. (6) Brennan held that under the powers conferred on it by the 1923 Statute, the Board alone held

this right of disposal. However, in 1928 Bruce had the numbers in Parliament, and the first Commonwealth Shipping Line went out of existence. No legislation was involved.

The Australian Commonwealth Shipping Board remained, with the sole function of holding and managing properties on the two islands in Sydney Harbour. With the gradual disposal of the Line, the Cockatoo Island Dockyard had to look elsewhere for business, and it had successfully tendered for a large engineering job at the Bunnerong Power Station, with a rather amazing result. The Commonwealth, through its Attorney-General, sued its own creation, the Australian Commonwealth Shipping Board, and the Sydney City Council in an attempt to have the contract voided, and the High Court held that the Board had no power to enter into such agreements.(7) The Dockyards were forced to bear the cost of the case, and shortly afterwards they were leased to a private company. This lease was placed on a statutory basis under the Cockatoo Island Dockyard Agreement Act of 1933 (8), parties to the agreement being the Australian Commonwealth Shipping Board, the Commonwealth of Australia, and a private company known as Cockatoo Docks and Engineering Pty. Ltd. This arrangement continued until 1949, when a new public shipping line established during World War II under separate corporate management was given legislative backing. (9) To avoid the confusion of having two Shipping Boards, and in long-delayed recognition of the fact that the earlier Board had continued for twenty-one years without shipping functions, a companion Act (10) abolished the Australian Commonwealth Shipping Board, returning the administration of the two islands to the Commonwealth Government through its ministerial agency, then the Department of Shipping and Fuel.

THE FEDERAL CAPITAL COMMISSION CONTINUED:

The Federal Capital Commission was being subjected to increasing criticism for its alleged lack of sympathy towards the local needs of the Capital Territory, and Prime Minister Bruce promised in 1928 that action would be taken to provide for representation of the residents on the Commission. In fulfilment of this promise, Sir Neville Howse (Minister for Home and Territories) introduced a bill providing for the reconstitution of the Commission to consist of a Chief Commissioner and a Second Commissioner to be appointed by the Governor-General for five year terms, and a Third Commissioner to be elected by the rate paying lessees of the Commission for a three year term. The elected commissionerwas to be entitled to attend and vote at all meetings, but was not otherwise to take part in the executive or administrative work of the Commission. (11)

The bill was opposed in the House of Representatives by Labour spokesmen Blakeley (Darling, N.S.W.) and Riley (Cook, N.S.W.). These representatives voiced the policy of their Party, which sought full restoration of parliamentary control over all activities then undertaken by commissions. They also criticised the limited representation envisaged by the bill, which gave the right to vote to only 600 out of an adult population of 4,600, and in fact the bill was finally amended in committee to expand the franchise to embrace all adult owners and occupiers of property. A further amendment reduced the tenure of appointment of the Second and Third Commissioners to one year. (12)

The Third Commissioner was duly elected, and took his seat on the Commission. From this time, friction developed within the

Commission itself; and the Chief Commissioner, Sir John Butters, attempted to analyse the reasons for this in his Fifth Annual Report (13). Sir John, who was a highly qualified engineer, had served on the Commission since its creation in 1924, first as Chairman, and then as Chief Commissioner; he was now retiring because no further funds were available for engineering projects and the Government desired to appoint a less-qualified replacement at a lower salary as an economy measure. In his report he drew attention to the non-representative form of the original Commission, noted the objection that this was not democratic, but asserted in its defence that "in the final analysis no successful form of government ever is." As originally constituted, the Federal Capital Commission had been responsible to one democracy, the whole Australian public, but it was made to serve also and more intimately the small local democracy at Canberra. He went on :

> "The larger democracy is necessarily somewhat disinterested, or in some cases antagonistic, to everything at Canberra, whereas the local democracy is primarily interested in the way that every action of the governing authority affects its own immediate interests ..... The change made a year ago by which one member of the Commission was elected by the local residents, must be a failure as constant clashes were bound to develop where the question of balancing the interests of the local public and the Australian public arose. Experience proved the probability that the elected representative was unlikely to co-operate in a friendly spirit with his colleagues by keeping clearly before the Commission the local point of view, but on the contrary invariably proceeded on the assumption that his colleagues were necessarily entirely antagonistic to the local interests. Furthermore, the municipal

side of the Commission's activities form a small part of its everyday work, and obviously its general activities could not be made subsidiary to the smaller but troublesome points associated with local government."

Chief figure in the mounting friction was Irish-educated Dr. R.M. Alcorn, second of the elected members.

The Commission system of government in the Territory was thus being sabotaged by the very attempt made to secure its democratisation, and the Bruce-Page Government announced its intention of changing the system. However, this Government was defeated before it could act in the matter, and the chapter of events not only played into the hands of the succeeding Labour Ministry, which was opposed on principle to commission government, but also resulted in a lack of serious opposition to the forthcoming abolition of the Commission. The Labour Government under Mr. J.H. Scullin began by setting up a committee of experts to make recommendations on the steps necessary to restore departmental control to the affairs of Canberra.

Dr. Alcorn assured the incoming Labour Minister for Home Affairs, Mr. Blakeley, that he would not embarrass, but rather assist the new Government. Very little time elapsed, however, before he wrote to the Minister submitting his resignation as a protest against certain actions of the Commission in relation to matters upon which he held definite views, despite the fact that only the Governor-General could accept such a resignation. Subsequently he again wrote to the Minister withdrawing his resignation, but his impaired health prevented him from attending further meetings. Mr. Blakeley outlined this

sequence of events to justify amending legislation (14) which he introduced in 1929. He added :

> "In order that the Government may not be embarrassed, and that the functions of the Commission shall be carried on until the departments are ready to shoulder its responsibilities, I propose ..... to give the Chief Commissioner the power to call meetings when he so desires, the object being to prevent a declaration that the office of the Third Commissioner is vacant when that gentleman has absented himself from three meetings."

He also proposed the further safeguard for the existing Commission of increasing from three to six the number of meetings from which a Commissioner could be wilfully absent before compelling dismissal! (15)

For the opposition, Mr. (now Sir John) Latham (Nationalist - Kooyong, Victoria) actually wished the Government well in its efforts to improve the administration of the national capital. "The last government", he said,

> "..... endeavoured to give the residents of Canberra a share in its government in relation to certain matters. The two gentlemen who have filled the positions of elected Third Commissioner were unable to recognise what was meant by a share ..... Apparently it was their desire that the residents should have complete control. I say 'apparently' advisedly, because it has been difficult to ascertain what they really wanted. Canberra is the national city, and cannot be governed entirely by its residents ....." (16)

The Commonwealth had had little trouble with the partly-representative corporations it had established in the fields of repatriation and marketing. The events described above demonstrate, however, that there are limits to the successful application of this representative principle, and similar sad results were in later years to come from representative corporations established to serve the coal mining and stevedoring industries. It seems that a degree of success with such bodies can well be achieved where there is substantial identity of interests, but that success is impossible where conflicting interests lead to dissention within management itself.

The abolition of the Federal Capital Commission followed as a matter of course. The Commission had handled the actual transfer of the federal capital to Canberra. Its programmes had involved millions of pounds and the appointment of a large staff, and the value of the major works it carried out was recognised by all parties. Yet there was again little opposition when Mr. Blakeley introduced a further bill in 1930, in fulfilment of Labour's declared opposition to the commission system of government, to provide for "more direct Ministerial responsibility in the control of the Territory." The 1930 Seat of Government (Administration) Act created an advisory and partially elected Federal Capital Council in place of the executive Commission; while the general administration of the Territory was transferred to the Home Affairs Department (now Interior), with certain specific functions being entrusted to the Health, Works and Attorney-General's Departments. (17)

THE DEVELOPMENT AND MIGRATION COMMISSION CONTINUED:

The actual appointments to the Development and Migration Commission vindicated the sincerity of the Bruce-Page Government in creating a body which could expect to command respect from all sections of the community. Although constituted as an expert as distinct from a representative commission, it could nevertheless be described in a sense as representative of all the major political parties; while the prestige of the members themselves was very high. The Chairman was Mr. H.W. (later Sir Herbert) Gepp, formerly General Manager of the Electrolytic Zinc Corporation; while the other Commissioners included Mr. W.P. Devereux, a man of wide pastoral and financial experience, and Mr. J. Gunn, formerly Labour Premier of South Australia. (18) The fourth member was a Mr. Mulvany, who had previously been Permanent Head of the Department of Markets and Migratio n. The British Economic Mission, which visited Australia in 1929, welcomed the creation of the Commission in the following terms :

> "The Development and Migration Commission is in a position not only to bring its own critical faculty to bear on the projects laid before it and to give its valuable services for their perfection, but also working as it does through committees established in each State (to ensure) that collection and co-ordination of available knowledge before schemes are undertaken which has been too often lacking in the past. The Development and Migration Commission is, in short, the nucleus of combined and co-ordinated effort for prudent development, and for the work which it has done upon the subjects specially referred to it by the Commonwealth Government as well as for what has been done in consequence, we have nothing but praise to offer ! " (19)

Work in connection with migration was responsible for the bulk of the expenditure by the Commission. This work, however, received considerable criticism, which was not surprising in view of the physical limitations on the migration programme imposed by growing unemployment in Australia. Even so, some of the most valuable work of the Commission consisted of thorough economic investigations which resulted in the prevention or postponement of rash development schemes drawn up by various State Governments under the Migration Agreement. On the purely developmental side, the Commission made a major survey of the economic condition of Tasmania and its need for Commonwealth assistance, and its advice had beneficial results for the State, particularly in the fields of agriculture and forestry. Other projects included investigations into the gold mining and dried fruits industries, and also the economic position of the Murray Valley Region. The Commission worked in close co-operation with the Council for Scientific and Industrial Research, to which it applied when scientific assistance was required.

It was also suggested in 1929 that the Commission should be used to provide an objective economic and scientific investigation of the claims of the smaller states for Commonwealth grants to assist in the balancing of budgets, and thus to separate this important question from political influences and pressures (20); but, unfortunately from many points of view, the life of the Development and Migration Commission was to be a short one. Yet three years after its abolition, a new expert and autonomous body, the Commonwealth Grants Commission, was created for this very purpose. An interesting commentary on the lack of continuity in democratic administration is provided by the

position of bodies such as the Tariff Board, the Council for Scientific and Industrial Research, the Development and Migration Commission and later the Commonwealth Grants Commission, in relation to the Inter-State Commission, which, if it had been permitted to continue in the manner intended by the framers of the Constitution, could have been developed to carry out all functions of this kind.

By 1930 depression was imminent, and the need to eliminate all doubtful expense items was widely accepted; moreover a Labour Ministry, whose declared opposition to the commission form of government has already been noted, had replaced the pro-corporate Bruce-Page administration. Thus it might be said that the change in political fortunes pointed to the fate of the Development and Migration Commission, and that, in this context, the economic situation sealed its doom. The closure was accompanied by perhaps the clearest of all official statements relating to the place of the public corporation in public administration in Australia. The significance, or the lack of significance, of this statement will be discussed later in this chapter.

I now quote significant extracts of the speech made by Senator Daly (Labour, South Australia - Vice-President of the Executive Council), when introducing the Development and Migration Bill in 1930 (21) :

> "Prior to 1926 the subjects of development and migration were under direct and complete ministerial control. The establishment of a Development and Migration Commission represented a complete change in such control. The control of the Minister

became indirect and partial. The Development and Migration Commission, being a creature of Parliament, built up its own organisation, engaged and employed its own staff, and, within its ambit, defined its internal policy free from the control of the Minister. The present Government seeks to amend the law to provide that the complete control of development and migration shall once again be vested in the executive."

The statement of principle was included in the following passage :-

"The case for the Government in support of its contention may be conveniently stated in the following propositions :

(1) That our system of constitutional government implies, as a general rule, that executive administration shall be supervised and controlled by individual Ministers; and

(2) That necessity only, as opposed to convenience, should be the exception to such general rule, and such exception, once it is created, should continue only so long as the necessity exists."

He amplified these propositions thus :-

"(1) The responsibility to Parliament of a Ministry, individually and collectively, is secured by the fact that Ministers are, in effect, dismissable at the pleasure of Parliament through their inability to carry on the government without its support; and

(2) A member of the Public Service may be dismissed by the Crown .....(On the other hand,) commissioners are not dismissable by Parliament and neither they nor the

members of their staff are members of the Public Service."

Senator Daly concluded :

"..... in the case of a Minister or a Ministry being overworked, the remedy is for Parliament to increase the number of Ministers and not to create commissions ..... Even if the necessity to appoint the Development and Migration Commission did exist when the previous government appointed that body, that necessity no longer exists ..... The Government has no desire to detract from the value of the work done by the Commissioners and the staff .... But I ask what work has the Commission performed which could not have been done as efficiently and as economically by a Minister."

He showed that the Commission was costing Australia over £100,000 per annum, and was maintaining a special staff in London, independent of Australia House; and that the salaries bill for the Commissioners themselves exceeded that of seven Cabinet Ministers.

The Act which abolished the Commission provided that officers of the Commission would continue to hold office under the Commonwealth subject to good behaviour for the remainder of their terms of appointment and subject to the conditions of appointment; and that compensation would be paid to the Commissioners for the unexpired portions of their terms. (22) The Opposition accepted the closure of the Commission in view of the prevailing economic situation, but it did not subscribe to the Labour Party's expressed attitude towards commissions generally.

THE NORTH AUSTRALIA COMMISSION CONTINUED.

The fate of the North Australia Commission was sealed by the same combination of economic pressure and political theory. The three members of the original Commission had included a first-class engineer, an official highly experienced in transport problems, and another with lengthy experience in land settlement administration. During its lifetime this Commission had produced three reports but the Government took little or no notice of these and did not act on any of their recommendations. The Government was more and more concerned with the difficult economic situation leading up to the depression and had neither time nor finance to spare for expansion in the territory. The adjoining States had refused to participate in the project.

In introducing the Northern Territory (Administration) Bill in 1930, Mr. Blakely, Home Affairs Minister, paid

> "..... a tribute to the ability of the present North Australia Commission..... They were given a job but no money with which to do it ..... it follows that the Commission itself is unnecessary and that administration by a commission is costly and cumbersone." (23)

He added that the new Labour Ministry had appointed a committee of responsible officers of the Auditor-General's Office and the Public Service Board to investigate the method of government in the Territory, and that this committee had recommended restoration of a single Administrator responsible directly to the Minister for the affairs of the entire Territory, a recommendation which was favoured by the majority of residents in the Territory.

Thus, under the 1931 Act (24) the Commission was abolished, the division of the Territory was terminated and the system of administration in force before the passing of the North Australia Act 1926 was restored. Provision was made for the completion of the periods of engagement of members of the small staff which the Commission had set up, and for the transfer of assets and liabilities to the Home Affairs Department.

Thus, one major state enterprise under corporate management had been disposed of by an anti-socialist Government, which nevertheless favoured corporate management, while three other corporations were closed by a socialist but avowedly anti-corporate Government. Meanwhile another corporation, the Commonwealth Bank, was rapidly moving into position first to embarrass and then to force its will on this popularly-elected Labour Government. Apparently convinced that corporate management was a matter of necessity as distinct from convenience as far as the Bank was concerned, the Labour Party did not use these events to justify conversion of the Bank also to departmental administration. It did, however, use them as the basis for a strong advocacy of greater ministerial control over the Bank, an advocacy which was to result in the application of a clear formula on this vital subject for the first time in the 1945 banking legislation.

THE COMMONWEALTH BANK 1924-45 CONTINUED.

The Commonwealth Bank's organisation had been expanded in 1925 by the addition of a special Rural Credits Department. This change was accomplished by the passing of special legislation (25), and it marked the arrival of the Country Party as an influential political force in

Australia. Other special purpose departments have since been added by similar means, and two years later further legislation was passed aimed at separating the Savings Bank business from the other activities of the Bank. Although the administrative provisions were never acted upon, this legislation had some unusual features.

The Commonwealth Bank (Savings Bank) Act 1927 (26) provided for the appointment of a Commission, independent of the Board of Directors, to manage the new Savings Bank. This Commission, which was to be a body corporate, was to consist of a Chief Commissioner, who was to be Chief Executive Officer, and two other Commissioners, one of whomwas to be a Director of the Commonwealth Bank (other than its Governor or the Secretary of the Treasury). All three were to be appointed by the Governor-General for terms not exceeding seven years, the Commonwealth Bank representative following a nomination from the Board of Directors of that Bank. The Chief Commissioner was to serve in a full-time capacity, and his salary was to be fixed by the Governor General; while the other two Commissioners were each to receive a salary of £500 per annum. All three were required to sign a declaration of fidelity and secrecy, and were to hold office during good behaviour only. The office of Chief Commissioner was to be regarded as vacant if the occupant accepted other remunerative employment; while any of the three offices would be vacated if the occupant became a director of a bank other than the Commonwealth Bank, became bankrupt or insolvent, absented himself for the prescribed period, or became permanently incapable of performing his duties.

After dealing with the powers of this Commission, the Act further provided that;

> ".....until the appointment of the Commission, which shall only be made on a resolution passed by both Houses of Parliament approving such an appointment, the Savings Bank shall be managed by the Board of Directors, and the Governor shall have power of Chief Commissioner under this Act."

Thus Parliament retained for itself the right to consider further the need for separate management for the new Savings Bank which the Act created; in fact the resolution was never carried and the provision for separate management of the Savings Bank was repealed in 1945. Likewise the 1927 Act provided that the Commission (if and when appointed) should appoint its own officers and servants. The Act further provided, however, that "so far as possible practical arrangements may be made by the Commission with the Commonwealth Bank of Australia for the utilisation of a common staff of officers." In fact, of course, the Commission was never appointed, and the business of both banks has always been carried on by a common staff comprising the "Commonwealth Bank Service." However this was not the only occasion on which separate management for the various activities of the Bank was proposed. Such moves by the Scullin Labour administration in 1930 will shortly be recorded, while in 1957 similar action has again been under consideration, with further sensational results.

However, the financial provisions of the separating legislation of 1927 were carried out. It has been alleged that the legislation was a further step in the destruction of the "peoples' bank" by the capitalist-backed Bruce-Page Government. Socialist pamphleteer D.J. Amos, for example, attributed the measure to the visit to Australia of Sir Ernest Harvey, Comptroller of the Bank of England

(which was then a private institution), early in 1927, for Sir Ernest had stated that savings bank business did not come within the ambit of a central bank of reserve. (27) Amos argued that savings bank deposit represented the greater part of the capital of the Commonwealth Bank, and that the bill which thus deprived the Bank of its cash reserves and at the same time its most profitable activity, made no compensatory provision to compel other banks to lodge their reserves with the so-called "bank of reserve". Thus the Commonwealth Bank was to become in the words of the then Leader of the Opposition :

> "..... neither a trading bank nor a savings bank, nor yet a reserve bank, but a thing of shreds and patches, at the mercy of private institutions, and which could be destroyed at any time (28)

Even Professor Giblin, a qualified observer without such a partisan outlook, has criticised the advice given by English banking experts on the subject of central banking, but to a certain extent he uses this criticism to excuse whatever indecisiveness and errors there may have been on the part of the Australian authorities. (29) Yet some weight is given to the socialist view by the very fact that, although the separate administrative provisions of the 1927 Act were not invoked, no time was lost in transferring Commonwealth Bank securities to the account of the new "Savings Bank".

The year 1929 saw a marked deterioration in Australia's financial situation, and, in October, the advent of the Scullin Labour Administration. At the insistence of the Bank Board, the Government almost immediately introduced legislation to provide for the mobilisation and regulation of the gold reserves. This, the Commonwealth Bank Act 1929,(30) was supported by a letter to Parliament from the Chairman of the Bank Board strongly recommending the proposed action and approving the

Bill, and its mechanism placed the Board in a very strong position in relation to the Government, although the significance of this was not be become apparent until later. The strength of its position was increased by the seemingly accidental fact that the Senate had in 1924 deleted from the Bill creating the Bank Board the provision that the Treasurer might resume control of the note issue by proclamation.

The Scullin Government attempted both to follow the lead of many overseas countries in creating distinct central banks, and at the same time to regain the lost powers, by dividing the Bank into two separate entities, a Central Reserve Bank, and a new Commonwealth Bank which was to become simply a Government trading and savings bank operating in competition with the private banks. Thus Mr. E.G. Theodore, then Federal Treasurer, introduced the Central Reserve Bank Bill on 2 April 1930. The Reserve Bank was intended to control the note issue and the gold reserves, to hold compulsorily a fixed proportion of the reserves of all other banks, and to act as a bankers' clearing house. It was to be managed by a Board which was to be appointed by the Governor-General, and which was to consist of not more than nine persons, namely : a Governor, not more than two Deputy Governors, the Secretary of the Treasury, and five other Directors who, as in the existing Bank Board of non-Labour creation, were or had been actively engaged in agriculture, commerce, finance or industry. Experience in labour organisation was included as an alternative qualifying interest. The Governor was to be Chairman of the Board and chief executive officer, and the other five Directors were to retire in rotation by means of the now accepted principle of staggered terms of appointment. (31) A companion measure , the Commonwealth Bank Bill (No.1) of 1931, aimed at reconstituting the Commonwealth Bank under a Governing Manager who was to be advised by a committee of various officials of that Bank. The first Bill passed the House

of Representatives, but, being unacceptable to a hostile Senate, it was referred to a Committee by that Chamber; while the second was delayed indefinitely pending a decision of the first. Both finally lapsed.

The Bank Board, with its powers unfettered, endorsed the deflationary policy which was demanded by Sir Otto Niemeyer of the Bank of England in 1930, and which placed great emphasis on the balancing of budgets. Professor Giblin has given examples of the growing opposition of the Bank Board to requests for additional government finance, but he has also pointed out that the Bank was forced into a difficult position by the Government's indecision. He quoted a particular letter from the Chairman, Sir Robert Gibson, to the Prime Minister, Mr. Scullin, dated 15 August 1930, to support his contention that :

> "The Chairman was nervous about appearing to interfere with the proper functions of Government, and the language in which his warnings and exhortations were couched lacked somewhat of incisiveness." (32)

Yet this letter, which read as follows, contained a definite threat :

> "The seriousness of the whole position is such that my Board is compelled to advise you that it has been forced to intimate that unless and until matters are so adjusted as to make the future position clear and definite in a manner which can enable the envisaging of a practical financial scheme, it will go no further than has been promised in respect of London up to 30 December and Australia up to 30 September." (33)

The great bitterness engendered by these and other related contemporary events is apparent from the writings of labour sympathisers, and D.J. Amos observes, for example, that following his reappointment for seven years on 4 August 1930, Sir Robert Gibson "no longer troubled to be polite." He was alleged by Smith's Weekly, in its issue of 4 October 1930, to have said :

> "Mr. Prime Minister and Members of the Cabinet, you ask me to inflate the currency by issuing another £20 million in notes. My answer is that I bloody well wont." (34)

While this is doubtless a somewhat embellished version of what actually transpired, it nevertheless points to the grave cleavage which was then developing in Australian politics on the banking issue, and which is of major importance to an understanding of the evolution of the public corporation in this country.

The Bank Board took the attitude that it was open to the Parliament, which had created it and entrusted it with the responsibility for controlling the currency of the country, to relieve it of that responsibility if this was deemed advisable. While the responsibility remained, however, the Board must act in accordance with its best judgment. The difficulty was that, with a hostile majority in the Senate, the Government was no more able to force its will on Parliament than it was on the Bank Board. Moreover, the Board was increasingly becoming involved in an argument with the Government on the subject of providing credit to finance deficits, a question which Professor Giblin considered,

> "..... was, in fact, political, and it was a political judgment (though not a party judgment) which the Board was making and

continued to make on depression problems, notwithstanding its honest disclaimer of political bias." (35)

Early in 1931, a Conference of Premiers and Treasurers agreed on a policy for the recovery of the economy and submitted its proposals to the Commonwealth Bank Board and representatives of private banks. Sir Robert Gibson's reply, dated 12 February 1931, was again not conciliatory :

> "Subject to adequate and equitable reductions in all wages, salaries and allowances, pensions, social benefits of all kinds, interest and other factors which affect the cost of living, the Commonwealth Bank Board will actively co-operate with trading banks and the Government of Australia in sustaining industry and restoring employment." (36)

Various suggestions were made by men such as the Commonwealth Treasurer, Theodore, and the new Premier of N.S.W., Mr. J.T. Lang; these led to the so-called "Battle of the Plans" (37). The Conference was not prepared to accept Sir Robert Gibson's conditions, and it authorised the Commonwealth to proceed with a Fiduciary Notes Bill designed to overcome the Bank's objection to the Government's request to raise the note issue beyond the limits set by law in relation to the gold reserve. Theodore introduced this Bill on 5 March 1931.

On the following day Sir Robert Gibson wrote to the Treasurer stating that the Bank was unable to find £5,000,000 to cover the Government's impending debt commitments. The Treasurer then proposed legislation to enable the note issue reserve to be utilised in this emergency, and requested the Bank's agreement to this course. The Bank Board replied that it was unable to give its approval. Professor

Giblin suggested that :

> "..... this reply was meant not so much to disapprove of this use of the gold as to throw the whole responsibility for the decision on the Government."

He went on :

> "It seems in fact to have been one more move in the effort to force economy and retrenchment on governments, and opinion in banking and business circles was hardening to the view that this objective was inconsistent with the continuance of Mr. Scullin's Government." (38)

Nevertheless, on 17 March 1931 the Government introduced a Bank Interest Bill designed to control interest rates by reducing bond interest to three percent. This was followed on 24 March 1931 by a further Commonwealth Bank Bill (No. 2) which was designed to give the Government power to commandeer the gold reserves held by the Bank. Parliament was thus by now considering five separate bills dealing with the banking problem. The fate of those respecting the creation of the Central Reserve Bank and the reorganisation of the Commonwealth Bank has already been recorded. Likewise, the Fidiciary Notes and the Bank Interest Bills went to inevitable slaughter in the Senate. In view of the grave urgency of the situation it seems that there was some possibility that the remaining bill, the Commonwealth Bank Bill No. 2, might escape the Senate's axe (39). However the conservative elements in that chamber took action to produce the climax of this chapter of unhappy events.

On 2 April 1931 Sir Robert Gibson had delivered his long-awaited ultimatum. On behalf of the Bank Board, he set a limit on the

amount of advances the Bank was prepared to make : in London the limit had already been reached, while a few weeks would exhaust the limit in Australia (40). The Government's only remaining hope to avoid defaulting lay in this Bank Bill. However the Senate took the unprecedented action of summoning Sir Robert to the Bar of the House on 6 May 1931 for questioning on the merits of the Bill. The Senators questioned him in order. His attitude was one of general opposition to the Bill, and to any attempt to depart from the gold standard, although he admitted that it would be better to ship gold overseas than to default. However he made it plain that he considered there was another alternative, although pressed on this point by various Senators and later the Treasurer, he refused to amplify. Professor Giblin suggested that Senator Sir George Pearce understood the political nature of this alternative, for after Sir Robert's examination, he recommended rejection of the Bill, saying that "..... the only way in which Australia's credit can be restored is by this Government being torn away from the Treasury benches." (41) D.J. Amos thought, however, that the alternative was simply acceptance of the Bank's conditions already advised to the Government, i.e. economy and retrenchment. Amos alleged that during the questioning, Senator Daly (Labour - South Australia), had said in referring to the Bill : "You might have let the child live;" to which "the grim old man" had replied : "It is not my child." (42)

The remainder of this story is something of an anti-climax. Sir Robert Gibson had already been reappointed Chairman of the Bank Board for a further term of seven years by the very Government whose mastery he had accomplished. The legislation was thrown out by the

Senate. The General Manager of the Bank of N.S.W., Mr. A.C. (later Sir Alfred) Davidson, who had been prominent in the banking negotiations of the period, actually made an unsuccessful attempt to mediate between the Bank Board and the Government. But some compromise had to be worked out, and the acceptable "Premiers' Plan", which provided for drastic retrenchments and increased taxation, and was at the same time the nucleus of a scheme for reconstruction, emerged from a Premiers' Conference held during May and June 1931. The Bank compromised by accepting depreciation in the exchange rate and deficit financing, the Government by accepting economy and retrenchment. After June 1931, an uneasy alliance between the Commonwealth Bank and the Australian governments resulted in the financing of revenue deficiencies, although haggling continued between the Bank and the Loan Council in regard to loan moneys required to create public works and relieve employment. (43) In January 1932 Mr. Scullin's Government was replaced by that of Mr. J.A. Lyons, who a few months previously had led a breakaway group of Labour members across the House to coalesce with the Nationalist Party and to form the new United Australia Party. Although many difficulties were still to be faced in bringing about an economic recovery, generally speaking the new Government and the Bank Board found each other far more amenable than had previously been the case, and four years were to elapse before any critical analysis of the events described above was attempted from the administrative point of view.

Professor P.H. Partridge has recorded angry attacks made by Theodore, who was "cornered, and smarting under the somewhat imperious warnings he had received from Sir Robert Gibson," against the

Commonwealth Bank in 1931. The Treasurer had asserted, for example, that the bank was quite illegally trying to prescribe the Government's policy, and that the Bank's own severely deflationary policy had been responsible for at least some part of the economic distress (44). Indeed, modern economic theory is far more liberal than that applied by the essentially conservative Bank Board in 1930-31. Yet, as Professor Partridge has shown, in the struggle between the Labour Government and its Treasurer on the one hand and the Commonwealth Bank and its Chairman on the other hand, it was the Treasurer and his Government who lost ground in the electorate. The desire of the latter to establish political control over the banking system, reasonable as it may seem in retrospect, actually contributed to the alliance of opposition groups and strengthened their electoral support. Nevertheless, the conflict :

> "..raised very important questions of principle. In particular, it raised the question of the power which the government should have in relation to the central bank in order to carry through a financial policy for which the government assumed responsibility. The attitude of the governor during the last few months of the Scullin government, and his success in dictating terms to the government, left its mark on the thinking and the purposes of the Labour party, and helps to explain some of the steps taken by it when it came to office again during and after the war." (45)

In the context of the events of the later nineteen-twenties and early nineteen thirties, which have been described in the foregoing pages, it is now necessary to examine the significance of the policy of the Australian Labour Party in regard to public corporations. This was the policy which

had been developing quite obviously since the decline of the sydnicalist doctrine, which was expressed so emphatically in Senator Daly's statement of 26 March 1930, and which resulted in the closure of the three developmental corporations during the term of office of the Scullin Government. Its basic argument was that responsible government required the administration to be fully accountable, and that to ensure this ministers must possess full and effective responsibility for all government activities. The use of autonomous commissions was a negation of responsible government, and the mere convenience of governments did not warrant any departure from this principle. Such departure could only be justified where the necessity for this action was proved. It was further implied that any such necessity would be of limited duration only; and the solution to an overworked ministry was the appointment of more ministers. This theory represented the first clear exposition of administrative principle in relation to the organisation of government activities in the history of the Federal Parliament; and Senator Daly's statement was perhaps the clearest of all official statements relating to the place of the corporation in public administration in this country.

In retrospect, Senator Sir George Pearce (then Senate Opposition Leader) attempted to justify the Nationalist-Country Party policy towards public corporations during the nineteen-twenties, in his reply to Senator Daly's statement on the Development and Migration ~~Commission~~ Bill in 1930. Put together, the argument ran as follows : that parliamentary government had originated in an age when society was not nearly as complex; that, as the ramifications of society and business have been extended, the problems of government itself have

become more complex; that, in view of the limitations on parliament's ability to cope with some of the more complex problems, it was incumbent on governments to bring to their aid the most expert and business-like advice available; and that this was possible only through the creation of boards and commissions since sufficiently attractive remuneration and working conditions could not be provided to officials within the framework of a ministerial department. The last point was intended as an answer to Senator Daly's view that the desired staff of experts might just as conveniently have functioned under, and reported to, a Minister. (46) The great problem for both practioners and students of modern public administration is that there is much truth in both the Labour and the non-Labour points of view, as outlined in these passages, and effective democratic government depends on finding some satisfactory reconciliation of the two.

With the Labour Party apparently firmly convinced of the wisdom of its own policy, one might have expected to see evidence of its application to other fields of government activity in which public corporations were operating during the time of the Scullin Government. But no serious attempt was then made either to abolish or to transfer to departmental administration the Commonwealth Railways Commission, the Repatriation Commission, the War Service Homes Commission, the Council for Scientific and Industrial Research, or the Australian Commonwealth Shipping Board which had already been shorn of its major raison d'etre. And in the space of three short years, the Government which had expressed this conviction drew up proposals for the creation of a Central Reserve Bank, the constitution of whose managing board was obviously modelled on the existing Commonwealth Bank Board, and

for the creation of a further commission to control the National Broadcasting Service.

Admittedly the Government was proposing to replace the existing Bank Board by a single Governor, or "Governing Manager". The Belief that one-man control was dependent to a greater degree on political goodwill, e.g. through power of re-appointment, than a multi-member executive where rotation of appointments facilitated continuity of policy, and where strength accrued through very numbers, had been convincingly argued; and Labour saw that a single-member executive was therefore likely to be more amenable to political influences. It was this desire to modify the independence of corporations which was actually to shape future Labour policy. There was no attempt in 1930 to deprive the Bank of its separate corporate status.

These moves were in direct contradiction to the declared policy of the Government, and leave the impression that the Government did not regard the principle it had expounded as important in itself, but used it merely as a means towards getting rid of a particular irritation at the time.

Perhaps the pressure of work relating to the economic crisis prevented any attention being given to other corporations whose work continued despite the depression, and which were functioning fairly smoothly. These might have received attention later had the Labour Government remained in office. Two of the corporations then functioning, the Repatriation and War Service Homes Commissions, were in fact converted to departmental administration by a Labour Government seventeen years later; but the same Government also created many new

corporations. Careful research through proceedings in Parliament during the period of the Scullin Government has revealed no evidence of any real attempt to tackle the other corporations then operating. Senator Sir George Pearce reminded the Government on 28 March 1930 that before its election to office Labour campaigners had toured the country castigating all boards and commissions. Feeling on the issue had apparently been so strong that the 1928 Labour Campaign Manual edited by Mr. E.G. Theodore had listed for extinction no fewer than forty-eight Commonwealth boards and commissions, but the Senate Opposition Leader suggested an emotional rather than a rational basis to the campaign in view of the fact that this number was arrived at only by the inclusion of defunct Royal Commissions and bodies such as Taxation Boards of Review and the Commonwealth Literary Fund Board. In fact, and as he pointed out, the Labour Government dealt with only the three developmental corporations out of "this formidable list." (47)

Much has been said about the Senate debates on the Development and Migration Bill of 1930. In the House of Representatives, however, this bill occasioned scarcely any consideration of administrative principles except that Mr. Francis (Nationalist - Moreton, Queensland) reminded the Government that some of its members had publicly announced their surprise, on coming to office, at discovering the valuable work being performed by certain corporations (which taunt drew the reply that the previous Government was to blame for this since its publicity work had been so poor !) Mr. Francis accused the Labour Government of acting against its better judgment, "at the dictation of those who are prompting it from outside, to abolish this commission in accordance with its undertaking to do away with all boards and commissions." (48) The inference is not hard to follow in view of

recent events within the Labour Movement which have demonstrated the often overriding power possessed by its non-parliamentary organs. These organs, such as Executives and Conferences, were proposing a large programme of nationalisation, but their attention to administrative method was limited to the criticising of the commission form of management.

In proposing corporate control for the Central Reserve Bank and the National Broadcasting Service, the Government was no doubt influenced by contemporary developments overseas, and it seems that it was persuaded to attach more importance to these than to its own expressed policy. Thus, in his second reading speech on the Central Reserve Bank Bill, Theodore referred at length to the organisation of overseas Reserve Banks (49). Again, the Government's broadcasting proposals were obviously influenced by the creation of the British Broadcasting Corporation in 1926; yet New Zealand was content to use conventional departmental machinery for this purpose.

A less likely explanation of the contradiction between theory and practice is one which involves a play on terms. In 1924 and up till 1928 Labour members were criticising boards as well as commissions. The 1930 statement referred to commissions only, and the Bank at least was managed by a board. However it is hard to conceive that Labour members drew any distinction because of this difference in wording. The looseness of names has always been a characteristic of Australian government agencies, and there has not been any purposeful differentiation between the two.

Or perhaps by 1930 the Federal Labour Party was beginning to realise what Lang had already recognised in N.S.W., what the Adelaide

"Register" had feared as early as 1924 (50), and what Professor Bland was to lament in 1934 (51); and decided to try its hand too at the exercising of under-cover pressure through the manipulation of appointments to the supposedly-autonomous public corporations.

However valid the above suppositions may be, Labour members did probably genuinely believe that the developmental corporations had been creatures of convenience only, whereas banking boards and broadcasting commissions were probably regarded as necessities. Yet despite the clarity of expression of Labour's administrative principle, its weakness is that such judgments in themselves may be political. What criteria satisfy the test of necessity? Despite the fact that the independence of such commissions is relative and not absolute, all parties in Australia have agreed on the necessity for commission management of the National Broadcasting Service. Yet New Zealand did not share this judgment. /Moreover, as Professor Giblin has shown, questions of central banking cannot be divorced from politics, since national economics are at the root of most political issues. The great problem with Senator Daly's definition of a desirable policy in regard to the use of public corporations was that the two key words in this definition, convenience and necessity, were open to varying interpretations. Thus, in effect, no clear policy had been laid down, and even Labour Governments themselves were in later years to create many corporations in settings where the absolute necessity was open to doubt. The factors which were held to constitute necessity were not defined. Even so, the debates concerning the creation and abolition of public corporations during the years from 1924 to 1931 are in marked contrast to those of recent years, for they show that, no matter what standpoint they adopted, parliamentarians a generation ago had a much clearer concept of the place of the public

corporation in administration; or, at least, that they played much closer attention to the method of management of government business.

The decade of development and depression thus produced constructive thought on the problems of administrative organisation. Non-labour interests had developed a reverence for the qualities of expertness and business method, in non-competitive fields, which were satisfied by the corporate form of management. Labour interests, whose socialist beliefs demanded a far greater intrusion by governments into business and commercial fields, were nevertheless inherently hostile to these qualities; and instead, in theory if not in practice, they stressed the fact that such management was foreign to the principles of responsible government. But to a large extent this constructive thinking was forgotten in the depression and its aftermath. The bitterness engendered at this time has left a distinct tendency for the banking issue, particularly in its more emotional aspects, to be regarded in political quarters both as far more important than and separate from other aspects of administrative organisation. Developments in relation to the Commonwealth Bank have, as a result, frequently followed a different course from those affecting other corporations.

In another sense also, the year 1931 really marks the end of the old era and the beginning of the new, insofar as Australian public corporations are concerned, for it was in that year that final plans were being drawn up for the establishment of the Australian Broadcasting Commission, whose evolution reflects the changing concept of the status of the public corporation, and whose framework has been extensively copied for other modern corporations.

There is, however, little evidence of any positive attempt to reconcile the live "banking" issue and the politically dead "commission" issue. A major enquiry during the nineteen-thirties was to suggest a solution to the problem of the relationship between the government and the central bank, and this solution was adopted in 1945. Yet in regard to other corporations we have generally proceeded on our merry inconsistent way. There is much to be said for the view that the varying functions of corporations require varying approaches to such questions. Nevertheless some attempt to find an overall set of administrative principles is essential to clarify administrative practice - this has been attempted in other countries. There has been no full enquiry in Australia, for example, as to whether the banking formula would be appropriate to other corporations; and it therefore comes as something of a surprise to find that the Menzies Government has made some use, without any accompanying explanation, of the relevant provisions of the 1945 banking statute in creating new corporations such as the Export Payments Insurance Corporation in 1956. This unannounced development will be referred to in Section (f) of this Chapter.

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1932-1944 : RECOVERY AND WAR.

The following seven years saw the rise of Fascist Power in Europe and the weakening of the League of Nations, with the result that Australian politics became more concerned with questions of foreign affairs and defence than ever before in peace time. Moreover both the Australian Labour Party and the national economy as a whole faced a period of very gradual recovery from the disorganisation of the depression period. Consequently there was no possibility of a repetition of the enthusiastic developmental activities of the nineteen-twenties, and in comparison with this period the country did little more than mark time under the guarded stewardship of Mr. J.A. Lyons.

On the administrative front, some of the ashes of the Development and Migration Commission were rekindled in 1933 by the creation of the Commonwealth Grants Commission, an advisory and non-corporate body which draws its administrative services from the Prime Minister's Department; while the Australian Meat Board and the Australian Apple and Pear Board were added in 1935 and 1938 respectively to the list of Commonwealth commodity marketing boards. The issue of national insurance was raised again in the latter part of the period, and a National Insurance Commission was constituted by the National Health and Pensions Insurance Act of 1938. (1)

THE NATIONAL INSURANCE COMMISSION:

Although this National Insurance scheme proved to be an abortive one, the administrative provisions of the legislation involved some interesting innovations. There was nothing very unusual about the National Insurance Commission itself, which was to consist of three

members appointed by the Governor-General to serve for terms not exceeding seven years and eligible for reappointment. Qualifications for office were not prescribed. Commissioners were not, without the approval of the Governor-General, to engage in other paid employment. Conditions of suspension and dismissal were similar to the other early corporations, while the Commission was legally constituted as a body corporate. It was charged with the general administration of the Act "subject to the control of the Minister", and was to present an annual report to Parliament. However, the staff of the Commission were to be subject to the provisions of the Public Service Act, and in this respect it resembled none of the earlier or contemporary Commonwealth public corporations except the Federal Capital Commission. For this purpose the Chairman of the Commission was to have all the powers of a Permanent Head under the Public Service Act. These administrative provisions occasioned little or no comment in the parliamentary debates, although it is interesting to note that the Treasurer, Mr. R.G. Casey (United Australia Party - Corio, Victoria), who introduced the Bill, answered a question on the amount of salary the Governor-General was likely to approve for the Commissioners in the following way :

> "The practice of the Government is to consult the Public Service Board on such matters, and unless there is any good reason to the contrary - I do not think there will be - to accept its advice." (2).

The three Commissioners were duly appointed, and one of them, Mr. D. McVey, was responsible for an interesting article on the administrative aspects of the scheme in the first issue of the present series of the Journal of the Australian Regional Groups of the Institute

of Public Administration. On the question of staffing, he outlined the functional sectionalisation of the central staff of the Commission, and added that "following the general practice of decentralisation in Commonwealth Departments, a Deputy Commissioner with a local staff has been appointed in each State." (3) The most notable feature of the proposed administrative system was, however, the important role planned for Advisory Councils. The Act provided for the use of voluntary organisations such as Friendly Societies and Hospital Funds for the detailed administration of sickness benefits (as in the present National Health Scheme); and it further provided for the appointment by the Minister of an Approved Societies Consultative Council to consist of twenty persons representative of the Approved Societies and employers of insured persons. The statutory function of this Council was to advise the Commission on any matter affecting the administration of the Act relating to the Approved Societies and which was referred to the Council by the Commission. Despite the limited terms of reference implied in the latter condition, Mr. McVey believed that the Council :

> "..... will provide valuable administrative liaison between the Approved Societies and the Commission, and will also enable the Commission to gauge the effects of its administration of Health Insurance. It may be assumed furthermore, that the Council by its very composition will not be hesitant in expressing views on legislative effects of the Health Insurance Scheme and in endeavouring to use considerable influence on the future development of National Insurance in Australia." (4)

The Act also provided for the appointment by the Minister of a Medical Benefit Council representative of doctors, chemists and insured persons, to discuss matters of major importance affecting the working of medical

benefit and such other associated matters as the Commission might refer to it; and also of Medical Benefit Committees of doctors and chemists in each State to deal with complaints and other matters of local importance. Still further, in Mr. McVey's words :

> "Both the doctors and chemists will have their own special organisations, which will be recognised by the Commission and through which any matter may be raised affecting the interests of these professions, or any suggestions which they think the Commission should refer to the Medical Benefit Council for consideration". (5)

The comprehensiveness of the contemplated system of advisory and consultative bodies has not been paralleled before or since with Commonwealth public corporations, and from the academic point of view it is unfortunate that there was little opportunity to study the working of the scheme in practice. It was frankly admitted at the time that many aspects of the scheme were modelled on the British pattern of medical benefits and national insurance administration, although no attempt had been made to disguise the British department as a public corporation. Moreover, more recently many British observers have expressed doubt as to the success of the device of the advisory or "Consumer" council (6).

After a nucleus of staff had been appointed, the Lyons Government decided not to proceed with the project, and Mr. R.G. Menzies (then Attorney-General) resigned from Cabinet in protest. Finally the scheme lapsed, the legislation was suspended by the National Health and Pensions Insurance Act of 1939 (7), and the Commissioners and staffs had to be found new jobs. Mr. McVey, for example, was appointed Permanent Head first of the Department of Supply and Development and then, later in 1939, of the Postmaster-General's

Department; and Mr. A.B. Smith, Deputy Commissioner for Tasmania, became Public Service Inspector in that State.

It is interesting to compare the administrative details of the 1938 National Insurance Scheme with earlier proposals submitted to Parliament by the then Treasurer, Dr. Earle Page, in September 1928, and with the later National Health Scheme which embodied one only of the two phases of the earlier plans and which was finally given practical effect after being submitted to Parliament by the same gentleman (by then Sir Earle Page, and Minister for Health), some twenty-five years later. True to form, the Bruce-Page Government envisaged administration of the scheme by a board which was to be a body corporate and to "act under the terms of its constitution with practical freedom from political interference." (8) The various conditions regarding constitution of the proposed board, dismissal of members, etc., were generally similar to other corporations created by the same Government, except that the board was to be representative in the sense that the Repatriation Commission was representative. Dr. Page explained that the board would consist of not less than three and not more than five members to be appointed by the Governor-General, one of whom was to be appointed from representatives of the employers and one from representatives of the employees. One member was to be an actuary, and one was to be "President" and in this capacity to serve on a full-time basis as "permanent administrative officer of the board." (9) The deteriorating economic circumstances, however, prevented this 1928 Bill from getting beyond the second-reading stage. The 1938 legislation described above retained the public corporation as the administrative organisation, but substituted an elaborate system of advisory agencies

for the representative corporation envisaged in 1928. In 1938 also, the minister's powers were much more comprehensive, and moreover there appeared to be little objection to the provision of full Public Service Board staffing control, a provision which has rarely operated before or since with Commonwealth corporations. Yet only Professor Bland, and certainly no one in the Federal Parliament for many years previously, had left any record of a conscientious attempt to justify such a practice. (10) When the Labour Government in 1948 attempted unsuccessfully to create a National Health Service (11) it proposed to place administration of the scheme in the hands of the Commonwealth Director-General of Health, and Sir Earle Page's 1953 legislation (12) followed suit. It involved no suggestion of the creation of a public corporation, and the National Health Service was established within and as an integral part of the Commonwealth Department of Health.

The very short-lived National Insurance Commission has been a closed book in the annals of Australian administrative history for many years now. However, there were two lines of development during the nineteen-thirties of lasting significance to the study of public corporations in Australia, both of which were forecast by the events of the depression. These were :

(1) a major enquiry and report into the banking system, and

(2) the development of the National Broadcasting Service, whose form of management has been copied extensively for later Commonwealth public corporations.

Later, during the early stages of the Second World War, the Curtin Labour Government replaced the first Menzies Government, Mr. R.G. Menzies having succeeded to the leadership of the United Australia Party on the death of Mr. Lyons in 1939. The 1939-1945 War was

responsible for a mass of administrative action, much of it of a temporary nature only, and usually within the framework of the National Security Regulations. Many new boards and commissions were thus established, some of which were later given permanent status by legislation; while major developments emerging from this period and concerning public corporations were the establishment of joint Commonwealth-State undertakings, and the attempts to nationalise the banking and air transport industries. Planning for post-war reconstruction also commenced during the later war years and many of the post-war corporations were on the drawing board during this period. For the sake of convenience corporations established up to the close of 1944, the last full year of war, will be discussed in this section, while the others will be treated under "Post-War Reconstruction." In any case, the two corporations created in 1944 had a close relationship to the war effort, while most of the post-1944 corporations rather looked ahead towards conditions of peaceful development. First, however, I shall consider the banking and broadcasting developments.

THE COMMONWEALTH BANK 1924-45 CONTINUED:

The enquiry into the banking system referred to above was conducted by a Royal Commission appointed on 15 November 1935 :

> "..... to inquire into the Monetary and Banking Systems at present in operation in Australia, and to report whether any, and if so what, alterations are desirable in the interests of the people of Australia as a whole, and the manner in which any such alterations should be effected." (13)

The Royal Commission commenced taking evidence in Melbourne on 15 January 1936, visited all States of the Commonwealth during its lengthy proceedings, and presented its report on 16 July 1937. This

report was an exhaustive one, comprising 693 paragraphs together with dissenting memoranda and appendices, and it covered all phases of the monetary and banking systems.

In so far as the management of the Commonwealth Bank was concerned, it sought a continuation of the Board of Directors, but recommended some changes in the constitution of this Board. The desired changes were :

(i) that the Governor should be ex-officio Chairman of the Board, and that he "should possess qualifications and receive a salary commensurate with the importance of the office";

(ii) that the six Directors other than the Governor and the Secretary of the Treasury should be appointed for six instead of seven year terms, and that a compulsory retiring age of seventy should be instituted for Directors; and

(iii) that those Directors "should be selected for capacity and diversity of experience and contact, and not as representatives of special interests," and to ensure this, the legislative limitation on the field of choice should be removed. (14)

The Chairman, Judge J.M. (now Sir Mellis) Napier of the Supreme Court of South Australia, and Mr. E.V. Nixon dissented from the first recommendation with the rather obscure argument that "the status and responsibility of the directorate would be seriously impaired by the alteration;" while Mr. J.P. Abbott made the rather reactionary suggestion that one director should be a resident of the State of Western Australia, for "after listening to the evidence given in Perth I have come to the conclusion that the problems of that State are in many respects different from those in the eastern States." (15)

From the point of view of this survey the most significant recommendation was that concerning the desirable relationship which should exist between the Government and the Central Bank. The Royal Commission considered the two possible extremes : first, that the Bank should be at all times under the direction of the Government, as was advocated by the Labour movement, and second, that in exercising the authority delegated by Parliament, it should be entirely independent and should refuse to accept Government direction. This was, of course, the existing position, whereby

> "..... if the Government is determined upon a policy which the Bank Board will not accept, the Government will have to obtain any legislation required, and if necessary, appoint a board which will carry out that policy." (16)

In dissenting from the majority opinion of the Commission, which favoured a compromise, Mr. H.A. Pitt (then Director of Finance in the Victorian State Treasury) desired a continuation of this system :

> "It is important that the public should not only have faith in the judgment of the Board, but should be satisfied that it will be prepared to preserve its spirit of independence. Sacrifice of independence will involve loss of prestige. Confidence in the administration of a central bank is essential, and this may be disturbed if it is thought that the administration is in the hands of a gelatinous Board which may set aside its judgment on pressure from the Government. The Board should not lightly disregard the views of the Government and should do all it reasonably can to avoid conflict, but occasions may arise when it considers it essential in the public interest not to sacrifice its judgment. The Bank is the creation of the Parliament and not of the Govern-

ment of the day. Parliament can be asked to give effect to the Government's wishes if a conflict arises."

The Chairman also made the reservation that "from every point of view it is highly desirable that the administration of the central bank should be removed from the sphere of party politics." (17)

The proceedings on this question are recorded at length, since they represent one of the fullest considerations in Australia of the vital issue of reconciling democratic accountability and managerial independence in a public corporation. In the broader setting the extremes, of course, are that the corporation should be fully subservient, in which case the traditional justification for corporate management disappears, or that it should be fully autonomous, in which case democratic principles are compromised. Professor Bland wrote in 1939 that this Royal Commission was the only commission of enquiry on public enterprise in Australia which had adequately faced this problem. (18) The Commission endeavoured to devise a workable compromise between the two extreme possibilities, and believed that :

"It is essential for a central bank that its relations with the Government responsible for monetary policy should be close and cordial in order that there should be consistency between Government financial operations and those of the Bank." (19)

To facilitate this object, and to prevent any reoccurrence of the events of 1930-31, the Royal Commission by majority vote made the following recommendation, which was to be put into effect in 1945 by a Labour Government :

"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 a 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 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."(20)

The other principle claim to fame of the Banking Royal Commission lay in the dissent of Mr. J.B. Chifley, who put forward the Labour view on the question of bank nationalisation. The Commission had recommended a continuation of the existing system whereby both state and private institutions functioned in the banking field. From "the evidence given before the Commission, and personal observation

and experience", Mr. Chifley concluded :

> "..... that there is no possibility ..... of any well-ordered progress being made in the community, under a system in which there are privately-owned trading banks which have been established for the purposes of making profit ..... Banking differs from any other form of business, because any action - good or bad - by a banking system affects almost every phase of national life. A banking policy should have one aim - service for the general good of the community. The making of profit is not necessary to such a policy. In my opinion the best service to the community can be given only by a banking system from which the profit motive is absent, and, thus, in practice, only by a system entirely under national control." (21)

Had any prophet in 1937 been able to forecast that in eight years' time the then little-known Mr. Chifley would become Prime Minister of Australia, considerably more attention would have been paid to his opinion. However the episode furnishes an indication of the direction of future developments concerning the Commonwealth Bank. In the meantime, the National Broadcasting Service had been established, and considerable controversy was developing also over its form of management.

THE AUSTRALIAN BROADCASTING COMMISSION:

At first glance it may seem surprising that a major corporation such as the A.B.C. should have been created in the very year which is generally noted as being the lowest ebb in the state of the national finances. All parties were seeking economies in government spending, and the Labour Party had expressed its open

hostility to commission management. However, scientific and technical progress continued despite the depression, and the creation of the A.B.C. was only the culmination of events concerning the development of wireless services during the previous decade.

Broadcasting of general entertainment and information services began in Australia in 1923, and the Postmaster-General experimented with various methods of licensing. In July, 1924, the "two-class" service that we know today was introduced. Class A stations were to receive the major proportion of the revenue collected by way of listeners' licence fees; advertising was restricted, and a better class of service was to be provided. Class B stations were subject to no such restrictions and received no share of the listeners' licence fees; they had to pay their way from advertising income. Although this two-class scheme has, in its basic form, existed to the present day, several weaknesses were revealed in the early stages; the A.B.C. came into being as a result of the efforts to overcome these. The main difficulty lay in the fact that the commercial interests owning the various stations could only realise profits when operating in the more densely populated areas. As a result, the country areas, where the need for broadcasting was strongly felt, suffered since the provision of services away from the cities did not pay. A Royal Commission was set up in 1927 to study this question, and it recommended either that the revenue of A class stations should be pooled and shared, or that the companies operating these stations should amalgamate to provide a national service. The interests behind the A class stations conferred for several months, but did not reach any agreement. The Bruce-Page Government then announced its intention of establishing a National Broadcasting Service. The Postmaster-General's Department

took over the ownership and operation of all existing A class stations and studios, and the construction of new regional stations in out-back areas was commenced. A three / year contract for the provision of programmes was entered into with the new Australian Broadcasting Company, which was formed by various theatre interests. The fee for each listener's licence was fixed at 24/-; of this the Company was to receive 12/-, and the Postmaster-General's Department 9/-, while the remaining 3/- was to be paid to Amalgamated Wireless (Australasia) Ltd. for the use of certain patent rights. (22)

Thus the first step was taken by a conservative government, and in its original form the Service was conducted jointly by departmental and private effort. A Conservative Government in Britain had created the British Broadcasting Corporation as a state-owned broadcasting monopoly in 1926, and this influence no doubt contributed to the wide acceptance in Australia of the need for public enterprise in the field of broadcasting. Indeed, the 1927 Royal Commission reported that :

> "Right at the inception of broadcasting it had been authoritatively recognised that at some stage it would be necessary to establish broadcasting on a national basis."

Then, in 1929, the Scullin Labour Government assumed office, and wireless transmission (including broadcasting) was included in the list of enterprises the party sought to nationalise. This government determined that it would not renew the contract with the Australian Broadcasting Company, and it drafted a bill to establish a public corporation to replace the Company. This move was in direct contradiction to the Labour Party's policy in regard to public corporations as declared in

1930 and the earlier part of 1931, and it is difficult to say whether the change was brought about chiefly by the force of British example, by a genuine change of heart on the part of the Scullin Government, or merely by lack of conviction in the Party attitude. Despite the fact that the British example was a Conservative example, it did involve full nationalisation of broadcasting services and this appealed to Labour ambitions; moreover similarities in the proposed Australian organisational pattern suggest that it did influence the Scullin Government, which in any case, was defeated before its bill could be introduced in Parliament. The result, however, was that, when the succeeding Lyons Ministry introduced basically similar legislation in 1932, there was general agreement on the principles both of limited nationalisation and of corporation management, and only the details had to be thrashed out. (23)

The Australian Broadcasting Commission Bill provided for the nationalisation of all A class stations and for the creation of the A.B.C. to provide programmes for these stations. Technical services were, as before, to be supplied by the Postmaster-General's Department, although the studios were to be taken over by the Commission. Its only major variation from the bill drafted by the outgoing Labour Government was that the proposed salaries for the Chairman and Vice-Chairman of the A.B.C. were reduced. Labour members criticised these reductions on the grounds that the proposed remuneration would neither attract men of outstanding ability nor enable any one outside the higher income groups to accept appointment. (24) What remarkable transformations occur in the views of politicians during the course of those short journeys between the Opposition and the Treasury Benches ! - only a year or two before a non-Labour Opposition tried unsuccessfully to

convince a Labour Government that adequate remuneration was necessary to ensure that the best brains were available for service on the Developmental Commissions. On the Government side, Mr. W.A. Holman (U.A.P. - Martin, N.S.W.), saw one side of the inconsistency, if not the other, when he expressed sympathy with the Labour view. This is perhaps not surprising for Holman's own background was essentially a Labour one, although he had parted company from the official party on the conscription issue with W.M. Hughes.

The bill as originally introduced followed the Labour drafting in providing a number of specific limitations on the powers of the Commission and also in giving the Minister general power of direction. Strong criticism of these provisions, however, came from the back-benchers of the Government party, and, after a week's adjournment of the debate, Mr. Gullett (Henty, Victoria - Minister for Trade and Customs) announced that "on reconsideration of the matter the Government is prepared to grant greater power to the Commission than was originally intended." (25) Another amendment barred the Commission from broadcasting sponsored programmes, which had originally been allowed. These changes were denounced by the Labour Opposition, of whom Mr. H. Makin (Labour - Hindmarsh, South Australia) was typical, saying of the former that "there should always be a measure of public control over essential public services." (26) For the Government Holman replied that :

> "....the purpose of appointing a railway, or broadcasting, or any other commission, is to ensure that the policy dominating the enterprise affected shall be consistent and coherent over a long period and protected from the pressure of members of Parliament

or members' constituents with axes to grind, exercising its best judgment in the interests of the enterprise entrusted to it."(27) During the debate, the omission of prescribed qualifications for members of the Commission was also criticised. Some suggested that the Commission should be "fully representative", others that appointees should be "experienced and capable business men who would make a financial success of the venture". The Postmaster-General stated that the Government intended to select persons with qualifications similar to those of members of the British Broadcasting Corporation.(28)

The bill also provided a statutory basis for the appointment of a General Manager to the A.B.C. Professor Bland has pointed out that, in drawing on the British Broadcasting Corporation as a model, the Government created a body different in many respects from older Australian corporations (29). It will be remembered that, in creating the original Commonwealth Bank in 1911, the Commonwealth Parliament saw itself, in the language of private enterprise, as the board of directors, and deemed it necessary, therefore, only to provide a general manager. Now, after many tentative experiments with different forms of control, Parliament was being asked to create not only a general manager but also a separate board of directors. The proposed relationship between the two evoked considerable discussion, but was not clarified in the legislation and was to cause later difficulties. The provision of a full-time Chairman was considered by some to be preferable to the proposed dual control by a part-time Commission and a General Manager.

As it finally became law, the Australian Broadcasting Commission Act 1932 (30) provided for the appointment by the Governor-General of a Commission of five members, including a Chairman and a Vice-Chairman. Terms of office for members of the original Commission were to be as follows : Chairman, not exceeding five years; Vice-Chairman, not exceeding four years; other three members, each not exceeding three years; each further appointment was to be for a term not exceeding three years. If a member vacated his office before his term expired, a new member was to be appointed for the remainder of that term only. All members were eligible for re-appointment. The Chairman was to receive a salary of £500 p.a., the Vice-Chairman £400 p.a., and the other Commissioners £300 p.a. each. Other constitutional provisions were fairly similar to previous Australian enactments creating public corporations. For example, Commissioners could be dismissed by the Governor-General on the grounds of inability to carry out any of the provisions of the Act. An office was to be deemed vacant if the member was dismissed by the Governor-General, if he became bankrupt, or of unsound mind, if he resigned, if he absented himself without leave from all meetings held during two consecutive months, or if he became commercially interested in contracts or agreements made by the Commission. Meetings could be convened at the request of the Chairman or of at least three other Commissioners. A quorum was to consist of three members; the Chairman had a deliberative vote, and if there was an equality of votes, he had a second casting vote. Legally, the Commission was a body corporate, with perpetual succession and a common seal; it could acquire, hold and dispose of real and personal property; it was capable of suing and

being sued in its corporate name, and all Courts were to take judicial notice of its seal affixed to documents, etc.

The Commission had a large degree of independence in matters related to finance and staffing. It was empowered to appoint a General Manager and such other officers as it thought necessary. The staff were not subject to the Public Service Act, but only to such conditions of service as were determined by the Commission. The only control lay in the provision that the salaries of the General Manager and the next six most highly paid officers were subject to the Governor-General's approval. In regard to finance, the broadcast listeners' licence fee of 24/- was retained, and of this the Commission was to receive 12/-. T This income, together with other revenue, was to be paid into an Australian Broadcasting Commission Fund to be opened with the Commonwealth Bank. The Commission was empowered, subject to the approval of the Treasurer and the Postmaster-General, to issue debentures guaranteed by the Commonwealth Government, but not to exceed a total of £50,000 at any one time. These moneys were to be used for payment of operating expenses and salaries and any surplus was to be invested in Government securities. The Commission was to be financially self-supporting and all accounts were subject to inspection and audit by the Auditor-General. However, the approval of the Minister was necessary before it could purchase or dispose of assets valued at more than £5,000, or before it could enter into a lease for a period longer than five years.

Despite the fact that the Commission was much more independent than Labour had intended it to be, the Minister was given a number of other specific powers. Although provision of broadcasting studios was the Commission's responsibility, their location was to be subject to

Ministerial approval. In addition, the Commission was required to provide such accommodation near the studio as was directed by the Minister to enable his Department to provide the necessary technical services. The Commission was free to provide programmes within the broad policy lines laid down in the Act, but was specifically required to broadcast any matter "the broadcasting of which is directed by the Minister as being in the public interest." Likewise, the Minister was empowered to prohibit the broadcasting of any matter, although this had to be by notice in writing, while the Act set out conditions for political broadcasts. The Commission was required to submit an annual report and balance sheet, together with the statement of the Auditor-General, to the Minister, for presentation to both Houses of Parliament. Finally, to ensure ultimate public control, the Act enabled the Governor-General, where he considered an emergency had arisen, to authorise the Minister to exercise complete control over the National Broadcasting Service in the public interest. Even so, the A.B.C. as originally constituted, is generally considered to have possessed a greater degree of freedom than most other Australian public corporations

Thus, another type had been added to the "bewildering variety" of public corporations created by Australian Parliaments. The Labour Party had apparently discarded its policy of 1930, for it was now consenting to the creation of corporations, subject to a substantial degree of political control to ensure that democratic rights of citizens were not endangered by irresponsible public authorities. However, the A.B.C. did not satisfy this Labour requirement, and it was almost inevitable that a great deal of attention should be focussed

on its early activities since these impinged so closely on the jealously guarded principles of the democratic way of life, e.g. freedom of speech, freedom of association and freedom of religion.

Indeed, early criticisms shed interesting light on the new political outlook. Labour parliamentarians claimed that most of the original appointments to the A.B.C. had been made on political grounds, and they were still making this claim as late as 1941. Miss Joan Rydon's analysis of these appointments suggests that there may have been some truth in these allegations (31). Mr. J. Beasley (Labour - West Sydney, N.S.W.), a representative of the Lang faction in the Federal Party, made this revealing statement in May 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." (32)

This was not the only occasion on which Labour sympathisers were to admit frankly their belief in the morality of political appointments to senior official positions of this nature. For example, Fitzpatrick, writing eulogistically of the Curtin Government's attempt to restore "popular" control of the Commonwealth Bank, commented : "From 1941 the Labour Government appointed Labour men to the Bank Board ....." (33) From another angle Don Whitington, in his breezy but superficial history of federal politics, made this penetrating comment on the Curtin Government's action in removing embarrassing Independents such as Mr. A.W. Coles from Parliament (or possibly rewarding them for voting out

Menzies !) by appointing them, for example, to the Rationing Commission:

> "These were all actions by the Government which the Opposition was entitled to describe as political. In no case, however, did the appointee behave in a manner damaging to himself or to the Government, and it was generally conceded that the duties entailed had been performed satisfactorily in every case. 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." (34)

In fact, Mr. Coles, who with his brother had built up throughout Australia the network of chain stores which bears his name, served with distinction as Chairman of the Rationing Commission and was subsequently appointed Chairman of the new National Airlines Commission.

Other criticisms to which the operations of the National Broadcasting Service were subjected almost from the beginning of operations included some against the Commission itself, for the secrecy it maintained on the questions of relations with the Government, staff recruitment, numbers employed, and expenditure which many considered to be extravagant; while others considered that conflict would develop between the Commission and the General Manager, whose position was not clear. In fact, the resignation of the General Manager in 1935 was generally attributed to disagreement with the new Chairman, Mr. W.J. Cleary, who was frequently accused of assuming a dictatorial attitude. Objection was also taken to censorship policy.

Details of these and many other criticisms are contained in Joan Rydon's study of the A.B.C. (35)

As a result of these numerous criticisms, which unfortunately revealed a large measure of confusion and muddled thinking among member all of/parties where informed opinion and debate could have contributed greatly to an understanding of the principles of the public corporation various proposals to amend the original Act were brought forward during the decade from 1932 to 1942. Suggestions came from both sides of Parliament, and even their framers were not always consistent in their demands for greater or less independence for the Commission. For example, four successive non-Labour Postmasters-General at least got as far as drafting amending bills, although only in one case did the proposal become law. In 1939 Mr. A. Cameron (then Leader of the Federa Country Party), sought to deprive the Commission of its autonomy in personnel matters and to provide a Director-General appointed by the Governor-General on the Commission's recommendation in lieu of the General Manager appointed directly by the Commission. At the same time he sought to increase the amount the Commission might spend without Ministerial authority to £10,000 and to enable the Commission to replace the Postmaster-General's Department as collector of licence fees. Later in the same year Mr. E.J. (now Sir Eric) Harrison (U.A.P. - Wentworth, N.S.W.) introduced a bill providing that the position of General Manager should be clarified by specifying that he was the "Chief Executive Officer" and as such "responsible ..... for the management of the affairs of the Commission"; that the A.B.C. should be given final authority to determine conditions of broadcasting of political speeches, and that the Minister's power should correspondingly be restricted to

matters of national interest, as distinct from matters primarily of interest to a political party; and that the A.B.C. should assume control of its own technical services. In 1940 Mr. H.V. Thorby (Country Party - Calare, N.S.W.) commented on the surplus revealed in the last balance-sheet of the Commission and the overall need for government economy, and therefore proposed that the amount of money the Commission had to spend should be reduced. Then, in 1941, Senator McLeay (U.A.P., South Australia) proposed to increase the number of Commissioners to seven by including one to represent labour interests and one to represent cultural interests; Labour, while agreeing that these interests should be represented, did not agree that it was necessary to increase the number of Commissioners; the Country Party replied by demanding its own representative; and others favoured a Commission of six members, one from each State. Senator McLeay's bill also proposed on the one hand to increase the financial independence of the Commission and to clarify its powers in other directions, and on the other to substitute prescription of staffing conditions by Government regulation for determination by the Commission, and to provide a Ministerial power of veto over any action of the Commission.

The Labour opposition generally supported all proposals aimed at restricting the independence of the A.B.C. Labour also believed that the Commission should be required to give greater detail concerning its operations and particularly its relations with the Minister in its annual reports to Parliament, while both the Government and the Commission itself were criticised for imposing an unnecessarily strict censorship over broadcasting material. For the time being, however, only one of the many proposals was to be acted on. The amending Act of 1940 (36), which

passed without opposition as a result of Mr. Thorby's suggestion, reduced the share of each licence fee to be paid to the Commission to 10/-. The Commission complained bitterly in 1941 that this unannounced cut was seriously affecting its services. In other respects, its constitution and powers remained unchanged. (37)

However, there was general dissatisfaction about the Commission's operations, and many members were demanding legislation to control the B-class stations. Although Senator McLeay's bill of 1941 was not proceeded with, a Joint Parliamentary Committee on Wireless Broadcasting was appointed by the Government to inquire into all matters connected with broadcasting. This Committee, while recognising that steady progress in standard of programmes and extension of services had followed the creation of the A.B.C., nevertheless took cognisance of the many criticisms, and its report was the basis of a completely new body of legislation which Federal Parliament enacted in 1942 to regulate the broadcasting industry.

The Joint Parliamentary Committee on Wireless Broadcasting presented its report in 1942. This Committee, which had functioned under the Chairmanship of Senator W.G. Gibson, had not only made a detailed investigation into all aspects of broadcasting, but had also examined the principles (such as the degree of staffing, financial, and general policy autonomy) that should be observed in determining the organisation and powers of management of a public corporation. It took evidence on the latter aspect from Professor F.A. Bland, and was influenced by a number of his views, e.g. on the value of a Standing Parliamentary Committee (38). The First Menzies Government,

which had appointed the Committee of Enquiry, was defeated before presentation of the report, but its recommendations were followed closely by the succeeding Curtin Labour Government in re-constituting the A.B.C. and in providing for the regulation of commercial broadcasting. In fact, the new Commission was later to be used as a model for the National Airlines Commission and the Overseas Telecommunications Commission, which were created in the immediate post-war period; and Miss Rydon has described the report which brought about these changes as "an important landmark in Australian administrative development." (39)

The three Labour members of the Gibson Committee, Senator S.K. Amour, and Messrs. A.A. Calwell and W.J.F. Riordan, had added to the report an amplification of their views in which they recommended complete nationalisation of the broadcasting system (40), but apart from this there was fairly general agreement on administrative principles both during the proceedings of the Committee and during the debates on the subsequent legislation. After detailed study of this report, and of the Australian Broadcasting Act of 1942 (41) which repealed and replaced the Australian Broadcasting Commission Act of 1932 as amended to 1940, Miss Rydon concluded that they evidenced :

> "..... an earnest and thoroughgoing attempt to define more clearly the relation of a Public Corporation to Parliament, Cabinet, the Treasury and the Public Service Board, and to ensure it some real degree of independence, particularly from Ministerial control ..... it is most interesting to note that many Labour speakers (contrary to traditional policy) stressed the need for the Commission to be free from political control. Rarely has any Australian legislation been based on a fuller consideration of the factors involved. The

reconstitution of the A.B.C. in 1942 was a reassertion of the time-honoured conviction of Australian Parliaments that the most suitable method of administering government enterprise is by a Commission with a large degree of autonomy. Although in some respects (notably control of personnel) the A.B.C.'s independence was decreased, its general powers were more clearly stated than before. The principles governing such aspects as the size, method of appointment and tenure of office had been clearly laid down .....' (42)

The 1942 Act dealt separately with the management of the "National Broadcasting Service," the regulation of the "Commercial Broadcasting Service", and the establishment of a Parliamentary Standing Committee on Broadcasting. This thesis is, of course, mainly concerned with the Australian Broadcasting Commission itself. This was to continue to provide "adequate and comprehensive" programmes for all stations of the National Broadcasting Service; and it was required to"provide for the collection of news and information as it thinks fit". In addition, it now had power to organise and subsidise public concerts under certain conditions prescribed by the Act; and it could arrange tours of prominent overseas artists. It was required to establish and use bands and orchestras. There was to be no advertising. The Gibson Committee had rejected a suggestion that the Commission should assume control of technical services. The A.B.C. had no control whatever over the commercial stations, all power of regulation under the Act being exercised by the Postmaster-General.

The size of the Commission (i.e. five members) remained unchanged, and the only concession to those who sought representation of

particular interests was the provision that at least one of the Commissioners should be a woman. There were, however, other significant changes. Terms of office were to be, in the first instance, five years (Chairman), four years (Vice-Chairman), four, three and two years (other members), and thereafter each appointment was to be for three years. In the 1932 Act terms of office were "not to exceed" certain prescribed periods; the amendment was designed to reduce the greater possibility of political interference inherent in short-term appointments, and to ensure greater continuity in policy formation and planning. While all commissioners were to continue to serve in a part-time capacity, salaries of the Chairman and Vice-Chairman were increased to £1250 per annum and £500 per annum respectively. The position of the General Manager was clarified. The Commissioners were concerned with major matters of policy and finance, and the General Manager was to be "the Chief Executive Officer of the Commission." The General Manager was to attend all meetings except where expressly asked to retire by the Commission. The Commission could if it wished appoint Broadcasting Advisory Committees in each State; however, their constitution and functions were not defined.

The Gibson Committee had taken notice of criticisms directed at the secrecy surrounding the engagement of staff by the Commission, and made the following recommendation :

> "When the Commission commenced its operations in 1932, it was rightly given a free hand with certain reservations in connection with the appointment of the staff, but with its organisation now consolidated from ten years of experience, we consider the time has arrived when the rights of the permanent staff ..... should be protected by statutory authority. We do not suggest that they should be brought within the Public Service proper, but as broadcasting is a

government activity, the conditions applicable to permanent staff should be the subject of statutory rule ..... We agree with the evidence that the appointment of specialised personnel should be by selection, but we do not think it proper to permit continuance of the present system under which the choice of juniors and other permanent staff for routine and administrative functions is discretionary. In a government instrumentality such as the A.B.C. it is most important that the method of making appointments should be free from the risk of deference to influences inimical to social justice ..... Even with the safeguards of selection boards, it is conceivable that unfair discriminations due to subconscious prejudice or nepotism may influence the choice of applicants. Therefore, in order to ensure that all classes of the community may be afforded prejudice-proof opportunities of entering the service of the Commission in these positions, we are of the opinion ..... that open competitive examinations should be stipulated." (43)

As a result, the 1942 Act prescribed conditions of appointment. The Commission was to appoint a General Manager and such other officers as it thought necessary; however, they had to be British subjects, to be medically fit, to have completed an oath or affirmation of allegiance, and to have passed a prescribed entry examination in open competition with the proviso that the Commission could exempt certain classes from examination. Appointments from examinations were to be in order of merit, and all examinations were to be advertised. Thus, while the staff of the Commission remained outside the jurisdiction of the Public Service Act, nevertheless their conditions of appointment were brought much closer to those obtaining in the regular Public Service. The 1942 Act also

prescribed that the Officers Rights Declaration Act, 1928-1940, would apply to ex-members of the Commonwealth Public Service appointed to the staff of the Commission. The salaries of the General Manager and the next six most highly paid executive officers remained subject to the Governor-General's approval. Financial provisions were identical to those of the 1932 Act, except that the amount of each broadcast listeners' licence to be refunded from the Consolidated Revenue Fund to the Commission (set at 12/- in 1932 and reduced to 10/- in 1940) was increased to 11/-, and the Commission was deprived of its right to issue debentures; instead, the Commission could borrow up to £30,000 from the Consolidated Revenue Fund if, in the Minister's opinion, the loan was warranted. Further sums could be advanced only by special parliamentary appropriation.

The general powers of the Minister were fairly similar to those exercised by him under the earlier Act. Apart from those specifically mentioned above, he had to approve all purchases and sales exceeding £5,000, all leases exceeding five years, and the location of all studios on technical grounds. He could order the broadcasting of any matter which he considered to be in the public interest; likewise he could prohibit the Commission from broadcasting any matter. However, all ministerial orders now had to be in writing. This latter provision arose from the Gibson Committee's judgment that :

> "..... it is most important that there should be safeguards for opposition parties and others and that the broadcasting instrument should not become the monopoly of the government of the day. The obligation of the Minister to give notice to the Commission in writing is a precaution which should be retained to ensure that

> Ministers will not be able viva voce to issue instructions with impunity and without the protection which the Act rightly provides for those who carry out Ministerial directions ..... There is no evidence to lead us to believe otherwise than that the Commission has exercised its great powers with calm judgment and measured impartiality and such differences as it might have encountered could only have arisen through an itching desire on the part of Ministers to assert their authority in a manner that Parliament never intended and should never sanction." (44)

In furtherance of this need to safeguard overall parliamentary authority from the possibility of concealed ministerial persuasion as feared, for example, by Professor Bland (45), the new legislation provided also that the Annual Report submitted by the Commission was now to list specifically :

(a) all broadcasts made at the Minister's direction;

(b) all proposed broadcasts prohibited by the Minister; and

(c) all other cases in which the Minister has given directions other than as prescribed in the Act.

As a still further safeguard to ensure that the ministerial power of direction could be used for matters concerning the national interest only, as distinct from matters of interest to a particular political party, the 1942 legislation provided at Section 89 (1) that the A.B.C. may itself determine the conditions under which "political" broadcasts may be made, and also that in exercising this power, the Commission is not subject to any other provisions of the Act which might otherwise circumscribe it. There is no evidence to suggest that the

A.B.C. has not enjoyed immunity from political direction in this important sphere since 1942. However, government pressure on a general policy issue was later to be exercised through the financial powers retained by the Minister.

Considerable attention had also been paid by the Gibson Committee to Professor Bland's view on the desirability of providing other than solely the Ministerial link between Parliament and its corporation. A Parliamentary Standing Committee on Broadcasting was established under Part IV of the Act to consider any matter referred to it by Parliament or by the Minister; and the latter was obliged to pass on any requests for consideration by the Committee of any matter received from the A.B.C. or from the Federation of Commercial Broadcasting Stations. However, as will be shown later in this thesis, this isolated Australian venture with the Standing Committee system in relation to a public corporation was not a successful one.

The reconstitution of the A.B.C. in 1942 had been characterised by one of the fullest and most objective examinations of the administrative requirements of a public corporation ever undertaken in Australia, and also by an unusual measure of agreement between the various political parties. One might therefore be pardoned for expecting to find that operations of the reconstituted commission were running smoothly following the practical application of the results of this inquiry. However, this was not to be. The annual reports of the A.B.C. for the years immediately following its reconstitution in 1942 were very critical of the parts played both by the Government and by the Parliamentary Standing Committee. These events were examined in detail by Miss Rydon since they represent one of the most searching inquiries ever made in Australia as to the constitutional position of a public corporation (46). In effect, the A.B.C. had endeavoured to assert the independence promised for it by Parliament in 1942, but it found a number of obstacles in its path. It protested strongly about numerous attempts at interference in its affairs, but there were four major sources of friction.

First, the Commission consistently demanded both control of technical services within its studios and restoration of its control over the overseas shortwave service, which had been taken over by the Department of Information late in 1941. Following a favourable report by the Parliamentary Standing Committee, the latter service was handed back to the Commission in 1942; however, it was again transferred to the Department of Information in 1944. The report of the Committee was not debated in Parliament.

Secondly, the Commission complained that until the Government restored the remaining shilling of each licence fee taken from it in 1940,

it could not provide an adequate standard of service. The Standing Committee supported the Commission on this issue and the Government made available in 1943, by special appropriation, a sum equivalent to the additional income for one year that would have been received had the Commission's proportion of each licence fee been restored to 12/-. The Commission then pointed out that the time limit attached to "this financial relief ..... an element of insecurity which hampers its effective use." Again, the report of the Committee was not debated in Parliament. Then in 1946, the Commission requested an early review of the allocation of licence fees by Parliament, and the Parliamentary Committee recommended a further grant from Consolidated Revenue to give immediate relief in view of the Commission's serious financial position. The A.B.C. rejected suggestions that it should be financed by parliamentary appropriation on the ground that a system of direct revenue "is a sound principle particularly appropriate to the independent character of the Commission as decided by Parliament."

Thirdly, the Commission attempted to come to a more satisfactory agreement with press organisations for the supply of news. Labour members of Parliament had alleged that the press had, under the old agreement, forced the A.B.C. to broadcast items of "capitalist" interest only, and they wanted to see the Commission completely independent of the press. Eventually, however, the Commission, which was empowered under the 1942 Act to collect news in such manner as it thought fit, reached agreement with Australian Associated Press for the supply of news items. But the agreement involved a sum in excess of £5000, and the Minister exercised his right to refuse approval. The Commission then requested that the matter be referred to the Parliamentary Standing

Committee, in its own words "less with a view to exploring the merits of the proposed agreements than to clarifying the position as to its powers and responsibilities." The Committee divided on party lines as far as the actual agreement was concerned, but it reported unanimously that:

> ".....it would be improper to confer absolute power on a government instrumentality to spend public moneys without some control, and that Parliament would be unwise to relinquish its power to control the A.B.C. through the Minister or the Government in matters conceivably affecting high policy under contracts which involve more than £5000 or exceed five years."

If we can read between the lines, it seems that Parliament was beginning to have second thoughts about the wisdom of granting a large degree of independence to corporations.

This report was followed by a most critical Annual Report from the Commission for the year ended 30th June, 1944, and by the resignation of Mr. Cleary, then Chairman of the Commission. The Commission expressed complete lack of confidence in the Parliamentary Standing Committee, since although this had been painstaking in its enquiries and had supported many of the Commission's suggestions, its reports had not been discussed in full Parliament, and there had as a result been no clarification either of the extent of the Minister's veto power or of the degree of independence of the Commission.

Then, in announcing the appointment of Mr. R.J. (now Sir Richard) Boyer to succeed Mr. Cleary as Chairman in April 1945, the Prime Minister (Mr. Curtin) declared that the Government recognised that Parliament had intended to give the A.B.C. a position of special independence. He added that:

> "..... the healthy and beneficial function of national broadcasting, and the maintenance of public confidence in the system must rest ... solely on the integrity and the independent judgement of the persons chosen to administer its policy, and not on either review by or pressure from any sources outside it, political or non-political. This principal holds good in spite of the necessary responsibility of the Commission to the Minister for the legitimate use of its funds under the terms of the Act, and all the sections of the Act should be read in the light of the above general intent of Parliament in the establishment of the Commission."

In its 1945 Report the Commission accepted the Prime Minister's interpretation and stated that :

> "..... the translation into legal phraseology of an Act which embraces the inevitably difficult relationship between national broadcasting and Parliament, between the primacy of Parliament and the agreed principle of the Commission's legitimate independence of action can never be achieved. In both Britain and Canada it has been found more practicable to operate the Act in the light of its general intention rather than by attempting a process of meticulous revision of apparently conflicting sections."

Meanwhile the Commission continued to provide news under emergency arrangements with the press and the British Broadcasting Corporation, and a draft of a permanent agreement with the press for the provision of a news service for one year at a charge of £20,000 was submitted to the Minister. This also was referred to the Parliamentary Standing Committee, which divided on party lines as before. Labour members wanted the A.B.C. to establish its own news service, while opposition members objected on the ground that a large sum would have to be provided. A

Labour Government was in power, and the Labour majority report was to be the basis of amending legislation in 1946, which will be considered later.

The fourth bone of contention was the delay in giving approval to Staff Regulations which were drafted by the Commission in 1943 and submitted to the Minister to give effect to that section of the 1942 Act which provided that conditions of employment should be "as prescribed". The draft regulations were referred to the Parliamentary Standing Committee, where they were critically examined, and adversely reported on to the Minister. The Minister sought the comments of the Commission and referred these back to the Committee, which further delayed an agreement. The Committee was coming to be regarded simply as an unwanted complication in the relationship between the Commission and the Minister and Parliament.

Thus, despite the thorough enquiry of 1941-42 into the administrative problems raised by the operation of the National Broadcasting Service as a public corporation, and the attempt by Parliament in 1942 to safeguard the autonomy of this corporation, the dissention which developed during the war years in regard to the independence of the A.B.C., the ministerial power of veto, the method of finance and the personnel policy, showed that these problems had not in fact been satisfactorily answered. Final decisions had not been made on a number of these contentious issues, and the Labour Party, which dominated Parliament at the end of the war, seemed obviously to be reverting to its pre-1942 policy, which, if it consented to the existence of public corporations at all, did so only where political supremacy was clearly provided for. Indeed, one Labour parliamentarian, Senator Cameron (Victoria,

Minister for Aircraft Production), had taken the trouble to excuse the apparent modification in the Party's attitude in 1942 in the following words : "We have compromised because we realise that war is the major issue." (47) The stage was therefore set for a modification of the position of the A.B.C. in the immediate post-war period.

Meanwhile, under the mantle of the Commonwealth's defence power and by means of National Security Regulations, numerous boards and commissions were set up during the Second World War. These included managerial agencies like the Australian Shipping Board, which was established to control the new national shipping line built up during the war; quasi-judicial agencies set up to supplement the Court of Conciliation and Arbitration and operating in specialised fields of industrial arbitration, such as the Maritime Industries Commission, the Stevedoring Industry Commission and the Women's Employment Board; further commodity control agencies such as the Commonwealth Tinplate Board and the Australian Barley, Tobacco, Wheat, Wool, and Hide and Leather Industries Boards; advisory agencies like the Man-power Priorities Board; administrative agencies functioning within the framework of ministerial departments such as the Commonwealth Prices and Rationing Commissions; and a great many others.(47A) Many of these were given separate identity as corporate bodies, and they would in themselves prove an interesting field of research. However, in view of their temporary nature while functioning under war-time regulation they will not be treated in this study unless and until continued in permanent legislative form; and for previously mentioned reasons the new marketing boards which were continued after the war are also excluded. The corporation known as the Commonwealth Coal Commissioner was probably the first of the bodies established under National Security Regulation to be extended by the

passing of separate legislation, and although itself purely a Commonwealth authority, it is by virtue of its field of operations linked with the interesting group of inter-governmental corporations. It also heralded a major development in the control of the staffing policy of Commonwealth corporations.

THE COMMONWEALTH COAL COMMISSIONER:

The need for government regulation of the coal industry was apparent for some years prior to the Second World War. During the late nineteen-twenties, coal production greatly exceeded demand and the major problem was that of finding new markets - added to this was the ever-present fear of unemployment. The New South Wales Government was vitally interested, as about eighty percent of the coal mined in Australia is produced in that State. Consequently in 1930 it appointed a Royal Commission to investigate the industry. The establishment of a State Coal Control Board was recommended, but it was emphasised that the N.S.W. Parliament could only legislate to control the production of coal within that State; it had no power to legislate on interstate or overseas trade, to fix the market price of coal outside its own boundaries, or to levy excise duty to finance the operations of the proposed Board. The Commission reported, therefore, that action by the State would be useless unless accompanied by complementary legislation by the Commonwealth and perhaps by other States. With little regard for this proviso, the Lang Labour Government in N.S.W. in 1931 introduced a bill to create the State Control Board; apparently it hoped that the Scullin Labour Government would introduce a corresponding bill in the Federal Parliament. However, both governments lost office during the year and the State bill lapsed. (48)

By the early stages of World War II the position was vastly different. Coal supplies were inadequate, and greater output was essential to maintain war production. Using its defence powers, the Commonwealth Government in 1941 assumed complete control of the industry throughout Australia, and established, by National Security Regulation, a Commonwealth Coal Board to control the supply, distribution, storage and use of coal. This Board remained in existence for only a few months - it was replaced by a Coal Commissioner as a corporation sole. In February 1942, in response to demands by the Miners' Federation, and following the assumption of office by a Labour Government, the Commission was enlarged by the inclusion of employer and employee representatives (49); this was apparently a compromise to maintain industrial peace in the industry, although the lead was not followed in later legislation by Labour Governments. A parallel set of National Security Regulations created a Central Coal Authority as the forerunner of the present arbitration authority, the Coal Industry Tribunal.

The provisions of the various regulations were superseded by the Coal Production (War-Time) Act 1944 (50) which set up an "authority to govern and direct the production, treatment, handling, supply, distribution, marketing and consumption of coal". The authority was given regulatory control of all collieries; it was also given power to acquire mines in the defence interest and to determine rates of compensation. The Act, which also placed the arbitration tribunal on a statutory basis, was to cease to operate six months after the end of the war. The authority, known as the Commonwealth Coal Commissioner, was a corporation sole, appointed by the Governor-General to hold office for so long as the Act remained in operation, subject to provisions relating to suspension and vacation of office similar to those for the Commonwealth Railways Commissioner. Salary was fixed by

the Governor-General. The Act also provided for the appointment of two "Advisers" to the Commissioner, and for the creation by the Commissioner of advisory State Production Councils and Mine Committees. Profits from mining activities were to be put towards the advancement of the industry, including social welfare schemes, and the Commissioner could make advances to mine-owners on behalf of the Commonwealth. The companion Coal Mines Profits (War-Time) Act (51) provided that, where the profits of controlled mines during any period exceeded profits made during an equivalent period immediately before coming under control, the amount of the excess was to be paid to the Commissioner.

The staffing provisions heralded a new era in the wording of such enactments. The Commissioner appointed his own officers and employees; they were not subject to the Public Service Act, although the Officers Rights Declaration Act applied to officers transferred from the Commonwealth Service. The interesting provision was that salaries and conditions of employment "shall be such as are, subject to the approval of the Public Service Board, determined by the Commissioner." As with the Australian Broadcasting Commission as reconstituted in 1942, we can see here a definite trend towards reduction in the degree of staffing freedom possessed by corporations, and in fact this phraseology was destined to be copied extensively in future legislation. However, again as with the reconstituted A.B.C., in other respects the powers of the Commissioner were very extensive, and he was subjected to few of the restrictions usually imposed on public authorities of this nature. The only other requirement under the Act was that his "decisions shall be subject to any directions of the Minister as to matters of policy." There was to be no review of decisions in any matter of detail, and he was not required to furnish either an annual report or financial statements

The provision relating to the Ministerial power of direction which was added by amendment during the committee stages on matters of policy/brought out an interesting discussion, during the debates on the Coal Production (War-Time) Bill in 1944, between the present leaders of the major parties in the Federal Parliament. Frequently distinctions have been drawn, in discourses and legislation concerning public corporations, between matters of policy and matters of day-to-day administration. However these distinctions are almost invariably vague in the sense that rarely if ever are satisfactory definitions given to distinguish the point where administration finishes and policy begins. Professor Bland himself has been criticised for this omission. The fact is that policy is extremely difficult to define, and there can be little doubt that the existence of this loosely-defined power of ministerial direction tends to increase the area of political control over public corporations. Dr. H.V. Evatt (Labour - Barton, N.S.W., then Attorney-General and Minister for External Affairs), admitted the existence of this problem but believed,in common with Labour thinkers at least since 1924, that considerations of democratic principle outweighed its disadvantages. He stated that :

> "It is quite impossible to define policy ..... but it is essential that general ministerial responsibility on the broad policy of the bill will still remain with the Government. As a democratic principle ..... the Government cannot possibly abdicate its responsibility completely by conferring upon the Coal Commissioner exclusively the authority to declare important questions of policy ..... The general day-to-day administration of this legislation will be in the hands of the 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 direction should be given. On such occasions the Commissioner will have to accept the Government's decision" (52).

Mr. R.G. Menzies (then Leader of the Opposition) said in reply :

"Nobody can tell what a matter of policy is ..... There is no machinery in this bill 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? ..... the effect of the amendment will be to perpetrate political control of the industry ..... when it suits the Government, the Commissioner can control the industry and when it does not suit the Government, the Minister can intervene and say : 'this is a matter of policy'". (53)

Although the Liberal-Country Party group in Parliament opposed the Minister's power on policy matters on this and other occasions, the group has made no serious attempt when in power itself to remove such controls. In fact, the only distinction in Australian legislation generally is whether the Minister's power is restricted to policy issues, or whether it is an all-embracing power of direction.

The debates on the bill leave no doubt that the existing Coal Commissioner, Mr. N.R. Highell, who held office previously under the National Security Regulations and was to continue in officer under the new legislation, was held in high repute by members of all parties; and they suggest that in this case the legislation was framed to fit the individual rather than vice versa. This could explain the absence of many of the usual controls over public corporations and also the restriction of the covering control to direction over policy only, a direction which Dr. Evatt inferred would be used sparingly. However, the trend in staffing policy, which has already been remarked on, was something quite distinct.

Despite the provision in the original Act that the Commissioner was to cease to function six months after the end of the war, he remained operative for some years beyond this time. His powers over matters of primarily State interest such as production lapsed with the disappearance of the direct relationship to the Commonwealth's defence power, being legally terminated by Section Ten of the Coal Industry Act of 1946. (54) However for the time being the Commissioner retained control over all coal outside the boundary of the State in which it was produced. Then, a further short Act in 1948 (55) provided that the Governor-General could declare from time to time by Proclamation that the Coal Production (War-Time) Act would cease to operate in a particular State; the first State so named was Queensland, in which the Commissioner ceased to operate on 27 January 1949. Meanwhile another public corporation, the Joint Coal Board, had been established within the coal industry (56).

The federal system in Australia, with its rigid separation of Commonwealth and State powers and consequent disputes as to location of sovereignty, has given rise to a number of interesting experiments in the management of undertakings of partly regional and partly national concern by jointly-constituted public corporations. Both of the public corporations in which the Commonwealth has combined with one or other of the Australian States were established during the period 1944-46. These were the Australian Aluminium Production Commission, established during the closing stages of the war and therefore treated in this section, and the Joint Coal Board (the successor to the Commonwealth Coal Commissioner), established in the early part of the post-war period and therefore included in the following section of this thesis. However, the idea of co-operative effort to overcome constitutional barriers was not new. The River Murray Commission, which was established at a time when the States still enjoyed very substantial rights,

and which is still in operation today with a basically unchanged organisation, affords an interesting background for a survey of the newer joint authorities.

This Commission was brought into being by "an Agreement entered into between the Prime Minister of the Commonwealth and the Premiers of the States of N.S.W., Victoria, and South Australia respecting the River Murray and Lake Victoria,and other waters," in 1914. The agreement was ratified by all four Parliaments by 1915, and is attached as a schedule to each Act, typical of which is the Commonwealth Parliament's River Murray Waters Act 1915 (57). The Commission appointed as a result of this Agreement was not constituted a body corporate, and cannot therefore be regarded strictly as a public corporation. It consists of four Commissioners, appointed respectively by the Governor-General of the Commonwealth and the Governor of each participating State. The Commonwealth member is President but does not have a casting vote : it is specifically provided that the powers of the four members are equal, and that all matters other than those concerning procedure at meetings are to be decided by unanimous vote. There is an unusual proviso which is to operate in the event of a disagreement : in such cases an Arbitrator is to be appointed by agreement among the contracting Governments; if they cannot agree within two months on this appointment then the Arbitrator, whose decision must be accepted by the Governments, is to be selected by the Chief Justice of the Supreme Court of Tasmania. In a further safeguard for States' Rights, it is provided that the regulations of the Commission may be disallowed by any of the four Parliaments involved. Annual reports containing information

prescribed in some detail in the Agreement are required for presentation to each Government, while accounts, although subject to annual audit by the Commonwealth Auditor-General, are open to inspection "at any reasonable time" by State Auditors. Finance for the Commission's works is made available in approximately equal shares by the participating governments, and although amending agreements and acts subsequent to 1914-15 have authorised new works and increased expenditure by the Commission, no major administrative changes have been involved.

Most of the projects involved in the agreements have been carried out by State departments and authorities, and the Commission's role has been that of co-ordinator of the public works of the three States in so far as they have concerned water storage, water transport and irrigation projects in the Murray Valley, rather than that of a managerial authority in its own right. The Commonwealth has for many years been represented on the Commission by a member of Cabinet, usually the Minister for Works, while the States have selected senior officers of existing departments or authorities to serve in an ex-officio capacity. The Commission thus not only includes representatives of the Commonwealth and three States, but also mixes politicians and public servants. Without legal identity in its own right, it is, moreover, a fragmentary agency working for and as part of four equal "masters". Although its achievements have been considerable, its position is in this respect very different from and theoretically much more complex than that of the centrally-directed corporations operating in the inter-governmental field.

THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION:

Although suggestions at an official level for the establishment of an aluminium industry in Australia had been heard since 1941, the first definite step taken was the signing of the 1944 Agreement between the Commonwealth and Tasmania. The two governments agreed to co-operate to establish an industry in Tasmania for the production of ingot aluminium for defence purposes. The project was strongly criticised at the time as being economically unsound, many parliamentarians and others claiming that the demand for aluminium would be very considerably reduced after the war, and that high transport costs made the location of the industry in Tasmania most undesirable. As the proposed organisation for the industry became clear, the anti-socialist Opposition also objected to the Government's intention to conduct it as a public enterprise. (58) The Inter-Governmental Agreement provided that the Commonwealth should take all the necessary steps to establish a Commission to be known as the Australian Aluminium Production Commission, subject to certain conditions as to constitution and finance as prescribed. This Commission was in turn required, subject to certain limits to its powers and functions, to establish and operate the industry; while each government was committed to exercise its legislative and administrative powers "in such a way as is calculated to assure the full success and development of the industry."

To give effect to the Agreement, the Commonwealth Parliament passed the Aluminium Industry Act 1944 (59). The Agreement itself was included as a schedule to this Act. Companion legislation was passed by the Tasmanian Parliament (60). The Commonwealth Act provided that the

Commission was to be a body corporate, originally consisting of two members representing the Commonwealth (one to be Chairman) and two representing the State (one to be Vice-Chairman). All members were to be appointed by the Governor-General, those representing Tasmania first being nominated by the Tasmanian Governor-in-Council. Surprisingly, the Act did not lay down dismissal procedure, nor did it specify the conditions of vacation of office. Later events were to cast grave doubts on the wisdom of this omission, which indeed, has never been satisfactorily explained. In other respects also the Commission was free from many of the restrictions to which public corporations were usually subjected. In regard to personnel, for example, it was empowered to appoint such staff as it deemed necessary for the execution of the Act; its officers were not subject to either the Commonwealth or the State Public Service Act, and the Commission had unrestricted freedom to determine their conditions of service. The Officer's Rights Declaration Act applied to ex-Commonwealth officers, while ex-State officers were regarded as being transferred to the Commonwealth. The freedom of the Commission in staffing matters seems to have been a by-product of the desire to avoid difficulties which could arise if the Commonwealth were to prescribe conditions conflicting with State practices.

Financially, the Commonwealth and Tasmania agreed to contribute equal shares towards the establishment of the industry. Under the 1944 Act the Commonwealth Parliament approved the payment of £1,500,000 to come either from Consolidated Revenue or from a special loan as the Commonwealth's contribution. The Act also provided that, when the production stage was reached, revenues would be required to meet salaries

and expenses, and repayment of interest on the original loan. Accounts of the Commission were subject to inspection by the Commonwealth Auditor-General, who was required to supply any information the Tasmanian Premier required; and an annual report was to be submitted to the Commonwealth Minister, who was required to furnish a copy to the Tasmanian Premier. The Commission was to exercise its powers "subject to any directions given on behalf of the Commonwealth and State by the Commonwealth Minister administering the Act of the Commonwealth Parliament." Further, the Commission could not proceed with any single project involving expenditure of more than £50,000 "without first obtaining the consent of the Commonwealth Minister, who, before consenting, shall consult and consider the views of the Tasmanian Premier." The Governor-General had the usual power to make regulations not inconsistent with the Act.

Following the establishment of the Commission, land was acquired at Bell Bay, Tasmania, and construction work commenced. However, progress was slow and the original estimate of the cost of establishing the industry proved to be too low. In other respects also the early operations of the Australian Aluminium Production Commission proved unsatisfactory, and criticism from the Auditor-General and other sources, as well as a recognition of the inadequacy of the existing financial provision, led first to amending legislation eight years after the creation of the Commission, and then, two years later, to the most exhaustive enquiry into the constitutional position of a public corporation held during the post-war period in Australia. These events will be discussed later in this thesis.

With the Second World War drawing to a close, a Labour Government under Mr. J.B. Chifley in command, and planning for post-war reconstruction already well under way, the curtain was about to open on four and a half years of what Professor L.F. Crisp has described as :

> "..... the most considerable programme of legislative and executive measures for nationalisation and public enterprise in the Commonwealth's history." (61)

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1945-1949 : POST-WAR RECONSTRUCTION.

In his history of the Federal Labour Party, Professor Crisp has recorded many of the Chifley Government's legislative and executive achievements. These achievements, which were carried through concurrently with the development of Australia's vast post-war immigration programme, and with the positive role played in foreign affairs including leadership of the small nations in the United Nations :

> "..... extended from such undertakings as an expanded Commonwealth Acoustics Laboratory to the establishment of a Stevedoring Industry Board to direct that industry, the re-establishment on a peace-time basis of a Commonwealth Shipping Line, a public aluminium ingot industry (jointly with the Tasmanian Government, under an Act initiated by the Curtin Government), a public whaling industry, a public monopoly of atomic energy raw materials, public development of television under the Broadcasting Control Board, joint Commonwealth-State governmental supervision of the New South Wales coal industry (with power to enter directly the production side of the mining and open-cut branches of the industry), the great Commonwealth Snowy River Hydro-Electric Scheme, the compulsory purchase (jointly with other British countries) of the private overseas telecommunications services, the nationalisation of internal, and Australian-owned sections of overseas airlines, and finally the nationalisation of the 'key of the citadel' - the private banks. The High Court (and, in the second case, the Judicial Committee of the Privy Council) declared ultra vires the Constitution the airlines and bank nationalisation measures. In the airline field, however, the Government corporation - Trans Australia Airlines -

was able to continue in competition and, thanks to first-class direction and management, to achieve enviable pre-eminence. The Commonwealth Bank continued not only its central bank functions but competitive relations with the private banks through its trading bank department ..... Of even greater importance as steps towards the realisation of what the average Australian worker expects of his Labour Party were the Chifley Government's general intervention and planning in economic and social affairs ..... Nor should there pass without notice the manner in which Chifley and his colleagues developed joint action between Commonwealth and State Governments under a whole range of formulae which enabled them to go forward with their policies and planning despite the otherwise crippling limitations of the Federal Constitution ....." (1)

The significance of these achievements, from the point of view of this thesis, is that in so many cases the public corporation was selected as the administrative form. Again, this was in contrast to the Labour policy of 1930, but the period represented a continuation of the later Labour practice of creating corporations but limiting their autonomy; the limitation was noticeable particularly in regard to staffing, but also in numerous other directions. And again also, apparently quite incidentally to its overall activities, the Chifley Government, like the earlier Scullin Labour Government, was to give voice, on a particular occasion with a view to clipping the wings of two particular corporations, to a belief in the advantages of normal departmental administration (with its combination of Ministerial and Public Service Board control).

The volume of legislation passed during the relatively short span of the Chifley Government is probably at least partly the explanation why most parliamentarians paid so little attention to the administrative detail of the various enactments. However, the very nature of much of the legislation made it inevitable, in the context of the Australian political party system, that debaters would be carried away by their strong emotional feelings either for or against socialism and thus prevented from showing much interest in, or exercising objective judgment about, administrative provisions. The result of these influences is that from his own point of view, the student of public administration cannot fail to remark on the relative barrenness of the post-war debates when compared with the debates on similar creative legislation a generation before.

QANTAS EMPIRE AIRWAYS LIMITED:

After the Second World War, a variant of the corporate form of management for public enterprises appeared in the field of overseas air transport when the Labour Government acquired all shares in Qantas Empire Airways Limited, and thus the right to appoint all members of the Board of Directors. Australia's overseas airline industry was thus effectively nationalised without the creation by statute of either a new ministry or a new corporation, the only legislation involved being the appropriation of the necessary money(2). This absence of constituting legislation meant that administrative details such as qualifications for appointment, terms of office, salaries, conditions of dismissal and so on were left completely to the decision of the executive. The usual requirement of ultimate accountability to parliament was also absent.

Up to this time corporations registered as private companies under the Companies Law of an Australian State had entered the sphere of public enterprise to the extent that governments had on infrequent occasions associated with private interests either in acquiring part of their shareholding or in participating in their formation by the provisio of a portion of their capital. This usually occurred as a stimulus to development or to provide a measure of home control. Commonwealth Oil Refineries Limited and Amalgamated Wireless (Australasia) Limited were, until recently, examples of these so-called "mixed enterprises". With the acquisition of all shares in Qantas Empire Airways, however, this form of management was retained for the first time in Australia for a fully nationalised industry. A similar form was to be adopted by an Australian non-Labour Government for the operation of Commonwealth hostels in 1951, and a further comment on this deviation in the history of Commonwealth corporations will be made in this connection in Section Two (f) of this thesis.

Another development of the period and one which quite rightly has not participated in the drift towards greater political control over the affairs of public corporations, was the entry of the Commonwealth Parliament into the field of University constitution and management. Many would dispute the inclusion of the Australian National University within the group of Commonwealth public corporations; and yet Universities as we know them in Australia are public institutions created by statute and belonging to that group of enterprises which Professor Webb regards as necessarily as distinct from conveniently requiring public corporation management because of the need for cultural autonomy in its widest sense. Moreover, such an authority could not be excluded from the broad group of public corporations within the very sensible classification of state

activity drawn up by Mr. D.N. Chester and discussed in Chapter Three of this thesis (2A).

THE AUSTRALIAN NATIONAL UNIVERSITY:

The Australian National University Act of 1946 (2B) created the National University in Canberra, and provided for its constitution as a body corporate. The legislation followed conventional university practice in establishing a Council as the governing body together with a Chancellor to be president of the Council and a Vice-Chancellor to be chief executive officer. Section Eleven / of the Act detailed the constitution of the Council and the method of appointment of councillors. There were to be "not more than thirty members", including representatives of both Houses of Federal Parliament, and of the Convocation, students, and professional and teaching staff of the University, together with the Vice-Chancellor and other persons appointed by the Governor-General by reason of knowledge and experience which could "advance the full development of the University", and other members co-opted by existing members of the Council. Terms of office varied according to method of appointment; re-appointments were permitted, while juniors, bankrupts, persons convicted of an offence and sentenced to imprisonment who have not received a free pardon or served the sentence, and insane persons, are disqualified from appointment. The Chancellor is elected by Council from among its number, while the Vice-Chancellor is appointed by the Governor-General to hold office subject to good behaviour for a term of seven years.

The Act further provided that the University should be financed by an annual payment determined by the Treasurer and not exceeding £325,000, for the first five years of its existence;

and thereafter by a set annual grant of £325,000, together with fees and other revenues. The Council itself was given wide powers to make "Statutes" covering matters such as the number, stipend, manner of appointment and dismissal of deans, professors, lecturers, examiners and other officers and servants of the University. Each such Statute was to be approved by the Governor-General and notified in the Commonwealth Gazette, and would "thereupon have the force of law."

The National University obviously has more in common with the older Universities than with other Commonwealth public corporations, and the legislation was quite openly framed with the intention of preserving a much larger measure of freedom than was the case with the other corporations, i.e. the so-called "academic freedom". The activities of the National University are at present concerned with post-graduate research only, although there is provision for it to make arrangements with the University of Melbourne for the integration within its organisation of the under-graduate Canberra University College, at present conducted by that University. The Commonwealth Observatory at Mt. Stromlo was transferred from the Department of Interior to the National University in 1956 (2c).

Having thus briefly chronicled the appearance of the fully publicly-owned company, as distinct from the previously known "mixed enterprise", on the Australian scene, and also the inclusion of a University within the broad group of Commonwealth corporations, I shall now survey what might be called the relevant constitutional developments of the period, viz :

(a) the cases of inter-governmental co-operation, and

(b) the nationalisation proposals;

and then proceed to :

(c) the contemporary modifications and creations of other

corporations not included in the above groupings.

(a) Inter-governmental Co-operation.

THE JOINT COAL BOARD:

Although it was not the first of the orthodox (in the statutory sense) corporations created in the post-war period, I shall deal first with the Joint Coal Board, both because it is quite out of step with the other orthodox corporations of the period in relation to the effective degree of managerial autonomy possessed, and also because, by virtue of its "joint" constitution, it is more closely related to the corporations discussed at the close of the preceding section. For the latter reason the following remarks should be read in conjunction with those concerning the establishment of the Australian Aluminium Production Commission.

The Joint Coal Board came into being because many of the powers of the earlier coal corporation, the Commonwealth Coal Commissioner, became ineffective for constitutional reasons in time of peace.

Both Commonwealth and State Governments were agreed that continued regulation of the coal industry after the war was desirable, while the Miners' Federation, as in Britain, was demanding complete nationalisation. Accordingly, on the cessation of hostilities a Board of Inquiry was set up to investigate and report on the need for regulation. This Board of Inquiry consisted of Mr. Justice Davidson (who had previously figured in the N.S.W. Royal Commission in 1930), sometimes assisted by employer and employee representatives. His report, presented in 1946, stressed the need for a statutory Federal Authority to regulate the industry. He recognised the many constitutional difficulties, but argued that a Federal Authority could grant bounties (under Section 51 (iii) of the Constitution) to mine owners who voluntarily accepted its jurisdiction, and that as most owners needed financial assistance, the majority would co-operate in the scheme. The proposal was generally supported by the Liberal Party and the mine owners in N.S.W., but met strong opposition from the Miners' Federation, and from the State Labour Government which desired to participate actively in the scheme. These events were examined in some detail by Mr. T.H. Kewley and Miss J. Rydon in an article on the Joint Coal Board published in 1949. (3)

- Finally the N.S.W. and Commonwealth Governments reached agreement on an alternative means of overcoming constitutional limitations, and a "joint authority" was established under the 1946 Coal

Industry Acts which were passed simultaneously by both Parliaments (4). The Acts are generally similar, and give the Joint Coal Board the powers needed to "secure and maintain adequate supplies of coal throughout Australia." However, as the Commonwealth Parliament cannot interfere in the domestic affairs of a State, the powers given to the Board to take over land and mines in N.S.W. are contained only in the State Act. Since neither government was able to vest all the required powers in the Board the provisions of the Acts are vaguely worded, and many functions "are vested in the Board to the extent to which they are not in excess of the legislative powers" of the respective governments.

Joint action by the two governments has thus led to a very wide measure of control over the coal industry. This control is primarily of a regulatory nature, although for some years the Board operated a number of mines to supplement the output of private owners. The Board, which is a body corporate, consists of three members appointed by agreement between the two Governments. No qualifications are prescribed and appointments are for terms "not exceeding seven years". Members are eligible for re-appointment. No specific grounds of dismissal are quoted, but an office is vacated if a member engages in any other paid employment, becomes bankrupt, takes unauthorized leave, resigns, becomes permanently incapable of performing his duties, or becomes financially interested in any contract or agreement made by the Board.

The Acts provide that "the Prime Minister may in agreement with the Premier of the State, issue directions to the Board on matters of policy, and it is the duty of the Board to observe and carry out any directions so given." Defending this provision against criticism by the

by the Opposition, Prime Minister Chifley stated : "..... the party to which I belong will not set up any authority which may become in itself a complete autocracy." (5) Yet directions can only be given if the Prime Minister and the Premier agree, while generally the Board appears to have a far greater degree of independence from ministerial interference than most other statutory authorities - for example, unlike other corporations, the Board is not required to seek ministerial approval for expenditure of amounts in excess of a stipulated figure (frequently £5000). Moreover, each of the two governments concerned undertook not to take any action to amend or repeal the Coal Industry Acts without the prior concurrence of the other. Regular annual reports are not specifically required by either legislation, but the Acts allow either government to demand reports from time to time showing the policy the Board is pursuing or proposes to pursue in the discharge of its powers and functions. In fact annual reports have been presented each year since 1948-49. The staffing position is similar to that of the Australian Aluminium Production Commission. Each Parliament meets half the costs of administration from Consolidated Revenue, while the Commonwealth is required to meet all other current expenses. The Board may borrow money with the consent of the Commonwealth Treasurer, and its profits are to be allocated to welfare and reserve funds. Accounts are to be audited by the Commonwealth Auditor-General. Under the Acts a Coal Industry Tribunal, Local Coal Authorities and Mine Conciliation Committees were established to replace the arbitration and advisory bodies set up under the war-time legislation.

The 1946 legislation did not satisfy the demands of the Miners' Federation for complete nationalisation of the industry as in

the United Kingdom. It did show, however, that complementary legislation on a particular issue by both Commonwealth and State Parliaments could overcome many constitutional difficulties, and the significance of this was not lost on R.G. Menzies, Leader of the Liberal Party Opposition (which has developed out of the United Australia Party) in 1947, when he stated during the debate on the Australian National Airlines Bill that :

> "Although a good deal of talk is heard about the inability of the Commonwealth Parliament to nationalise industries such talk is meaningless because, by means of co-operation between a socialist Australian parliament and a socialist State parliament, industries could be nationalised to the full hundred per cent." (6)

Another interesting comment on the legislation is that appearing in "Common Cause", the official organ of the Australian Miners' Federation, on 10 August 1946. This stated that "the Federation cannot be pleased at the failure of the government to see the need for representation by the mine workers in the new coal set-up." (7) Only for brief periods, as a matter of expediency, has employee representation been allowed in the management of Australian public corporations even though on occasions the Labour Party has suggested that such a step might be taken. Although Acts rarely specify qualifications for appointment, successive Australian governments have usually either followed the British method of selecting Board-members or commissioners for general business experience or special qualifications, or, unfortunately as is often alleged, for loyalty to the governing party; however they have not generally favoured appointment of elected representatives of workers' and consumers' groups as in the syndicalist type of management provided for the socialised French industries. The group of marketing authorities is, of course, something of an exception.

In regard to the demand of the Miners' Federation for full nationalisation, however, it is interesting to recall the observations of F.R.E. Mauldon on the Hunter River Valley situation in 1927 (8); and also to note the record of the Coalcliff Mine after being taken over by the Commonwealth Coal Commissioner in 1944, as described by Mr. Justice Davidson in his 1946 report :

> "It might have been anticipated in view of the oft-repeated assertions that nationalisation would ensure the remedy for all evils in the industry, that the miners would have seized this opportunity of demonstrating their point ..... However, despite the provision of underground transport and improved methods of dust control, the average number of days worked per fortnight fell from 8.75 to 7.7; output per man-shift fell from 2.76 to 2.10 tons; average daily absenteeism rose from 43 men to 59; 138,000 tons of coal were lost as a result of absenteeism and strikes, and the Commonwealth Government had lost £37,000 when it decided to close the mine. Hence the conclusion seems inevitable that when industrial disputes occur the disturbing elements among the men have no more regard for the Government when it is in charge than for the private owner ..... and the policy of many of the leaders and members of the unions in clamouring for nationalisation bears every indication of being dictated not by concern to procure a greater output of coal at lower cost, but rather to gain a more complacent employer, open to political pressure, so that mine workers may be allowed to do less work for more pay, and to potter along in archaic ineptitude." (9)

Nevertheless the claim of the miners organisation that nationalisation and control by representative management would improve industrial

relations since it would get rid of provocative owners, and would eliminate the feeling of exploitation and the evil traditions inherited from the past, which resulted in nationalisation and unification of the industry under the National Coal Board in Britain, was not without certain support from academic circles in this country. For example, in their study "The Australian Coal Industry", published in 1947, A.G.L. Shaw (Senior Lecturer in History at the University of Sydney) and G.R. Bruns gave qualified support to nationalisation. They ~~qualifications~~ recognised the dangers in political appeasement of the miners, but believed these dangers could be overcome by removing the nationalised industry from day-to-day political control and by ensuring a large measure of independence for its management. This of course involved the creation of a public corporation, and Shaw and Bruns believed a measure of self-government in the industry could be provided by including in the governing board representatives nominated by the government from "prescribed classes (excluding defeated politicians)". For the sake of efficiency they did not favour elected representatives. (10) Presumably workers and consumers would be included among the prescribed classes for the mining authority : it is inferred that the "representatives" of these classes would be acceptable to the Miners' Federation, and yet, since they are to be selected and appointed by the Government, the problem of divided loyalties would be overcome. With British experience and Australian public opinion testifying against full nationalisation, however, the prospects of implementing such proposals are now much dimmer than in the immediate post-war years.

The Joint Coal Board established its Head Office in Sydney, and branch offices have been set up in most of the N.S.W. coal mining

regions, e.g. Cessnock, Lithgow, Newcastle and Wollongong. The Board itself, unlike its British counterpart, the National Coal Board, is purely a policy-making body and its members have no particular functional responsibilities. Its service is divided into four departments, namely Administrative, Engineering, Welfare and Medical. The Coal Industry Tribunal functions as a separate Arbitration Authority, independent of the Board.

In addition, a separate Operations Division was set up within the Board's own organisation in 1948 to handle its own colliery undertakings. The Operations Division acted in its commercial activities through privately-registered subsidiary companies owned wholly by the Board. The subsidiary companies engaging in actual mining operations were N.S.W. Mining Company Pty. Ltd., Newstan Colliery Pty. Ltd., and the Commonwealth Collieries Pty. Ltd.; while a further subsidiary company, Coal Mines Insurance Pty. Ltd., served as the agent of the Board through which all employers in the coal industry in N.S.W. were required to effect their Workers' Compensation Insurance. The Operations Division was subjected to the same supervision and control from the Board's technical and regulatory officers as the private mining companies. Mr. Kewley and Miss Ryden noted in 1949 that the Board's justification for setting up the Division was similar to that frequently advanced by governments in creating corporations : that the move would permit the conduct of collieries on sound business lines, and also would free the Board's supervisory and policy staff from the detailed production work. They also noted that :

> "The position of the board as regulator and supervisor of all mines, while owner and operator of some, is a complex and difficult one, but the separation of these functions should clarify administration".

(11)

In recent months, however, the activities of the Operations Division have been drastically curtailed. (12)

The possibilities of extending the scope of joint undertakings such as the Joint Coal Board were further revealed in an agreement signed between the Commonwealth and Tasmanian Governments and ratified by the Federal Parliament in the Coal Industry (Tasmania) Act 1949. (13) The Commonwealth Government had previously offered to enter into an arrangement with any State for the enactment of joint coal legislation similar to that already passed for New South Wales. An authority to be known as the Tasmanian Joint Coal Board was to be set up, to consist of the members of the Joint Coal Board (for N.S.W.) plus one additional member to represent Tasmania. The powers and functions of this organisation in relation to the Tasmanian coal industry, and the various administrative provisions, were to be similar to those of the parent N.S.W. organisation. It was intended that parallel legislation should be passed by the Tasmanian Parliament. It is conceivable that the extension of such an arrangement could bring all States within the ambit of the Joint Coal Board (or for that matter, other joint authority) with little more in effect than a variation in the occupancy of the fourth position on the Board to preserve the distinction between States. The only requirement is that the Commonwealth and State Governments and Parliaments must agree that such action is desirable; however ~~insurmountable~~ this appears to be an almost insurmountable stumbling block in the path both of those who seek merely to ensure effective co-ordination of a national industry and those who seek by this means to achieve full nationalisation. No other State Government accepted the Commonwealth offer in this matter, and even the bill submitted to the

Tasmanian Parliament as a result of the agreement between the Commonwealth and State Governments lapsed for want of enthusiasm in the State Legislature. Thus, although the Commonwealth Act remains in the statute-book, the Tasmanian Joint Coal Board has in fact never been constituted.

Another form of inter-governmental corporation appeared in Australia in the immediate post-war period. This was the type of corporation set up to act as the Australian Subsidiary of an international corporation, and which was, of course, closely linked with its international parent body. "International" corporations within the limits of the British Empire were not unknown in pre-war days. Perhaps the earliest example was the Pacific Cable Board, which will shortly be referred to by way of introduction to the Overseas Telecommunications Commission. Between the wars, the British Phosphate Commission appeared, consisting of one representative each of the United Kingdom, Australia and New Zealand, to operate the phosphate industry on the Pacific Island of Nauru, which had been acquired by the three participating countries under mandate from the League of Nations after the First World War. The Christmas Island Phosphate Commission was also set up in 1949, by agreement between the Australian and New Zealand Governments, and consisting of one Commissioner appointed by each of the two Governments, and a third appointed by the Governments jointly; this body is closely linked with the British Phosphate Commissioners whom it employs as managing agents. The 'company' form of Qantas Empire Airways has also been applied to the British Commonwealth field by the establishment immediately after the war of British Commonwealth Pacific Airlines Limited. This international public corporation was created by agreement

between the Australian, New Zealand and United Kingdom Governments to provide an all-British Trans-Pacific Service. Australia provided fifty percent of the capital by parliamentary appropriation, and was represented on the Board of Directors by G.P.N. Watt of the Commonwealth Treasury. In 1954, however, the entire stock of British Commonwealth Pacific Airlines was acquired by Qantas Empire Airways, and Britain and New Zealand ceased to participate in management of the Pacific airline. Tasman Empire Airways Limited, jointly owned by the Australian and New Zealand Governments as equal partners, is another example of the international public corporation registered as a private company. However, all these corporations functioned centrally under the internationally representative board of management, and as the principles involved in their organisation and control are quite distinct from those affecting the purely Australian corporations, they are excluded from this study except by way of passing reference.

THE AUSTRALIAN WOOL REALISATION COMMISSION:

The first of the separate Australian "subsidiary" corporations was the Australian Wool Realisation Commission. This was the Australian branch or unit of the international agency commonly known to students of economics as "Joint Organisation" or simply "J.O.", and whose correct title was United Kingdom-Dominion Wool Disposals Limited. This imperial corporation was set up by agreement between the Governments of the United Kingdom, Australia, New Zealand and South Africa in 1945, for the purpose of disposing of the accumulation of wool stocks no longer needed for defence purposes, and of integrating future wool clips into the sales programme. The Company form used for the parent corporation preceded the ventures of Australian Governments in the use of this type of organisation for public enterprises (Qantas Empire Airways Limited, and Commonwealth Hostels Limited),

but the "Crown Company" was not unknown in Britain, and was a commonly-used device of public administration in Canada.

A co-operative organisation with similar functions had also been created at the close of the First World War, and although not strictly a public corporation of the Commonwealth Government, it is worthy of mention both as the predecessor of the J.O. - Australian Wool Realisation Commission machinery and since it represents a unique experiment in international public administration. This organisation was the British-Australian Wool Realisation Association Limited, more commonly known as "Bawra". It resulted from negotiations between the Australian Central Wool Committee which had managed the Australian Wool Pool during the 1914-18 War, representatives of the wool industry in Australia, and the British Government, and its function was to organise the disposal of wool still on hand when acquisitions by the British Government ceased. It was incorporated on 27 January 1921 by registration under the Companies Act of Victoria, and consisted of an unusual partnership between the Australian wool growers in a voluntary, collective and private capacity on the one hand, and the British Government on the other, between whom all proceeds were to be divided equally. The only legal interest of the Commonwealth Government appears to have been the promulgation of regulations under Section 112 of the Customs Act to prevent the export of wool by the minority of "free sellers" who did not comply with the fixed minimum export price. Bawra was wound up following the final distribution of proceeds from its operations on 15 March 1932. (14)

The International Agreement creating J.O. was appended as a Schedule to the Australian Wool Realisation Act of 1945 (15).

It provided specifically that J.O. should be incorporated as a private registered company with a nominal share capital of eight shares, four of which were to be held by nominees of the United Kingdom Government, two by nominees of the Australian Government, and one each by nominees of the New Zealand and South African Governments; and that "this company will have three active subsidiaries in the Dominions to act on its behalf, which may be registered as Companies or other legal entities." The Directors of the "Principal Company" were to consist of an independent Chairman appointed by the four Governments by agreement, and eight Directors appointed by these Governments in proportion to their shareholdings. In addition, the Chairmen of the three Dominion subsidiaries were to be ex officio Directors, but without voting power.

In view of Australia's extensive if ragged experience with commission-type corporations, it was not surprising that the Federal Government selected this type of organisation for the Australian subsidiary, and constituted it a body corporate in accordance with the provision of the Agreement that each subsidiary should be a legal entity. Its South African equivalent, the South African Wool Disposal Organisation, was given similar corporate status. (16) The Australian corporation was given the title "Australian Wool Realisation Commission", and it took over the obligations and staff of the Central Wool Committee which had preceded it under the National Security Regulations. The Commission was quasi-representative after the fashion of the Repatriation Commission : it comprised a Chairman, an Executive Member, two members selected from a panel of four persons nominated by the Australian Woolgrowers' Council, two members similarly representative of the Australian Wool Producers' Union, one member [illegible] selected from a panel

of two persons nominated by the Federated Storemen and Packers' Union of Australia, and two persons "with experience in the valuation and marketing of wool." The method of selecting these "representatives" was wisely designed to minimise the problem of divided loyalties which so often arises when a system of direct election of members is employed : all members were appointed by, and to hold office during the pleasure of, the Governor-General, who was also to fix rates of remuneration.

The Commission was to engage its own staff, subject to their terms and conditions of employment being approved by the Public Service Board : this important innovation of the Coal Production (War-Time) legislation was also to be perpetuated in other post-war enactments. Although finance was to be provided by Parliamentary appropriation from the Consolidated Revenue Fund, it was balanced by the levying by the Government of a contributory charge on all wool coming under the Commission's jurisdiction : this was authorised by companion legislation in 1945 (17). Accounts were subject to inspection by the Auditor-General, while the Commission was required to submit to the Minister copies of all reports furnished to the Joint Organisation. There was an unusual procedure for Ministerial intervention : if the Chairman dissented from a decision of the Commission, he was entitled to bring his dissent to the notice of the Minister, in which case action was to be withheld until the Minister gave his overriding decision in the matter. At first glance this might appear substantially to restrict the ability of the Minister to interfere, but it must be remembered that the Chairman was to be a Ministerial nominee.

The Commission was empowered to appoint advisory and technical committees to advise it on such matters as it thought fit to refer to

them, and it took advantage of this provision early in 1946 by appointing advisory committees representative of the following sections of the trade : Wool Selling Brokers, Wool Buyers and Woollen and Worsted Manufacturers. The Commission completed its task of disposing of accumulated wool stocks in 1951, and the marketing of wool in Australia then reverted to the free auction system.

However the Commission itself remained in existence for the purpose of distributing to growers and dealers the considerable profits which resulted from its earlier operations, the Australian share of which amounted to approximately £93,000,000. The greater part of this money was distributed by 1955 under the terms of the Wool Realisation (Distribution of Profits) Act 1948-55 (18), but the clearing of a final £2,500,000 was delayed by the protracted litigation of the "Poulton Case". In a further amending Act in 1957 (19), the period for disposing of this money was extended until 30 June 1959 or "earlier determined date", after which time it is envisaged that any outstanding moneys will then be paid into the Wool Research Trust Fund, and the Australian Wool Realisation Commission will go out of existence.

The Australian Wool Board (renamed Australian Wool Bureau in 1953) has always been quite distinct from the Wool Realisation Commission, and is related by constitutional similarities to the group of commodity marketing authorities although it is somewhat different from these in function. It was first established by National Security Regulation in 1939 to undertake economic and scientific research in the wool industry; and it was reconstituted by the Wool Use Promotion Act of 1945 (20), primarily as a publicity organisation, the research functions passing to the Council for Scientific and Industrial Research. However, the Wool

Board has also become linked with an international authority in its own right, even though this may be of a rather more informal nature than I.O. With the Wool Boards of New Zealand and South Africa, it has participated in the setting up of an International Wool Publicity and Research Secretariat, with headquarters in London, whose function is the promotion of wool use through a broad programme of publicity, education and research. Further, this body has, in partnership with American wool industry representatives, formed the Wool Bureau Incorporated, to permit the extension of its functions to the United States of America. (21) The Australian Wool Testing Authority, a further distinct statutory corporation created in 1957 to function within the wool industry, will be briefly discussed in Section Two(f).

THE OVERSEAS TELECOMMUNICATIONS COMMISSION (AUSTRALIA):

The second of the Australian "subsidiary" public corporations was the Overseas Telecommunications Commission (Australia). The early developments in the overseas telecommunications industry show that it has always been regarded as an imperial rather than a national concern, and this attitude has been strengthened rather than weakened by post-war nationalisation.

Australia was first brought into direct communication with the outside world during the late nineteenth century, when a private company, the Eastern Extension Cable Co., opened a cable service from England by way of Africa. Then, in 1898, representatives of the governments of Great Britain, Canada, New South Wales, Victoria, Queensland, South Australia and New Zealand drew up an agreement for the laying and operation of a Trans-Pacific All-British cable. Under this

agreement, which was signed by all the interested governments except South Australia in 1899, the Pacific Cable Board was created. The Board, which is an interesting example of an early inter-governmental corporation, was given legislative force in all participating countries by the Pacific Cable Act 1901 of the United Kingdom Parliament (22). It consisted of seven members, appointed by the various governments as follows :-

Great Britain	:	two representatives.
Canada	:	two representatives.
The Australian Colonies	:	two representatives (at first these members were selected by agreement between the Colonial Governments; later they were appointed by the new Commonwealth Government).
New Zealand	:	one representative.

The project, which cost £2,000,000, was to be financed by the partner governments in the following proportions ; Great Britain and Canada - each five-eighteenths of the total cost; New South Wales, Victoria, Queensland and New Zealand - each one-ninth of total cost. In fact, by arrangement, Britain originally financed the whole project and each other country was required to pay off its debt to Britain in fifty annual instalments. The cable was opened in 1902 and the Board remained in existence until 1929 (23).

External wireless services, which were first established in Australia in 1912 for the handling of traffic with ships at sea, were, like the internal telecommunications services, owned and operated by the Postmaster-General's Department until the year 1922. These coastal

stations were then transferred to the company now known as Amalgamated Wireless (Australasia) Ltd. (A.W.A.); although the Postmaster-General retained the right to regulate by virtue of the licensing powers vested in him under the Wireless Telegraphy Act of 1905 (24). Then, under the Wireless Agreement Acts of 1924 and 1927, by which the government shared with private interests in the provision of capital for the expansion of A.W.A., this "mixed enterprise" established the beam wireless service. (25). The first direct beam radio telegraph service connected Australia with England in 1927; in 1928 a similar service to North America was opened, and since then the service has been extended to many other countries.

It was soon obvious that, owing to the relatively low capital costs involved in its establishment, the beam wireless service was able to operate at rates lower than those charged by the cable services. Thus, if unrestricted competition were to prevail, the financial position of the cable operators would be seriously affected. Yet the cable services had two distinct advantages; first, they afforded the only completely secret means of communication in time of war, and second, they were not subject to the occasional fading and interruptions which occur in long distance wireless transmission. It was therefore recognised that some method of combining the advantages of both systems was needed.

In an endeavour to solve this problem, the Imperial Wireless and Cable Conference was convened in London in 1928. Following this Conference a company known as Imperial and International Communications Limited (later renamed Cable and Wireless Limited) was established to own and operate the Empire Cable network and the United Kingdom cable

and wireless services. This Company took over the operations of the Pacific Cable Board and the various cable companies. The beam wireless service and the coastal radio stations in Australia were not involved in this merger, and continued to be operated by A.W.A. Thus, as far as this country was concerned, the element of competition had not been eliminated, although the cable services were placed in the hands of an enterprise which was in a far sounder position to maintain them. (26)

In 1929, however, the short-lived Scullin Labour Government announced that it favoured the operation of all overseas telecommunications services by a single public authority; and the new Curtin Labour Ministry in 1941 drew up a plan, in the war-time setting, for nationalisation and imperial co-ordination of these services. This plan was strongly supported by the New Zealand Labour Government and was accordingly termed the "Anzac Plan". It was placed before the Commonwealth Telecommunications Conference in London in 1945, and the attending representatives of the governments of Australia, Canada, India, New Zealand, South Africa, Southern Rhodesia and the United Kingdom drew up an agreement based largely on its provisions. The agreement provided :

(a) that the United Kingdom Government would purchase compulsorily all the shares in Cable and Wireless Ltd.;

(b) that the cable service assets previously held by that company in the territories of the other partner governments would then be transferred to those governments at an agreed price;

(c) that the other partner governments were to acquire the overseas telecommunications assets of the wireless operating companies in each country ;

(d) that they were to nominate an existing department or establish a public corporation to operate the services newly acquired under (b) and (c); and

(e) that an organisation representative of all partner governments would be set up to co-ordinate the activities of the various "national bodies". (27)

The Overseas Telecommunications Act 1946 (28) of the Federal Parliament ratified this agreement, accepted the Australian assets of Cable and Wireless Limited, compulsorily acquired the beam wireless and coastal radio installations, and created a corporation known as the "Overseas Telecommunications Commission (Australia)" as the Australian "national body". This is the only statutory Commonwealth corporation which operates a nationalised monopoly industry. This was constitutionally possible since the field of operations is closely defined and the States are not involved, either internally or in their interrelations. The Commission is required to operate cable and radiotelegraph facilities for the conduct of public communications between :

the Commonwealth and other countries,
the Commonwealth and ships at sea,
the Commonwealth and commercial and private aircraft,
the Commonwealth and Commonwealth Territories,
any two Commonwealth Territories.

Government comment on the organisation of the Commission was limited to the statement of the Minister for Information, Mr. Calwell (Labour - Melbourne, Victoria), who introduced the bill, that "the Commission is to be constituted on similar lines to the Australian National Airlines Commission." (29) This in turn was openly modelled

on the Australian Broadcasting Commission. Debates on the measure were mainly concerned with the merits of socialisation generally, acquisition and compensation procedures, and the desirability of empire co-ordination which was generally accepted to the extent that little or no consideration was given to possible loss of independence through integrated control. Mr. E.J. (now Sir Eric) Harrison (Liberal - Wentworth, N.S.W.) accepted nationalisation as inevitable in view of the numerical strength of the parties in both Houses, but asked :

> "Which is preferable - control by the Postmaster-General's Department, or control by the Commission which has been outlined by the Minister? We must study both these systems carefully and realise whither each leads. I am not one of those who believe that a commission of this kind is other than a job-finding body for some particular people whom the government has in mind."

He wanted to know why there should be a second public body when the Postmaster-General's Department was already in the field with a highly-qualified technical staff, a research section, and the necessary equipment and organisation to give immediate effect to the scheme. The Government's reply was put by Mr. L. Haylen (Labour - Parkes, N.S.W.) who described the scheme as "a rather complicated proposal" and expressed the view that the vesting of control in a commission designed especially to fit in with the Empire organisation "seems to be a reasonable solution of the difficulties presented." (30) New Zealand and South Africa, however, used the existing Post Office organisation for the purpose.

In his gesture of opposition, the much-criticised Sir Eric, who is now High Commissioner to the United Kingdom, merits notice for providing one of the very rare occasions in the history of the Federal Parliament when a non-Labour member has attempted to justify departmental control of a state activity in the face of suggestions for the conduct of that activity by a public corporation or "statutory authority."

Although lacking thus in adequate examination by members of appropriate administrative forms, the debates at the time of the Overseas Telecommunications Bill reached a more objective level in the discussion of staffing requirements. As originally introduced the Bill obtained personnel provisions similar to those contained in the National Airlines Legislation of 1945, which allowed a substantial measure of freedom. Before the Telecommunications measure was enacted, however, the Parliamentary Standing Committee on Broadcasting furnished a report on the staffing rules drafted by the A.B.C., and in the discussion that ensued it was strongly argued, particularly by Labour spokesmen such as Senator Cameron (Labour - Victoria, Postmaster-General) that uniform conditions should apply to the staffs of all Commonwealth instrumentalities. (31) The Government accepted suggestions, arising out of the Bailey Committee Report,(32) for example, that Disciplinary and Promotions Appeal Boards should be provided as in the amending Public Service and Commonwealth Bank legislation of 1945. Both the proposed Overseas Telecommunications Act and also the existing Broadcasting Act were accordingly amended by the inclusion of many additional provisions relating to staff in a degree of detail previously found only in regulations. (33) In so far as the former was concerned, conditions of appointment were prescribed as in the 1942 Broadcasting legislation, and all appointments were to be on probation as in the regular public service. All positions in the Overseas Telecommunications Commission Service were to be classified and salary ranges determined, and the Commission could create, abolish and reclassify positions. Selection for promotion was to be based on superior efficiency or equal efficiency plus seniority, and the criteria of efficiency were defined.

A Promotions Appeal Board was set up with executive authority, similar to the Promotions Appeal Committees included within the regular public service structure in 1945. In addition a Disciplinary Appeals Board was established, again similar to the Appeals Boards of the regular public service. Provisions relating to the retirement and dismissal of officers, and to the employment of married women were included, and these were also similar to the relevant provisions in the Public Service Act.

The Commission itself is a body corporate and has five members appointed by the Governor-General, including a Chairman and a Vice-Chairman. No special qualifications for appointment are prescribed. The salary of the Chairman is fixed by the Governor- General, while the Vice-Chairman was originally to receive £500 per annum and the other members each £400 per annum. Conditions relating to terms and vacation of office of Commissioners were similar to those for the Australian Broadcasting Commission, while the general staffing provisions have already been described. A General Manager was to be appointed as Chief Executive Officer, his salary, and all others in excess of £1,500 per annum being subject to the Minister's approval. The rights and conditions of employees of A.W.A. and Cable and Wireless Limited who were transferred to the Service of the Commission were preserved.

The Commission presents annual estimates to the Minister and all revenues are paid into its account to cover expenses and its contribution to the international body. It was originally financed by a Treasurer's advance of £3,000,000 to permit the acquisition of installations. Profits are applied to the repayment of this advance and, subject to the Minister's and the Treasurer's approval, to the development

of its services. An annual report is presented, together with such other reports the Minister requires. The Minister's approval is also necessary for contracts above the usual £5,000 or five year limits, for the supply of materials from outside Australia, and for any alteration in rates.

The Overseas Telecommunications Act 1946 requires the Commission to do all in its power to give effect to the British Commonwealth agreement, with a view to co-ordinating and developing facilities throughout the Empire. The Commission is, in fact, simply the Australian branch of the integrated imperial organisation. It operates the two cable systems, the beam wireless service, and the low-power stations of the coastal radio service. Internal land-line connections are provided by the Postmaster-General's Department, and the wireless and cable services are freely and flexibly available as alternate channels for the clearance of traffic. (34)

The London Agreement of 1945 had provided for an international organisation to co-ordinate the activities of the "National Bodies" administering the nationalised external telecommunications of the seven original partner governments, and to initiate developmental programmes. However this part of the agreement was not carried out immediately, as the interim "Commonwealth Communications Council" suggested, in view of the changing state of the British Commonwealth, that modifications to the accepted constitution for this organisation were necessary to allow the admission of new dominions and the withdrawal of existing partner governments. As a result, at a further conference in London in 1948, a new "Commonwealth Telegraphs Agreement" was signed on behalf of all

governments represented at the original conference. The new agreement provided that :

(a) the original partner governments may admit any other British Commonwealth Government as a partner to the agreement,

(b) if any partner government ceases to be a member of the British Commonwealth it shall automatically cease to be a partner to the agreement, and

(c) if any partner government wishes to withdraw for any other reason, it may only do so by giving not less than two years notice to the co-ordinating body and to the other partner governments. (35)

The international body was finally established by Act of the Imperial Parliament at Westminster (36) in May 1949 and is called the Commonwealth Telecommunications Board. Details of its constitution and powers are set out in the 1948 Agreement. It consists of a Chairman, appointed jointly by the partner governments, one member appointed by each partner government, and one additional member appointed by the United Kingdom Government to represent non-self-governing territories. Appointments are not to exceed five years but members are eligible for re-appointment. The Board is a body corporate with legal identity. Issues at Board meetings are decided by a simple majority, with the Chairman having a castingvote if necessary; but if the issue is claimed by a member to be one of government policy and unanimity is not obtained, then the Chairman must refer the matter to the partner governments with a report and recommendation, and a decision is dependent on the views of the partner governments. Staff is to be recruited from all participating countries. The annual budget distinguishes between

estimates for current and capital expenditure. A copy of the budget is forwarded to each of the partner governments, who must approve the proposed capital expenditure and provide the funds required. Current expenses, on the other hand, are met from a Central Fund for the receipt of the regular contributions of the various national bodies. An annual report and statement of accounts is submitted to each partner government.

The amended Commonwealth Telegraphs Agreement provided in addition that a further specific agreement clarifying respective powers and obligations was to be entered into by the Board, the partner government and the national body in each country. The main Agreement is attached as a schedule to the Federal Parliament's Overseas Telecommunications Act 1952 (37). Sir Earle Page, in introducing the amending bill, stated that the government wished to place its approval to the amended constitution on a statutory basis. He added :

> "The Board today consists of a Chairman appointed by the partner governments jointly, and nine members representing the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Ceylon, Southern Rhodesia, and the British colonies and protectorates. Pakistan is represented on the Board by an observer." (38)

The 1952 Act thus approved Australian participation in the Commonwealth Telegraphs Agreement; and it also included the blanket provision that all future amendments to the Agreement may be approved by regulations made by the Governor-General. It is surprising that during the debates on these bills neither Labour nor Non-Labour spokesmen in Parliament expressed concern at the fact that inevitably some of our national sovereignty must be sacrificed if we are to take part in an international project of this kind. The concept of strength through unity, or perhaps more appropriately in this case, greater efficiency

through imperial co-ordination, seemed to be widely accepted in this country in the immediate post war years. The industry, of course, is one which could not function without at least some degree of international co-operation.

The Commonwealth Parliament has thus effectively nationalised a major and vital industry despite the restrictive features of the Constitution. As shown above, however, it was an industry which did not materially affect the individual States. The Commonwealth was not so successful in implementing two other proposals for nationalisation in the immediate post-war years, even though these had the full support of both the Federal Government and a substantial majority of both Houses of Parliament. Yet, although effective nationalisation was not achieved, both episodes had an important bearing on the history of the public corporation in this country. Like the Labour Government in Britain, and apparently following its example, the Chifley Government in Australia was accepting the public corporation as the vehicle for nationalisation; and in each case, as the nationalisation proposals were judicially defeated, the corporations involved remained in existence as competitors in lieu of the intended monopolies. This is one of the major differences between most Australian Commonwealth corporations and their counterparts in Britain, or for that matter in the Australian States. The two corporations involved were those operating in the banking and internal air transport industries.

(b) The Nationalisation Proposals.

THE COMMONWEALTH BANK 1945-1951:

Bank nationalisation had occupied a prominent place in the various platforms of the Labour Party since the Party's 1916 Federal Conference. The growth of central banking theory and the disastrous

depression and unemployment during the years around 1930 further concentrated the Party's attention on considerations of monetary and credit policy. Indeed, as Sir Frederick Eggleston has remarked (39), the now widely-accepted view of economic policy first propounded by J.M. Keynes had far more in common with the attitude of the more responsible Labour elements during the depression years than it had with the deflationary policy followed by the alliance of the Commonwealth Bank, the private banks and the anti-Labour Senate majority. It was, therefore, perhaps not so surprising that, in Professor Crisp's words :

> "..... at this time the Party turned increasingly and, sometimes perhaps all too exclusively, to considerations of banking policy and banking nationalisation." (40)

When Labour next had an opportunity to further its policy at the Federal level - the coming of the Curtin Ministry during the Second World War - it lost little time in securing the appointment of sympathisers to the Board of Directors and in providing, by National Security Regulation, for the exercise of stronger central banking controls over banking activities.

In the meantime, however, Mr. J.B. Chifley, who as a Cabinet Minister in the unfortunate Scullin Government had shared Theodore's Keynesian policy, had been deeply impressed by the sufferings of the Australian worker during the great economic crisis. Although for the time being Chifley had disappeared from Parliament, he was appointed a member of the Banking Royal Commission, and as he travelled around Australia with the Commission he found, according to Eggleston,"that bank managers were routine bureaucrats who had not absorbed the new economic policy", and thus"generated a deep distrust of all bank officers trained in private banks." (41) His dissenting view on the subject of

bank nationalisation has already been recorded in connection with the Report of this Royal Commission on the Monetary and Banking Systems. He carried his personal "vendetta" with him to the Prime Ministership in 1945, and thereafter "action against the banks dominated his political objectives." (42)

Mr. Chifley's Government lost no time in introducing into Parliament two banking bills of major importance to the national economy. One of these, the Banking Act 1945 (43), provided for the regulation of banking and the protection of the currency and public credit of the Commonwealth. It gave the Commonwealth Bank many powers of regulation over the trading banks, including the right to demand information and regular returns showing details of assets and liabilities, and the right to hold "special deposits" as a compulsory reserve against the liabilities of the trading banks. The other, the Commonwealth Bank Act 1945 (44), provided for a major reorganisation of the Commonwealth Bank itself.

The latter Act repealed all previous legislation dealing with the Bank and its various departments and reconstituted the whole organisation under the management of a Governor assisted by an Advisory Council. This is the type of management Labour has consistently favoured in recent times, and Mr. Chifley explained that "the Government feels that an institution of this character should be under management which is entirely divorced from private interests." (45) In lieu of the Board of Directors, an Advisory Council consisting of the Secretary to the Department of the Treasury, the Deputy Governor of the Bank, an additional Treasury representative and two other officers of the Commonwealth Bank, was appointed to advise the Governor with respect to

monetary and banking policy and such other matters as the Governor might refer to it.

Conscious of the crisis which developed when an earlier Labour Government endeavoured to give effect to its financial policy in the face of the hostile autonomy of the Commonwealth Bank, the Government desired to reserve for itself the power of direction over matters affecting the national economy. This, of course, had been envisaged by the Banking Royal Commission in 1936-37, and the relevant clause (Section 9) of the 1945 Act was based on the recommendation of the Commission. However, as Professor Giblin pointed out (46), there was one major departure from that recommendation. Under the Act the Treasurer and the Bank are required to endeavour to reach agreement in the event of any difference of opinion on whether the banking policy is directed to the greatest advantage of the people of Australia. In the event of their being unable to reach agreement, the Treasurer may inform the Bank that the Government accepts responsibility for the adoption by the Bank of its (i.e. the Government's) policy, and that the Government will for its part take any action within its powers necessary to implement that policy. The Bank shall then give effect to this policy. The departure is contained in the underlined phrase. The Royal Commission had considered that any dictation of policy to the Bank should be accompanied by a statement that the government "is in a position to take, and will take," such action. The wording of the Act, which Giblin describes as a "specious substitute", leaves the Government in effective command, but could result in indecisiveness and embarrassment if the Government found itself unable to carry out its part of the policy due to constitutional hindrance or a hostile Senate.

Notwithstanding this defect, this part of the legislation represented a considerable advance in Australian corporate practice. The Bank had ample opportunity to make its views known but it could not in the final resort operate in defiance of the wishes of the elected government. Moreover, for what it was worth, it was frequently emphasised that the new formula was intended to apply to policy issues only, and the Bank remained more truly autonomous in its managerial affairs than many other modern corporations where the Minister is given a general power of direction. Thus Mr. Chifley stated :

> "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." (47)

The general functions of the Bank were reframed in the 1945 Act to give substance to the now accepted function of a central bank in this wording :

> "It shall be the duty of the Commonwealth Bank, within the limits of its powers, to pursue a monetary and banking policy directed to the greatest advantage of the people of Australia, and to exercise its powers under this Act and under the Banking Act 1945 in such a manner as, in the opinion of the Bank, will best contribute to
>
> (a) the stability of the currency of Australia,
>
> (b) the maintenance of full employment in Australia, and
>
> (c) the economic prosperity and welfare of the people of Australia."

The Act also removed the statutory upper reserve limit to the note issue and formally recognised the role of the Bank as a Central Bank by allowing

for a separate division of accounts to be styled "Central Banking Business". Overall the Bank was divided into the following Divisions and Departments, all under the direct control of the Governor :-

Central Banking Business

General Banking Division

Rural Credits Department

Mortgage Bank Department

Note Issue Department

Industrial Finance Department

Commonwealth Savings Bank

Conditions of appointment and service of Bank Officers were brought more closely into line with the regular Public Service. Appointments were to be made by competitive examination, positions were to be classified, and officers were to be protected with respect to promotions, tenure of office, dismissal and punishment, by the creation of special Promotions Appeals Boards and Disciplinary Appeals Boards similar to those established within the Service of the ~~Australian Broadcasting~~ Overseas Telecommunications Commission. The Bank was required to submit an annual report to Parliament, and its accounts were subject to inspection by the Commonwealth Auditor-General.

Describing the general effect of the 1945 Commonwealth Bank Act, Mr. Chifley pointed out that the legislation was intended :

> "..... to strengthen the central banking functions of the Commonwealth Bank; to ensure that the financial policy of the Commonwealth Bank will be in harmony with the main decisions on matters of Government policy and in the interests of the people of Australia; to ensure the development and expansion of its general banking functions by active competition with the trading banks; to return the control of the

Commonwealth Bank to the Governor .....; and to assist in developing small industries and in enabling the people to secure homes." (48)

Mr. Menzies, as Leader of the Opposition, considered the 1945 legislation to be the most momentous measure before the Federal Parliament for many years, and explained the attitude of the Liberal-Country Party Opposition thus :

"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 great conflict of opinion on a central banking problem."

He pointed out that the report of the Royal Commission had favoured the retention of the Board of Directors, and added that the Opposition held grave fears concerning the possibility of political control of the Governor and therefore of the Bank. He complained that the word "policy" was not defined and could apply to "matters great or small", and that the advisory council was pure window-dressing since it consisted only of Commonwealth Bank officers and Treasury officials and was in no way independent. Reconciling this attitude with that of the Royal Commission he stated that :

"..... 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 object ..... to argue ..... and to publicise its own views." (49)

It is interesting to note that Sir Frederick Eggleston supported Mr. Menzies' view on this issue. As a true liberal of the old school, however, Eggleston's support was qualified, for it also found fault with the Bank Board of conservative creation. In his "Reflections", he expressed the following opinion :

> "..... the Act of 1945 gave the Central Bank just that sort of control which an efficient Central Bank can exercise. The Commonwealth Bank was no more efficient than any other agency in the economic system ..... Its prestige was entirely due to the high profits which came to it almost automatically (from the note issue). Nobody in Australia had really worked out the proper function of a Central Bank, or the limits of that function. Bank officers and politicians combined to overplay the position of the Central Bank in the banking system. The only really bad point of the legislation of 1945 was the disbanding of the Bank Board and the centralisation of power in the hands of a Governor. I do not contend that the Bank Board was an ideal board, and its composition shows how little we really understand the principles which should determine the structure of State instrumentalities. Members were appointed as representing interests and not for their financial knowledge or experience. Nevertheless, it is always desirable to have a board because it is preposterous to give one individual the power of dictation and control contemplated in the 1945 legislation. No one individual can possibly undertake the responsibility involved; he will be bound to evade risks and play for safety. It must not be forgotten that he must be strong enough on occasions to assert his view against political leaders who will act according to the political exigencies of the moment. He should be reinforced by the weight of

his board. It will do him no harm to have to prove the case for his view to a board, and if the board is composed of real independent experts and not interests, a politician would have to think twice or more before disagreeing with it." (50)

From the above opinion, it is apparent that Eggleston retained his belief in the possible damaging effects of detailed political control of public enterprises to the end of his life. However, his experience had been a long and active one, both on the political and administrative side, and he has without doubt devoted more attention to administrative principles than the great majority of Australian politicians and administrators. His view is one, therefore, which cannot be lightly discarded. He added that the business of central banking was like the architectural profession : in both two entirely different skills were required - the engineer and the artist in the latter, and the "ordinary banker" and the "theoretical economist or financier" in the former. It was "very difficult" to find a Bank Governor with all the qualities required.

The staffing provisions of the Commonwealth Bank, which have already been briefly described, were brought closely into line both with those of the regular Public Service and of other corporations created or reconstituted during the period 1942-46, such as the Overseas Telecommunications Commission. Indeed, the Labour government was consistent in reducing the staffing freedom of the majority of Commonwealth corporations. Yet, with this exception, the constitutional organisation of the Bank under the 1945 Act was far removed from that of any other Commonwealth corporation. The enquiry into the Banking system in 1936-7 came to a very different conclusion on the desirable relation between the Minister and the corporation, for example, from that arrived at by the enquiry into the Broadcasting System

in 1941-2; and although it was a Labour Government which broadly followed both recommendations, no attempt seems to have been made to reconcile the two methods, or even to recognise that a similar set of administrative principles could and should be applied to both corporations. Obviously procedural details in regard to operations or regulation in industries as different as banking and broadcasting will themselves differ - it would be most unreasonable to suggest otherwise. But in each case Parliament decided to set up a public agency operating within the industry, and it decided that departmental management of the public agency would be unsuitable as various factors existed which demanded managerial autonomy subject to certain safeguards to ensure ultimate democratic accountability. Hence in each case the device of the public corporation was adopted, but, except for the trend in personnel policy, there was little similarity between the two. It is this national habit of inconsistency which causes the so-called "principles" or "constitutional conventions" which are supposed to govern the use of public corporations to lose all shape and meaning, thus making it easier for administrative confusion and sometimes abuse to appear.

If constitutional difficulties had not arisen, it is possible that Chifley and his Government may have been content with the powerful central bank they had established in 1945. The Constitution of the Commonwealth of Australia involved, in effect, the delegation of certain clearly defined powers by the sovereign State Governments to the Federal Government. State interests have always jealously protected those powers which remained with them. They have protested vigorously when the Federal Government has appeared to encroach on their rights, and many well-qualified authorities consider that the High Court has on occasions

gone too far in sympathising with such claims by the States, or by the private interests behind them who seek to gain by limiting the Federal power. In this case, the High Court held on appeal from the Melbourne City Council in 1947 that the Commonwealth could not compel the States or their instrumentalities to bank with the Commonwealth Bank.(51) Professor Sawer records that :

> "Mr. Chifley's reaction to this was excessively violent, and in particular his view that the decision presaged a general attack on the 1945 banking legislation was unfounded." (52)

Chifley at once decided to nationalise the whole banking system, and although the decision was made without even the formality of a Cabinet meeting it received the support of the Party.

Thus a further Banking Bill was brought down in 1947 to provide for :

(i) the expansion of the banking business of the Commonwealth Bank,

(ii) the taking over of the banking business of the private banks and the acquisition of property used in that business, and

(iii) the prohibition of private banks carrying on banking business in Australia.

This measure was passed by both Houses and received the Royal Assent. As the Banking Act 1947 (53) it exempted only the State Banks and Savings Banks from the process of nationalisation.

The Act provided for the payment of fair and reasonable compensation for all property or shares acquired; and it further provided for the establishment of a Federal Court of Claims, whose decision was to be final and conclusive, to hear and determine claims for compensation arising under the Act. All officers of the private banks were protected

in respect of continuance of employment, salaries, and conditions of service. The Commonwealth Bank was required to employ all officers of acquired banks on terms not less favourable than those they previously enjoyed, and it was required to provide adequate banking facilities, to conduct its business without discrimination, and to observe the practices and usages customary among bankers.

The validity of this Act was, however, challenged in the High Court by the private banks and by the States of Victoria, South Australia, and Western Australia, and in a majority judgment delivered on 11 August 1948, the Court held that certain vital sections were invalid under Section 92 of the Constitution, since they permitted interference by the Commonwealth in the free movement of interstate trade (54). An appeal to the Judicial Committee of the Privy Council against this judgment was dismissed (55) and the 1947 legislation was finally repealed by the Menzies Liberal-Country Party Government in 1951. The Commonwealth Bank remained in existence both as a Central Bank and as a competitor with the private banks in the operation of trading and savings bank business; and its activities were to continue as a major topic of political debate and hostility.

On the question of nationalisation and the Courts, Professor Sawer has written at length about the obstacles created by the Commonwealth Constitution for socialist Federal Governments. For example, he considered that the earlier judicial decision on the 1945 Banking legislation :

> "..... was quite unnecessary and revived a vague constitutional doctrine invented by the U.S. Supreme Court which the High Court had apparently laid to rest in 1920." (56)

Of the 1948 decision he had this to say :

> "The legislation considered in the Bank case had a multitude of defects, owing to the thoroughly unfortunate way in which the policy was adopted and rushed through Parliament, and the ultimate decision of the Privy Council turned on a very small and probably unnecessary part of the legislation - not the acquisition of the business of the trading banks, but the attempt to prohibit these banks from starting up again ..... the effect of such decisions as the Bank Nationalisation Case is far from settled, and it cannot be said dogmatically that they rule out the possibility of socialisation in the interstate sphere." (57)

Professor Crisp attributed this restrictive construction by the Courts of Section 92 of the Constitution to "juristic ingenuity"(58) while Eggleston, who was a solicitor in private life, for his part believed :

> "..... that the Commonwealth Parliament has the power to nationalise banking, and that, though the decisions of the High Court and the Privy Council invalidating the Act were the logical culmination of a series of previous decisions, this interpretation was arrived at by a painful straining of the words of the Constitution." (59)

Be that as it may, there is little doubt that the courts at least interpreted public opinion correctly, although this was not their function, for the attempt to nationalise the banks was the chief reason for the Labour defeat in the 1949 Federal elections.

Of equal importance to this survey is the general agreement among these authorities about the careless and hasty preparation of the banking legislation. To Eggleston "the approach to this momentous operation" revealed :

> "..... the crude thinking which pervades most socialist thought. Nationalisation, in the opinion of socialists, means simply the setting up of a mechanism to perform some social work. Apparently the actual form of the organisation does not matter very much; how the people to run it are to be appointed; what their responsibilities are to be; what arrangements are to be made to do various types of business. Apparently public ownership means that there is some sort of apocalyptic change from bad to good." (60)

Sawer's reference to the "multitude of defects" in the banking legislation has already been recorded; while Crisp has underlined the emotional tone with which Labour approached the banking question. In such an atmosphere, of course, little can be achieved in building up and applying a set of objective and rational administrative principles. Even so the new formula for Ministerial relations was a distinct advance on the haphazard nature of such provisions in earlier corporate legislation.

Nevertheless, the clear ultimate subordination of the management of corporations to the ministers "in charge" of them on the one hand, when considered in the light of the increasing complexities of modern government generally and the consequent elevation in importance of specialist and senior executive officials in the regular departments on the other hand, emphasises that the traditional distinction between departments and corporations is vanishing in practice if not in theory, and underlines the point made by a select band of scholars of public administration that the traditional nineteenth and early twentieth century justification for the corporations has largely disappeared.

THE AUSTRALIAN NATIONAL AIRLINES COMMISSION:

The other unsuccessful attempt at nationalisation by the Commonwealth Parliament was that of the internal airlines. However, it cannot be said that the corporation which came into existence as a result of that attempt has been unsuccessful. The Australian National Airlines Commission, which operates under the trade name of Trans-Australia Airlines (T.A.A.), was created by the Chifley Labour Government which followed the lead of other British Commonwealth Governments in setting up a nationally-owned domestic airline. The Commission derived its authority from the Australian National Airlines Act of 1945 (61) which gave the new national airline an effective monopoly of all internal air services by providing for the compulsory acquisition of aircraft and other property of private operators. In fact, the major private operator, Australian National Airways Proprietary Limited, already enjoyed a virtual monopoly of many major inter-state services, and was uncontrolled in this monopoly except for the maintenance of safety standards by the Department of Civil Aviation. It was intended that this near monopoly concern should be transferred by acquisition to public ownership and control, together with the few other small-scale private operators.

The nationalisation provisions were, however, challenged in the High Court by Australian National Airways and other airline companies on the ground that the Commonwealth Parliament could not make laws with respect to air transport in Australia (this subject was unknown when the Constitution was passed in 1900, and therefore not included in the list of powers delegated to the Commonwealth); or, if it could, that it could not give a power to a corporation to obtain a monopoly to operate

interstate airline services because Section 92 of the Constitution provided that "..... trade, commerce and intercourse among the States ..... shall be absolutely free." The High Court held that :

(1) the Commonwealth could create corporations to carry on trade and commerce among the States,

(2) it could not give them a monopoly in a particular field of trade and commerce among the States,

(3) the operation of such airline services was trade and commerce among the States, and therefore

(4) the Sections of the Act giving a power to the Corporation to obtain a monopoly to operate services between "any place in a State and any place in another State" were invalid as ultra vires Section 92 of the Constitution. (62)

Also for constitutional reasons, T.A.A. is unable to operate intra-state services unless specifically authorised by the State concerned. An amending Act of 1947 (63) removed from the legislation those clauses which were inoperative because of the Court's decision, and also enabled T.A.A. to operate services within / the State of Queensland and subject to the laws of that State, following an agreement between the Commonwealth and Queensland Governments. Similar agreements have since permitted the national airline to operate services within the boundaries of certain other States.

T.A.A. thus has never enjoyed the monopoly intended for it, and it has operated in competition with various private airline services. It began in a modest way by requisitioning three Government-owned D.C.-3 aircraft in 1946. However, under the bold early leadership of Mr. A.W. Coles, it enjoyed a period of rapid expansion. A calculated risk was

taken by the Commission, the development costs being written off against receipts as they occurred, rather than being capitalised and spread over a period of years. After showing deficits for its first three years, the Commission's operations have since generally been profitable, despite rising costs (64). It might be said, therefore, that this bold and successful financial policy has fully vindicated the claims made by Swinburne, Irvine and the earlier Watt in moulding the corporation to suit the requirements of government business activities. And yet the "Case of the Aluminium Production Commission", which was moving towards an explosive situation at the time T.A.A. was thus expanding its services and becoming firmly established, was to show that the provision of a public corporation was not a certain recipe for success, and that, depending on a combination of personalities and legal requirements, it could result in far greater confusion, timidity and lack of initiative than was likely even in the regular departments.

The Australian National Airlines Commission itself consists of five members appointed by the Governor-General, in the first instance for terms of five (Chairman), four (Vice-Chairman), four, three and two years respectively, and thereafter for periods of three years. Members are eligible for re-appointment. The Governor-General determines the salary of the Chairman, while the Vice-Chairman receives £500 per annum and the other members £400 per annum. No special qualifications for appointment are prescribed. Provisions for termination of appointment ~~xxxxxxxxxxx~~ and for vacation of office are similar to those contained in the Australian Broadcasting Act of 1942, on which this legislation was modelled. Likewise a General Manager is to be appointed by the Airlines Commission, while provisions for the appointment of staff are also identical to those which were applied to the Australian

Broadcasting Commission by the 1942 legislation, except that only clerical officers are required to take a competitive entry examination; and the Commission is required to submit to the Minister annual estimates, an annual report and such other reports as are requested. Early finance was to be provided by a Treasury advance.

Provisions for ministerial control have been summarised thus by Mr. G.P.N. Watt, who was moved by the Menzies Government from Secretaryship of the Treasury to Chairmanship of the Commission in 1950 (he had previously been a part-time member of the Commission), and who contributed an article on its operations to the Special Number of the Australian Journal of Public Administration on Public Enterprise :

> "The Commission has been granted wide powers under the Act, and only certain matters, such as contracts for capital expenditure in excess of prescribed limits, and salaries of higher executives, are reserved for the Minister. The Minister may direct the Commission to establish developmental services and will reimburse the Commission any losses thus arising, subject to certain conditions." (65)

Although a career public servant (at one stage he held the post of Public Service Inspector for Victoria), Mr. Watt was apparently not appreciated by the Menzies Government as Head of the Treasury. However, he has had considerable overall experience on the managerial side of modern public corporations of the commercial type, in various capacities such as Deputy Member of the Australian Aluminium Production Commission, Member and Chairman of the National Airlines Commission, Chairman of British Commonwealth Pacific Airlines Limited, Director of Qantas Empire Airways Limited, and Member of the Advisory Committee to the Commonwealth Bank, and his article is therefore worthy of considerable attention.

He referred briefly to the establishment, constitution and development of the national airline, and also to the great achievements during its first ten years of operation. He then discussed the management of the airline, and here provided valuable information on the working of a particular public corporation which is widely accepted as being an efficient organisation. For example, he wrote :

> "The business of the Commission is conducted in form similar to that of a Company Board of Directors ..... The Chairman concentrates his attention on policy, long range planning and overall financial control. He also gives special attention to Government liaison ..... He is continually available for discussion with Top Management and between monthly meetings deals on behalf of the Commission with any matters which cannot await the next formal meeting ..... Any decisions taken on behalf of the Commission are subject to its authority." (66)

"Top Management" comprises the General Manager and the Assistant General Manager, who share a large measure of responsibility for all matters affecting the Commission and the airline. The former is Chief Executive Officer of the Commission, whose affairs he administers through the Assistant General Manager and the executives in charge of the various functional Divisions and State Branches. The Assistant General Manager is directly responsible for day to day operations and business activities. Certain special aids are also made available to the Top Management. There is a part-time Administrative Consultant "who operates along the lines of an organisation and methods unit in a Commonwealth Department", also specialist officers such as an Inspector of Air Safety and an Inspector of Accounting Systems. Further,"in order that the Commission and Top Management may be relieved of inappropriate detail", senior administrative officers have been given "the widest reasonable financial powers and

delegations". Mr. Watt expressed the view that the success of T.A.A. has been due in large measure to high staff morale and the spirit of co-operation fostered by successive General Managers, who have made every effort to develop team spirit and efficiency. (67)

On the question of relations with the Minister, Mr. Watt referred to statutory obligations such as the annual report and other controls which "are formal safeguards to Ministerial responsibility". Of the more intangible aspects, the Commission held the view "that it was essential to deal direct with the Minister to keep him informed at first hand of matters affecting him in the conduct of a public authority." There were two broad categories of matters which came within the Minister's interest : first, Commission policy and its relationship to the policy of the Government of the day; and second, matters of administration as distinct from policy which might be brought before the Minister by Parliamentary question or external representations. The Commission saw it as its duty to discuss all such matters fully with the Minister - how different from the attitude of the original War Service Homes Commissioner and more recently the Australian Aluminium Production Commission! It is also interesting to note here the Commission's acceptance of the right of Members of Parliament to question its activities, as opposed to the British practice in this regard. Subject to statutory obligations and these two categories of intangibles, however, the Commission believed that :

> "..... public authorities should be left free under the direction of their Commissions or Boards to perform their day to day operations guided by their own business judgment, and sense of responsibility, propriety and discretion. Such an approach allowed the public authority form of organisation to combine the principle of Government ownership with the flexibility of private enterprise."

In the case of the Australian National Airlines Commission, the formal or statutory safeguards :

> "..... are supplemented and strengthened by frequent personal discussions by the Chairman with the Minister when the opportunity is taken to review matters of current interest and importance. In this manner the Minister is kept well informed of the Commission's deliberations at policy level and in appropriate matters the opportunity is taken to ascertain the Minister's views in regard to proposed new courses of action." (68)

In regard to staffing, Mr. Watt pointed to the anomalous position of the Commission in respect of "the duality" of arbitration tribunals to which its employees had access. Thus some of its employees joined organisations which submit their claims to the Commonwealth Public Service Arbitrator; in other cases the claims went to the Commonwealth Court of Conciliation and Arbitration. (69) Since Mr. Watt's criticism of this arrangement was written, however, the T.A.A. staff have been removed from the Public Service Arbitrator's jurisdiction. Unlike other modern corporations, the Airlines Commission has retained a substantial degree of staffing independence, and Mr. T.H. Kewley has attributed this to a belief that public authorities operating competitive business enterprises should be placed in the same position as their competitors.(70) Admittedly when created, the Commission was intended to operate a monopoly service, but circumstances discussed above prevented this. Although the Labour Government reduced the personnel freedom of many corporationsin the years immediately after the establishment of T.A.A., it did not amend those provisions concerning this enterprise; while the application of a similar degree of freedom

by the succeeding Liberal-Country Party Government to the Coastal Shipping Commission set up in 1956, despite a general continuation of the Labour Government's policy of restriction, shows that there is some political agreement on this point. Yet some may dispute the distinction drawn here between competitive transport enterprises and competitive enterprises in other fields such as broadcasting and banking.

I have perused a series of documents prepared by T.A.A. for use in staff training courses, and believe that certain extracts are worthy of reproduction because :

(a) they represent a serious attempt to interpret the constitutional position of the Commission for the benefit of its own officials (this in itself is unusual), and

(b) they represent one of the few cases in Australian literature on the "public corporation" where the term is used in its wider sense to include both publicly-owned companies and statutory corporations (this of course is the sense in which it is used in this thesis). (71)

The relevant extracts are contained in Appendix C.

Although useful, however, they contain certain inaccuracies or ambiguities in so far as Australian public corporations as a whole are concerned. For example, the linking of the concepts of freedom from Government control and responsibility to a Minister of State is paradoxical; while only corporations within certain functional classifications, but certainly not all corporations (e.g. Broadcasting Control Board), are empowered to appoint their own officers. These aspects serve to emphasise the difficulty which will inevitably be met in any attempt to group all Australian corporations together in the one category for the

purpose of making generalisations. Moreover the competitive position of T.A.A. is not unique among Commonwealth corporations : the Commonwealth Bank was also "injected into a competitive industry", and in so far as its trading functions are concerned, continues to compete with private banking corporations. It is perhaps less surprising that T.A.A. being a successful corporation itself, should accept the common, but in my opinion not altogether valid, belief in the superiority of the corporation over the department as a device for the efficient administration of government enterprise. This may be true in the case of corporations operating in the high pressure world of competitive "big business but it is a doubtful generalisation.

(c) Modifications and Creations of Other Corporations.

THE REPATRIATION AND WAR SERVICE HOMES COMMISSIONS continued:

At the end of the war the "Pinner Committee", which was set up by the Government to investigate the functions of the various Commonwealth Departments, with particular reference to the cessation of a number of war-time activities, drew attention to the desirability of establishing uniform standards of staffing and similar salary classifications for all Commonwealth employees. (72) In this connection it will be recalled that the Commonwealth Coal Commissioner was legally required in 1944 to obtain the approval of the Public Service Board for conditions of employment of staff. This provision has since been applied to numerous other corporations by governments of both political colours, whose views on this question are obviously in harmony with that expressed by the Pinner Committee.

However the Chifley Government was by 1947 to develop these views to a stage analagous to that reached by the earlier Scullin Labour administration in 1931. As with the Scullin Government, a responsible Minister was to make an official policy statement clearly indicating

that the government did not favour administration by agencies apart from the regular Public Service; and as with the Scullin Government, this statement had momentary effect only, being used to justify the partial closure of two corporations and then being promptly forgotten

In introducing legislation designed to bring the staff of the Repatriation and War Service Homes Commissions within the Public Service proper, Mr. Dedman (Corio, Victoria - Minister for Defence and Post-War Reconstruction) stated that :

(a) the committee appointed to investigate the various departments had recommended that the staffs of Commonwealth authorities generally should be brought under the Public Service Act,

(b) that the Government had also received representations to this effect from the High Council of Public Service Organisations, and

(c) that in supporting these recommendations, the Public Service Commissioner (Mr. Thorpe) had expressed the view that

> "..... an independent and virtually isolated activity cannot have the advantage in its general administration to be gained from the assistance and guidance that can come from a centralised body whose officers have an intimate knowledge of the organisation and working of many Departments." (73)

Mr. Dedman described what purported to be the Government's policy thus :

> "..... as a principle, the Government feels that as far as possible all Commonwealth activities should be brought directly under the Public Service Act, thus ensuring a uniform system for staffing and for determining matters relating to salary fixation and the general conditions of employment of all Commonwealth employees by a

centralized body which has had extensive experience in personnel administration."

He amplified this expression of policy as follows :

"..... it will be generally agreed that unless there are very special reasons for a contrary course, no Commonwealth activity should stand alone, and, in effect, be excluded from the oversight and review of its organisation, methods, etc., on lines which Parliament has laid down in Section Seventeen of the Commonwealth Public Service Act, just as none with financial responsibility is free from checks imposed by the Audit Act." (74)

The Opposition, through its spokesmen, Messrs. Harrison and Francis, fulfilled its role by critisizing the measure. The ground selected was that the original Repatriation Act provided for the staffing of that body exclusively by ex-servicemen, in order to secure a softening effect not possible in an ordinary Department (75). However a study of the debates on the original Act reveals that this was not the only reason for the separation of the staff from the Public Service. The expected temporary nature of the activity had in fact been an important consideration. Moreover, the bill under debate did not deprive ex-servicemen of their representation in management of the organisation; the existing staff of the Commission were transferred in block to the new Repatriation Department; and the Public Service Board continued to show preference to ex-servicemen in new appointments to the Department, although as has fairly recently been realised this latter policy had a detrimental effect on administrative efficiency.

This, the Commonwealth Public Service Bill (No. 1) of 1947, duly became law (76), and the amending War Service Homes Act (No.1) of 1947 (77) abolished the statutory position of Commissioner and created in

lieu a Director, with the status of head of the War Service Homes Division of the Department of Works and Housing. The Division has since been transferred first to the Department of Social Services and later to the Department of National Development. It is completely integrated within the Commonwealth Public Service, although the person holding office as Director retains the legal status of body corporate. The Repatriation Commission also remains in existence as a body corporate charged by law with the administration of the Repatriation Act subject to the control of the Minister of State for Repatriation. All provisions of the Act relating to powers, duties and obligations still refer to the Commission itself. However, all reference to the employment of staff and to separate budgetary arrangements has been deleted, and the "Commission" has been, since the 1947 amendment, scheduled under the main Public Service Act as a Department of the Public Service, its Chairman being similarly scheduled as a Permanent Head under that Act. The Commission would now appear to be in a most ambiguous position from the point of view of public administration. Its top structure remains that of a public corporation, admittedly subject to a full measure of political control (indeed, even when a separate administrative entity the Repatriation Commission was unique in having a special ministerial portfolio created solely to ensure its political supervision - in no other Commonwealth case is a ministerial portfolio associated separately and distinctly with a public corporation, although this is not uncommon in the State field); while in all other respects it enjoys a similar position to an ordinary ministerial department, and is so regarded. As such, it is in a different position from the Broadcasting Control Board and other corporations, which are either subject to a similar wide area of political control, or whose staff may be integrated within the Public

Service Act by the device of vesting in the Chairman all the powers and functions of a Permanent Head under that Act - but not actually making him a Permanent Head, and not scheduling the authority as a Department under the Public Service Act. I have therefore followed both Australian legal intention and general practice in regarding the present Repatriation authority as a department and not a corporation, in the full realisation that the distinction is even more blurred than usual in this case.

A Labour Government had thus again enunciated a principle apparently intended to restrict the use of public corporations. Again however, this principle was not applied generally. Only in the case of one other corporation, the first new authority to be created after the enunciation of this principle (the Australian Broadcasting Control Board which will shortly be discussed) was the principle to be used to provide for the full integration of a new activity within the regular Public Service. In practice, the principle in no way prevented the Labour Government from creating new public corporations - its further application resulted merely in depriving them of a greater or lesser degree of staffing autonomy. As will be seen in the case of the A.B.C., the Labour Government was at the same time depriving an important corporation of its last claim to financial autonomy.

THE AUSTRALIAN BROADCASTING COMMISSION continued.

It has already been shown that, although the Broadcasting legislation of 1942 resulted from one of the most thorough and objective examinations in this country into the desirable features of public corporation administration, that legislation in fact did not solve the

problems experienced in the management and control of the National Broadcasting Service; and that many contentious issues were raised during the later war period. These events, of course, emphasised the general ineffectiveness of the Parliamentary Standing Committee on Broadcasting.

The clarification of Government policy towards the staffing of most public corporationsin the post-war period has also been referred to in its differing effects in connection with the closure of the Repatriation Commission and the creation of the Overseas Telecommunications Commission. Parliament in 1946 also legislated (78) to bring the staffing provisions of the A.B.C. into line with those applied to the latter corporation. In this connection a new major Division (Division 1A of Part II) was inserted into the principal Act under the title of "The Service of the Commission". This new Division required that the Commission was to appoint a General Manager and other officers and temporary employees. The salary of the General Manager was subject to the Governor-General's approval, and the payment of all other salaries in excess of £1500 were subject to the Minister's concurrence. Conditions of appointment were not changed, although all appointments were now to be on probation as in the regular public service. Conditions relating to promotions and dismissals, appeal machinery and the creation, classification, and abolition of positions were similar to those for "The Service of the Overseas Telecommunications Commission."

The Australian Broadcasting Act of 1946 also satisfied Labour ambitions in another direction by requiring the A.B.C. to establish its own independent news service. However, despite the recommendations of the Standing Committee, no changes were made in the financial provisions of the 1942 Act, and the news service had to be financed out of existing sources of revenue, already regarded as inadequate.

A recent chronicler of these events, Mr. Ian K. Mackay, has commented that :

> "In the years that followed (the 1942 legislation) Parliament appeared to be completely out of touch with the realities of broadcasting." (79)

The Parliamentary Standing Committee began an examination of the financial position in 1947, and the A.B.C., after stressing the rapid increase in costs over the prewar level, reported that it was unable to provide an independent news service and to maintain its other services on the statutory allocation of 11/- per licence fee. The A.B.C. asserted strongly that it did not wish to be subject to the annual budgeting of the government of the day, since the adequacy or otherwise of the grant from Consolidated Revenue might then easily depend on political goodwill. However, it stated that it would be satisfied with a system of grants based on three year periods, and this suggestion received the support of the Standing Committee since it would facilitate forward planning. This recommendation was given little or no attention, however, and a further separate committee under Mr. A.A. Fitzgerald (Chairman of the Commonwealth Grants Commission) was set up to examine the problem. In the meantime, expenses in excess of regular income were met by frequent grants from Consolidated Revenue; and in Mr. Mackay's words :

> "By this time the patience of the A.B.C. was exhausted and they complained of continual parliamentary interference in their affairs - they suggested that it was dangerous for politicians to interfere unnecessarily in matters of taste and opinion." (80)

These events are also examined in detail in Miss Rydon's analysis which has been referred to previously.

However, Miss Rydon records (81) that independently of and despite these investigations, the Labour Government had been preparing legislation to provide for major changes in the regulation of Australian Broadcasting generally, and for certain changes in the constitution of the Australian Broadcasting Commission itself. This Broadcasting Bill was introduced into Parliament before the report of the special committee was released; yet it included the repeal of all previous legislation relating to the finances of the Commission in favour of a financial system similar to that used for the regular departments. In addition, the Commission was deprived of its power to appoint State Broadcasting Advisory Committees, and there were also other important amendments.

The amending Act of 1948 (82) provided for the enlargement of the Commission by the appointment of two additional Commissioners, one of whom was to be an officer of the Department of the Treasury, and the other an officer of the Postmaster-General's Department. The normal dismissal provisions were not to apply to these "Departmental Commissioners," who were to hold office during the "pleasure of the Governor-General" and who were to receive no remuneration other than their salaries as departmental officers. Referring to the appointment of departmental officers to the Commission, Miss Rydon has pointed out (83) that the amendment merely gave legislative form to a practice which had come into common usage in connection with other corporations. Thus the National Airlines Commission, established in 1945, actually comprised an independent Chairman and vice-chairman, and three other Commissioners who were public servants specially appointed as representatives of the Treasury, the Postmaster-General's Department and the Department of Civil Aviation. Similarly, in the case of the Overseas Telecommunications Commission created in the following year, the three other Commissioners were the Director-General

and Assistant Director-General of the Postmaster-General's Department, and the Secretary of the Treasury. Such appointments had been made possible by the fact that the legislation creating these corporations did not prescribe qualifications for appointment. The inclusion of public servants in the management of the A.B.C. was denounced in many quarters at the time, and the implications of this development have been examined by Miss Rydon. While such members may strengthen the Commission in any stand it may take against a government department, nevertheless the problem of dual loyalties arises. Public servants are actually servants of their Ministers; hence their appointment to commissions such as the A.B.C. increases the potential area of political interference. Although there has been much argument on this point, it does not appear to have been shown clearly that such appointees have been freed from their departmental loyalties. Such appointments to the corporations of men trained within the regular public service departments must, moreover, also have the effect of increasing the area of uniformity between the departments and the corporations for the reason that the managerial thinking of the men involved will not change appreciably between the departmental office and the corporation board-room. It is interesting to note that when the Labour Party first demanded representative management of corporations, its desire was the inclusion of nominees of organised labour; however, after bitter experience with the Stevedoring Industry Commission, the representatives appointed by the Chifley Government were its own officers and not labour representatives. The present Liberal-Country Party Government has recently legislated to repeal the provision relating to the appointment of "Departmental Commissioners" to the A.B.C. (84).

The 1948 legislation included other provisions of major importance also. As mentioned above, all sections of the 1942 Act

dealing with finance were repealed. Now the Commission was required to prepare annual estimates in a form prescribed by the Minister, and to submit them to the Minister for inclusion in the overall Government estimates. All moneys appropriated by Parliament for the purposes of the Commission, together with other moneys received, were to be paid in/to an account kept by the Commission in the Commonwealth Bank. From this account, operating expenses and the remuneration of Commissioners and staff were to be met. The Commission was no longer required to be financially self-supporting, and all expenditure was to be in accordance with the approved estimates. Created as a public corporation because of a desire to ensure a greater degree of autonomy and freedom of action than permitted of departments, the A.B.C. was now reduced to a position identical to that of the departments in so far as the control of its own finances was concerned. Yet the change was accepted with very little discussion in spite of the unfavourable reports both of the Parliamentary Standing Committee and of the Special Committee which reported favourably on the system of independent financial management.

The 1948 broadcasting legislation also involved a major change in the method of regulation of commercial broadcasting stations. The Labour Government still did not fully implement the Party's declared policy of nationalising the "B-class" stations, but it did in this legislation establish a supervisory body with fairly wide powers of regulation over these private enterprises. This body, the Australian Broadcasting Control Board, is similar in many respects to the managerial corporations created by the Commonwealth ~~public corporations~~ Parliament, and is generally included in any study of Commonwealth public corporations. The consolidated broadcasting legislation is therefore unique in that it constitutes two distinct corporations.

Before passing on to a study of the Control Board, it is worthy of note that the 1948 legislation as originally brought down in the Senate excluded the vital Section 89 of the 1942 Act, which had given the A.B.C. the exclusive power to determine the conditions of political broadcasts. The intention was apparently to transfer this discretion to the Control Board. However the A.B.C. made representations during the passage of the bill to have this power restored to it, and an amendment introduced in the Committee stages not only restored this discretion to the Commission but widened its terms to include "controversial" subjects as well as "political" subjects. As Mr. Mackay points out, this extension would include religious and social issues (85). By 1948 then, the A.B.C. had been deprived of its independence in both staffing and financial matters; and yet its authority in relation to the broadcasting of contentious issues had been strengthened to the extent that opportunities for political interference in its actual programme work were severely curtailed.

THE AUSTRALIAN BROADCASTING CONTROL BOARD.

The 1948 Act provided for the appointment of three members to constitute the Australian Broadcasting Control Board, one to be Chairman and all to serve in a full-time capacity. Members, who are not to have any financial or executive interest in commercial broadcasting, are to serve for such terms not exceeding seven years as the Governor-General determines.(86) Remuneration is also determined by the Governor-General, while dismissal provisions are similar to those for the Australian Broadcasting Commission. The Board was later to be enlarged, under the Broadcasting Act 1954 (87) by the appointment of two additional part-time members to assist in the added volume of work being brought about by the

introduction of television services - this development, with other later changes in corporations established or reconstituted by the Chifley Government, will be discussed in the next section of this thesis. The Board is financed by parliamentary appropriation, and is required to submit an annual report and balance statement to the Minister for presentation to Parliament.

The Minister retains the overall power, through licencing, to regulate commercial broadcasting, but is now required to take into account any recommendations made by the Board as to the exercising of that power. On matters listed specifically as coming within the function of the Board, however, the Board is to make decisions "subject to any direction of the Minister". These matters include the preparation of plans for the extension of broadcasting and television services; the determination of location, operating power and frequency of individual stations; the enforcement of technical standards; the provision of financial and other assistance to ensure adequate services, e.g. in rural areas; and the control of actual periods of time allotted for various subjects to ensure that comprehensive programmes are provided to serve the best interests of the general public. The Minister may appoint Broadcasting Advisory Committees in each State to advise the Australian Broadcasting Control Board.

A significant feature of the Board's constitution is the provision for staff appointments and conditions of service. The Act provides (Section 6 J) that the staff are in all respects to be subject to the Public Service Act, and that the Chairman of the Board is to have all the powers of a Permanent Head under that Act. This is the device used to integrate the staff of two former short-lived Commonwealth public corporations, the Federal Capital Commission of 1924 and the National Insurance

Commission of 1938, into the Public Service as a whole.

The application of the device in the Commonwealth field in these two instances was quite out-of-step with the many other corporations created before, almost simultaneously and since. The device, however, was quite commonly although admittedly most inconsistently used by some State Parliaments, the N.S.W. Hospitals Commission, the Queensland Harbours Trust, and the Tasmanian Forestry Commission being cases in point. On equally inconsistent occasions, South Australia has adopted a formula which, although fairly similar, is not as restrictive ; thus staff of the State Bank of South Australia for example are subject to that State's Public Service Act except that all powers normally exercised by the Public Service Commissioner are to be exercised by the Bank Board. A similar provision was applied to the South Australian Commissioner of Highways; yet the Savings Bank, Electricity Trust and Housing Trust of that State are quite independent of the Public Service Act. The circumstances relating to the inclusion of the staff of the Commonwealth's Repatriation and War Service Homes Commissions within the regular Public Service have been described : we can see the influence of these circumstances in the extension of these staffing provisions to the Australian Broadcasting Control Board. The Chifley Government's strong belief in the application of uniform conditions to all persons serving the Commonwealth found its logical and most extreme expression in these cases. Of course, like the Repatriation Commission, the Board's organisation is largely administrative in function and it is perhaps possible to see a closer affinity between it and the normal Public Service Departments than is the case with the other modern corporations.

On this occasion Senator Cameron (Postmaster-General) explained that :

> ".....since the Board is intended to become a permanent part of the broadcasting machinery in Australia, it is proposed that the staff shall be employed under the Commonwealth Public Service Act. In this way they will enjoy benefits available to other members of the Public Service ....., and their salaries will be subject to relevant arbitration awards. The staff of the Board will also be subject to the overall authority of the Public Service Board, which will be able to check any undue expansion." (88)

He made no reference to the events surrounding the inclusion of the staffs of the Repatriation and War Service Homes Commissions within the framework of the Public Service Act; and made no attempt to explain why, since the A.B.C. itself was also "a permanent part of the broadcasting machinery", its staff should not be similarly treated. The administrative development passed almost unnoticed by the Opposition, due largely to its fear that the Government's sinister aim in imposing further controls was to bring complete nationalisation a step closer.

This fear of the Opposition Parties was shared both by the Australian commercial stations and by the A.B.C. itself. The latter feared that the autonomy already possessed by it in relation to the control of contentious broadcasts would be transferred to the Board, and through this in fact to the government of the day, for, as has been pointed out, the Board is subject in general terms to any directions the Minister might care to give. It has already been seen that last-minute representations by the A.B.C. secured the retention of this control (89). The Control Board today seems to be generally accepted in the broadcasting industry as holding, as an impartial tribunal, a watching brief to ensure

that adequate and comprehensive programmes are provided in the public interest. Although there is apparently some difference of opinion on the relationship between the Board and the A.B.C., Mr. Mackay, who has obviously made a close study of his subject, states that :

> "In the exercise of its functions the Board is required to 'consult' with the A.B.C. to ensure that the above mandate is observed, and I am not aware that any friction has ever developed in carrying out these duties." (90)

Mackay believed that except for technical matters, Parliament did not intend the Board to have overruling powers over another Commonwealth authority, and that the Board in fact has not exercised such powers in the programme sphere. I have examined a number of Annual Reports of the Control Board, and find that while reference is made to such consultations there is no mention of any refusal by the A.B.C. to recognise the Board's jurisdiction. Information received from senior officials of both the A.B.C. and the Control Board has confirmed this impression. Later legislation - the Broadcasting and Television Act 1956 (91), with the principles of which the Control Board expressed agreement - was to place the issue beyond doubt.

The Central Office of the Board was duly established in Melbourne, and the Public Service Board made provision, by the creation of positions under the Public Service Act, for regional staff in the other State capitals. However, no appointments have been made to these regional offices, and the Control Board has instead delegated its powers to officer of the Postmaster-General's Department in the various States. In this case, the corporate wheel has thus turned a full circle - the impartial board which was set up to replace the politically-controlled Postmaster-General's Department now employs officials of the latter department as its

agents in carrying out its functions at the regional level. Of course, the Board itself was subject to any directions the Minister might give - but this did not mean necessarily continuous direction as with the department. I am not aware that any difficulties have arisen, but the arrangement has intriguing possibilities in the new angle it presents on the problem of divided loyalties. Moreover, the episode must cast some doubts on the necessity of removing the regulatory functions from the department, as provided for in the 1948 legislation.

THE STEVEDORING INDUSTRY COMMISSION and
AUSTRALIAN STEVEDORING INDUSTRY BOARD.

The Stevedoring Industry Commission was first set up under National Security Regulations, and was continued by the Stevedoring Industry Act 1947 (92). It was designed to serve both as an administrative agency to provide facilities within the waterfront industry, and also as a special arbitration tribunal in the same sense as the Coal Industry Tribunal and its predecessors have assumed the Commonwealth's arbitration powers in respect of another specialised industry; and it was unique among the Commonwealth corporations in so combining both executive and arbitration functions. It was also one of the few examples in this country of the widely representative corporation. It consisted of an independent Chairman who was appointed by the Governor-General for a five-year term and who had to be either a Judge of the Court of Conciliation and Arbitration or a Conciliation Commissioner (Mr. Justice Kirby held this office), and five other members with the following qualifications : an officer of the Commonwealth, a representative of overseas ship-owners, a representative of Australian ship-owners, and two representatives of the Waterside Workers' Federation.

Two years later this representative Commission was abolished by the Stevedoring Industry Act 1949 (93) which substituted the Australian Stevedoring Industry Board, a non-representative body corporate consisting of a Chairman and two other members appointed by the Governor-General for terms not exceeding seven years, and without prescribed qualifications. Both Acts provided for the appointment by the Minister, from panels of names furnished by the Federation, of Waterside Employment Committees in each port to serve as local agencies advising and assisting the authority.

Introducing the 1949 Bill, Mr. Dedman described the Act of 1947 as a "bold legislative experiment" creating an authority which had both administrative and arbitration powers in the waterfront industry, and which was fully representative of all the interested parties. He recalled that the Government had hoped that good results would be achieved because of the greater opportunity for co-operation of employer and employee interests in the joint management scheme. He then described the results of this experiment. Difficulties soon arose when Messrs. Healy and Roach, the representatives of the Waterside Workers' Federation, on two separate occasions directed waterside workers to strike against the orders of their own Commission. These strikes had nothing whatever to do with conditions of employment on the waterfront, but were intended to serve as a protest against court proceedings against Sharkey and McPhillips, Communist Party agitators, neither of whom had any connection with the industry. This problem of dual loyalties in representative authorities (and even in bodies such as the Aluminium Production Commission and the A.D.C. where so-called "Departmental Commissioners" are appointed) is not uncommon, and is discussed elsewhere in this thesis.

Neither the Government nor the Chairman of the Commission could tolerate this state of affairs, and the Government therefore sought an assurance from Healy and Roach that while they remained members of the Commission they would co-operate with it and not encourage members of their Federation to flout the Commission's authority and disobey its orders. Healy and Roach refused to give this assurance and were therefore dismissed from the Commission. The Federation was then asked to nominate two representatives to take their place, but refused to do this. The Government then had no alternative but to dissolve the Commission; at the same time it wished to retain an administrative authority to maintain pickup centres, to supply wharf labour, and to improve amenities and other conditions of wharf employment. Mr. Dedman explained :

> "As events had shown that the time was not yet ripe for the actual disputants to be represented on the Commission, the only solution was to constitute a similar authority on which neither side would be represented." (94)

The earlier authority had been given Commission form largely to permit representation of interests. If the Government really believed that a similar corporation was the only alternative to the representative commission, it was guilty of great lack of imagination and great lack of understanding of public administration. It may have believed there were good reasons for the course it took, but if it did it made no effort to explain. The Board was, however, only one of a number of new corporations set up by the Chifley Government in 1949, and few were adequately justified by ministerial statements in the light of the anti-corporate policy statement which accompanied the closure of the Repatriation corporation in 1947. In fact it was Mr. Dedman, who was now claiming that the

Australian Stevedoring Industry Board was "the only solution", who had made the conflicting policy statement two years earlier. Despite his earlier view he gave no hint of any exceptional circumstances, following the decision to do away with the representative commission, which might justify the creation of a further separate authority outside the public service. Whether he had forgotten that contribution or not, he showed no realisation of the inconsistent role he was playing. It would appear that having achieved its desire for a substantial measure of uniformity in government employment, and for effective controls in other directions, the Labour Government was satisfied - it had no thought for administrative efficiency as such, and therefore did not concern itself further with abstract principles of public administration.

Thus the Australian Stevedoring Industry Board replaced the Commission, with wide powers over matters of wharf employment generally, but without the final power to settle major industrial disputes; instead the Conciliation and Arbitration Court was required to make one judge available continuously to handle waterfront disputes. The appointment of staff under both Acts was subject to the Minister's approval, and although employees were not subject to the Public Service Act they were to be covered by the same terms and conditions as temporary employees under that Act, unless otherwise determined by the Minister. Both Acts provided for financing by a special tax on man-hours worked by waterside labour. Annual reports were to be furnished in each case, and the Minister was enabled to direct the calling of a meeting at any time. Application of funds was subject to any direction of the Minister, and under the 1949 Act the Board was required to seek the Minister's approval before entering into any agreement involving expenditure in excess of £5,000 or a lease of more than five years.

The waterfront situation, however, remained a most unhappy one, and the succeeding Menzies Government appointed a special committee to examine and report on all aspects of the industry, including the operations of the Board. Following this investigation, legislation was introduced in 1956 to replace the Board by a further corporation operating in the stevedoring industry, to be known as the Australian Stevedoring Industry Authority. This "Authority" will be discussed in the next section. Meanwhile, before its defeat in December 1949, the Chifley Government was to legislate for the creation or reconstitution of four more public corporations.

Two of these corporations, the Australian Shipping Board and the Commonwealth Scientific and Industrial Research Organisation (C.S.I.R.O.) were merely adaptations of earlier public corporations. Thus in both these cases the form of the authority had been determined many years before, and both the Labour Government, and Parliament as a whole, appeared content to accept a continuation of the public corporation form of management. The only contentious issue appears to have been that of socialism, raised during the debates on the Shipping Bill. The two brand new operational authorities created during the last year of the Chifley Government were the Australian Whaling Commission and the Snowy Mountains Hydro-Electric Authority. In view of the statement of Government policy at the time of the winding up of the separate Repatriation Authority, one might have expected to see evidence in the debates of an examination of the administrative requirements of the two enactments, and a decision on the type of organisation needed, based on an evaluation of the relative importance of various conflicting considerations. As will be seen, however, and as with the Stevedoring Industry Board, such considerations appear to have been generally neglected.

THE AUSTRALIAN SHIPPING BOARD.

The 1949 Shipping Act (95) was intended to give legislative approval to the re-constituted Shipping Board which was operating under the war-time National Security Regulations, and whose predecessor, the Australian Commonwealth Shipping Board, has already been discussed. The Shipping Board was designed to control the second Commonwealth Shipping Line, which, unlike its predecessor, was used almost exclusively on Australian coastal services. It is interesting to note that the Board created by regulation included a representative of the employees, but there was no such provision in the consequent peace-time legislation (96). However, the 1949 Act was not in fact ever proclaimed, and the Shipping Board continued to function under the National Security Regulations for some years. Further developments will be discussed in the next section of this thesis - however the provisions of the Act will be briefly recorded as they represent a further stage in the history of Australia's corporate movement.

The abortive legislation provided for a Board to consist of five members, including specifically one officer of the Commonwealth Public Service. The Chairman was to be appointed by the Governor-General for a five year term, the other members for three years. The Act also provided, in the by now generally accepted manner, for Public Service Board approval of terms and conditions of employment. The Shipping Board was, for constitutional reasons, prohibited from operating intra-state services, and in addition the Minister's approval was necessary under the Act before a ship could be bought, chartered or sold, before a contract exceeding £5,000 or a lease exceeding five years could be entered into, before equipment worth more than £20,000 could be acquired or before any equipment whatever could be disposed of. The Minister was empowered to

direct the Board to establish any shipping service within its constitutional limits, and provision was made for payment of compensation by the Government where such service operated at a loss. A similar provision, it will be remembered, applied to the Commonwealth Railways and to the Australian National Airlines Commission.

THE COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION.

In introducing the Science and Industry Research Bill on 8 March 1949, Mr. Dedman stated (97) that the Government had for some time been considering a reorganisation of the Council for Scientific and Industrial Research, whose staff and work had expanded six-fold over the last ten years. Following discussions with authorities such as the Chairman of the Public Service Board, the Director-General of Post-War Reconstruction, the old Council, the British Government, and eminent visiting scientists, it had been decided to remove from the Council work related to research for defence purposes, and also to legislate for the overall reconstruction of the Council to provide improved administration for its expanded activities. The first decision was implemented by the transfer of the Council's Aeronautics Division to the Department of Supply and Development in 1948, the move being strongly supported by Sir David Rivett (then Chairman of the Council) in the following words :

> "If national sovereignty demands the right to prepare secretly for the destruction of other sovereignties, let those who take the responsibility of making a decision to that effect keep their projects clear of those national scientific instutions in which the traditional freedom of science must be maintained." (98)

The 1949 legislation (99) was designed to implement the second decision, and it provided for the replacement of the Council by a new authority to be called the Commonwealth Scientific and Industrial Research Organisation (C.S.I.R.O)

C.S.I.R.O.'s Executive, or governing body, comprises a Chairman and four other members, all appointed by the Governor-General for terms not exceeding seven years. At least three members of the Executive must possess scientific qualifications, while the Chairman and two others must serve in a full time capacity. There is in addition an Advisory Council consisting of the members of the Executive, the Chairman of each State Committee appointed under the Act, and such other members who may be co-opted, by consent of the Minister to a recommendation of the Executive, by reason of their scientific knowledge. State Committees are set up by the Governor-General to act as local agents both for the Advisory Council and for the Executive. The exercise of any power by the Executive of C.S.I.R.O. is subject to any regulations made under the Act , and to any directions the Minister may give - it is not specified that such directions shall relate to matters of policy only. C.S.I.R.O. is financed by means of the normal departmental method of estimates and appropriations through the Government's annual budget.

The Gibson Committee had recommended in 1942 that the terms of appointment of members of governing bodies should be for prescribed periods to reduce the dependence of the appointees on political goodwill. Yet the C.S.I.R.O. legislation fixed the maximum limit of seven years only, leaving the actual term in each case to the discretion of the Government. Although the Shipping, Whaling and Snowy Mountains legislation each prescribed fixed terms of appointment, it is noticeable that other creations of the same Government (Joint Coal Board, Broadcasting Control Board and Stevedoring Industry Board) also involved terms "not exceeding" the prescribed maximum period. This inconsistency on the part of the draftsmen and politicians responsible for all this legislation suggests that the Report of the Gibson Committee, having served its immediate purpose, was

forgotten, and that the relative provisions in subsequent statutes were shaped by pure accident only.

The chief innovation of the legislation establishing the Organisation, however, was contained in its staffing provisions. Like other modern corporations, it is required to obtain Public Service Board approval for its terms and conditions of employment. However, it was also :

(a) required to select staff in accordance with recruiting methods determined by the Public Service Board, and

(b) required to obtain Public Service Board approval for the size of its administrative and clerical establishment.

In the latter connection, the Act provided, at Section 24, that :

"The maximum number of officers and employees of each designation whose duties are primarily of an administrative or clerical nature shall be subject to the approval of the Public Service Board."

Except for the few corporations treated as departments for staffing purposes, this was the first occasion on which the Public Service Board's organisation, methods and inspectoral functions were extended to the autonomous public corporations. As such it represents an important development in public administration in this country. This device of expanding the area of Public Service Board control over the corporations was to be copied by the succeeding non-Labour government on various occasions.

Mr. E. Harrison had led the Opposition attack on the legislation, claiming that this was attributable solely to the fact that the lack of security arrangements in the appointment of staff to the Council for Scientific and Industrial Research had led to loss of confidence abroad

in Australian scientists and/to the consequent refusal of the United States to make known to us its own discoveries. He saw the measure simply as a transfer of scientific activities to Public Service Board control to ensure that the oath or affirmation of allegiance, and other security provisions, would be applied also in the field of public scientific research (100). Although the control vested in the Public Service Board was partial only, it was certainly more extensive than that applied to many other corporations by the Labour Government. On the other hand, the Government had only two years before expressed a policy apparently aimed at achieving full Public Service Board control over Commonwealth activities, and security arrangements did not then have much relevance. In denying Mr. Harrison's allegations, the Prime Minister (Mr. Chifley) commented that :

(a) as Treasurer, he had not been happy that any large organisation doing Commonwealth work should remain outside the scrutiny of the Public Service Board;

(b) the Government had carefully considered whether staff of the Council for Scientific and Industrial Research should be brought under control of the Public Service Board;

(c) the difficulty was that scientists, because of the nature of their work, cannot very well be brought under rigid public service control, because they must decide what is to be done, how it should be done and the numbers to be employed on it;

(d) the compromise decision aimed at bringing the Council's employees into line with the Public Service generally, without hampering its scientific work (101).

This statement is consistent with the degree of authority permitted the Public Service Board over C.S.I.R.O.'s staff - and yet many large

scientific establishments have been created both by Mr. Chifley's and the succeeding Government, within the ordinary departments. Nevertheless, there is considerable merit in the inference in Mr. Chifley's statement that full Public Service controls may hamper work of a cultural nature. There would appear to be strong justification for affording C.S.I.R.O. special status as a public corporation because of the need, in the words of Professor Webb, for "cultural autonomy."

THE SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY.

The question of harnessing the waters of the Snowy Mountains area for irrigation and power development purposes had been under consideration for many years, and there had been considerable discussion of the constitutional position of the various interested Governments. The boundary between N.S.W. and Victoria divided the catchment area from which the Snowy River flowed wastefully into the sea and from which the Murray River system began its long inward journey through outback Australia. The Commonwealth Government was also interested both because of its defence interest and because of the proximity of the Australian Capital Territory; while to South Australia, through which the Murray finally flowed to the sea, the river water was vital not only for keeping farms productive but also for providing for the domestic needs of Adelaide, Whyalla and other centres of population. These questions were examined in a Current Affairs Bulletin entitled "Snowy : Whose River?". (102)

After the close of World War II a vast scheme was drawn up for the development of the area, the basic feature of which was the diversion of the Snowy River under the Great Dividing Range for the purpose of generating hydro-electric power and supplementing the waters of the Murray River system. Following a series of conferences between the Commonwealth,

New South Wales and Victorian Governments, both at ministerial and official level, and the reaching of a final agreement setting out the duties of the proposed authority and the mutual obligations of the three Governments, a bill was introduced in the Federal Parliament in 1949 to constitute an authority to undertake the works involved. (102A)

Surprisingly, however, anddespite the inter-governmental agreement, the bill drafted by the Chifley Government left the States without a voice in executive management of the Authority. Parliamentary debate centred around the technical and scientific details of the scheme, although Mr. Menzies criticised the Government's lack of regard for State rights, and in committee Sir Earle Page, after mentioning the need to study carefully the administrative requirements of the plan, suggested an amendment to the effect that the Associate Commissioners should be representatives of the States involved - this was rejected on the grounds that the organisation was an authority of the Commonwealth, and that members must be servants of the Authority and not subject to State direction in the performance of their duty (103). That the Commonwealth was able to act in this way demonstrates the great power and prestige which had accumulated to it at the expense of the States during almost fifty years of federation.

The Snowy Mountains measure constituted a new departure in so far as Commonwealth legislation was concerned in that it provided for the appointment of a single Commissioner to be assisted by two Associate Commissioners. This form of organisation had previously been used in Tasmania for the Transport and Hydro-Electric Commissions of that State, although in the case of the latter, the Associate Commissioners hold part-time appointments only. The Snowy Mountains Hydro-Electric Authority is

legally a corporation sole through the personality of the Commissioner, while the two Associate Commissioners have the statutory function of advising and assisting the Commissioner and of performing such duties as he directs. The original appointments were for seven years in respect of the Commissioner, and six and five years in respect of the Associate Commissioners, while all further appointments are to be for set terms of seven years.

Like C.S.I.R.O. the Authority is required to obtain Public Service Board approval for terms and conditions of employment, and to select staff in accordance with recruiting methods determined by the Public Service Board. However its administrative establishment is not subject to the Board's approval.

There is no reference to the Minister in the section of the Act outlining the powers and functions of the Authority. However elsewhere the Minister's approval is specifically required for the appointment to the Service of the Authority of non-British subjects, for payment of salaries in excess of £1,500 p.a., and for contracts involving amounts in excess of £100,000. The Auditor-General is required to report the result of each audit to the Minister, and the Authority is to furnish an annual report and such other reports as the Minister may require. The Governor-General has the usual power to make regulations. Many of these provisions are of course fairly standard for Commonwealth corporations, although the Authority was given wider latitude in respect to entering into contracts: frequently the uncontrolled limit is £5,000. The Minister was also required to recommend for the Treasurer's decision the price at which power produced by the Authority was to be sold, while the form of accounts, raising of loans and provision for reserves were all subject to the Treasurer's approval.

The First Annual Report of the Snowy Mountains Hydro-Electric Authority (104) included a copy of a "Financial Directive from the Treasurer of the Commonwealth issued by the Minister". In this "Directive", the Authority was instructed to submit its programme for the next five years to the Minister for his approval, and to furnish an estimate of the funds needed to implement this programme. Further, three months prior to the commencement of each financial year the Authority is required to submit to the Minister :

(a) a statement in broad outline indicating the operations which it is proposed to carry out during the ensuing year; the manpower and material required, and (where possible) the country of origin of the materials;

(b) a statement of the commitments to be incurred in acquiring permanent machinery, equipment, and other capital items during that year, and (where possible) the country of origin;

(c) in a form to be approved by the Treasurer, estimates of the expenditure involved in (a) and (b) above; and

(d) estimates of the receipts (if any) of the Authority during the year on capital or other account.

The Directive also lays down the procedure to be followed in borrowing money from the Treasurer following receipt of the Minister's approval for such an advance, and it sets out the rate of interest and the terms of these loans. It provides also that the Authority shall not, without the approval of the Minister and the Treasurer, enter into any arrangement with a State or a Local Authority, involving finance, that may be of concern to the Commonwealth in its financial relations with the States; similarly it shall not introduce any staff pension scheme or provident fund without the Minister's and the Treasurer's approval. Insurance,

including workers' compensation, is not to be effected with private insurers; and until it commences to sell power, the Authority is to treat any insurable losses as part of capital cost of works.

This directive is particularly interesting in view of the noticeable lack of financial detail in the covering legislation. The assumption is inevitable that (except, perhaps, for the staffing provisions of the 1946 acts) the modern legislature does not concern itself with the attention to detail which characterised the Acts of twenty years ago - in fact it is content to give the executive a much freer hand in laying down procedures relating to the ultimate accountability of such bodies.

As has been shown, like the River Murray Commission, the Australian Aluminium Production Commission and the Joint Coal Board, the Snowy Mountains Hydro-Electric Authority resulted from an agreement between the Commonwealth and certain States; and yet the States have no voice in its management. For eight years the Commonwealth's authority to operate within the territory of N.S.W. and Victoria rested on a doubtful/defence application of its power. The vast developmental undertakings in the Snowy Mountains area have become the shop window of Australia, and the magnitute of the scheme and/imagination behind it have impressed alike such recent distinguished visitors as the President of South Vietnam and the Ceylonese Minister of Finance. Yet the following remarks of a newspaper political correspondent published as late as 21 September 1957, under the heading "Rivers Scheme Official Now", furnish a reminder of Sir Frederick Eggleston's comment on the lack of attention given by the Chifley Government to the administrative detail of the scheme (105):

> "..... this week the formal documents were signed which put the Snowy River hydro-electric scheme on a constitutional basis. No

longer does this vast scheme hang precariously by a tenuous defence power which Mr. Menzies as long ago as 1949 said was of doubtful validity. The States have agreed with the Commonwealth on the sharing of water and power, and there is no possibility henceforward of this largest development scheme being challenged." (106)

Despite this, it seems probable that the Chifley Government had learnt the lesson, through its experience with the Stevedoring Industry Commission and elsewhere, of divided loyalties in management, and that the legislation was framed accordingly. It might perhaps be said that the hasty measure involved taking a constitutional risk to ensure administrative harmony in the undertaking.

THE AUSTRALIAN WHALING COMMISSION:

With true liberal rather than socialist motives, the Chifley Government recognised the profitable whaling operations being carried out by other countries in the waters around and to the south of Australia, and desired to secure Australian participation in harvesting these riches from the seas. The Government decided to establish a publicly-owned industry, but no legislative attempt was made to make this a monopoly or to prevent private interests also entering the field. The Australian Whaling Commission therefore filled the role of a "development stimulator" in the best liberal tradition. In fact, after ably demonstrating to private enterprise that profits could be made from shore-based whaling operations, it was before long to be sold out to private interests by the succeeding non-Labour Government.

The only vague reference to type of organisation contained in the debates on the Whaling Bill was that made by the Minister to the effect

that one of the purposes of the bill was "to provide for the appointment of a central authority to administer and manage whaling operations on the Government's behalf". The Opposition criticised the government's policy of socialisation, and New South Wales and Tasmanian representatives pressed the claims of their States for a share in the new industry; however once national ownership had been accepted, members were not concerned with methods of organisation (107).

The administrative provisions of the Whaling Industry Act of 1949 (108) were fairly typical of recently established corporations. The Commission, which operated from a land station at Carnarvon in Western Australia, consisted of a Chairman and two other members. The Chairman was appointed for five years in the first instance, and any re-appointment was to be for such term as was specified; his appointment could be terminated by the Governor-General, and as with all similar enactments since 1944, no provision was made for parliamentary review of such a decision. The other members held office during the pleasure of the Governor-General, the intention obviously being to allow for the appointment of "departmental commissioners". The exercise of any power by the Commission was subject to the directions of the Minister, while an annual report and any other reports the Minister required were to be furnished. Finance was provided in the first instance by a Treasurer's advance; after repayment of this loan and provision for depreciation, surplus profits were to be disposed of as the Treasurer, on the Minister's recommendation, decided. In fact the industry cost one million pounds to establish, but the Commission returned substantial profits during its early years of operations. It was, however, to be a venture of short duration, for the enterprise was sold to private interests by the succeeding Menzies Government.

In regard to staff, the Whaling Industry Act empowered the Commission to appoint its own officers, who had to be British subjects, to be medically fit, and to subscribe an oath or affirmation of allegiance (provided that the Minister could exempt certain positions from these requirements - this clause was inserted to permit the engagement of Norwegian whaling experts). Staff were not subject to the Public Service Act, but the approval of the Public Service Board was necessary for terms and conditions of employment. The Third Annual Report of the Commission recorded that the Public Service Board had approved the terms and conditions of employment of the Commission's officers, and that these followed closely the terms and conditions of employment of Commonwealth officers (109). In fact, an analysis of the "Australian Whaling Commission Terms and Conditions of Employment" as approved by the Public Service Board reveals a large measure of uniformity (110). Certain prescribed sections of the Public Service Act were applied by this document to the staff of the Commission, as were the "Common Rule" of the Public Service Arbitrator relating to sick leave, and also numerous prescribed Regulations made under the Public Service Act and relating to matters such as salaries, leave and holidays, hours of duty and overtime, allowances, incremental advancement, promotions and transfers. The Public Service Board in effect retained for itself the power to determine classifications of positions in the service of the Commission; while in many other respects the Chairman of the Whaling Commission was required to follow regular public service conditions in exercising the staffing powers vested in him. There was one major distinction : unlike the Public Service, the Commonwealth Bank, the A.B.C., and certain other corporations in which officers were provided with strong safeguards against arbitrary dismissal, the

Whaling Commission Terms and Conditions provided that "the services of an officer may be dispensed with at any time by the Commission."

Thus, the Labour Governments which held office during the years from 1942 to 1949 extensively augmented the list of Commonwealth public corporations. By the close of the latter year, when the Chifley Government met defeat because its bank nationalisation plans were out of step with public opinion, Labour had closed down two corporations (the Repatriation and War Service Homes Commissions) but had created or reconstituted many others. It is strange to reconcile this wide acceptance by Labour of the public corporation as an instrument of government policy with the Party's clearly expressed hostility toward the corporation less than a generation before. Yet, as we have seen, even at the time Labour was giving lip-service to its former policy which saw the corporation as a negation of the democratic principle of full ministerial responsibility, it was assenting to the establishment of the A.B.C. Labour theory regarding the public corporation has thus had a confused history, and even in recent years, although practice has been reasonably consistent at the Federal level, this theory has remained unclear because of the inconsistency between its earlier and not altogether forgotten standpoint and the Party's divergent activities.

The period of "Post-war Reconstruction" also provides ample evidence to support the comments of Professor Bland during the nineteen-thirties and Professor Sawer and Sir Frederick Eggleston during the nineteen-forties about the defects of socialistic legislation. Motivated by doctrinaire and - to them - far more vital considerations, the socialists have been generally content to neglect such abstractions as considerations of administrative efficiency.

A definite trend in administration during the period has been the extension to many public corporations of the area of uniformity in Commonwealth employment. The Chifley Government was painstaking in its efforts to achieve this object - only the constitutional peculiarities (the Joint Coal Board and the Australian Aluminium Production Commission) escaped the process altogether. However, there was also some inconsistency in the methods used in bringing about this uniformity. Sometimes, the conditions of employment were covered in great detail in the creating legislation, sometimes they were prescribed in regulations issued by the Governor-General, sometimes they were influenced by the widely-exercised practice of appointing men versed in public service procedures to the governing-boards, and sometimes they were subject to Public Service Board approval. It is important to note that Public Service Board control of personnel matters does not involve political control, for that Board (itself a "statutory authority") was created especially to ensure impartial and non-political management of the Public Service; in exercising its functions it actually enjoys a larger measure of autonomy from government direction than do most of the corporations.

However, there has even been inconsistency in regard to the area of Public Service Board jurisdiction - this might extend to terms and conditions of employment only (as in the Whaling Commission), it might cover also recruiting methods (as in the Snowy Mountains Authority), or it might cover both these aspects and also extend to the size of the clerical and administrative establishment (as in the C.S.I.R.O.). The latter involved for the first time the Public Service Board's so-called "Section Seventeen Staff".

Probably the first reference to Section Seventeen of the Public Service Act in relation to public corporations was that made by Mr. Dedman in justifying the decision to disband the Repatriation and War Service Homes Commissions as separate entities - but as has been shown little further notice was taken of this statement. Section Seventeen is reproduced at Appendix D;with its emphasis on organisation and methods analysis,training, and other aids to management, it seeks the application of business methods to the Public Service. Yet superior efficiency is, and has been since the eighteen-eighties, one of the primary merits claimed for the public corporation. It is therefore remarkable that this efficiency-seeking power of the Public Service Board has received so little attention in relation to the corporations, at a time when many other activities of that Board were being extended to cover the corporations as well as the departments. It is pertinent to recall the appointment by T.A.A. of a part-time business consultant to work along similar lines to the organisation and methods sections within the regular Public Service. The succeeding non-Labour Government has in fact gone some way towards bridging this remaining gap in the personnel area between the corporations and the departments, by a limited extension of the form of Public Service Board control applied for the first time to C.S.I.R.O.

Overall, the governing bodies of the corporations have lost their staffing independence except for the right to appoint staff (the Broadcasting Control Board has even been deprived of this right). Moreover, as has been shown, some have been reduced in financial management also to the same dependence on annual parliamentary appropriations as the ordinary departments; while the ultimate ministerial supremacy over the affairs of corporations has been generally confirmed. As

certain academics have pointed out, one of the major reasons for the invention of the corporation as a device of public administration has therefore vanished, and there has been too little evaluation of the corresponding change in the role of the public corporation.

The parliamentary debates show a lack of interest in such problems of organisation, and it is difficult to find any reasoned assessment from high government sources. From the point of view of the politician, of course, this might be a waste of time. The non-labour parties have needed no convincing that the public corporation is a "good thing" - with labour now apparently sharing that view, there is no need for argument or justification. The pity is that in such an atmosphere, less attention is being paid to the principles of successful organisation.

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1950-58 : LIMITATION AND REFORM.

The present Liberal-Country Party Government under Mr. R.G. Menzies took office at the close of 1949. It has continued, with some changes in emphasis, the immigration, defence, trade, and foreign policies of the preceding Labour Government. The basic difference between the two governments has rather been their opposite views on the role of public enterprise, and this of course has been reflected in the history of our public corporations. The Menzies Government, like the earlier conservative Bruce-Page Government before it, is strongly and emotionally opposed to socialism, but it shares the view of that earlier administration that government enterprise is ethical in developmental fields where it acts as a stimulus for private enterprise. The Menzies Government has also expressed the view that government enterprise is justified where it is necessary to ensure the operation of a healthy competition in certain industries such as airlines where the alternative seems likely to be a private monopoly; but it has acted with considerable uncertainty in this regard, and various related events have cast serious doubts on its sincerity in voicing such an opinion. Whether the Government is itself genuine on this issue or not, it seems certain that there are strong pressure groups of private business interests, which exercise considerable influence in the affairs of the Liberal and Country Parties and which are opposed to this concept of the validity of public enterprise.

However, although the political parties may differ on the role of public enterprise in Australia, they are now in practice unanimous in accepting the public corporation as an important instrument of such enterprise. Consequently in the absence of effective argument and

critical evaluation on the subject at the political level the change in governments has brought few new developments in the administrative principles governing the use of the corporations. The highlight of the period, from the point of view of public administration, has been the enquiry by the Joint Parliamentary Committee of Public Accounts into the administration of the Australian Aluminium Production Commission. The organisation of the Commonwealth Bank has remained a hot political issue, but arguments concerning this are based on political and not administrative implications. In regard to the other corporations generally, it might be said that the Menzies Government has carried on where the Chifley Government left off : the trend towards uniformity of staffing conditions in public employment has been continued, even to the extension in some instances of further Public Service Board controls; there has been little or no attempt to restore financial self-sufficiency to corporations such as the A.B.C.; and there appears to have been no significant change in the general relationship between government and corporations, the Labour-introduced formula governing the relationship between the Treasurer and the Commonwealth Bank, for example, having been endorsed by the present Government.

In the latter connection, the absence of any clear guiding principle in this country was demonstrated by two exchanges in Parliament during 1954. The Commonwealth Parliament in the early nineteen-twenties had examined fully the relationship between the Minister and the War Service Homes Commission (1), but there are serious doubts as to whether our post-war Parliament appreciates the distinction between those matters for which the Minister should take responsibility and those in which the corporation has final jurisdiction. The following passage suggests that the distinction is appreciated :

21

Question by Senator Henty (October 1954): "What was (a) the cost of land, (b) the cost of the building, and (c) the cost of furniture and fittings of the new Commonwealth Bank in Hobart?"

Answer by Senator Spooner (representing the Treasurer): "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 of the Bank's new Hobart premises was about £1,000,000."

Yet even so this answer was described by Senator Gorton (Victoria) a Government supporter, as "arrogant and uninformative", and raising "the important principle" that since statutory authorities use taxpayers' funds it is competent for Members of Parliament to ask questions and to expect to receive adequate replies. (2) In fact, by personal contacts and informal discussions between politicians and corporation heads, many such questions can be answered even though there may not be any legal requirement for this. Such informal discussions are more often than not the chief means by which ministers exercise their influence in the management of public corporation affairs - the Governor of the Commonwealth Bank, for instance, makes frequent visits to Canberra for discussions with the Treasurer and his officers. Until recently, the Bank maintained a special private aircraft largely for this purpose. Little of the subject matter of these discussions is ever recorded for public information, or questioned in Parliament, and Ernest Davies, M.P., complained in Professor Robson's "Problems of Nationalised Industry" that British ministers use these "behind-closed-doors" techniques, and the consequent absence of written instructions, to exercise their powers unobtrusively and at the same time to escape answerability in Parliament./ (3)

Thus it was that, when in the Commonwealth Parliament during the debate on the Adjournment on 23 September 1954, the methods adopted by the Stevedoring Industry Board in advertising for staff were criticised and debated, Sir Phillip McBride (acting Minister for Labour and National Service) made this surprising comment:

> "I can assure honorable members that it is easy for me, and the department, to furnish any information required by honorable members on any subject, whether in regard to (this) or any other organisation." (4)

And, moreover, there has been no objection to the action of the Parliamentary Committee of Public Accounts in examining the administration of the Australian Aluminium Production Commission - yet theoretically this Commission is independent in matters of internal day-to-day administration.

It will be remembered that Speakers in the British House of Commons have ruled out of order questions concerning , for example, the affairs of the British Broadcasting Corporation. If such a principle were adopted in Australia, it would of course be much harder for the Labour Party to accept the public corporation. As it is now, the lack of a clear body of administrative principles differentiating the corporations from ministerial departments removes many of the distinctions which exist in other countries between these two forms of public administration, and as a result Australian Labour sensitivity regarding democratic rights is not so offended.

In regard to personnel policy, the similarity in thinking and continuity of action of the two governments is forcefully demonstrated by

the extension, by the Liberal-Country Party Government in 1953, of the requirement for Public Service Board approval for staffing conditions, a device invented by a Labour Government, to the commodity marketing boards not previously treated in this way. In introducing the necessary amending bills (5), Mr. McEwan (Country Party - Murray, Victoria, Minister for Commerce and Agriculture) said :

> "It is the policy of this Government, as it was of previous governments, that salaries and other remuneration payable to employees of Commonwealth statutory authorities should carry the approval of the Public Service Board ..... No regulations are required, and variations of salaries and other conditions of employment may be made effective without delay .... It is proposed that this should apply as standard procedure for all Commonwealth marketing authorities .... I make it clear that this amendment merely provides that the conditions of employment attaching to the particular post shall be standard in relation to other boards. This standardisation will be watched by the Public Service Board itself. That applies to the conditions attaching to the post and not to the employee. Within those limits the right to engage employees or to dispense with their services will be entirely within the discretion of the board." (6)

In answer to opposition to the proposed change from the Wool Bureau, Mr. McEwan explained :

> "..... the Government has felt unable to grant the Bureau the complete freedom which was desired in this matter. I am sure, however, that in practice the Bureau will find that the system is not onerous, and that it will recognise that the Government has a responsibility to preserve uniformity as between the various statutory authorities financed out of moneys raised by the Government." (7)

The removal of the staffs of certain corporations from access to the Public Service Arbitrator, already mentioned in connection with the Australian National Airlines Commission, was a concession towards better business management of the corporations. However it cannot be regarded as significantly reversing this trend in personnel matters. The corporations were previously more handicapped than the departments in that they came under the jurisdiction of two separate arbitration tribunals. The great majority of the staff of Commonwealth departments had access only to the Public Service Arbitrator, except by way of appeal to the Court of Conciliation and Arbitration (or its successor, the Commonwealth Conciliation and Arbitration Commission). The 1956 legislation (8) had the effect of recognising that the majority ~~but not all~~ of the staffs of corporations are members of organisations which deal directly with the latter tribunal, and it placed the corporations in a similar position to departments by removing anomalies caused by the previous duality of external jurisdiction in the field of arbitration.

Many of the measures taken by the Menzies Government have involved a further abdication by Parliament from its traditional role of supervising government activities. There is, in fact, ample evidence that the Commonwealth Parliament is not organised so as to exercise effective supervision over administration of a complex nature, and that the annual reports of the corporations, and associated material, are not closely studied. For example, a number of years passed between the first critical report of the Auditor-General regarding the affairs of the Australian Aluminium Production Commission, and the first serious parliamentary criticism on the subject. It has already been shown that the

Government secured the right, through the Overseas Telecommunications Bill of 1952, to approve changes in the international telecommunications network, of which the Overseas Telecommunications Commission (Australia) is an integral part, by regulation only. Moreover, the Chifley Government's lead in nationalising the Australian sector of the overseas airways industry, without any reference of administrative details to Parliament, was also followed by the Menzies Ministry in its creation of Commonwealth Hostels Limited, an organisation which will shortly be considered more fully.

During the period at present under discussion, the Labour Opposition became torn by internal dissention, and the Liberal-Country Party Government, which gained control of the Senate in 1951, further increased its majority in the House of Representatives at subsequent elections. In this atmosphere the Government was perhaps encouraged to pay less respect to Parliament, and it is the Government's own backbenchers who have grown restive and complained about this neglect. For example, when the Government submitted legislation in 1957 to replace the statutory determination of salaries of members of the Commonwealth Grants Commission by fixation by the Governor-General (i.e. in effect by the executive), Senators Laught (Liberal - South Australia) and Wright (Liberal - Tasmania) protested strongly that such powers should be retained by the Parliament and not delegated by it to the executive. The broad principle is one of great importance to democratic government, although the ground selected for the protest was rather surprising in view of the fact that probably all Commonwealth Parliaments since that which legislated in 1911 for the creation of the Commonwealth Bank have permitted the executive this particular power, which has been applied to

numerous (although not all) public corporations and similar agencies. Senator McKenna (Labour - Tasmania) pointed this out in offering Opposition support to enable the Government to defeat its own dissident Senators and to ensure the survival of the bill. The protesting Senators had also claimed that the proposal would reduce the independence of the Grants Commission by making it more dependent on political goodwill and the following statement by Senator McKenna, in arguing that parliamentary approval of changes in salary was alone of little importance, is also worthy of comment :

> "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 ..... that conferred upon the Auditor-General, which makes his case a distinctive one." (9)

The distinction in the case of the Auditor-General is apparently that the Governor-General may only suspend and that dismissal is subject to the passing of an address by each House of Parliament praying for removal. Of all corporation chiefs in the Commonwealth's history, only the Director of the old Institute of Science and Industry enjoyed this high degree of protection. However, suspension in a number of cases has been subject to parliamentary non-disallowance. For many years past the practice of affording/this degree of "assurance of independence" to even commissioners / board members has been vanishing. To my mind, however, and there is no satisfactory answer as to why this assurance was proposed for the National Insurance Commissioners in 1939, but not for the A.B.C. in 1932. The former constituted an authority which was little more than a

glorified department; but surely the very reasons for constituting the latter as a public corporation were sufficient to make its case as distinctive as that of the Auditor-General.

A strong hint that the underlying political and economic philosophy of the new Government would not favour the continuation in their existing form of public enterprises whose operations adversely affected the profitability of private undertakings was given by the disposal of the public interest in Amalgamated Wireless (Australasia) Limited and Commonwealth Oil Refineries Limited in 1952. The Commonwealth's interest in these two companies was sold out to private enterprise on the typically anti-socialist view that the industries were established on a sound basis and were no longer in need of government financial support.

Other practical effects of this philosophy included :

(a) the disposal of the public whaling industry and the closure of the Australian Whaling Commission;

(b) the passing of legislation to restrict Trans Australia Airlines in the competition it was providing for the privately-owned Australian National Airways Pty. Ltd.;

(c) the prolonged state of uncertainty in relation to the future of the competitive activities of the banking, airlines and shipping corporations; and

(d) very recently the Commonwealth Government's unilateral announcement of the closure of the mining operations of the Joint Coal Board.

These developments will now be considered in connection with the various corporations concerned; and the new corporations created by the Menzies

Government in the developmental ~~and profit-making~~ fields will also be examined together with the existing corporations which have been reconstituted by this Government.

In addition to discussing these essentially political developments in the history of the Commonwealth's public corporations, a number of important administrative enquiries conducted during the period will be summarised in greater or lesser detail according to the emphasis attached during each enquiry to the overall principles governing the public corporation. The enquiries concerned are :

(a) that by officers of the regular Public Service concerning the operation of publicly-owned hostels;

(b) the Royal Commission on Television;

(c) the investigation by the Parliamentary Joint Committee of Public Accounts into the affiars of the Australian Aluminium Production Commission;

(d) the "Statutory Committee" of enquiry into the stevedoring industry, and

(e) the Senate Select Committee on the Development of Canberra.

Because of these cross-currents and the inability to separate them all in point of time, I have found it difficult to determine any logical order for the treatment of the various corporations involved in these events. However, I have decided to group the relevent happenings into the following broad divisions:

(a) Early Creations (i.e. Corporations created prior to "The Case of the Aluminium Production Commission");

(b) Anti-Socialist Political Measures (i.e. Attempts to limit or destroy public enterprise);

(c) Major Enquiry (i.e."The Case of the Aluminium Production Commission"); and

(d) Recent Creations (i.e. Corporations created or reconstituted since the"Case of the Aluminium Production Commission").

My chief concern is that the enquiry listed under (c) above is without doubt the major administrative landmark of the period, and that the organisation of this section should therefore be so devised as to facilitate an analysis of its impact on actual administrative developments. It is of course too early for these events to assume their proper historical significance - in fact, the position of the Commonwealth Bank, Australia's most powerful public corporation, is most uncertain at the time of writing.

(a) Early Creations.

COMMONWEALTH HOSTELS LIMITED:

It has already been shown that Qantas Empire Airways has emerged as one of Australia's major public corporations - yet it is registered as a private company, and the legislature was only required to find the necessary funds for the buying of shares. / Commonwealth Hostels Limited is in an even more unusual position, since its creation required no legislative backing whatsoever - it was established by executive decision only, as its capital assets had already been provided within an existing departmen

By 1950 hostels were being operated by a number of Commonwealth Departments, Labour and National Service controlling over sixty and Immigration, Interior, Postmaster-General's, Supply and Works many more. This divided management was resulting in unnecessary duplication of services, and unsound accounting methods and large stock losses were not

unusual. Consequently, whilst abroad, Mr. H.A. Bland (then Assistant Secretary, Department of Labour and National Service, and son of Professor F.A. Bland), examined the methods of government hostel management in Britain and the United States of America; and on his return he submitted a case for the re-organisation of Commonwealth hostels under a single autonomous authority (10). It is interesting to note that these preliminary objective discussions were handled purely on an official level, between senior officers of the departments involved and the Public Service Board, the Solicitor-General, the Secretary of the Prime Minister's Department, and high Treasury officials. As the matter was not fully debated by Parliament and as no ministerial statements were made except inadequate replies to questions, it has been necessary to examine departmental files to discover the basis of the creation of this corporation in its unusual form. Even so, Mr. Bland's original proposal was rather drastically altered before the autonomous authority came into being, and some confusion now exists as to which was the primary consideration motivating its creation. In the following paragraphs I shall endeavour to illustrate the various factors involved, but I do not pretend to be able to distinguish cause from effect. It is apparent that the various authorities concerned in the negotiations were not all influenced by identical considerations. I believe, however, that one factor which played a major role in the final decision was the strong public demand, which had been encouraged by the campaigning Liberal and Country Parties during their recently successful election campaign, for a reduction in the size of the Commonwealth Public Service; and that another was Cabinet's desire to find a billet in which to shelve an unwanted Permanent Head.

Mr. Bland's submission was modified and transmitted to the Public Service Board by Mr. Funnell, then Secretary of the Department of Labour and National Service. Summarised, the transfer of hostel

activities from departmental control to an autonomous authority was requested on the following grounds :

(a) financial methods in the Public Service were unsuitable,

(b) existing purchasing arrangements were inflexible,

(c) staffing and administrative methods were also unsuitable.

Mr. Funnell suggested the appointment of a part-time Board consisting of the Permanent Head of the Department of Labour and National Service and two men with wide experience in the catering business, and a general manager as chief executive officer. The Public Service Board was from the beginning in general agreement with the proposals, claiming that :

> "..... the new arrangements are aimed at obtaining an entirely new approach to management, and the application of business methods to the conduct of hostels."

The Board emphasised that success would depend on the quality of the men selected as co-directors and general manager. To a suggestion from the department that the Public Service Inspectoral Staff might be used to give assistance to the new body on staffing problems, the Board replied that it did not favour any proposal which might limit the General Manager's authority and control in running hostels on a business basis. This attitude is in marked contrast to that of Mr. Thorpe, a previous Public Service Commissioner. (11)

In his submission, Mr. Bland left open for further consideration the form of the proposed organisation - whether it was to be a registered company or statutory corporation. However he pointed out that "the former course has the advantage of being achievable by Cabinet and administrative action alone; the latter would need special legislation." Indeed, as he showed, the former had been adopted in

the United Kingdom. It is also interesting to note his argument that creation of such an organisation would "enable a reduction of staffing in existing Departments and avoid the present progressive increase inevitable as Departments continue to expand hostel activities." (12) The possibility of thus concealing the Commonwealth's interest was put clearly in another way by the Secretary of the Prime Minister's Department, who wrote as follows :

> "The public corporation is the developing concept and the Commonwealth makes use of it both in its basic form of a body incorporated by statute and its very practical form of a normal trading concern in which the Commonwealth Government is sole or majority shareholder.
>
> The traditional legal view is that a company possesses an identity separate and distinct from that of its shareholders and on this basis it may well be that a company in which the Commonwealth owns all the shares could engage in activities which the Commonwealth itself or a body corporate created by a Commonwealth statute could not carry on. It seems to me, therefore, to be undesirable to make an official overt recognition that such a limited company is an authority of the Commonwealth. By so doing we make it easy for the Courts to subject such a company to the limitations to which the Commonwealth is subject. I would think that for the present we should aim at the maximum degree of flexibility.
>
> I have in mind such a simple thing as the operation by Qantas Empire Airways Ltd. of a service between Sydney and Lord Howe Island which is an intra-state flight and which the Commonwealth has no obvious power to conduct.

I would therefore think it preferable to refrain from publicising your proposed new company as an authority of the Commonwealth within the meaning of the Officers Rights'Declaration Act." (13)

In August 1951 a summary of the case prepared by senior officials was presented to Cabinet for decision by Mr. Holt, Minister for Labour and National Service; and the Cabinet decision reads as follows :

"Cabinet approved -

(a) the registration of a Company to be known as "Commonwealth Hostels Limited", responsible to the Minister for Labour and National Service, to undertake the conduct and management of hostels now conducted by the Department of Labour and National Service;

(b) that immediate applications be called by the Department of Labour and National Service for the responsible position of General Manager;

(c) the earliest possible registration of the Company;

(d) that the Minister for Labour and National Service, in consultation with the Prime Minister and the Treasurer -

(i) determine the membership of the Directorate and the conditions of appointment of Chairman and Members; and

(ii) arrange for their constitution as an interim body to facilitate the setting up of the new organisation and to take over the conduct and management of the hostels from the Department of Labour and National Service pending the formal establishment of the new organisation." (14)

As previously mentioned, the Government was at the time seriously concerned at reducing the number of Commonwealth Public Servants, and this concern probably influenced the form of its decision; it is also likely that the Public Service Board recognised that the proposal could be utilised to satisfy in part the Government's demand for a cut of 10,000 in the number of Commonwealth Public Servants. It will be noted that in the final Cabinet decision reference was made only to those hsotels operated by the Department of Labour and National Service; the need to co-ordinate the divided control of government hostels appears to have been an original motivating factor, and yet in the ensuing proceedings this aspect appears to have been overlooked. Later some other hostels, but not those operated by the Department of Works in Canberra, were vested in the new Hostels organisation.

Cabinet made one other major change in the final proposals. It appointed Mr. Funnell as full-time chairman of the Board of Director of Commonwealth Hostels Limited, whereas previous suggestions envisaged a part-time chairman only. Four other part-time directors were appointed, including the Permanent Head of the Department of Immigration. Mr. H.A. Bland, original author of the scheme, succeeded Mr. Funnell as Permanent Head of the Department of Labour and National Service. This move lends support to the claim made in certain responsible quarters that the authority was formed to provide a pretext for removing Mr. Funnell in order that Mr. H.A. Bland could become Secretary of the Department.

It is generally accepted that the Government was looking for means to replace certain Permanent Heads of Departments who had served the previous Labour administration, by persons whose political affiliations it found more acceptable. Mr. Funnell, Mr. Watt (who had

helped Chifley draw up his banking proposals and was moved from the Treasury to the Chairmanship of T.A.A.), and Dr. Burton (moved from External Affairs to the post of High Commissioner in Ceylon) are all cases in point. Whether Mr. Funnell's appointment to Commonwealth Hostels Ltd. was the motivating factor as far as the Government was concerned, or whether it was a "happy release" made possible by seizing the opportunity to convert the proposed part-time Chairmanship of the organisation devised in administrative minds to a full-time post is not clear, although my research suggests that the latter is the more likely possibility. Whichever is the case, however, the episode reveals a further degeneration in political motives in using the device of the public corporation. Nevertheless, I believe that the transfer of the hostels to a separate management under Mr. Funnell proved successful from the point of view of commercial efficiency, and that the hostels are now in a sounder financial position than when under departmental control.

Many officers of the Public Service who had been engaged in the administration of hostels transferred to Commonwealth Hostels Limited, and the discussions concerning the creation of machinery to protect their rights of service lent further support to that point of view which favoured

the establishment of a company rather than a statutory body with legally defined powers, for the reason that there would then be no need to publicise the fact that the company was an authority of the Commonwealth, and it could be expected to operate unrestricted by legal and constitutional barriers. The opinion of the Secretary of the Prime Minister's Department has already been referred to. The Solicitor-General, Professor K.H. Bailey, commented that the company was not identified in law as an authority of the Commonwealth, when advising that the Officers' Rights Declaration Act should not be amended but that some less specific way should be found to provide for the retention of the rights of Commonwealth Officers transferred to the employment of the company. (15)

Following its establishment the organisation was registered under Victorian Company Law as a private company; its constitution, which was incorporated in the articles of registration, had been prepared by executive act only. The comparative ease with which the Government was able to remove an important public activity from the normal channels of accountability to Parliament opens up many possibilities in the field of the publicly uncontrolled (but perhaps politically dominated) public corporation, possibilities which should alarm those who believe that the essence of democracy is the preservation of lines of responsibility from the administration through the Minister to Parliament and the people. The unusual form of this corporation, moreover, was shaped in the minds of public servants, the so-called "bureaucracy".

THE FLAX COMMISSION:

The first legislation creating a new orthodox corporation to be passed during the second Menzies regime was the Flax Industry Act 1953 (15A) - this legislation passed through Parliament almost simultaneously with that giving legal form to the Australian Atomic Energy Commission, which will next be discussed. In introducing the bill, Mr. McEwan (Minister for Commerce and Agriculture) stressed the importance to the national defence interest of flax production. He stated that, during and since World War II, flax straw had been purchased from farmers and processed into fibre in a number of mills operated by the Flax Production Committee functioning within his own department. The Government had unsuccessfully tried to dispose of these mills to private enterprise, and now wished to provide a legislative basis for the continuation of processing activities under a "government commission". This form of control had been chosen, in the Minister's words, simply because :

> "The Government would prefer not to become involved as a principal operator in this production activity." (15B)

The Flax Commission, as it was called, consisted of five members, including a Chairman and Deputy Chairman, all appointed by the Governor-General. They were not given fixed terms, but were to hold office during pleasure, while normal provisions applied for vacation of offices. The Commission was financed by Treasury advance to permit the taking over of the flax mills, and since the Act provided machinery for the disposal of profits, was obviously expected to meet subsequent costs primarily from revenue. It was to appoint its own staff subject to prescribed conditions, while the conditions of their employment were subject to Public

Service Board approval. Section 14 (3) of the Act specifically provided that "the exercise of a power by the Commission is subject to the directions, if any, of the Minister". The Minister was also empowered to direct the holding of a meeting by the Commission, to approve staff appointments other than under the prescribed conditions, and to approve salaries over £2000 p.a. The Commission was to furnish an annual report and such other reports as the minister required, and the Auditor-General was to report specially to the Minister the result of each audit of the Commission's accounts.

Apart from a small mill owned by the Western Australian State Government and operated under lease by a Co-operative, the Commission had a national monopoly in its own field. It operated seven mills in Victoria and South Australia. However, it encountered serious financial difficulties, due largely to a depressed world market for its product. The industry was reviewed both by the Tariff Board and an inter-departmental committee; as a result of the first review, a series of Acts was passed to provide for the payment of bounties to subsidise the industry, and as a result of the second, the Commonwealth Government announced its intention, on 20 November 1957, of vacating the field of flax production and closing the Commission, after the processing of the current harvest is completed (15 C).

THE AUSTRALIAN ATOMIC ENERGY COMMISSION:

The debates on the Atomic Energy Bill in 1953 confirmed that political interest in the relative merits of different types of administrative organisation was lacking, no matter what group occupied the Government benches. The conventional type of corporation was generally accepted almost without question, and the only thorough attempt to evaluate the relative importance of the opposing factors of flexibility of management and public accountability of recent-enough memory at the time was that carried out, not by Cabinet or by Parliament, but by departmental officials, and which resulted in the creation of an unconventional corporation known as Commonwealth Hostels Limited - as has been shown, however, in the final analysis the formation of this authority should probably be attributed to far less noble and less objective reasonings than those originally brought out by the administrative enquiries. The Government was satisfied to revert to the orthodox type of corporation for the national atomic energy authority, and in this also some attention was doubtless paid to overseas developments : whereas both the United Kingdom and the United States had used a privately-registered company for their public hostels administration, both had accepted the statutory corporation for atomic energy control. In fact the Atomic Energy Commission was constituted in November, 1952 and a number of proposals formulated by it were in the Government's hands before a bill ostensibly for its creation was brought down in Parliament.

In introducing this Bill on19 March 1953, Mr. Beale (Liberal - Paramatta, N.S.W., Minister for Supply) referred to earlier tentative legislation (16) associated with the development of atomic energy research in Australia, the responsibilities for which had been "scattered

amongst several departments or were not possessed by any of them". In regard to the form of the new authority, Mr. Beale deemed it unnecessary to say anything by way of explanation except that the legislation :

> "..... will set up the Atomic Energy Commission and it includes many provisions that are usually embodied in statutes incorporating bodies of this sort."

Mr. R.G. Casey (Minister for External Affairs), in supporting the bill, added that :

> "The Atomic Energy Commission has been modelled ..... on similar bodies in Great Britain, the United States of America, Canada and South Africa, but the measure is based more closely on the Canadian legislation than any other."

The Opposition also supported the Bill, and its Leader (Dr. H.V. Evatt) made it clear that he considered the secrecy and security provisions to be those most worthy of discussion and examination. (17)

Thus confirmed in existence by the Atomic Energy Act 1953 (18), the Australian Atomic Energy Commission was given the now common legal status of a body corporate. It consists of a Chairman, a Deputy Chairman and one other member, all appointed by the Governor-General for terms not exceeding seven years. The Governor-General is empowered to determine salaries and to terminate appointments for inability, inefficiency and misbehaviour, and except with his permission, the Chairman is prohibited from engaging in any other paid employment. Offices are to be vacated for the usual reasons, and also if a member becomes commercially interested, except within prescribed limits, in any contract or agreement entered into by or on behalf of the Commission.

The proviso here has a significance which will be discussed in connection with the Australian Aluminium Production Commission (19). The Minister is empowered to convene meetings of the Commission, and the Commission is required to comply with any directions he may issue in relation to the performance of its functions or the exercise of its powers. In regard to operations in the external territories of the Commonwealth the Minister's prior approval must be obtained in all cases, and before issuing such approval he is required to confer with the Minister for Territories. The appointment of Advisory Committees, and the entering into of contracts involving more than £25,000 are also subject to Ministerial approval. The Commission is required to submit annual estimates of expenditure, and its operating expenses are to be met by parliamentary appropriation. With an eye to the future when the commercial production of atomic energy may become a revenue-producing activity, there is provision also for the Minister to decide how the profits of the Commission, if any, are to be applied.

The Commission is empowered to appoint its own staff, although the Act prescribes the basic requirements for eligibility for appointment. With the Minister's approval a non-British subject may be appointed; while his approval is also required for staff movements in positions carrying salary of £1750 p.a. or higher. As with other recently established corporations, the Commission is required to obtain the approval of the Public Service Board for the terms and conditions of employment of its officers and employees; while Section 24 of the Act repeated that innovation of the Science and Industry Act of 1949 (20) by requiring also that :

"The maximum number of officers and employees of each designation whose duties are primarily of an administrative or clerical nature shall be a number approved by the Public Service Board."

Little time was lost in implementing the provisions of the Act relating to the establishment of Advisory Committees. The Annual Report of the Commission for the year 1954-55 (21) recorded that the Commission had received valuable scientific assistance both from the Scientific Advisory Committee and from the Advisory Committee on Uranium Mining. This Report also recorded the formation of a twenty-member Business Advisory Group, consisting of prominent industrialists and commercial men, together with a leading representative of the trade union movement. This was broadly similar to advisory bodies which had been set up to assist the atomic energy authorities in Britain and the United States. The Australian Group was to meet at approximately six-monthly intervals, and the intention was that that the Commission would seek at these periodical meetings the comments and advice of the Group on its plans for atomic energy development, the progress of these schemes, and their effect on industry. On the surface the Group appears rather too large and heterogeneous, and its meetings too infrequent, to permit forceful assistance and concerted suggestions and criticisms. However much depends on the incentive and will of the members to render a valuable public service and more time is needed before a sound judgment can be formed on this question.

The Australian Atomic Energy Commission, which is operating at present under the Chairmanship of Professor J.T. Baxter, is building up a large scientific research establishment at Lucas Heights, near Sydney. It is also active in encouraging, and subsidising by scholarships and

other means, research into nuclear physics at other Australian Universities and training institutions. It may logically be grouped in that class of corporations seen by Professor Webb to require a large measure of autonomy for "cultural" reasons. On the other hand, both by virtue of its large expenditure of public money and its obvious connection with the Government's responsibility for defence, it cannot be divorced entirely from Government control. Hence once again the appropriate Minister is given fairly extensive powers of direction over the Commission's affairs - there is not even that legal restriction of his powers to matters of policy which is supposed to exist in the framework of the ideal public corporation, but which is so frequently absent in Australia. Once again, in this compromising of administrative principle, lines of responsibility are confused and consequently a heavier burden is placed on the various personalities involved to ensure the harmonious and successful working of the organisation.

Following a brief description of the changes which have recently occurred or are at present under consideration, for political rather than administrative reasons, in the organisation of various Commonwealth corporations, it will be shown that these Australian customs of carelessly designed legislation and confused areas of responsibility have contributed to mismanagement and chaos in the affairs of an important public corporation.

(b) Anti-Socialist Political Measures.

THE COMMONWEALTH BANK 1951-1958:

After assuming office in 1949, the Menzies Ministry quickly brought down a bill aimed at reconstituting the Board of Directors of

the Commonwealth Bank. This step was in accordance with the view strongly held and firmly pressed by all non-Labour Governments since 1924 that only such a Board could ensure the truly independent and impartial management of the Bank. The Labour Party's open hostility to a Bank Board composed of representatives of the world of big business, whose interests almost inevitably were alien to those of the Party, was again in evidence. In the present decade this wide gulf between the views of the two major political groups on this issue has, in fact, become the only real and lasting point of political interest in Australia in so far as the administration of public enterprises is concerned. Thus it was that the Commonwealth Bank Bill introduced by the Menzies Government was twice rejected by a Senate in which the Labour Party held the majority of seats; and Mr. Menzies obtained a Double Dissolution of Parliament as a consequence of this.

During the ensuing election campaign, politicians, press and electors devoted the major part of their attention to the issue of Communism, and the Menzies Government was re-elected primarily on its promise to fight this menace. However, although this received little if any public notice as an election issue, Mr. Menzies did promise also to restore the Commonwealth Bank Board as a priority measure if returned to Parliament. (22)

The amending Act of 1951 (23), as it finally passed both Houses and received the Royal Assent, drew quite a clear legislative distinction between the management of the Bank, which broadly remained in the hands of the Governor as before, and the consideration of questions of policy, which became the function of the Bank Board. The terms of office of the Governor and Deputy Governor were not significantly changed

except that the Governor was now specifically required to exercise his managerial functions in accordance with the policy of the bank and with any directions of the Board. Unlike the earlier Bank Board, the Governor was now automatically installed as Chairman of the Board, with the Deputy Governor as Deputy Chairman : this arrangement was intended to obviate an important weakness of the earlier administrative system which had been criticised by well-qualified observers such as Professor L.F. Giblin. The Board itself was now to consist of the Governor and Deputy Governor of the Bank, the Secretary of the Treasury and seven other members appointed by the Governor-General. Little was prescribed about the qualifications of these other members, except that at least five were to be persons who were not officers of the Commonwealth Bank or of the Commonwealth Public Service. These "non-official" members were originally to be given staggered appointments, with all subsequent appointments being for five year terms, subject to good behaviour; any "official" members who might be appointed were to hold office during the pleasure of the Governor-General. All members were required to complete the oath or affirmation of allegiance and also a declaration of secrecy. Remuneration was to be fixed by the Governor General. Directors and employees of business corporations wholly or mainly engaged in banking were not eligible for appointment, and offices were to be vacated if their occupants became bankrupt, absented themselves from the prescribed number of meetings, or became permanently incapable of performing their duties.

The 1951 Act also formalised the relationship between the Bank and the Government, although this continued to follow the basic pattern suggested by the Royal Commission of 1936-7. The amendment

placed the final responsibility directly on the Government itself instead of leaving much to the Treasurer as in the 1945 Act; it also included provision for written statements of the various viewpoints involved in any contentious issue that might arise, obviously to safeguard the Board from possible irresponsible political action in much the same way that the A.B.C. was intended to be protected by the requirement that ministerial directions should be published in the Annual Reports of the Commission. Thus, if after frank discussion the disagreement persisted, the Bank Board was now to submit a formal statement of its views in writing to the Treasurer. The Treasurer in turn was now required to make a recommendation to the Governor-General, who was to determine the policy to be adopted by the Bank in accordance with the advice of the Federal Executive Council. In other words, whereas the appropriate Minister is given ultimate authority over policy matters in most public corporations, the Minister in this case was required by law first to submit his views and obtain the concurrence of the full executive; for what it was worth, the final responsibility for the Bank's policy thus rested with the Government as a whole. After informing the Bank of the policy so determined, the amending Act further provided that the Treasurer was to lay before each House of Parliament, within fifteen sitting days, a copy of the order determining the policy, a statement by the Government in relation to the matter on which the difference of opinion arose, and a copy of the statement furnished by the Bank Board to the Treasurer. The 1951 Act also required the Governor of the Bank and the Secretary of the Treasury to establish a close liaison with each other and to keep each other fully informed on all matters of joint concern.

In a further amending Act in 1953 (24), the Menzies Government legislated for the creation of the Commonwealth Trading Bank as a distinct banking institution operating under the Commonwealth Bank Board. The Trading Bank, which took over that division of the parent Bank's accounts previously known as "General Banking Business", was constituted a body corporate in its own right, and was placed under the immediate control of a General Manager. This officer was to be appointed by the Governor-General to serve in a full time capacity for a term not exceeding seven years; in other respects also his conditions of service were similar to those of the Governor and Deputy Governor of the parent Bank. The staff of the Trading Bank was to be made available by the Commonwealth Bank from within the overall Commonwealth Bank Service, which already served also the Central Bank Section, the Savings Bank and the Note Issue, Rural Credits, Mortgage Bank and Industrial Finance Departments.

The Prime Minister (Mr. R.G. Menzies), who introduced this legislation, explained that its twofold purpose was to create a separately incorporated Commonwealth Trading Bank in lieu of the General Banking Division of the Commonwealth Bank, and also "to protect the trading banks, in so far as that protection can be given by statute, against unfair competition from the Commonwealth Bank." (25) In reply, Dr. Evatt claimed that the Government's aim was to weaken permanently the "peoples' bank", which from its inception was intended to carry on general banking business. After referring to the provision for the appointment of the General Manager by the Governor-General as being in effect a power of veto over the Bank Board, he quoted from the Royal Commission on the Banking and Monetary Systems, which had favoured the conduct of trading bank activities as an adjunct to central banking policy. The Labour argument, then, was that clearly the real purpose

of the legislation was to weaken the Commonwealth Bank on its trading side compared with the private banks, to subvert and destroy the structure of the Bank founded by Labour in 1912 and strengthened by Labour in 1945, and to give an unfair advantage to the private banks. (26)

These exchanges were, in fact, to set the pattern for later argument on the political level about the future of the Commonwealth Bank, and the 1953 legislation was merely a foretaste of more revolutionary - or from the Labour point of view, more reactionary - proposals to come. In 1953, Mr. McMahon (Liberal - Lowe, N.S.W.) denied that the Government was acting at the request of the private banks (27), but by 1957 the pressure of private interests was openly admitted by their own representative.

Reports of pressure on the Government, both from its own back benchers and from private groups such as the trading banks, for a re-organisation of the Commonwealth Bank to restrict its powers and to make more difficult any later attempt by Labour to nationalise the industry, were current for a number of years; and on 4 September 1957 the Federal Treasurer (Sir Arthur Fadden) finally announced the Government's plans for re-organisation at a combined meeting of members of the Liberal and Country Parties in Federal Parliament. Details of the plan were given prominent and generally favourable attention in the daily press (28), but Labour leaders left no doubt that they regarded the plan as being designed to bring about the effective destruction of the "Peoples' Bank" in the interests of big business. Indeed, on the day following Sir Arthur's announcement, Mr. H.D.T. Williamson, former Chairman of the Australian Bankers' Association, was recorded as having said that :

(a) the separation of the Commonwealth Trading Bank and the Commonwealth Central Bank would safeguard private banks against any possibility of unfair competition from the Commonwealth Bank;

(b) that he himself, as representative of the private banks, had sought the banking reform at a conference with the Federal Government in February 1957;

(c) and that the Government's plans were in line with the representations of the trading banks at that Conference. (29)

Such remarks, of course, lend weight to Labour accusations that the present Government's economic policy is loaded in favour of big business interests; and there is little doubt that the Government is subject to considerable pressure from these groups, without whose financial support it would have little chance of organising a successful election campaign.

The Government's proposal involved the setting up of an entirely separate institution to be called the Reserve Bank of Australia to replace the central bank section of the existing bank. This was to include the present Note Issue and Rural Credits Departments. The remainder of the present Commonwealth Bank group was to come under a body to be known as the Commonwealth Banking Corporation. This was to include the Commonwealth Trading Bank, the Commonwealth Savings Bank and a new Commonwealth Development Bank, the latter combining the present Industrial Finance and Mortgage Bank Departments of the Commonwealth Bank. Each of the three banks under the Banking Corporation was to have separate legal identity, separate assets, liabilities and accounts, and a separate general manager.

The Government planned to place both the Reserve Bank and the Commonwealth Banking Corporation under the overall control of boards fairly similar in constitution to the present Bank Board, and the formula recommended by the Banking Royal Commission and adopted in the current Commonwealth Bank legislation to ensure ultimate Government control was to be retained for both institutions. Thus each Board would be required to keep the Government informed of its policy, and in the event of a disagreement the Government would have power to issue directions. Executive management of the Reserve Bank and its departments would rest with a Governor, and the Reserve Bank would have its own special staff. In this connection, Sir Arthur Fadden announced that existing officers of the Commonwealth Bank would be given an opportunity to choose whether they wished to transfer to the service of the Reserve Bank or of the Banking Corporation. (30)

The detailed administrative provisions designed to achieve this re-organisation of the bank, to replace the existing special accounts provisions of the Banking Act with a new system of reserve deposits to be held by the various trading banks in the Reserve Bank, and to subject the Commonwealth Trading Bank to the payment of income tax, were included in a series of fourteen bills introduced in the House of Representatives on 24 October 1957. The Labour Party announced that it would oppose the major bills clause by clause, but most observers at the time considered that the Government would obtain the necessary majority in both Houses. The Government, which had lost its absolute Senate majority, was hoping to take advantage of the fact that a number of Labour Senators were absent on account of serious illness and would be unlikely to vote on the Banking Bills.

The Bills passed the House of Representatives where the Government had a large majority, and were hurriedly introduced into the Senate without prior notice, the Government having previously made known its intention not to grant pairs. In one of the most sensational scenes the Senate has known, sick Labour Senators were called into the House, and with a full Opposition vote including break-away Democratic Labour and Queensland Labour Senators, divisions were called on the first reading and the Bills defeated without even the customary second-reading speech. Press reports of the episode suggest that the Senate Chamber took on the appearance of a hospital, with nurses and doctors in attendance. One of the sick members, Senator Arnold, who voted from a wheel chair, had undergone surgical treatment for a malignant growth eight days before, and was due for another operation very soon. (31)

The Government's intention to re-introduce these Banking Bills was made known in the Governor-General's speech opening the new session of Parliament on 25 February 1958. The Bills were re-introduced in the House of Representatives on 13 March 1958, and as at the date of typing this thesis their fate has not been decided. Dr. Evatt has reported that the Parliamentary Labour Party carried a resolution pledging its irrevocable opposition to the proposals, in the following terms :

> "In the opinion of the party the legislation involves a direct attack on and the organised dissemination of the Commonwealth Bank of Australia in a way which would impede its functions and destroy its usefulness as a trustee for the people of Australia." (32)

It appears unlikely that the legislation will pass during the present sitting of Parliament, and the possibility of a further Double Dissolution therefore exists. Press commentators, however, have voiced the belief

that the Government is more likely to favour an open fight over the banking issue at the general elections due late in 1958. Meanwhile Labour members are suggesting that it is the Government's desire to reward the present Treasurer (Sir Arthur Fadden) by appointing him Chairman of the proposed Banking Corporation. It is therefore safe to say that banking will remain one of the most contentious issues of Federal politics for some time to come, and in this atmosphere it is unfortunately inevitable that considerations of administrative efficiency must be neglected.

This phase in the history of the Commonwealth's public corporations is obviously incomplete, and emphasises that no finality can be reached in the study of such living administrative organisations. I shall now move on to a brief study of other Commonwealth corporations which have been affected by the political and economic philosophy, rather than the administrative principle, of the Menzies Government.

AUSTRALIAN NATIONAL AIRLINES COMMISSION continued:

Following the unsuccessful attempt of the Labour Government to nationalise the internal airlines of Australia, the anti-Labour groups made clear their belief in the continuation of private enterprise in this field. As with the Commonwealth Bank they sought means to limit the "unfair" competition provided by the national airline - thus the Menzies Government concluded a fifteen-year agreement with Australian National Airways Proprietary Limited, then the chief private internal operator, which provided for :

(a) the granting by the Commonwealth of financial assistance, by way of guaranteed loan, for the purchase of new aircraft for use by the private company in competition with the Government airline.

(b) the reducing of air-route charges payable by the company,

(c) the ensuring of a substantially equal distribution of airmail between the company and Trans-Australia Airlines,

(d) making Government business freely available to the company,

(e) the rationalisation of air services in the interests of economy and efficiency,

(f) the equitable division of available aircraft between the company and Trans-Australia Airlines, and

(g) a guarantee that the Commonwealth would not, in the exercise of its various powers, discriminate against the company.

The Agreement was ratified by, and published as a schedule to, the Civil Aviation (Agreement) Act 1952. (33) In effect the Government had forfeited the peoples' right to give their own collective custom to their own airline, and had thus inevitably weakened its financial poisition. As in the era of the Bruce-Page Government, the Labour Opposition was extremely critical of this weakening of the peoples' assets. Basically, of course, the Liberal and Country Parties contest the peoples' right to own such an enterprise and its continuation appears to be a matter of expediency rather than conviction on the Government's part. This difference of opinion is paramount in Australian politics today, with the consequence that there is uncertainty about the future of the public corporations involved. Few doubts are, however, cast upon the efficiency of the Australian National Airlines Commission, which runs Trans-Australia Airlines, and the 1952 Agreement at least appeared to guarantee its existence for a further fifteen years.

The Agreement also provided for the appointment of a Chairman to decide on any matters relating to the review of services where the two parties fail to agree. The former Chief Justice of the High Court, Sir John Latham, has in this capacity of arbitrator decided some points of disagreement.

The Civil Aviation (Agreement) Act was accompanied by an amending Australian National Airlines Act (34). For reasons later to be revealed by the Public Accounts Committee in its enquiry into the affairs of the Australian Aluminium Production Commission (35), it was found necessary to modify the disqualification provisions applying to members of the Airlines Commission. Thus the amending Act of 1952 made less restrictive the conditions under which Commissioners were prohibited from holding a financial interest in transactions of the Commission; and it also contained the provision that the national airline should hereceforward be subject to all forms of taxation. Other major changes in the financial provisions included clauses to the effect that moneys advanced by the Treasurer were to become the capital of the Commission, that this was repayable to the Commonwealth at such times and in such amounts as were determined by the Treasurer, and that any profits were to be applied as the Minister determined with the concurrence of the Treasurer. In the exercising of these political discretions consideration was to be given to any advice furnished by the Commission in relation to its financial affairs.

The position of the National Airlines Commission again became the subject of public debate and speculation when it became obvious that the management of the privately-owned Australian National Airways was dissatisfied with the airlines arrangement. Suggestions that the disposal of the national airline was under consideration to eliminate the major competition against the company's service were scarcely countered by the Government, and the position was clarified only by the decision of the company to sell out. This followed an unsuccessful attempt to persuade the Government to set up a Holding Company to co-ordinate fully Australian air services, with the various operators, both public and private, functioning as subsidiaries (36). The interests of Australian National

Airways Proprietary Limited were acquired by Ansett Transport Industries Limited, the transaction being completed on 6 October 1957, and the new combined airline has been called Ansett-A.N.A. The anti-socialist Minister for Civil Aviation (Senator Paltridge - Liberal, Western Australia) even refuted certain statements made by P.W. Haddy, former Chairman of Australian National Airways, in connection with the unfair competition of "the socialist airline." (37) Although the true position is obscured by its association with other Ansett enterprises, some heed should probably be paid to the view that as the previously relatively small Ansett Airways had succeeded in building up a vast financial empire on a lower scale of fares than charged by either of the major airlines, there was a relevant difference in the degree of efficiency in management of the private airlines. Many other opinions have also been offered, and I do not pretend to know the true position - probably there is an element of truth in many of the assertions made on either side.

However, the overall effect of the constitution of T.A.A. as a public corporation and the subsequent rationalisation agreement has been described to me by a senior official of the airline in this way : that, despite allegations by private interests to the contrary, in its relationship to the Government (including payment of taxation), T.A.A. suffers from all the disadvantages of private enterprise and enjoys none of the advantages of a government department.

Meanwhile the Menzies Government seems committed to a policy of preserving both the major airlines, public and private, the justification being that only in this way can the public receive the Benefits arising from active competition. However this reasoning seems to

ignore the fact that any agreement for rationalisation of services or on charges, as existed between Trans-Australia Airlines and Australian National Airways, reduces the element of true competition.

A new supplementary agreement was quickly drawn up in 1957, to effect some modifications to the original agreement necessitated by the changed situation, and to govern the relations between Trans-Australia Airlines and Ansett-A.N.A. during the remainder of the fifteen year term of the original agreement (37A). However, the basic rationalisation plan is retained. It is for the future to decide whether such an agreement will prove to be any more acceptable to the private operator than did the last; and also what effect possibly more vigorous competition may have on the Australian National Airlines Commission. It is also interesting to speculate on the possible consequences of the return of a Labour Government to the Treasury benches. The uncertainty of the economic background, and even the very existence of public enterprises in Australia is thus amply demonstrated; however this can today scarcely be construed as a reason for the use of public corporations, as it was in the case of "temporary" activities after the First World War, since their staffs are protected by security of employment almost to the same extent as are those in the regular Public Service.

AUSTRALIAN SHIPPING BOARD continued:

In regard to the continuation of the Commonwealth Shipping Line, the first important point is that the Shipping Act, which was debated at length during the dying hours of the Chifley Government in 1949, and which has been referred to in the previous section of this thesis, was destined never to be proclaimed. A reason for this is not hard to find : it was soon rumoured that the Menzies Government was proposing to sell the Line to private interests. In the House of Representatives on 12 September

1952, Mr. A.S. Drakeford (Labour - Maribyrnong, Victoria) referred to a spate of press publicity on the subject in recent weeks, and in replying, Mr. P. Hasluck (Liberal - Curtin, Western Australia; Minister for Territories) admitted that, being non-socialist in outlook and firmly committed to a belief in private enterprise, the Government was seeking an alternative method of operating essential coastal shipping services (38). The Shipping Board thus continued in existence under the provisions of the National Security Regulations, and the Line was operating at a considerable loss. It is again a matter for speculation whether the uncertain future contributed to any managerial lack of interest and incentive; but if this was the case, one could scarcely blame the officials concerned.

It was at this stage that the pattern varied from that of the nineteen-twenties, when the first Commonwealth Shipping Line was sold by Viscount Bruce. There were no takers on reasonable terms in the nineteen-fifties, and the Government eventually introduced legislation to reconstitute the management of the Line as a public authority. The new Coastal Shipping Commission will be briefly described at the end of this section.

AUSTRALIAN STEVEDORING INDUSTRY BOARD continued:

Turning now to the Australian Stevedoring Industry Board, various improvements were undoubtedly brought about in the waterfront industry as a result of the Board's efforts. However, it proved unable to bring industrial harmony to the industry, and became increasingly during the early nineteen-fifties the subject of complaint and criticism. It was frequently described as an unwarranted complication in the affairs of the industry, particularly by the shipping companies, and after the usual press speculation as to the future of the Board, the Government acted in 1954 to appoint a "Statutory Committee" to enquire into the Stevedoring

industry (39).

This Committee was appointed on 25 November 1954 and consisted of Mr. J.B. Tait, Q.C., as Chairman and Messrs. F.J.R. Gibson (National Secretary of the Australian Council of Employers' Federations) and J. Shortell (President of the Labour Council of N.S.W.) as Members. It is usually referred to as the Tait Committee. After an unusually long enquiry, it presented an Interim Report on 28 February 1956, and its final and comprehensive Report on 7 March 1957. The final Report (40) was organised into sections dealing with matters such as the functioning of the industry as a whole, the organisation of the labour force and its use, discipline, disputes and stoppages, costs, profits, shipping and freights. The first mentioned was included also in the Interim Report, as a result of which the Government brought down legislation in 1956 to reconstitute the statutory authority operating within the industry.

The Report of the Statutory Committee had, in reviewing the history of the stevedoring industry, furnished a detailed account of the regulatory controls operating from time to time, such as the representative Stevedoring Industry Commissions. The Committee then examined the 1949 legislation replacing the statutory Commission of 1947, which had become inoperative because of the refusal of representative members to participate (41), by the non-representative Australian Stevedoring Industry Board. It concluded that :

> "..... the Board as constituted by the 1949 Act was set a task impossible of satisfactory fulfilment and the Board's failures have in no small measure been due to the unsatisfactory nature of its composition;"

and that :

> "..... the ill-considered scheme of the 1949 Act in the dichotomy of power as between the Board and the (Arbitration) Court failed to work satisfactorily." (42)

It is noted in passing that this is merely the latest of many well-informed opinions criticising the legislation of the Curtin and Chifley Governments and implying that too little care was taken in drafting administrative schemes appropriate to proposed functions; other such criticisms recorded in this thesis concern the Aluminium Industry Act of 1944, the bank nationalisation legislation of 1947 and the Snowy-Mountains Hydro-Electric Power Act of 1949. (43)

The Committee advanced a number of reasons for this conclusion. It described the administrative functions vested in the Board as "most comprehensive and widespread as well as being responsible and difficult"; yet it found that the Board consisted of a full-time Chairman and two part-time members, and that the latter acted "in consultative capacity only" and "attended only occasionally." The result was that in practice the Chairman assumed responsibility for "the whole of the policy decisions of the Board and the whole of its administrative work." Moreover the part-time members were a practicing stevedore and a Treasury official, and the problem of divided loyalties was recognised by this Committee as by other enquiries before it. The Committee found also that the absence of legislative provisions clearly seperating and defining the respective functions of the Arbitration Court and the Board contributed to the unsatisfactory state of the industry. Many other weaknesses were found in the detailed legislative provisions governing the Board's operations, and also in the Board's own administration. However the following passage served to emphasise the Board's difficulties, and also lends weight to an inference made on other occasions in this thesis where public corporations have been required to function in an atmosphere of uncertainty about their future existence :

"..... at this point we should refer to one of the reasons advanced by the Board in answer to severe criticism of its inactivity and ineffectiveness in the exercise of the function conferred upon it of regulating and controlling stevedoring operations. This was the uncertainty it felt as to its own position in view of certain public statements and representations made to the Government, and the absence of a firm decision by the Government as to the Board's future. We were told by the Chairman of the Board that as early as January, 1950, he was informed by the Minister then administering the Act ..... that he did not expect the Board would continue in existence for any length of time, and the Committee also had evidence as to representations made to the Government on several occasions by the principal shipping interests for the abolition of the Board. In the circumstances the Committee feels that it is not surprising that the Board was handicapped in the carrying out of the difficult functions allotted to it by the legislation." (44)

The Committee recorded that strong representations were made on behalf of the Waterside Workers' Federation for the restoration of a representative authority. These representations were made by Mr. J. Healy, who had himself been one of the members who had sabotaged the old Commission. Mr. Healy stated that the Federation now believed that its earlier attitude had been wrong, and that it should have co-operated with the Commission and the Government. Nevertheless, the Committee, in recommending the creation of

"..... a strong and independent authority which is in a position to make decisions for the industry as a whole, to balance the interests of the employers on the one hand and the employees on the other, and to hold the scales fairly and evenly between them in the interests of the efficiency of the industry."

set its face against Healy's proposal, in the belief that the Authority should be independent of the interests directly concerned and non-representative in character. (45)

The Tait Committee also made definite recommendations concerning the composition of the proposed new Authority. It sought the appointment of three full-time members, of whom the Chairman should have wide general experience and proven administrative capacity, and of whom the other members should be drawn respectively from the employer and trade union sides of industry but not connected with either shipping or stevedoring interests or the Waterside Workers' Federation. (46) It will be observed that this description of the qualifications desired for the two other members of the proposed Authority accurately fits the qualifications of the two other members of the Committee making the recommendation. Details of the resulting legislation will be recorded at the close of this section - in the meantime, it is necessary to refer to the fate of the Australian Whaling Commission.

AUSTRALIAN WHALING COMMISSION continued:

A shore-based whaling industry having been established on a sound and stable basis by the Australian Whaling Commission, the Menzies Government decided to dispose of the assets of the Commission, whose work in the "development-stimulator" sense could therefore be considered to be complete. The Government brought down legislation in 1956 to provide for the repeal of the Whaling Industry Act of 1949, and for the vesting of control of the Commission's business in the Commonwealth in order to permit the latter to arrange a sale to private enterprise. Parallel legislation provided for the setting up of a Trust Account from the proceeds of this sale, to be used to finance schemes designed to foster

the development of the Australian fishing industry by private enterprise. Labour spokesmen made the by now customary objection that the Government had no right to dispose of the peoples' assets, and asserted that a Labour Government, when returned to power,"might not have any hesitation in dealing very arbitrarily with a transaction which we consider is of the most phony character." Again, the uncertainties of Australian politics are reflected in the history of our public corporations. Yet the efficiency of the Australian Whaling Commission was never in dispute and it had returned an average of £200,000 in profits annually, even allowing for early growing pains. Not concerned with such considerations, the Government accepted an offer of £880,000 payable in four annual instalments., and the Australian Whaling Commission passed out of existence. (47).

JOINT COAL BOARD continued:

The Joint Coal Board again came into the news with the announcement late in 1957, first, that the Commonwealth Government intended as a matter of policy that the Board should withdraw from actual mining operations and restrict itself to its regulatory functions only, and second, that the Commonwealth's so-called partner in this venture, the N.S.W. Government, objected to the former's unilateral action and intended to oppose the sale of the Board's assets (48). Notwithstanding this, the Commonwealth had its way : while the agreement of 1946 had committed each government to consult the other before taking any action to amend the Coal Industry Acts, the Commonwealth was able to achieve its purpose without resorting to legislation. By another means, however, the State Government was able to save a large part of the situation.

The Board called tenders for the purchase of its mines and the Commonwealth Government announced the end of its association with the production and marketing of coal on 10 February 1958. Ironically, in making this announcement the Minister for National Development (Senator Spooner) revealed that there had been only one tenderer for the Newstan and Newcom mines, the Electricity Commission of N.S.W., and that the mines had therefore been sold to this "State instrumentality" against the better judgment of the Commonwealth, which, in accordance with its principles, would have preferred to see the mines sold to private enterprise (49).

There are few competitive industries in which Commonwealth Governments have become engaged from time to time where the Commonwealth's contribution has not been reviewed and either terminated or reformed by the present Government. Where reforms have taken place it would seem safe to say that these have aimed at presenting the public authority in a form generally more acceptable to the private interests backing the Government. I shall now move on to an examination of events affecting the Australian Aluminium Production Commission during the life of the present Government. In doing so, I shall consider both the lessons, and their effectiveness, of the only major detailed and objective enquiry to concern itself with the role of the public corporation in general terms to be undertaken in Australia during the post-war era, an era in which the use of this administrative form has been so rapidly expanding.

(c) Major Enquiry.

THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION continued:

The establishment of this joint Commission by the Commonwealth

and Tasmanian Governments during the closing stages of World War II has already been recorded. However more than ten years were to elapse before the project was sufficiently advanced to permit the production of aluminium ingots on even a small scale. Thus it was that, in introducing an amending Aluminium Industry Bill in 1952, Mr. Beale, Commonwealth Minister for Supply, had mildly stated that the"project went ahead rather slowly", and also that "the original estimate of the amount necessary to complete the project was quite inadequate." (50). He had explained that the Government of Tasmania had been unable to contribute additional money, and that a new agreement between the Commonwealth and Tasmania had therefore been drawn up to provide for an increased contribution by the Commonwealth and for a corresponding increase in Commonwealth representation on the Commission. The agreement also incorporated certain other changes.

The amending Act (51) of the Commonwealth Parliament had appropriated a further £4,250,000, thus increasing the share of the capital provided by the Commonwealth to £5,750,000; there was no change in the State's contribution. The number of commissioners was increased to five, of whom four were to represent the Commonwealth and only one Tasmania. In fact, however, the second Tasmanian representative continued to hold office as one of the additional Commonwealth appointees. The Chairman was to be a Commonwealth representative but the Vice-Chairman could be either a Commonwealth or the State representative. Members were now to hold office on such terms and conditions as the Governor-General determined, subject in the case of the Tasmanian representative, to the concurrence of the Governor-in-Council.

Other changes made by the 1952 Act had included a provision designed to safeguard the interests of the State in the event of the

Commonwealth wishing to dispose of its interests in the industry. The Commonwealth is required to give three months notice of such intention, and if the State raises an objection, then the disposal is not to proceed unless the Commonwealth repays all moneys contributed by the State, together with outstanding interest. In this event, the State is to accept the payment offered and will then have no further interest in the assets of the Commission on which it shall cease to be represented. It is further provided, however, that such a disposal by the Commonwealth Government must be covered by specific parliamentary approval. Provisions relating to ministerial control were also strengthened, probably following some early criticism of the Commission's financial affairs, by the inclusion of a section requiring the Auditor-General to report specifically to the Minister on the results of his inspections of the Commission's accounts.

As with the Coal Industry legislation, certain sections of the Aluminium Industry Act (e.g. staffing) were vaguely worded to avoid difficulties which might arise in prescribing detailed conditions which may conflict with State practices. Although some minor tightening up (e.g. on conditions of appointment of commissioners) was apparent in the 1952 amendment, the Act was still very much briefer than most other acts establishing public corporations. It is obvious that the Commonwealth's part in the administration of this undertaking was by now far greater than that of the State, and this affords an interesting comparison with the Joint Coal Board. The "junior partner" role of the State was reflected in the anxiety of its Labour Government to safeguard its own investment in the undertaking in view of the known anti-socialist tendencies of the Federal Liberal-Country Party Ministry in office at the time of the 1952 amendments.

In November of 1952, the Auditor-General refused to certify the balance-sheet of the Commission for the financial year 1950-51 (52), and thus set in motion a gradually increasing discontent and public anxiety about the affairs of the Commission, which was to culminate in the sensational enquiry of the Joint Committee of Public Accounts in late 1954 and early 1955. Criticism of the Commission's accounting system was repeated in later audit reports, which disclosed wasteful expenditure and unsatisfactory records permitting neither valuation of assets nor preparation of accurate balance sheets. (53) These reports themselves were given little attention when tabled in Parliament, although later revelations were to show that the Minister for Supply (Mr. Beale) had been somewhat concerned about the position existing in the affairs of the Commission, and had independently taken steps to gain a full report during 1952. By 1954, in the absence of any really positive action at the political level, the possibility of which was of course somewhat restricted by the very form of the Commission as an autonomous public corporation, allegations of fraud and theft were made from certain quarters, and the Commission itself called in the Commonwealth Investigation Service. While this enquiry was proceeding, newspaper speculation and criticism of the apparent inaction was rife, and this in itself added in no small measure to the widespread public anxiety.

The Parliamentary Committee of Public Accounts had already decided to investigate the affairs of the Commission, but its programme for 1954 was interrupted by the Royal Visit and the dissolution of the House of Representatives in April of that year. On reassembling after the elections, it decided to defer the investigation to permit the Commission to complete the construction of the plant and commence production free from the distractions that would inevitably be associated

with its enquiry. However, on 14 October 1954, Mr. L.H. Barnard, the newly-elected Labour member for Bass (Tasmania), launched parliamentary debate on the subject with a demand for a public enquiry. (54) The Public Accounts Committee then reconsidered its programme, and decided to begin immediately on its investigation. (55)

The Committee has reported that its enquiry into the affairs of the Australian Aluminium Production Commission was of the most unusual and exacting nature. It was, for example, faced with an emotionally-tinged atmosphere throughout, and had to reconcile violently conflicting statements from witnesses. Altogether, it examined twenty-nine witnesses, and received and examined a total of 177 statements concerning the subject of the enquiry. Typical examples of evidence taken and reported widely in the press were :-

1. The Auditor-General (Mr. J. Brophy) charged that
   (a) the Commission's staff was generally unaware of its duties, because of the absence of written instructions and directions,
   (b) the stores methods were unsatisfactory, and
   (c) that excessive prices had been paid for goods and services especially in deals with firms with which the Commission's own Chairman, Mr. G.H. Watson, was associated.
2. The General Manager of the Commission (Mr. A.J. Keast) stated that workers had no incentive and that they had the feeling that the works would never run. He attributed much of the poor administration to the fact that the Commission was located in Melbourne, its secretarial staff in Sydney, and the scene of operations in Tasmania.

3. The former Chief Accountant of the Commission (Mr. P.A.Conde) listed thirty-two faults in accounting procedure and stores control. He stated that "direct allegations of malpractice" had come to his notice, and commented : "If a clever man had set himself out to create a situation in which he could commit fraud without being caught, he could not have done better than the situation that existed at Bell Bay in 1952."

Professor F.A. Bland, Chairman of the Public Accounts Committee, was reported to have expressed the view during the hearing that the appointment of the original Commission in 1945 as a part-time body without specific instructions was a fundamental error which made the failure of the project inevitable; and Committee Member H.A. Leslie to have asked, "Is there a machine to protect us against Government Commissions?". The Solicitor-General, Professor K. Bailey, for his part, was recorded as having remarked that the Aluminium Industry Act was practically unique in its lack of prohibition against members of the Commission handling transactions with firms in which they had a private pecuniary interest.(56)

The Public Accounts Committee's findings were published in two consecutive reports, its Twenty-First and Twenty-Second, which were presented to Parliament and ordered to be printed on 7 June 1955 and 27 October 1955 respectively. The reports are of major importance to public administration in this country since they not only represent a thorough attempt to examine the functioning of, and reasons for weaknesses in, the particular corporation involved, but also include, in relation to this primary consideration, a closer examination of the nature and character of the statutory corporation as a device of government than has been attempted for many years. In this connection, it should be borne in mind that the Committee's Chairman, Professor F.A.

Bland, (now Liberal Member for Warringah, N.S.W.) is probably Australia's greatest scholar in this field, and his interest and energy were reflected throughout the enquiry. The reports are lengthy and somewhat involved, but as the Committee itself pointed out, this was inevitable as many aspects of the enquiry thought to be finished were later reopened as new witnesses provided further related information and points of view - it was, for example, quite impossible to separate completely questions such as management and accounting. I shall now attempt to review as briefly as possible the subject matter and the conclusions contained in the two reports.

Twenty-First
The main body of the Report opened with a reference to the traditional definition of the public corporation by Sir Arthur Street (then Deputy Chairman of the National Coal Board, United Kingdom) as a

> ".....financially autonomous non-profit making body created by Act of State to provide a monopoly of goods or services on a commercial basis, ultimately responsible through a Minister to the Parliament and the public, but free from full and continuous Ministerial control."

The Committee realised that many Australian corporations "would not conform to all the features in this definition," and mentioned specifically the lack of uniformity in the field of financial autonomy (57). - finance is, of course, the main interest of a "Public Accounts" Committee In fact, however, few Commonwealth corporations operate monopoly services and the recent trend in staffing and other directions has limited freedom of action. Further, some public corporations existing today were not created by Act of State, although these could in the strict sense of the term be eliminated from a study of "statutory corporations", the expression generally favoured in Australia and adopted by the Committee.

For all these reasons, the definition quoted is inadequate in the Australian situation. Even in Britain, however, Sir Arthur Street's definition is not an all-inclusive one : it does not fit the many corporations existing in fields other than the commercial operation of the nationalised industries.

The Committee recorded that :

> "Australia is usually credited with creating this form of administrative organisation with the founding of the State Savings Bank of Victoria in 1841."

It added that since then the statutory corporation has been used for a great variety of purposes, and that "the form of the corporation is as varied as are its activities." The Committee examined many dissertations on the reasons for creating corporations, and quoted here and elsewhere from the writings of the Rt. Hon. Herbert Morrison, M.P., who is credited with being both one of the first socialists to recognise that nationalisation would present grave administrative problems and at the same time one of the chief advocates of the public corporation. It recognised that "Mr. Morrison would have gone much further than we have in Australia in accepting the consequences of the policy of establishing such corporations", by allowing for effective autonomy at the expense of a considerable amount of accountability; and concluded that :

> "..... there is wide agreement among authorities in this field that the statutory corporation is the most suitable device for ensuring the public management of economic enterprises, where there is need for flexibility in administration, and for independence from close political control. These attributes, essential for successful business operation, are seldom present in ordinary Government Departments." (58)

What I believe to be a most important and valid criticism of this conclusion by Professor Webb will be discussed at the end of this treatment of the Australian Aluminium Production Commission.

The Committee examined in some detail the provisions of the Aluminium Industry Acts of the Commonwealth Parliament, and noted that the economy of words with which they were drafted resulted in a failure to prescribe the powers, duties and organisation usually set out in some detail in statutes creating such corporations. It then analysed the membership and meetings of the Commission, and considered that too few meetings were held in Tasmania (twenty meetings up to the time of the enquiry, ~~which~~ had been divided between Hobart, Launceston and Bell Bay, compared with twelve held in Sydney and forty-one in Melbourne), and that the works site was neither inspected regularly nor with sufficient frequency. (59)

The opinion of the Solicitor-General (Professor K.H. Bailey) on the question of the responsibilities of the Minister in relation to the Commission was then quoted. This opinion stressed the existence of "a pattern or system of constitutional conventions, understandings or practices", but admitted that these conventions were "by no means firmly established, and leave room for much diversity of opinion." Professor Bailey also noted that that the legal provisions contrasted with this body of conventions and that, in fact, they gave the Minister sufficient power to enable him to be as fully responsible for the operations of the Commission, if he so desired, as he was for the affairs of his Department. Professor Bailey also drew attention to the implications of the wording of the

Acts which designated the Commissioners as "representatives" either of the Commonwealth or the State of Tasmania. This wording implied an additional channel for political control. The Committee concluded, in much the same way as Senator Millen had argued in that ~~earlier~~ enquiry into the affiars of the War Service Homes Commission in the early nineteen-twenties, that :

> "Although the Minister is not concerned in the normal course of events with the details of management, it is in part his duty to keep in touch with the running of the Corporation, and if he learns of actions or defaults that may affect his accountability to the Parliament, he should then take whatever action seems necessary and is within his powers."

Thus the responsibility of the Commission to keep the Minister fully informed of its operations was regarded as of the utmost importance, and this was stressed frequently during the Report. The Committee added tha

> "These matters have not hitherto been considered in Australia, where practices are less clearly defined than in England."

It is pertinent to note, however, that this responsibility to keep the Minister fully and continuously informed is rarely present as a legal requirement in Acts creating public corporations. The question of the intention of Parliament in establishing this corporation was, for all these reasons regarded as being of the utmost importance, and the opinion as to the "constitutional conventions, understandings or practices" was summed up by the Committee with the following propositions :

> "(i) that the establishment by Parliament of a public corporation rather than a Department of State as the chosen instrument for the conduct of a business undertaking implies an intention that the corporation should enjoy a substantial measure of freedom from political direction and control;

(ii) that Ministerial control over the public corporation should be restricted to matters of general policy and principle, and should not extend to the details of management;

(iii) that in order to promote business efficiency and flexibility it is necessary to accept some derogation from the complete measure of Ministerial accountability to Parliament which is insisted on, in the constitutional systems of the British Commonwealth, in relation to the Department of State". (60)

As will be shown later, however, Professor Webb has contested the validity of the "constitutional conventions" described by the Solicitor-General and accepted by the Committee. I would go further in expressing the view, strengthened by an analysis of Parliamentary Debates from the time the Aluminium Production Commission was established, that in Australia these "constitutional conventions", which were designed in large measure by the Victorian liberals at the turn of the century and which were in evidence in the Federal Parliament from time to time up to the amending broadcasting legislation of 1942, have lost their claim to existence by virtue of the fact that the Parliamentary "intention" on which they are based is itself no longer in evidence. Legislation is drawn up either in Cabinet or the Draftsman's Office; the Minister may or may not give the stock explanation for the use of corporation management during the second-reading speech; but despite the fact that academic and administrative surveys have cast grave doubts on the validity of this stock explanation, Parliament is not interested. During the original debates on the establishment of the Aluminium Production Commission, members were not lacking who would contest Tasmania's right to the industry on parochial grounds; others claimed quite erroneously that the market would disappear after the war. There

is, however, little evidence of any consideration of the relative merits of the alternative forms of administrative organisation. Similarly in the debates on the Whaling Commission, for example, time was devoted to the relative claims of various States to the industry but not to the relative merits of various organisational forms. Yet, since public corporations are now so widely accepted in Australia, there is a great need for this question to be given adequate consideration each time a new public activity is proposed. If the system of "constitutional conventions" is to be constitutional, it is not sufficient for Parliament meekly to accept Cabinet dictation on the issue. The Report of the Public Accounts Committee's enquiry into the Australian Aluminium Production Commission reveals the chaos caused by the neglect of this consideration, apparently at all levels (Parliament, Cabinet and Draftsman) in this instance.

The next matter to be considered by the Committee was that of the position of a Treasury Official appointed as a member of the Commission, a practice quite commonly adopted in Australia. British and Canadian opinion quoted was opposed to this practice, and brought out strongly a recognition of the problem of divided loyalties that resulted.(61)

Much attention was then paid to the requirements for auditing the work of the Commission. Matters considered included a legal doubt as to the extent of the application of the Audit Act to statutory corporations; the refusal of the Auditor-General to certify the balance-sheets of the Commission and the reasons therefor; the disinclination of the Commission to implement an Internal Auditing Section as requested by the Auditor-General; the lack of adequate information in the latter's reports to Parliament; some buck-passing of responsibilities between the Treasury and the Audit Office; and the need for a different commercialised system

of audit arrangements for statutory corporations. (62)

The next matter to claim the Committee's attention was the question of Members of the Commission having a pecuniary interest in transactions of the Commission. The very bald and economical form of the Governor-General's notice of appointment of Members of the Commission which ignored the inference of the Act that such notice should prescribe also terms and conditions of appointment, is reproduced in the report. This was contrasted with the detailed legislative provisions of other Acts which specifically included pecuniary interest as a disqualifying condition, and evoked a recommendation that the two Governments should "give consideration to a general review of the legislation, bearing this aspect in mind." Here, and at other stages during the Report, the Committee examined various transactions of the Commission in which the Chairman, Mr. G.H. Watson, and to a lesser extent one of the Tasmanian representatives, Mr. H.B. Bennett, did have private pecuniary interests. On one particular occasion the picture was so confused that the Committee found one of the Chairman's companies sub-contracting with another of his companies which held the original contract, to do a job for the Commission The unsatisfactory finding in relation to contracts will be recorded shortly. In regard to the question of pecuniary interest, the Committee found no evidence of criminal practices, but questioned the wisdom of those concerned. It regarded :

> "..... the holder of any high public office, such as the member of a Commonwealth statutory corporation, as being placed in a position of trust and responsibility for moneys and property belonging to the public. Such a member should have ever present in his mind an appreciation of that trust and should therefore be most scrupulous

in his actions, forswaring other avenues of benefit, however small, that may arise from his association with the corporation. Although the members of these public offices are not in the strict sense of the word public servants, ... they should ..... comply with the same high standard of conduct as is expected of public servants" (63)

Various aspects of the management of the affairs of the Commission were next examined, and disclosed a sorry spectacle. Weaknesses revealed included the geographical division of the organisation between Sydney, Melbourne, Launceston and Bell Bay, and other deficiencies in executive co-ordination. There was, for example, "an inadequate appreciation of the need for wide delegations to the senior executive officer working on the site at Bell Bay." The Committee pointed out the difficulties involved in a Commission of part-time men, who met irregularly and infrequently and could only devote "the time that remained after they had dealt with their own affairs", endeavouring to assume executive control of a major developmental undertaking. It concluded that much of the delay in implementing the project could be attributed to the lack of a full-time General Manager for many years. The Committee also considered the lack of team work and differences of opinion among senior staff members, and recorded that "the resulting stresses and strains seriously affected the efficient and economic management of the work of the Commission". In many instances these differences arose, however, because of the refusal of the Chairman to lay down the functions of the staff, a neglect to which the Committee considered considerable blame should be attached. Moreover, in addition to the weaknesses disclosed at the higher executive level, "there was a deplorable absence of foresight and forward planning in the organisation established by the Commission in anticipation of full-scale construction." (64)

The question of contracts was then considered in relation to specific operations such as the Wessel Islands Bauxite Survey, and the purchase of the M.V. Illawarra and the "Unit" crane. Frequently in these transactions/companies the Chairman's were involved, and the Committee was forced to comment on the lack of candour by both the Chairman and the Secretary of the Commission, in failing to furnish the full Commission with details as to the condition of the purchase and costs of alteration. The frequent omission to call tenders was a contravention of the Audit Act and Treasury Regulations, which the Committee considered applied at that time to the Commission; unsafe ships were bought without knowledge of seaworthiness regulations; and there was laxity in absolving contractors from responsibilities for breakdowns. (65)

In regard to the accounting system, the Committee examined first the estimates of expenditure made by or on behalf of the Commission and noted that :

> "The lack of accuracy in the various estimates of the full cost of the project is a theme that runs right through this section of the Report."

This aspect also demonstrated clearly the neglect of the Commission to keep the Minister fully informed of its operations. After receiving carelessly prepared/estimates and conflicting which largely ignored the rapid upwards movement of costs and prices during 1951, the Minister/had made some caustic comments in a letter to the Commission. The Commission's minutes revealed some desire to keep information from the Minister, who eventually intimated that he would attend the meeting of the Commission to be held in January 1953, "to discover from the Commission the true position." In regard to the task of estimating, however, the Public

Accounts Committee realised the "dilemma" of the Commission in attempting to predict price movements in that period of rapid inflation. The history of the Commission's accounts system was then traced in detail, and this brought out the existence of a rivalry for accounts control between the General Manager, who was first appointed in February 1951, and the Secretary in Sydney. This was a further demonstration of the absence of any definition of staff responsibilities. The Committee recorded that the chaotic accounting system, the Auditor-General's comments on which had first brought under notice the mismanagement of the affairs of the Commission, was brought about by "a sequence of unfortunate personal incidents and regrettable ineptitudes", and that "the then Commission, and in particular its Chairman, were primarily responsible for permitting this fantastic situation to develop." The stores system, which had also been adversely commented on by the Auditor-General, was also examined, and revealed a further neglect in defining responsibilities, an inability to keep a proper check upon stores, and a general lack of leadership, vigour, and care in stores work. (66)

A special analysis was then made of the various matters raised by Mr. E.J. Storey, who was then Acting Chief Engineer of the Commission, whose allegations resulted in the calling in of the Commonwealth Investigation Service, and whose disclosures to Mr. Barnard finally led to the raising of the matter in the Federal Parliament. Mr. Storey had alleged that a sum of £1,176,343 had been incorrectly allocated, and press reports of this implied the likelihood of considerable malpractice at Bell Bay; he also claimed that a further amount of £800,000 had been spent unnecessarily. The Committee, although well aware of mismanagement and chaos in the Commission's accounting and stores systems, nevertheless found that Mr. Storey was unable to substantiate his allegations, and

questioned the veracity of certain other evidence he had given. It also censured Mr. Storey for his unethical disclosure of information concerning the Commission to an outside source without the Commission's knowledge and permission. The final chapter in the Storey allegations also received considerable press publicity, and reflects further discredit on the Commission itself. Towards the end of the enquiry, the Public Accounts Committee received a statement from the Commission which impugned the character of Mr. Storey and refuted his claim to possess professional qualifications. The Committee expressed "its surprise at the failure of the responsible authorities to investigate the qualifications of Mr. Storey". As well as the independent enquiry by the Commonwealth Investigation Service, the services of a firm of commercial auditors were obtained in an endeavour to value the assets of the Commission and to examine the accounting system. As a result of these enquiries, the Committee concluded that shortages and thefts had not occurred in sufficient magnitude to materially affect the asset values as recorded in the book of accounts. Thus, Mr. Storey's original expression of doubt about the proper allocation of costs, which in effect involved an allegation that £800,000 had been wasted and £1,200,000 was not accounted for, was shown in its true perspective as being due primarily to errors and omissions in recordings and to a weak accounting system. (67)

The Twenty-first Report of the Public Accounts Committee closed with a summary of the conclusions reached during the enquiry. Most of these have been intimated in the above paragraphs, but for the sake of clarity the most important are summarised below :-

(a) The creation of the Commission as a statutory corporation carried with it the intention of Parliament to give it a measure of independence; in particular, freedom from Ministerial interference in its day-to-day administration. The requirement that the Minister was to be kept fully informed of the operations of the Commission "preserved the doctrine of Ministerial responsibility."

(b) During 1951 and 1952 the Commission failed to keep the Minister continually informed of its operations, particularly of the great increase in the estimated cost of the whole project.

(c) The Minister for Supply (Mr. H. Beale) was exonerated from any blame in the "chaos which developed at the Bell Bay aluminium project." The Committee was "satisfied that the Minister took steps towards remedying weaknesses in the methods of control."

(d) The acts constituting the Commission did not clearly set out the terms and conditions upon which members held their office.

(e) Mr. G.H. Watson (former Chairman) and Mr. H.B. Bennett, who engaged in business transactions as private individuals with the Commission while members of that Commission, were "not only unwise but showed a lack of appreciation of the limitations imposed by official practice."

(f) The failure of the original Commission to appoint a general manager immediately the site was selected in 1949 had thrown an insupportable burden on the Chairman and to a lesser extent his colleagues. A part-time board could not effectively

manage the activities of the Commission in a period of rapid expansion.

(g) "The failure of all concerned to make provision for the protection of valuable stores and to install effective methods of accounts warrants the gravest censure ..... The weaknesses and loose practices at Bell Bay left the door open for manipulating vouchers and for the illegal removal of stores."

(h) Substantial breaches of the requirements of the Audit Act and Treasury Regulations had occurred.

(i) The type of audit conducted at Bell Bay during 1950-51, 1951-52 and 1952-53 was inadequate. It was not until November 1954 that the Auditor-General disclosed any details of his earlier criticism of the accounts of the Commission to support his refusal to certify. The Committee regretted that the Auditor-General did not see fit to give to Parliament a detailed indication of the seriousness of the Commission's accounting system at an earlier date. The Committee also felt that a type of commercial audit would be more appropriate to a business undertaking of this kind.

(j) The Treasury representative on the Commission owed a duty to the Treasury to report the state of accounts. This duty transcended his loyalty to the Commission to keep his counsel. The representative had apparently not seen his duty in this light.

(k) The Commission deserved criticism for having failed to make a more careful check of the professional qualifications of applicants for positions.

(1) The position was further aggravated by the neglect or lack of administrative ability of a number of senior officers of the Commission.

The Twenty-Second Report of the Public Accounts Committee included a consideration of certain matters left over from the earlier report and also further comments on some questions raised but not fully developed in that report. The weakness of the internal management of the Australian Aluminium Production Commission has already been proved, and I shall therefore deal now only with those findings of the Twenty-Second Report which concern the nature of the statutory corporation in the broader sense. In this connection it should be noted that written evidence was taken from Professor Webb during the latter part of the enquiry and published as Appendix sixteen to the Twenty-Second Report; and that as a result the Committee appears to have had some second thoughts, and applied some reservations to the views it had previously accepted from the Solicitor-General and other authorities. The criticisms of its findings by Professor Webb to be recorded shortly should therefore be taken to refer mainly to the Twenty-First Report, which was the more widely publicised of the two.

Under the heading "Commission or Department : What the Statutory Corporation Means", the Committee repeated its earlier view that, while the corporation had a long history in Australia, there was much less appreciation here of its status than in the United Kingdom. As an illustration, it mentioned the matter of Parliamentary questioning, in which members assume that the Minister is equally responsible for department and corporation, and commented :

"If this were so, there would be no point in creating a statutory corporation at all; indeed, such action would merely complicate the machinery of administration without affording any advantage."

The Committee then put forward the traditional arguments for the public corporation (including continuity of policy, flexibility in organisation, freedom in management and elasticity in finance), together with an acknowledgement of the Australian trend away from autonomy in administration and finance, brought about by the desire to use corporations to give effect to the social and economic policies of the Government of the day. It also recognised that some conventional departments managed public utilities and business undertakings, and added that "the original conceptions have been departed from, and the distinction between the two forms of Government organisation has become blurred." The Committee believed that unless Australia was prepared to grant a degree of managerial freedom to its corporations "the burden upon the Minister will be intolerable, and the objectives sought in creating the statutory corporation will not be obtained." (68)

The Committee then recorded its appreciation of the difficulty in framing a set of overall principles that would apply to all statutory corporations, and referred briefly to the problem of classification. It considered that the Australian Aluminium Production Commission, as a corporation producing goods for sale, could most appropriately be grouped with the "nationalised industries" in the British sense or the "proprietary corporations" which in the Canadian sense manage lending, financial, commercial or industrial operations and are expected to finance themselves from the sale of goods or services (69). In the absence of any such clear statutory definition in Australia, misunderstandings have of course been almost inevitable, and the problem of

selecting and applying administrative principles has been made much more difficult. This aspect will be considered in the final Chapter of this thesis.

Further consideration of the usual provision disqualifying members of corporations who have a financial interest in the transactions of the corporation, which was lacking in the brief Aluminium Industry Act, revealed that the stringent requirements of some acts in this regard have made it difficult to find suitable persons to appoint - i.e. they could be embarrassed even by such a small thing as the possession of some shares in a company contracting to do business with the corporation. The Committee therefore held the opinion that, while there was a need to indicate the terms and conditions of appointment in broad outline to permit the discretion exercised by the Government in terminating an appointment to be more readily subjected to parliamentary scrutiny and criticism, the "disqualifying conditions should not be too tightly drawn, especially where a provision so tenuous as that in respect of financial interest is concerned." The Solicitor-General had drawn the Committee's attention to Section Five of the United Kingdom Atomic Energy Authority Act of 1954, which did not prescribe disqualification in such cases but provided that a member finding himself in these circumstances should immediately disclose the nature of his interest at a meeting of the Authority, and that he should not take part in the deliberations concerning the particular contract involved and should be disregarded for the purpose of constituting a quorum for taking the consequent decision. It was noted that although Mr. Watson may have advised the Aluminium Production Commission of his interests, the Minister was not made aware of the position. It recommended that the disqualification provisions for

members of all boards and commissions be standardised, and suggested the provision in the United Kingdom Atomic Energy Authority Act as the most satisfactory of the various statutory provisions brought to its notice. The Committee also desired a closer examination of the particular circumstances of each corporation to ensure that an appropriate form of tenure was prescribed (70).

The Committee also considered further the relationship between Minister and corporation, and commented that while it appreciated "the logical force" of the opposing requirements of autonomy and accountability, it was "not convinced that in actual administrative experience the dilemma is insoluble." In the Committee's opinion, it was appropriate that corporations like the Aluminium Production Commission should be given substantial autonomy. It regarded the obligation to keep the Minister continually informed as the fundamental democratic safeguard, and sought care in ensuring that the other specific provisions for control do no more than "permit the necessary exercise of a defined Ministerial control," and do not make the corporation "a mere facade behind which Ministerial control operates unrestrained." In this connection the Committee sought the views of the Chairmen of the following Commonwealth public corporations :-

Australian Broadcasting Commission

Australian National Airlines Commission

Australian Atomic Energy Commission

Australian Aluminium Production Commission (as re-constituted)

Joint Coal Board

Overseas Telecommunications Commission (Australia)

Snowy Mountains Hydro-Electric Authority.

The replies, which appear as appendices to the Twenty-Second Report, showed that "while each corporation has devised its own methods for maintaining relationships with the Parliament through the Government of the day, each regards the problem of keeping the responsible Minister informed as of central importance"; however, in answer to a specific query, all considered that it was undesirable to send the Minutes of meetings of the governing board to the Minister. The Committee supported the "resolute but responsible determination" of the boards of the seven corporations to maintain "their existing status of substantial autonomy."(71)

Other matters considered included the degree of application to statutory corporations of the Audit Act. After a lengthy consideration of the views of the Solicitor-General, and a statement by the Auditor-General drawing attention to the fact that, while he could impose sanctions for irregularities in departments, he had no similar power in regard to the corporations, the Committee recognised the legal uncertainty that existed and recommended clarification of the position by amendment to the Audit Act itself (72). The Committee also believed that the Minister should have the responsibility of deciding the form of accounts to be kept by the corporation. This opinion was based on the view expressed by the Solicitor-General that, despite the apparent belief of the corporations, their responsibility cannot be directly to Parliament, but must always be through a Minister; the Solicitor-General argued that the Minister must take the responsibility for recommending an appropriation of public funds, and that it is also his duty to table the annual report and if necessary to defend it. In passing, it is also interesting to note the view of the Solicitor-General, expressed in this opinion, that the Minister's answer to the House concerning the affairs of a corporation should correctly "take something of this form":

> "Under the Act, I cannot control the actions of the Board in this regard, but the Board speaks to Parliament through me, and this is

what it says ....."(73).

Further consideration was also given to the question of appointing departmental officers to the boards of corporations, and the Committee concluded that it was unwise to appoint either Treasury officials, or officers of the department of the Minister responsible for the affairs of the corporation. Amongst its conclusions the Public Accounts Committee made the following important comment under the heading "Rationale" :

> "We have thought it wise to devote a very great deal of attention to the nature, character and purposes of the statutory corporation, because of the confused thinking on these matters that seems to be widespread today. Unless the status and function of the statutory corporation are properly appreciated, the misunderstandings that exist are likely to give rise to much embarrassment, not only to the statutory corporations themselves, but also to the Parliament and the public." (74)

This, then, was the most extensive enquiry into the use of the public corporation in this country for a very long time. Even more so than the enquiry by the Gibson Committee in the early nineteen-forties, this enquiry consciously broadened its scope to seek and examine general principles which should govern the operations of public corporations and to make recommendations accordingly. There have of course been a number of such enquiries by students of public administration, but these have been neglected at the political level.

Even so, the Public Accounts Committee was not infallible. The emphasis placed both by the Solicitor-General and by the Committee, which followed his views, on the "intention of Parliament" as a factor of great importance in any consideration of statutory corporations has

already been questioned. Mr. Curtin was no doubt justified in referring to this in connection with the Australian Broadcasting Commission in 1944 (75), for the special nature of the public corporation was debated at length, both at the time of the creation and of the reconstitution of that body. More recently, however, Parliament as a whole has given the impression of not understanding and of caring less, and the question of "Parliamentary intent" today seems unfortunately to be irrelevant and the intent itself non-existent.

In a criticism of prevailing thought on the subject of public corporations, and an interpretation of the Twenty-First Report of the Public Accounts Committee, Professor Webb has amplified the entirely new point of view he put forward in his earlier article "Freedom and the Public Corporation". (76) The criticism and interpretation were offered in two sources, a memorandum submitted to the Public Accounts Committee during the later part of its investigations and printed as an appendix to its Twenty-Second Report (77), and a further article in the Australian Journal of Public Administration entitled "Statutory Corporations under Review" and published following the release of the Committee's Twenty-First Report (78).

In the latter article Webb presented an interpretation of the report which was both appreciative and critical, and at the same time shed further light on the confusion evident in current theory and practice. He believed the real value of the report lay in the broadening of the Committee's enquiry to include an examination of the nature and character of the public corporation. Professor Bland, in his new role as Chairman of the Committee, was to be thanked for guiding it in the production of a document which was of great value to political science, rather than a discourse on technical details of accounting

procedure; and for succeeding in focussing the spotlight of the enquiry on critical weaknesses in the structure of the Commission and its relationships with the government, despite a strong press campaign drawing attention to the more sensational allegations. Webb's criticism concerned the tendency of the Committee to side in its generalised findings on the nature and purpose of the statutory corporation with those "romantics" who write of this device as they think it ought to be, as distinct from the "realists" who endeavour to observe it, discuss it and evaluate it as it works in practice. The Committee endorsed Mr. Herbert Morrison's view that the sole reason for setting up statutory corporations was to introduce freedom and flexibility into management. This was obviously untrue as a characteristic of most modern corporations, and yet many of these were well-justified on different grounds. The Committee also obtained and was influenced by an opinion from the Solicitor-General which referred to "special conventions and understandings" and "the growing body of accepted principles" which were expected to operate in lieu of clear legislative provisions to limit political controls - Webb pointed out, in the context of wide-spread general confusion on the subject, the difficulty in ascertaining the status and content of these principles. It was not, he believed in the best interests of the statutory corporation itself :

> "..... that vague and all-embracing assumptions should be made concerning the degree of Ministerial responsibility. That way lies uncertainty which is always the enemy of sound management."(79)

While the Committee appeared to have accepted this unsatisfactory proposition in regard to the statutory corporation as a species, it had nevertheless demonstrated the damaging effects of such uncertainty in the case of the particular corporation under review. It showed, for

example, that even those most vitally concerned were confused as to the reason for the appointment of a Treasury official to the Commission; that the role of the Auditor-General in the examination of accounts had been the subject of considerable dispute; and that both the Treasury and the Audit Office had attempted to prescribe accounting procedures unsuited to a business enterprise. Covering legislation provided the Minister, the Treasurer, and the Auditor-General with elaborate safeguards against mismanagement of the affairs of the Commission. Yet these safeguards not only failed when put to the test but worsened the situation by dispersing responsibility and by enforcing procedures unsuited to the activities of the Commission. Webb's view was that, through its weaknesses and successes, the report highlighted both the need to classify corporations according to their function rather than according to abstract and unreal organisational similarities, and also to ensure that central controls were appropriate to the particular activities and that the responsibilities of the Minister were directly related to his powers over the corporation (80). At the risk of some repetition, his opinions will again be referred to with this latter emphasis in Chapter Three of this thesis.

His views on the prevailing philosophy of the public corporation also formed the basis for his memorandum to the Public Accounts Committee itself. Although couched in more general terms, their expression at this time was motivated by "The Case of the Aluminium Production Commission", and it therefore seems appropriate to record them at this stage.

The Haldane and Bridgeman Committees in the United Kingdom, which reported in 1918 nd 1932 respectively, were both opposed to public

corporations; and Mr. A. Townley (now Federal Minister associated with the Public Service Board) has derided those who consider that the Public Service lacks qualities of business management. Yet the wide use of the public corporation today stems from the fact that an overwhelming majority of scholars, administrators and legislators assume that the corporation is far more capable of using business methods of operation than a department, and begin from that assumption to examine the many implications of creating public corporations. This basic assumption was no doubt correct when the corporation was refined in the late nineteenth century, but the ordinary public serivce has made many advances since then. Webb speaks with a lone voice in querying this assumption, which was, of course, also made by the Public Accounts Committee in its enquiry into the affairs of the Aluminium Production Commission. Surely it is fundamental to the study of public corporations, and of public administration generally, that an assessment of the validity of this assumption should be made the first and major factor in any enquiry such as that of the Public Accounts Committee.

Webb gives four good reasons why the traditional view of the public corporation, as expressed by "romantics" such as Mr. Morrison (81), "should be regarded with considerable reserve." First, their remarks usually apply, not to public corporations generally, but to that particular class of corporations set up to manage the nationalised industries, which scarcely exist in Australia and which present "highly specialised problems". Second, they tend "to underrate the level of managerial efficiency which can be achieved in government departments", and to assume both that public servants are inherently "red-tapish" and "unadventurous" and that there is no need for "flexibility and a spirit of enterprise" in the departments. Third, they see the need for

a compromise between the extremes of efficiency in the business sense and public accountability as the sole justification for the public corporation, whereas in fact the reasons for setting up corporations are much more varied, both in Australia and elsewhere. Fourth, they assume that the public corporations are by nature more efficient and flexible instruments than government departments, whereas "there are many cases where the same enterprise has at different times been managed departmentally and through public corporations, and comparisons of results do not suggest any inherent superiority in the public corporation" - here Webb referred to the New Zealand railways, and expressed the opinion that the corporation "is a device by which certain limitations of the departmental form of administration can be overcome", but that "it is not a recipe for managerial efficiency." (82)

He went on to examine the decline of corporate freedom, his views on which have already been discussed in connection with an earlier article (83), and the various types of control which have been imposed on corporations. He examined at some length an aspect with which the Public Accounts Committee was not much concerned, i.e. the question of control over staffing, and concluded that "the general picture is without much pattern of rationality", and that, "as with other controls, there is both redundancy and inadequacy". He also questioned the idea of constitutional conventions governing the relationships with Ministers, stressing the uncertainty involved; and added that, to avoid repetitions of "The Case of the Australian Aluminium Production Commission", which involved such uncertain assumptions, the relationship should be covered by deliberate and careful definition, and the Minister's responsibility directly related to the powers conferred on him by legislation. He also

referred to the adoption by the United Kingdom Parliament of a proposal for the formation of a parliamentary committee to keep under review the policies and practices of the nationalised industries, and suggested the establishment of a similar committee by the Commonwealth Parliament to work towards a closer understanding of the place of the public corporation in the general scheme of government and to a resolution of the problems of control and responsibility. (84)

Whatever political scientists have to say about the reports of the Public Accounts Committee the fact remains that for the first time for many years some of our members of parliament themselves devoted time and effort to examining the administrative requirements rather than the political results of government activity and for this we should be thankful. In any case, the criticisms of the report raised in the foregoing paragraphs concern primarily the basic rationalisation of the corporation - there is no doubt that the Public Accounts Committee had much to offer in the way of improving the framework of corporations as we know them in Australia today.

After eleven years of muddled preparation, production of aluminium ingots commenced at Bell Bay during 1955. From the point of view of this thesis, however, the main interest will be to see to what extent those responsible for administrative organisation have taken notice of the findings of the Public Accounts Committee.

(d) Recent Creations.

AUSTRALIAN BROADCASTING COMMISSION
AUSTRALIAN BROADCASTING CONTROL BOARD
} Continued.

Recent events concerning the two public corporations

functioning in the field of broadcasting do not fit accurately any division of the fourfold grouping I am employing for this final historical phase. These corporations have not been reconstituted in any major sense, although their functions have been revolutionised. Moreover, whereas political and economic causes led to the changes in certain public corporations discussed in sub-division (b) above, the changes brought about in these two corporations are due primarily to scientific and technological advances. I have included them in this sub-division because the major body of amending legislation - the Broadcasting and Television Act (No. 1) of 1956 (85) - occurred after the enquiry dealt with in the preceding paragraphs.

In the field of sound broadcasting alone, there had been considerable expansion . The A.B.C.'s independent news service came into full operation in 1947, and today there is a large staff of reporters throughout Australia; in addition a London news room is maintained for the collection of overseas news items. A further development is the series of agreements made with State Governments and city authorities, under which these bear part of the cost of financing the symphony orchestras set up by the Commission in all capital cities; while its conducted concert tours of celebrated musicians have become a regular and notable feature of Australian cultural life.

Since 1946, the A.B.C. has been required also to broadcast proceedings of Federal Parliament in Canberra. This development was brought about on one of the few recommendations of the Standing Committee to be translated into effective action, by the passing of the Parliamentary Proceedings Broadcasting Act (86). It is interesting to note that this Act set up a further Parliamentary Committee, the Joint Committee

on Parliamentary Broadcasting, to consist of nine members drawn from both Houses. Its function is to /determine the conditions of such broadcasts and to instruct the Commission on the days when Parliament is to broadcast and the House from which the broadcast will be made. In this one direction the A.B.C. thus has no discretion or freedom on political broadcasts despite the clarification of its general autonomy in this field in 1942 and the strengthening of this autonomy in 1948. The political parties are thus able to juggle important policy statements to ensure that they reach the A.B.C.'s audiences. The Beveridge Broadcasting Committee in Britain in 1949 did not favour parliamentary broadcasting because it believed this would influence harmfully the character of debates, and consequently there is no parallel provision in the United Kingdom. Main objection to the scheme in Australia, however, has come from the A.B.C. itself, which argues that the necessary rearranging of programmes while Parliament is in session creates grave difficulties and that too many hours are being devoted to the broadcasts, thus restricting the time that can be devoted to "serious programmes". (87)

When the amount of the broadcast listener's licence fee was raised in 1953, the A.B.C. requested a return to the old method of financing, i.e. by direct payment of a/prescribed portion of this fee to the Commission, with the proviso that school broadcasts and overseas shortwave sessions should continue to be financed by grants from consolidated revenue (88). However, despite the fact that this recommendation was not acted on, and that the A.B.C. continued to operate with drastically curtailed managerial independence in matters of finance and staffing, its operations generally since the 1948 legislation which contributed to this curtailment have been characterised by far greater

smoothness and absence of friction than before. I have discussed this phenomenon with a senior official of the Commission, and believe a number of factors have contributed. For example :-

(a) while managerial autonomy was largely sacrificed in the series of Acts culminating with that of 1948, cultural autonomy (in the sense stressed by Professor Webb) was actually increased;

(b) despite the dependence of the A.B.C. on the Government's annual budget and its fears of political pressure through Treasury supervision, it has actually been better off financially since the change;

(c) the question of personality also arises - the complicated relationships between Minister, Chairman, Commission, General Manager and staff seem to have been managed far more capably since Sir Richard Boyer took command in 1945; and

(d) sound broadcasting has now reached adulthood and maturity - it was largely inevitable that an industry which reached into almost every home and which touched so closely "the tender and dangerous realms of moral, religious, aesthetic and political values" (89) should experience a high quota of growing-pains.

In his book "Broadcasting in Australia", Mr. Ian K. Mackay, Production Manager of the Macquarie Network of commercial broadcasting stations, has sketched the history of the National Broadcasting Service and made some challenging comments thereon. This book, which was published as recently as 1957, has been received favourably by the broadcasting industry itself. Mr. Mackay compared the dual Australian system of national and commercial services under government supervision with the United States system of private enterprise and with other systems featuring one kind of monopoly control or another. He believed that the

Australian system was fundamentally suited to the country's economic and social needs, and combined the advantages of both other types of control with few of the disadvantages. He traced the background of broadcasting in Australia in some detail, and his book represents probably the only historical literature, for example, on the short-lived partnership between the Postmaster-General's Department and the Australian Broadcasting Company. Other matters to receive his attention were the foundation and objectives of the A.B.C.,and its management, political relationships (including the policy implications of the ministerial power of veto in expenditure of amounts in excess of the prescribed figure, in this case £5000), financing and programmes; while he expressed some amazement at the duality of control within the National Broadcasting Service between the A.B.C. and the Post Office over programming and technical services respectively - he pointed out that the National Services in other British countries managed their own technical services without difficulty (90).

The unfortunate role of the Parliamentary Standing Committee, which was neither reappointed nor mourned after the creation of the Broadcasting Control Board, was also traced, and the point made that such a Committee would be well justified to examine the Annual Reports of the Commission, but not, as was the case, to interfere excessively in its detailed administration. This view is of course behind the recent establishment of a Parliamentary Standing Committee in the United Kingdom to analyse and interpret for full parliament the reports of the various corporations conducting the nationalised industries; however the essential limitation in function was not brought out by Professor Bland in recommending the establishment of the committee system in Australia, and

the consequent neglect to reconcile carefully the terms of reference of the Standing Committee on Broadcasting with the principle of autonomy on which public corporations are supposedly created led in large measure to the failure of the Committee. Mr. Mackay also believed that a triennial review in some detail of the operations of the Commission might be of value, and that the A.B.C. itself would welcome such an investigation as a means of informing Parliament and public of its achievements and its difficulties (91).

Although an expert on broadcasting, however, Mr. Mackay made no claim to be a political scientist, and there are some technical ambiguities in his work concerning matters which are incidental only to the main theme of broadcasting. Nevertheless these ambiguities are important from the point of view of this thesis, since they serve to emphasise the confusion both in terminology and constitutional practice which exists within the broad field of public enterprise. For example, Mr. Mackay was unhappy in his choice of a description for the British Broadcasting Corporation. Because this "has never been a state department and its employees are not civil servants", it was an organisation "which many wrongly regard as a state-owned service". (92) To him, the British system was therefore something quite apart from the "state-owned" systems operating in various other countries. He then went on to argue that the National part of the Australian system was in a similar position to this scheme of statutory corporation control, but he was unable to maintain this distinction consistently. In other parts of the book he called the A.B.C. a "semi-government department", "a commission answerable to Parliament through a designated Minister", and even a "government instrumentality"; and the overall system a partnership between the state and private enterprise. It is not clear,

however, how the national sector can be part of the state and the body operating it completely divorced from the state. Moreover, a distinction in species was suggested between the"non-state Commission" and the Control Board, which was apparently regarded as merely a Government agent (93). Despite differences in function and degree of ministerial direction, from the point of view of the political scientist both are public corporations, and the public corporation is after all merely one of the three possible alternatives for managing state activity, the others being the ordinary department and the local authority. The weakness would appear to be that in his early isolation of the B.B.C. as an organisational species and his subsequent attempts to relate the A.B.C. to this, Mr. Mackay failed to distinguish between the state as the collective entity of citizens and their governing organs, and government itself, which is merely the executive of the elected parliament. There is no question that both the B.B.C. and the A.B.C. are part of the machinery of state, the only point of argument being the degree of managerial separation from the government. This of course is the crux of any study of public corporations.

The major development in this field has been that of television. The report of the Royal Commission on Television, released in 1954, recommended the introduction of television services on a similar basis to broadcasting services, i.e. with parallel national and commercial networks. The report proposed that programmes for the National Television Service should be provided by the Australian Broadcasting Commission, with membership increased from seven to nine, and with the same safeguards against political interference as in the case of broadcasting. This Royal Commission announced its acceptance of

evidence concerning the special position of public corporations in the British Commonwealth and of "the generally accepted principles" which apply to them and which, in so far as they relate to the necessity for securing the independence of such bodies from direct political control, have special application in the field of broadcasting (94).

The only immediate change in the related corporations was the addition of two part-time members to the Australian Broadcasting Control Board, which already consisted of three full-time members, by the amending Broadcasting Act of 1954 (95). This increase was designed to facilitate the hearing of applications for licences to conduct television services. The part-time appointments were made by the Governor-General, and there were certain machinery amendments to ensure, for example, that a part-time member could not become Chairman.

To a large measure, the Government gave effect to the recommendations of the Television Royal Commission in the Broadcasting and Television Act (No. 1) of 1956. (96) This legislation, which took the form of amendments and additions to the principal Broadcasting Act 1942-54, provided for the establishment and conduct of both the National Television Service and the Commercial Television Service. The functions of the Australian Broadcasting Commission were enlarged to embrace the provision of programmes over the National Television Service, with the Postmaster-General's Department being required to provide the technical services as with the National Broadcasting Service. In his second-reading speech on the bill, the Postmaster-General, (Mr. Davidson, Country Party - Dawson, Queensland) explained that the Government had carefully considered whether the increased responsibilities would warrant an enlargement of the Commission, and had come to the conclusion that, because of its experienced

staff and proven competence in the field of sound broadcasting, there was "no need to change the fundamental basis on which the Commission has been established over the years." Even so, there was one important change in the A.B.C.'s constitution. It was to consist of seven part-time commissioners as previously, but the practice of appointing "departmental commissioners" from the Treasury and the Postmaster-General's Department was discontinued (97). In effect, two new Commissioners were to be appointed to replace these departmental commissioners, and it is worth remarking that, although no specific reference was made by the Minister to the Report of the enquiry of the Committee of Public Accounts into the affairs of the Australian Aluminium Production Commission, this change was in accordance with one of the important recommendations contained in that report.

Other relevent provisions of the legislation included :

(a) the deletion of the statutory prescription of salaries of commissioners, which were still operative at the 1942 rates for the Chairman and Vice-Chairman and at the 1932 rates for the other members, in favour of the customary vesting of the power of salary fixation in the Governor-General;

(b) the vesting in the recently enlarged Control Board of the responsibility for ensuring that technical standards of all television as well as broadcasting stations are satisfactory, and that "adequate and comprehensive programmes" are provided in the public interest by the commercial stations; this legal limitation of the Board's power over A.B.C. programmes to technical matters only was a significant development, although this limitation had in fact previously been observed in practice;

(c) the setting out in detail of the obligations of broadcasting and television stations in regard to the transmitting of political matter on an equitable basis, and within these limits the confirmation of the A.B.C.'s discretionary power over the inclusion of political and controversial subjects in its own programmes (old Section 89(1) renumbered Section 116);

(d) the application of the same principle of financing that applies to the National Broadcasting Service - i.e. payment of licence fees into Consolidated Revenue, followed by departmental-type estimating and appropriation - to the Television Service;

(e) the increase of the amount up to which the A.B.C. can incur expenditure without Ministerial approval from £5,000 to £20,000, the amount of salary which can be paid without Ministerial approval to £2,500 p.a.; and

(f) the repeal of that part of the principal Act providing for the appointment of the Parliamentary Standing Committee on Broadcasting.

With television as with broadcasting, the non-labour parties seem committed to the continuation of a system of competing public and private enterprise, and there seems little likelihood of the A.B.C. being disturbed by those political forces which have affected corporations such as the Whaling Commission and the Shipping Board.

During the parliamentary debates, a number of matters of interest to the study of public corporations were raised. To mention a few examples, Dr. Evatt strongly expressed the view that the Parliamentary Standing Committee should be reconstituted to ensure that television should be "put beyond the bounds of a mere partisan project", but did not attempt to show how this Committee could be made an effective instrument. He also criticised the Government's proposal, for which he considered no reason had

been given, for the exclusion of public servants from the A.B.C. These, he believed, had an important role to play as "watchdogs of the public interest". He also desired to see the constitution of the A.B.C. changed so as to include a resident of each State. If he had read and digested the views of the Joint Committee of Public Accounts, he chose to ignore its findings (98). Mr. L.C. Haylen (Labour, Parkes, N.S.W.) made it clear that the Labour Party, or at least some of its influential members, were still thinking of complete nationalisation of the industry (99); while Mr. H.A. Leslie (Country Party - Moore, Western Australia) referred to what he considered to be anomolies in the relationship between the A.B.C. and the Broadcasting Control Board, and expressed the view that the latter should have clear powers of regulation over the former equal to those possessed over the commercial stations, and that it was wrong to bring "two separate corporate bodies under one legislative enactment". (100) Despite such suggestions the Act passed without major amendment of the administrative provisions and any changes along the proposed lines are a matter for future Governments to decide.

To bring this historical treatment of Australian Commonwealth public corporations up to date, it remains only to refer to the new corporations recently established by the Menzies Government. The major new corporations are the Export Payments Insurance Corporation, the Australian Coastal Shipping Commission, and the Australian Stevedoring Industry Authority, which were created during 1956, and the National Capital Development Commission, created at the close of 1957. The last three named, it will be observed, all represent a continuation in modified form of earlier public corporations, although in the case of the National Capital Development Commission over a quarter of a century had elapsed since the closure of the earlier Federal Capital Commission.

The Australian Wool Testing Authority established in 1957 is also a creation of this Government; but despite certain differences in function and constitution it bears many resemblances to the group of commodity marketing boards which have been excluded from the scope of this thesis, and it is therefore mentioned in passing only. Nevertheless the second-reading speech by Mr. McMahon (Minister for Primary Industry) on the bill to establish the Australian Wool Testing Authority shed further light on current practice concerning public corporations generally. He stated that the International Wool Textile Organisation will only accept certificates of quality from a "publicly controlled organisation", and that the Government therefore decided that a statutory authority was the most suitable means for administering the testing service since this would permit the representation of the wool trade in management. He added :

> "The industry did not wish - and the Government wholly concurs in this - to see the activity carried out by a government department as is the case in New Zealand." (101)

Yet in the debates on the same bill, Mr. Fairhall (Minister for Interior) recognised that the testing service established by the New Zealand Department of Agriculture "has proved very successful" (102). The Labour Party supported the bill, and showed no interest, as it would certainly have done in the nineteen-twenties, in this admission that a department could do the job efficiently. It is also interesting to note that, as well as private interests, one government department (Primary Industry) and two other statutory corporations (C.S.I.R.O. and the Australian Wool Bureau) are represented on the Authority.

THE PUBLIC TRADING CORPORATION:

In recognition of the dependence of the Australian economy on overseas trading, and the financial risks and difficulties involved in the exporting business, the Government brought down legislation in 1956 to

provide for a scheme of insurance designed to stimulate exports by protecting the interests of the producers and traders involved. (103) In introducing this legislation, Mr. McEwan (Minister for Trade) advised that many other countries had provided public authorities for this purpose : for example, the United Kingdom had an "export credits guarantee department responsible to the President of the Board of Trade " (which is itself today purely a ministerial department despite retention of the traditional title), and Canada had an "export credit insurance corporation operating under the Minister for Trade and Commerce". Justifying the proposed administrative organisation, the Minister stated that :

> "A primary aim, in framing the bill, was to provide maximum autonomy for the insurance authority, consistent with the necessary measure of Government control over broad policy. It is therefore proposed that there should be a statutory corporation, independent of existing government departments, under the control of a single commissioner. The corporation will be responsible to the Parliament through the Minister." (104)

The Commissioner was legally constituted a corporation sole, and a consultative council of ten members was provided for the conveyance to the Commissioner of the views of exporters, manufacturers, trading banks and other commercial interests; this council was "not to become involved in the management of the corporation".

The administrative details of the legislation suggest, at least in part, that the Government may have been influenced by the Report of the Joint Committee of Public Accounts on the Aluminium Production Commission, although the Minister made no reference to this in his second reading speech. The bill attempted to clarify in legal terms the relationship

between the Minister and the corporation, and in doing so incorporated some novel provisions. With the intention of clarifying the Minister's position and removing his influence from a large area of the Corporation's operations even extending to policy, it provided first that he should be kept informed of decisions on matters of policy, and second, that his prior approval was required only in connection with policy matters under three heads, viz:

(a) the classes of insurance contracts that might be entered into,

(b) the nature of the risks that may be covered, and

(c) the undertaking of liabilities in relation to trade with particular countries.

In cases coming under these heads the corporation was to make recommendations, and in the event of disagreement, was then to endeavour to reach an agreement with the Minister; if such agreement was not reached within a reasonable time, then the Minister was to determine the policy to be followed. The Minister's approval was not required in relation to any particular insurance contract.

Thus we see in the first corporation created since the Public Accounts Committee's Report on the Aluminium Production Commission an attempt to tighten up the wording and remove ambiguities in relation to the control of the Minister. The actual wording obviously owes much to the Commonwealth Bank legislation of 1945, although it had taken many years to see that the well-considered opinions of the Banking Royal Commission might conceivably apply to other public corporations. Only Mr. Crean (Labour - Melbourne Ports, Victoria), while debating this clause in Committee, made any reference to the probable relation to the Report of the Public Accounts Committee; however, he believed :

"....that anybody who thinks he can simply cut the Gordian Knot that binds what might be called day-to-day administration on the one hand and policy on the other is attempting the impossible; and to suggest that the matter has been clearly defined in clause eleven of this bill, as the Minister did, is merely to play upon words". (105)

Some other Labour speakers congratulated the Government on placing beyond doubt the ultimate authority of the Minister and of thus endorsing Labour policy on public corporations; but although the Minister's supremacy was emphasised in the manner described above, it applied only to a limited number of clearly defined subjects. Mr. T.H. Kewley took the more accurate view that, because of this limiting of the area of ministerial power, the Corporation was actually an exception to the recent tendency to stress accountability at the expense of independence (106).

There were no other administrative innovations in the legislation. The Commissioner is appointed by the Governor-General for seven years, and his appointment may be terminated for inability, inefficiency or misbehaviour. Conditions of vacation of office are generally similar to those of other recent corporations, while the disqualification on account of financial interest is especially framed so as to exclude mere share-holding in companies under contract to the Corporation. This provision was derived from the Public Accounts Committee Report. Provision is also made for the appointment by the Corporation of a Principal Executive Officer, while the usual power is given to the Public Service Board to approve terms and conditions of employment of officers. Payment of salaries in excess of £2500 p.a. is subject to Ministerial approval, as are appointments of non-British subjects and persons who are not physically fit or who have not subscribed an oath or affirmation of

allegiance. An initial appropriation not exceeding £500,000was to be paid by the Treasurer to form the capital of the Corporation,and subsequent loans are provided for, but basically it is intended that earnings should eventually cover expenses. Accounts are subject to inspection by the Auditor-General, while an annual report of the Corporation's operations and quarterly returns of liabilities are required.

THE AUSTRALIAN COASTAL SHIPPING COMMISSION.

In introducing the Australian Coastal Shipping Commission Bill, Senator Paltridge (Minister for Shipping and Transport) referred briefly to the fact that the Commonwealth had been unable to dispose of its shipping line on satisfactory terms, and that, as the line was still functioning under the authority of the National Security (Shipping Co-ordination) Regulations, the Government desired to place the "mode of operation ..... on a more satisfactory and permanent basis". (107) The legislation provided for the appointment by the Governor-General of a five member Commission, for staggered terms of appointment in the first instance and later terms of five years. The Governor-General, who was to fix rates of remuneration, could terminate any appointment for inability, inefficiency or mismanagement. The Act also provided specifically for the appointment by the Commission of a General Manager, who was to be Chief Executive Officer. It also repealed the 1949 Shipping Act, which had never been proclaimed, and accompanying legislation provided for a type of nationalisation agreement with the private shipping companies operating in coastal waters. (108)

As with the Export Payments Insurance Corporation the legislation establishing the new Commission followed the recommendation of the Public Accounts Committee in regard to the status of a member who becomes personally interested in a contract entered

into by the Commission. As suggested by the Committee, the provisions in this regard were modelled on the United Kingdom Atomic Energy Authority Act 1954 (109); in fact, the less restrictive policy in this regard was taken further than in the British legislation, in that a member who merely held shares in common with other members in an incorporated company of not less than twenty-five members, but had no other active interest in that company, was not even required to disclose his interest. The Minister made special reference to the fact that this provision had resulted from the recent investigation by the Public Accounts Committee, and during the committee-stages of the bill, Senator Wright repeatedly requested that the proven defects of the Australian Aluminium Production Commission should be borne in mind (110). Unfortunately, however, such references are few and far between.

Also of interest is the stated intention of the Government of "placing the Commission as far as possible in the same position as a private operator of ships". (111) Reversing the current trend, the legislation was therefore drafted with a view to giving a very considerable degree of autonomy to the Commission, and the Minister's powers were correspondingly less than in most modern corporations. However he held two important powers: namely, to approve of freight rates, and to direct the Commission to establish services in the public interest, subject to reimbursement to the Commission of losses incurred on such services. Unlike other modern corporations, this Commission is not required to seek Public Service Board approval for terms and conditions of employment of staff. It is required to pursue a policy directed towards securing revenue sufficient to meet all its expenditure and to pay a reasonable return on its capital; and when approving freight rates, the Minister is

required to have regard for these obligations. Its ships will normally engage in inter-state trade, although on special occasions they might go overseas; however they are constitutionally prohibited from intra-state trading.

THE AUSTRALIAN STEVEDORING INDUSTRY AUTHORITY.

The form of the new Australian Stevedoring Industry Authority, which was created by the Stevedoring Industry Act 1956 (112), follows very closely the recommendations of the Tait Committee, which have already been discussed (113). It consists of a Chairman and two other members who are selected from the employer and employee sides of industry but in no sense representative of the shipping interests and trade unions directly involved. All three members now serve in a full-time capacity and are appointed by the Governor-General for terms not exceeding seven years. Rates of pay are fixed by the Governor-General although it is possible for a member of the Conciliation and Arbitration Commission to be appointed as a member without further remuneration, and without vacating his position with that Commission. The Authority, which is a body corporate, has a narrower range of functions in the stevedoring industry, and these are more clearly defined than was the case with the Board which the Authority replaced. These changes were designed to remove confusion about the location of controls and to prevent overlapping between the owners, unions and the Authority.

The stevedoring organisation continues to be financed from the levy on man-hours worked by waterside-workers. Its accounts are subject to inspection by the Auditor-General, who is required to draw the Minister's attention immediately to any irregularity discovered. An Annual Report, and any other information requested, is to be furnished to

the Minister, who in addition, is given certain specific powers such as approving movements of staff in positions classified at over £2000, approving various classes of expenditure in excess of £10,000 and leases exceeding five years, and declaring that an emergency exists in a particular port.

The Authority is empowered to appoint such officers as it thinks necessary and these officers are to constitute the "Service of the Authority". However, conditions of appointment are laid down in the Act, which further provides that the terms and conditions of employment of staff, as determined by the Authority, are subject to Public Service Board approval. Further, the Authority is brought in line with the C.S.I.R.O. and the Atomic Energy Commission by the provision (Section 15 (8)) requiring Public Service Board approval for the total number of administrative and clerical personnel to be employed by the Authority. It is known that the inspection staff of the Public Service Board, in examining this aspect of the Authority's organisation, found that no serious staffing review had been conducted by the stevedoring organisation, either in its present or earlier forms, since its first establishment during World War II; that there was a need for improvement in various office procedures such as delegations; that some of the senior officials had rather outmoded ideas about their roles as administrators; and that the Authority would benefit by having certain of its senior officials attend the administrative training courses conducted as a feature of the Public Service proper. This recalls the traditional justification, frequently aired in the establishment of public corporations, that their organisational pattern is inherently better equipped to implement efficient procedures than the public service department; and also the apparent sense of achievement with which the then Chairman of the Australian National

Airlines Commission wrote in 1956 that, inter alia, his organisation had engaged a part-time administrative consultant with the task of emulating the work of organisation and methods units within the regular public service (114).

THE NATIONAL CAPITAL DEVELOPMENT COMMISSION.

Finally, in introducing the National Capital Development Commission Bill in 1957 (115), Mr. A. Fairhall (Liberal - Paterson, N.S.W., Minister for Interior and Minister for Works) referred to disappointments and criticisms in regard to the progress made in developing Canberra as a worthy capital city, and also to the Government's decision to transfer the Central Offices of the Defence Group of Departments from Melbourne to Canberra during 1959. To implement the latter decision, he added, it would be necessary to undertake a developmental programme of considerable magnitude; and in seeking to provide the best possible administrative system the Government had therefore paid close attention to the findings of a Senate Committee of Enquiry into the Development of Canberra, which sat during 1955.

This Committee had devoted some time to a consideration of various possible types of administration for the National Capital. It took evidence from a number of authorities who favoured the "Commission type of administration", including Sir John Butters, the former Chairman of the Federal Capital Commission, and representatives of the Canberra Chamber of Commerce and the Canberra Division of the Institute of Engineers. It also heard Mr. L. Withall (Federal Director of the Associated Chamber of Manufacturers of Australia) describe "the authoritative commission" as :

> "..... the sort of authority which is justifiable at an early stage of affairs but which could be reasoned as being totally undemocratic at a later stage of affairs;"

and Sir William Dunk (Chairman of the Public Service Board) express the view that there was no reason why departmental administration could not succeed, given a clear authority to make commitments. The Committee was referred also, in connection with the desire of the representative of the Canberra Chamber of Commerce (Mr. R. Rowe) to have a commission consisting of four nominated and four elected members, to the unfortunate experience of the earlier Federal Capital Commission with elected members. The Committee's judgment was that :

> "From the point of view of getting a job done, however, there seems to be little argument about a commission's ability". (116)

At this stage the Committee's report furnished proof, if this was still needed, of the large area of confusion surrounding the use of the public corporation in Australia. The Parliamentary Committee of Public Accounts, which had very recently reported on the affairs of the Australian Aluminium Production Commission, had recognised that Australia had a long if uninspiring history in the use of statutory or public corporations, and it had obviously included the large variety of boards, commissions, corporations and similar authorities within this category. In thus weighing the pros and cons of commission as opposed to departmental organisation (apparently without any full and adequate examination of the implications of the course it proposed), this Senate Committee on Canberra Development had used the heading "Evidence Recommending a Commission". In the very next section, and apparently under the impression that it was now considering a third and completely distinct species of public authority,

it used the heading "Evidence Recommending a Corporation". The Committee's meaning became somewhat clearer when it reported that "a form of administration which is relatively new to Australian thought, but apparently very effective in England, is that of the new town type of corporation." In giving evidence before the Committee Professor Towndrow and others had advocated the creation of an authority similar to the New Town Corporations which had been developed in post-war Britain. In British literature on public administration, however, these are accepted as being, with the incorporated boards and commissions, just another form of the same species of public authority, i.e. the public corporation. The terminology used by the Senate Committee, however, suggested that its members were not familiar with the broad concept of the public corporation (117).

The Senate Committee concluded that the development of Canberra "should be given over to a centralised authority with powers similar to those of the Snowy Mountains Hydro-Electric Authority," under a single controlling commissioner "with full executive powers under a Minister for State holding a separate portfolio for Canberra Development." (118) Even the latter part of this conclusion demonstrated the inadequate understanding of public administration by the Committee, for the suggested appointment of a Minister with the sole duty of holding accountable an authoritative commissioner confuses the principles both of ministerial responsibility and of the public corporation itself.

In his second reading speech, Mr. Fairhall announced that the Government concurred in the need to provide a single "powerful and competent commission charged with the responsibility for planning, development and construction of Canberra", to replace the existing division of

powers between the Departments of Interior and Works. Unlike the earlier Federal Capital Commission, the functions of the new body were to be developmental only, and it was not charged with detailed administrative duties of a municipal nature (119). The Government ignored the suggestion that a separate portfolio of Canberra Development should be created.

Concerning the actual constitution of the Commission, Mr. Fairhall advised that :

> "The commission will be constituted by a commissioner and shall be a body corporate. The commissioner will be assisted by two associate commissioners appointed by the Governor-General. These associate commissioners will be required to give such advice and assistance to the commissioner as the commissioner requires, and shall perform such duties as the commissioner directs. The period of appointment shall not exceed seven years, but, of course, commissioners and assistant commissioners will be eligible for reappointment."

The form of the commission was thus to be similar to that of the Snowy Mountains Hydro-Electric Authority. The Minister then gave insignificant attention to the detailed administrative provisions, which he dismissed as "normal machinery provision in a matter of this kind." He added, however, that provision is made :

> ".....for the resolution of any difference of opinion between the Minister and the Commission on matters of policy so that, once again in this important field, final authority is not taken out of the hands of the Government. Finally the provision of funds by annual appropriation and the obligation of the commission to present an annual report and financial statement to each House of Parliament offers ample opportunity for the House to keep under close scrutiny the performance of the Commission." (120)

Up to the time of writing the main claim of the National Capital Development Commission to public notice has been the offer by the Commonwealth Government of appointment as Commissioner, at a reputed salary of £6,000 p.a., to Mr. A.W. Knight, Tasmanian Hydro-Electric Commissioner, and the consequent political "storm in a teacup" (121). Following heated protests by the Tasmanian Premier and prominent government figures in some other States concerning such "pirating" by the Commonwealth of State officials, the Tasmanian Government eventually increased Mr. Knight's salary as Hydro-Electric Commissioner to £7,000 p.a. to make him reputedly the highest paid of all officials working under either Commonwealth or Tasmanian Governments. Mr. J.W. Overall, formerly a public servant occupying the post of Director of Architecture in the Commonwealth Department of Works, was then appointed to the post of National Capital Development Commissioner. Up to the time of writing the two associate commissioners have not been named.

It may safely be concluded that the debates on this and other recent public corporation legislation show that not enough attention has been paid by members of Parliament to the "landmark" Report of the Public Accounts Committee in connection with the Australian Aluminium Production Commission. It seems fair to comment that although this Report gave quite inadequate attention to the basic justification for creating public corporations, it did demonstrate that the administrative framework, or in other words the body of detailed provisions which members of Parliament pass over so lightly, has a lot to do with the success or failure of the organisation concerned. This essential lesson of "the Case of the Aluminium Production Commission" has not been widely appreciated, nor have the Aluminium Industry or Audit Acts been amended as suggested by the Committee. Even so, although there has been little evidence of any basic reorientation of thinking concerning public corporations, some individual improvements seem

to have resulted from the work of the Public Accounts Committee.

The various Commonwealth departments and corporations existing in the Silver Jubilee Year of 1926 were listed in Section Two (C) of this thesis. Excluding the non-corporate agencies grouped loosely within the departments themselves and also the group of commodity marketing boards, there were then ten departments and nine public corporations. Today, after another thirty-odd years of overall administrative growth and of centralisation of power in the Commonwealth government, particularly during the Second World War and the subsequent period of reconstruction, the following twenty-five departments under ministerial control (i.e. excepting the five small "parliamentary departments") and seventeen major corporations (excluding the marketing and allied primary produce boards, and international, non-corporate, and judicial bodies) exist :

Ministerial Departments.

Air	Navy
Army	Postmaster-General's
Attorney-General's	Primary Industry
Civil Aviation	Prime Minister's
Customs and Excise	Repatriation
Defence	Shipping and Transport
Defence Production*	Social Services
External Affairs	Supply
Health	Territories
Interior	Trade
Immigration	Treasury
Labour and National Service	Works
National Development	

*Arrangements are currently being made for the absorption of this Department within the Department of Supply.

Public Corporations.

Australian Aluminium Production Commission

Australian Atomic Energy Commission

Australian Broadcasting Commission

Australian Broadcasting Control Board

Australian Coastal Shipping Commission

Australian National Airlines Commission

Australian National University

Australian Stevedoring Industry Authority

Commonwealth Bank

Commonwealth Hostels Ltd.

Commonwealth Railways

Commonwealth Scientific and Industrial Research Organisation

Joint Coal Board

National Capital Development Commission

Overseas Telecommunications Commission (Australia)

Qantas Empire Airways Ltd.

Snowy Mountains Hydro-Electric Authority

The growth in the number of corporations may not have kept pace proportionately with the growth in the number of departments. However, in 1958 as in 1926, the public corporations occupy a large and important sector of the public administration of the Commonwealth of Australia. Public corporations also play an important role in the public administration of the six Australian States - but that is outside the scope of this survey.

There can be no real conclusion to this historical survey, for the public corporation is a living device of government, and as far as can be predicted today, it is here to stay. The device will therefore develop

as it applied to new purposes and as politicians of various political parties play new roles in the legislative process. As our scholars of public administration, among them Professor P.A. Bland, Sir Frederick Eggleston, Mr. T.H. Kewley and Professor Webb, have shown, there is a great need in our complex modern society to think out clearly the implications of the public corporation, and to apply without fear or favour the results of this thinking. Only in this way can we hope to develop a really efficient system of public administration.

We have created public corporations so that the hindrances associated with normal methods of accountability can be avoided. Having created them, we have immediately set about inventing alternative methods of accountability which of course bring with them new hindrances. In the normal department controls are exercised by the Minister, the Treasury and the Public Service Board; and the Auditor-General is also involved. We have already seen that the same agencies now exercise controls over public corporations. The theory of the public corporation suggests that we are still trying to apply in the nineteen-fifties a set of principles which was appropriate to the eighteen-nineties; but the world, and public administration, have changed a lot in the interim.

Mr. Kewley wrote of the reports of the Public Accounts Committee's enquiry into the Aluminium Production Commission that they :

> "..... represent something of a landmark in the development of thought about the statutory corporation in Australia if only because they reveal some of the consequences of the failure to profit from Australia's long and varied experience with the statutory corporation". (122)

To summarise, it might be said that there is a gradually emerging awareness of the implications of our previously haphazard thinking on the problem, and that our scholars are doing a great service in bringing out these implications. However, in the Australian political climate, our legislators, with some notable exceptions as revealed by the work of the Public Accounts Committee, have not the inclination to examine meticulously the many aspects involved. The task now is therefore surely to attempt to reduce all the many relevent and often conflicting considerations to a few simple propositions which can be readily appreciated and understood.

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CHAPTER THREE

ANALYSIS AND CLASSIFICATION

Followed by:

Appendices.

Bibliography.

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ANALYSIS AND CLASSIFICATION.

Introductory:

The title of this final chapter has been suggested by D.N. Chester's article "Public Corporations and the Classification of Administrative Bodies", which appeared in the first number of "Political Studies", the Journal of the Political Studies Association of the United Kingdom (1). In the third section of this article, Mr. Chester grouped together the two aspects of analysis and classification in a rather novel treatment. However, this/could equally well be termed Chapter "Rationale", after the arrangement of Professor Webb's submission to the Joint Parliamentary Committee on Public Accounts during its enquiry into the affairs of the Australian Aluminium Production Commission (2).

In so far as the Australian Commonwealth corporations are concerned, much valuable work on the question of analysing the various trends apparent, particularly in the statutory provisions, has already been done by Mr. T.H. Kewley of the University of Sydney, sometimes assisted by Miss Joan Rydon. Mr. Kewley's analytical treatments include "The Personnel of Commonwealth Government Corporations", "Australian Commonwealth Government Corporations : A Statutory Analysis" (which has followed a technique basically similar to D.N. Chester's earlier work, "The Nationalised Industries : An Analysis of the Statutory Provisions,"(3) and therefore facilitates comparisons with British corporations), and "Some General Features of the Statutory Corporation in Australia". These articles are readily available in the Journals of the Australian Regional Groups of the Royal Institute of Public Administration, and appear in Volumes VIII (No. 4), IX (No. 2) and XVI (No. 1) respectively. Mr.

Kewley's work has demonstrated conclusively the trend away from the emphasis on autonomy, with a few recent exceptions, towards emphasis on accountability; this trend is apparent in the terms of appointment of members of the governing bodies of corporations, in provisions for the exercise of ministerial control, in staffing and in finance. I do not wish to duplicate the work of Mr. Kewley in this direction, and will therefore consider the question of analysis of trends in statutory provisions only in so far as it affects the problem of classification.

With few exceptions, those who have examined the functioning of our public corporations in recent years have pointed to the need for a major reorientation in our thinking on the subject. Present practice, as has been shown in this thesis, is frequently confused and inconsistent, and even where definite trends are apparent, the administrative provisions often seem no longer appropriate to the purposes for which they are intended. Yet most of the critics are content to point out the difficulties - it is of course much harder to find the answer to them, and Professor Webb has performed a valuable service in this direction by leaving the detail to others and himself suggesting a new assessment of those old assumptions by which government activities were classified as being suitable either for administration by a conventional department or by a public corporation. This original approach appears to owe something to his close acquaintance with relevant experience in New Zealand, where public corporations have found far less favour than in this country(4). It is on this note that I desire to conclude this thesis.

The argument of this final chapter will be divided into two broad aspects, namely why public corporations have been created, and the question of classification. In the first of these aspects I shall endeavour to draw some general conclusions concerning the role of the public corporation in Australia, and also the various arguments advanced and their validity, the constitutional position, and the question of efficiency. In the second I shall consider various studies made concerning the question of classification and attempt to evaluate their usefulness in the Australian situation, in the belief that this is an essential first step in restoring order to our thinking on the subject of public corporations. Once again, however, I have found it impossible to separate the two aspects completely. I wish to draw particularly, in my discussion on classification, on the work of Mr. D.N. Chester in England and Professor Webb in Australia, and in each case this question has been closely related to the wider question of nationalising the corporation. Moreover, any consideration of "purpose" as a means of classification must relate to this broader question.

Why Australia has created public corporations:

In my dissertation submitted to the University of Tasmania at the close of 1954 for the award of the Diploma of Public Administration, I attempted to find an answer to the question "Why the Public Corporation?", in so far as the Commonwealth Parliament was concerned. Summarised, the reasons I was then able to discover primarily from an analysis of ministerial statements were as follows :

A. Form of management copied from similar institutions, either in private enterprise, Australian States, or overseas countries.

B. Freedom from political interference.

C. To permit greater flexibility in management than normal public service methods will allow.

D. Inadequacy of Parliament as effective instrument of supervision.

E. To allow participation of best brains in executive management.

F. To preserve continuity of policy.

G. To permit representation of non-governmental interests in executive management.

H. Need for single authority to replace dual or multi-control systems.

I. To overcome constitutional restrictions and facilitate co-operation between the Commonwealth and State Governments.

J. To facilitate operations as a branch of an inter-national organisation.

K. Provision of independent judicial or quasi-judicial authority.

L. Continuation of previous form of management, and personnel, after nationalisation.

M. To overcome legal restrictions by concealing the interest of the 'Crown'.

A table which I then prepared to illustrate how these reasonings had been applied to the various corporations is included at Appendix E of this thesis.

I concluded at the time that the arguments advanced could be divided into two groups, namely :

(a) those (A, and G to M) which apply for obvious reasons in special circumstances (e.g. as a consequence of Federation), and which may or may not be complementary to the other group of arguments, and

(b) those (B to F) which have been accepted as a general set of premises underlying the formation of public corporations in most modern countries;

and also that in Australia most weight seems to have been placed (apart from federal peculiarities and the representative marketing authorities) on :

(a) the introduction of flexible business methods into the field of public administration,

(b) freedom from political interference, and

(c) the participation of the best brains the country has to offer in executive management.

On reflection, it would seem that the representation of qualifications, separately from the representation of sectional interests, should be included among the reasons used to justify public corporations, as shown in the above Table. The Australian Broadcasting Commission and the Commonwealth Bank Board obviously owe something to such reasoning, which also figures in the recommendations of the Tait Committee, on which the new Australian Stevedoring Industry Authority is modelled. Or perhaps this is simply another way of saying that the public corporation is supposed to allow the participation in management of the best - or most appropriate - brains the country has to offer for the particular job in hand.

It would also seem that the belief that departmental management was unsuitable for activities which were expected to have temporary duration only counted towards the creation of bodies such as the Repatriation Commission; it was argued that it would be inappropriate to apply the security given by the Public Service Act to their staffs.

However, the belief that such activities would have a short life has proved erroneous, and moreover, many far more temporary activities have been organised since as departments of the regular public service, for example the Department of Post-War Reconstruction and numerous other short-term departments operating during the Second World War.

In the latter connection it is interesting to note that until recently the Commonwealth's Public Service Act provided for the appointment of a "Provisional Service" to allow for such "provisional activities" - yet it was not at any time considered necessary to make use of this provision. Commenting on its deletion in the amending Public Service Act of 1954 Sir Eric Harrison stated that the provision had been intended to provide "for the establishment in time of need of a temporary service with temporary departments", but had never been used during the thirty-two years in which it had had legal force because when temporary structures were needed governments had preferred to create statutory authorities to deal with particular matters or - during the war - to establish other special-purpose authorities under the National Security Regulations. (5)

A further reason I would now add is perhaps not far removed from the frequently expressed general desire for freedom from political interference - however the context is more specific and the need for corporation management frequently greater in such circumstances. The Australian National University was, for example, manifestly unsuited for departmental administration for amongst other things departmental officers are specifically prohibited from publicly criticising or commenting on actions of the government. As far as I am aware this point has been

argued clearly only by Professor Webb; although Mr. Chifley did say something similar in explaining that scientific officers must work out their own programmes and that detailed public service controls would therefore be unsuitable for C.S.I.R.O. (6). The need to provide conditions of academic freedom, or in Webb's phrase "cultural autonomy", is therefore a further reason for the creation of corporations.

During a recent short visit to the Headquarters of the Snowy Mountains Hydro-Electric Authority at Cooma, N.S.W., and to the neighbouring areas in which the Authority is undertaking its vast water conservation and power projects, I made an interesting if somewhat disturbing discovery, and formed some impressions relevent to this rationale of the corporation. First, the Guthega Power Station at Munyang on the Upper Snowy River, which is now feeding electricity into the N.S.W. grid, is capable of continuous operation, and of producing power more cheaply than the thermal stations in N.S.W. Yet it operates for a few peak-load hours only each day, in order that the employment of the N.S.W. coal miners will not be prejudiced - in times of excess demand in the coal industry, however, the miners have not shown a corresponding willingness to subject their sectional interests to the national interest. The Snowy Mountains scheme has already cost the Australian taxpayer a colossal sum. It is now capable of earning revenue to repay some part of that sum, but for political reasons its revenue earning capacity is purposely restricted. That able observer of public enterprises, Sir Frederick Eggleston, was most scathing in his condemnation of such intrusions of sectional political interest into the affairs of public business enterprises in the past. (7)

Of perhaps more relevance to the present search for a means of rationalising the public corporation was the impression gained that there would be justification in arguing that a close association with the public service might not be appropriate to an organisation dealing on such a large scale with private contractors such as the Kaiser-Walsh-Perini-Raymond Group from the United States. Most observers agree that the distrust of the government department in the United States and Canada has been a potent factor in the extensive use of public corporations in those countries; it has also been one of a number of factors operating in the United Kingdom. It may therefore well be that the desire to present the various private corporations concerned with a controlling authority organised on lines similar to their own, and free from the expected unpopularity of a government department, may have had something to do with the selection of the public corporation as the administrative form in this instance. Even if so, however, responsible statements have shown little evidence of such thinking. Another impression formed was that of a clear tendency in Australia, whether conscious or unconscious, to use public corporations for localised activities. Thus, for example, the development scheme in the Snowy Mountains, the aluminium industry in the Bell Bay region of Tasmania, and the shore-based whaling industry at Carnarvon in Western Australia, have all been entrusted to public corporations. This is not to say that all public corporations are localised, for the organisations of the Commonwealth Bank, the Australian Broadcasting Commission and Trans-Australia Airlines, extend to the remotest corners of Australia. However there are as yet no converse cases of Commonwealth departments being concerned with localised activities, although Dr. Evatt, in a

recent unsuccessful election campaign, did advocate the formation of a separate department for the development of the Northern Territory (8).

Validity of arguments used:

Just how valid are the main arguments? The premise that the public corporation brings with it advantages in business operation by virtue of its freedom from accounting, stores and personnel controls and routines associated with direct and full accountability to the minister and parliament was examined by the Bridgeman Committee which investigated the organisation of the United Kingdom Post Office in 1932. The Committee reported that continuous detailed political control resulted in the use of slow and guarded procedures, and unwillingness to depart from precedent. It expressed the belief, however, that these disadvantages were more than countered by the difficulty of providing public accountability in an independent board, and by the danger of replacing impartially recruited public servants by men appointed by patronage. The Haldane Committee on the Machinery of Government recorded a similar finding in 1918 (9). In the Australian environment, moreover, not only do the same considerations apply, but many corporations have lost those freedoms from controls and routines referred to by the Bridgeman Committee. In fact the history of public administration in Australia is one of improving efficiency in the regular departments on the one-hand, and of this weakening of corporate freedom on the other, with the result, as many observers have pointed out, that the distinction has become blurred, and the so-called business advantage of the corporation far less clear.

While the latter comments refer to the Australian situation,

the Haldane and Bridgeman Committees reported in the British context. Likewise in both countries, other committees of experts have used the traditional arguments about greater efficiency in the commercial sense in recommending the creation of public corporations. The Acland Committee, from whose 1918 report the British Forestry Commission was derived, is a case in point (10). I believe that it is largely as a result of the deliberations of committees of this persuasion that these traditional - and, in so far as Australia is concerned, once undoubtedly valid - arguments have become entrenched in the philosophy of democratic government. However, I also believe that such committees have generally failed to give adequate recognition to the fact that the activity they were considering was concerned with the business of public administration as much as with the particular industry or technology with which they were familiar. To the extent that they are observed, the principles governing the use of the public corporation are basically similar in all democratic countries; and in support of my contention that these traditional assumptions need reassessing, I cannot do better than to repeat two provocative questions posed in 1933, in relation to the administration of Britain's public utilities, by Marshall E. Dimock, the American scholar who is now Professor of Political Science at the University of Chicago. Dimock is described by Professor Webb as being one of the "realists" as distinct from one of the "romantics" who write about public corporations (11). The first of these passages is contained in his concluding remarks about the British Post Office, the second in his general appraisal of the trend towards vesting control of the newer services of state in the "public utility trust" - he used the latter term consistently to describe the bodies generally known today as public corporations. The relevant passages are as follows :

(a) "Candid observers have been ready to admit that the Post Office has many qualities which business firms lack and which they would find difficult to acquire ..... such as the high standard of education and the fine traditions of its officials ..... An official of the National Institute of Industrial Psychology, after having made comprehensive investigations in the Post Office and in many private and public utility concerns, concluded that 'Business houses ought to follow the example of the Post Office in its methods and the Post Office ought to follow the example of business houses in making the best of itself', (i.e. in salesmanship and public relations). May it not be possible that Civil Service personnel and methods plus commercial advertising and technique ..... will produce the future's most effective form of public service enterprise?" (12)

(b) "As a result of experience, it may be found that the public utility trust is too far removed from Parliament to be effectively criticised and controlled in matters relating to important financial and labour policies. This form of organisation is exposed to the pressure of interest groups, with the result that log-rolling and personal influence are hard to avoid. An appointed body, with no constituency to which it is effectively responsible, will be in danger of a dulled sensitiveness to public needs unless it is honestly and carefully chosen. Salaries, fees and overhead costs that the average person would consider too high cannot be effectively prevented. Moreover, the creation of public boards all of which possess important differences, may render the processes of popular control so complex and indirect that real

responsibility will be lost. The American system of independent commissions suffers from this defect ..... Great Britain should hesitate a long time before seriously vitiating her most valuable constitutional principle - real responsibility for power bestowed by public authority." (13)

Independence from political interference is a corollary of the first premise. No one can doubt seriously that political interference in certain activities of public corporations (e.g. broadcasting) is undesirable. It does seem logical that such activities should be divorced from ministerial departments - yet there are anomalies. For instance, surely in a democracy freedom from political interference is equally important in the conduct of elections as in the management of railways or a shipping line. Yet only the State of N.S.W. has deemed it necessary to create an autonomous Electoral Commission for this purpose. The Commonwealth's electoral activities are carried out as a function of the Department of the Interior under direct ministerial control, and this arrangement has not been seriously challenged. More criticism on the grounds of political interference has in fact been levelled against the supposedly non-political railway administrations in the Australian States. In this connection it is interesting to note that a visiting American Fulbright Scholar, an expert on electoral systems, recently remarked (14) on the great advantages enjoyed by Australia, in comparison with the United States, in having impartially and meritoriously appointed electoral officials. In the United States electoral officers are themselves elected on a party-ticket under the "spoils system" ; this visitor obviously held the view that an impartial administration was possible within an ordinary department, due to the safeguards in appointment of staff provided by the Public Service Act. Senior public

servants have greater security of employment, they hold important executive positions, and impartiality is an essential requirement; and on the other hand few corporations are legally free from ministerial direction.

Except in cases where freedom from political control is necessary to ensure cultural autonomy(as in broadcasting and university management), a good case could therefore be made out for arguing that this is not a valid reason for creating public corporations. Many such pro-corporate arguments have been based on past experience with inept ministers - a more recent Tasmanian example of this will be recorded later in this Chapter (15). And yet Australia prides herself on being a democratic country; it is therefore of the utmost importance to provide for the accountability of the administration to the people. If we insist on applying such democratic principles, the quality of the administration will be as good as the people deserve, because it is controlled by their own elected representatives. This is the essence of the argument that good government is no substitute for self-government.

An important argument advanced for the public corporation in Britain has been that exemption from normal public service control has permitted the retention, by the offer of attractive salaries, of the top executives of the pre-nationalisation era. Thus, in Britain, top management is generally better paid in the public corporation than in the normal department; but the reason outlined is absent in the Australian scene, with the possible exception of Qantas Empire Airways. It is also significant that here many boards and commissions are manned by public servants. A comparative survey of salaries in public corporations and other fields of government employment, made in 1954, is reproduced at

Appendix F. Although a little out of date, there has been no change in the relativity of salaries as between senior departmental and senior corporation posts. This analysis shows that there is, generally speaking, no monetary advantage to be gained in serving on the board of a public corporation in preference to the upper level of the regular public service. There are many able, well-trained men who advance to top positions in the public service; and although service methods of promotion restrict the introduction of mature "new blood" direct to top management, this restriction applies in practice no more to the First Division of the Public Service (the 'Permanent Head' level) than it does to the members of the board or commission. The Australian Broadcasting Commission is, of course, something of an exception since its part-time board is deservedly representative of a wide cross-section of Australian thought and interest.

At this stage it is appropriate to recall the two occasions on which an official statement as to the place of the public corporation has accompanied the closing down of Commonwealth commissions in favour of normal departmental management:

1. Senator Daly, speaking on the Development and Migration Bill 1930, stated the Government's case in two propositions :
   (a) That our system of constitutional government implies, as a general rule, that executive administration shall be supervised and controlled by individual ministers, and
   (b) that necessity only, as opposed to convenience, should be the exception to such general rule, and such exception, once it is created, should continue only so long as the necessity exists.

2. Mr. Bedman, speaking on the Commonwealth Public Service Bill 1947, stated :

(a) that advantages in general administration are to be gained from assistance and guidance by a centralised body whose officers have an intimate knowledge of the organisation and working of many departments, and

(b) that, unless there are very special conditions, no Commonwealth activity should stand alone, and be excluded from oversight and review of organisation and methods under Section Seventeen of the Public Service Act.

The Government at the time put forward the principle that as far as possible all Commonwealth activities should be brought directly under the Public Service Act in the interests of a wisely-controlled uniformity.

On another isolated occasion (the inclusion of the staff of the Federal Capital Commission within the Public Service in 1924) it was argued that there were mutual advantages to management and staff in including the latter in the wider "career service" (16).

Both these major policy statements opposing public corporations were put forward by Labour Governments. Yet, since the 1930 statement many new corporations have been created by Labour Governments. Has each case been one of necessity as opposed to convenience? This can hardly be true. And has each of the corporations established since 1947 had some special feature requiring exemption from the Public Service Act? A good case may have been made for C.S.I.R.O., but this has not generally been the case. With the inclusion of clauses providing either for conditions similar to those in the Public Service, or for Public Service

Board approval of staffing conditions and recruiting methods, the independence of the authorities has been reduced in this direction. In fact, apart from the actual engagement of staff, the only effective major exemption today for the majority of corporations is from the application of Section Seventeen of the Public Service Act, which seeks efficiency and economy in operation!

The constitutional position:

The doctrine of ministerial responsibility for the administration of all state activities is at the root of democratic British constitutional theory, on which the Australian system of government is based. This doctrine presupposes the comprehensive use of the ministerial department, in which the elected minister has full executive control.

Ministers may then be challenged on matters large or small especially during parliamentary Question Time, by various members at the direct instigation of interested electors - and any ministerial lapse at this time will be seized upon avidly both by public opinion and by the Parliamentary Opposition. The minister wishes to retain his job, and this constant accountability provides an incentive for sound control. It also means, however, that the departments must be able to provide answers for the minister on a wide variety of subjects at a moment's notice and this requirement leads to the importance attached to registry work in the regular public service. Theoretically, thus is "red-tape" born, and, of course, much of the criticism of Public Service efficiency. However, such measures taken within a department to satisfy the requirements of democratic accountability are an essential part of the department's make-up, and should not be regarded as a symptom of inefficiency provided they are kept within reasonable limits. The Public Service is conscientiously

streamlining its procedures; while in any case few private enterprises (or public corporations!) operate without comprehensive records.

However, the minister's control over his department is not absolute. In matters of finance both the Treasury and the Auditor-General exercise various controls, while in matters of staffing the Public Service Board has considerable influence. These non-ministerial forms of control have been introduced to ensure the co-ordination of the revenue raising and spending activities of the total government machine; the legality and honesty of financial transactions; and the provision of a non-political public service, recruited by open competition on grounds of merit, impartial in its dealings with the public, and equally able to carry out the policies of governments of various political colours. There is of course the machinery of Cabinet itself to give overall policy direction to the departments, but this is inadequate to provide the standard practices and conditions which are essential throughout the public service because of the need to avoid undesirable competition between departments for staff and funds and also to avoid confusion and chaos in the application of administrative principles and practices. Although these "external" controls in the departments involve some limitation on ministerial power, they have been instituted only following detailed assessments of the requirements of modern public administration. The position of the Auditor-General, who is an "Officer of Parliament" and directly accountable to full Parliament and not to the political executive, is actually intended to improve the accountability of the administration to the people as a whole. It could be argued that the Public Service Board is in a similar position.

Within the department itself, quite apart from these external

public controls, the Minister must in practice sharehis control. The Permanent Head, normally a career public servant, in these modern times possesses a large measure of power in his own right, for he has made a lifelong study of his highly complicated subject, and few ministers, in their relatively short terms of office, can be expected to match this knowledge. The current debates on whether the expert is now "on tap" or "on top" arise from this question (17). Generally speaking, it would be safe to say that ministers are physically able only to concentrate on those issues which impinge on overall government policy, and even here they are dependent to a considerable degree on the advice of their experts; detailed administration and even minor policy issues they are largely content to leave to their Permanent Heads.

The public corporation, as opposed to the department, openly places the greater part of the managerial responsibility in the hands of the governing board, which takes the place of the Permanent Head. The intention,i.e. to grant as much freedom as possible, and the result (at least in so far as Australia is concerned,)i.e. the constant weakening of this corporate independence, have already been discussed. This lack of regard for the claim of the corporation to a large measure of freedom is not as noticeable in the larger democracies. There politicians have usually based their decisions on an accepted set of principles. These principles, however, are unfortunately neglected in Australia. This lack, and the consequent inconsistencies in practice, suggest that Australia may not in fact have gained much in establishing such a motley collection of public corporations. There are efficient and inefficient corporations; likewise there are efficient and inefficient departments. And departments can successfully administer various activities, for example elections, in which any form of political interference in detail

would be disastrous; they can also control huge business enterprises such as the Australian Post Office.

It is pertinent to ask whether the ordinary government department is any more accountable or any less independent than the modern Australian corporation. In constitutional doctrine the answer to both questions is yes. But in fact the size and complexity of the modern department, and the technical knowledge required in both the professional and administrative spheres within it, have meant that the politician has been forced more and more to accept the advice of his experts. It cannot be doubted that these senior permanent public servants, the so-called "bureaucracy", today occupy a most important and influential position; and since the politician is legally and conventionally permitted to exercise control at least over matters of policy in the public corporation, there is not a great deal of difference between the two. It would seem, therefore, that the modern department, unlike its predecessor of the nineteenth century, is now a compromise between comprehensive accountability and expert management. Yet in constitutional theory it is not, and the public corporation has been created to bring about such a compromise. The popular assumptions about government departments thus need bringing up to date, and this process will inevitably require a corresponding adjustment in the role of the public corporation.

The case for the public corporation is only logical where legislators appreciate its peculiar nature as a separate and distinct part of the machinery of government. We should not create corporations indiscriminately, and there should always be an extremely sound administrative reason for dispensing with departmental management. Once the decision is made, however, it must be recognised that

the public corporation is indeed a distinct form of government administration, and that the principles of organisation and control of departments should not automatically be made to fit the corporation. Otherwise the reasons for which the corporation was finally selected are compromised, and the corporation itself prejudiced in its chances of success. The very reasons validating the corporation are (or should be) automatically the same reasons why departmental controls and procedures are unsuitable. This of course may apply to all or only some departmental procedures. For example, where the need for cultural autonomy is the justification, departmental accounting methods may not matter whereas independence in personnel matters is vital. Where the commercial nature of the activity is the justification, then departmental accounting and stores methods may not be appropriate. The recent report by the Joint Public Accounts Committee attributes much of the chaos at Bell Bay to our imposing traditional hindrances on an organisation designed to follow the accepted commercial methods of operation.

These remarks do not necessarily imply that conducting a business enterprise is a valid reason for creating public corporations. Professor Webb has argued very convincingly that this is no longer so because of the coming together in administrative practice of corporations and departments - his contribution to the rationalisation of corporations has already been discussed (18). I believe also that, where monopoly industries are involved, it is very important to provide conditions of full accountability, for in the absence of competition there is no other incentive for management to study the requirements of the public it serves and to satisfy these requirements. Since public favour is of the utmost importance in any truly competitive situation, accountability

in the usual sense would not then be of such importance, and the corporation might be justified to overcome certain limitations of the departmental system. And yet, since the nineteen-twenties / , where public corporations have been created in competitive situations, the prevailing philosophy, at least of non-Labour policies, has been that this is necessary to deprive the public enterprise involved of any advantages which might accrue from departmental operation, thus safeguarding the private operators in the field from undue competition from the public organisation. Bruce, for example, was not concerned with increasing the efficiency of the Commonwealth Shipping Line when he created the Australian Commonwealth Shipping Board- he actually used the device of the public corporation to decrease its effectiveness as a competitive undertaking (19). The tendency to restrict competition by "rationalisation" agreements is also significant.

I believe that, in the Australian context, the traditional assumption that the corporation as a species is inherently better suited to the operation of commercial activities, by virtue of superior efficiency, needs much closer examination than it has yet been given. In my opinion, the need for cultural autonomy in certain activities is a more convincing justification for the corporation. But it would also be possible to carry this argument too far, except in cases where assessment and argument of social values and the formulation of public opinion - the backbone of democracy itself - are involved. Using again the example of elections, impartiality is possible within departments. Moreover many scientific activities

are also conducted without undue hindrance within departments, for example the Defence Scientific Service of the Department of Supply and the Bureau of Mineral Resources within the Department of National Development. Public servants in these fields are limited by the obligations of official secrecy/and security, but in fact these obligations can also be extended as required to corporations such as the Atomic Energy Commission.

All this of course, assumes that our politicians, when they hold ministerial rank, will genuinely be concerned with the good government of their charges. Unfortunately, this has not always been the case - opportunities for abuse in the era before the acceptance of

departmental reform were so great that Parkes and Swinburne, for example, were justified in advancing the corporation as a recipe for managerial success. Today, however, we cannot reasonably base our administrative system on the assumption that the control of a minister will be bad.

To sum up these aspects, traditional democratic constitutional theory has much merit, and should not be lightly discarded. When it is, the closest consideration must be given to the matter of establishing conditions conducive to a high degree of efficiency - for inefficiency is much more serious in a non-accountable organisation. This is so whatever the justification may have been for creating the corporation - commercial or otherwise. Whatever the reasons, the fact remains that the misdeeds of the War Service Homes Commission after World War I cost the Australian taxpayer £1,000,000; and the maladministration of the Australian Aluminium Production Commission cost him a considerable amount in wasteful expenditure. The "cost of accountability" should be weighed carefully against the cost of such non-accountability.

The question of efficiency:

In many of the arguments advanced in favour of the public corporation, efficiency is an underlying consideration. It is widely held that conventional departmental organisation is not conducive to efficiency, and that the public corporation will be more efficient than the department and somewhere near as efficient as private enterprise. Thus the public corporation has developed as a compromise between private enterprise and the government department, intended to combine the best of both worlds. But, as I have suggested above, the use of the term

"efficiency" in this sense needs closer examination. The ideal public corporation may achieve all the good things expected of it. But in present day Australia, the ideal can only be achieved by accident.

It is not reasonable to apply the same tests of efficiency to government undertakings as to private concerns, since the primary aims are vastly different. Private enterprise is chiefly concerned with making profits; otherwise (unless it receives a government subsidy, in which case the distinction I am now making is confused) it will finish up in the Bankruptcy Court, or otherwise cease to function. Government undertakings, on the other hand, are chiefly concerned with service to the public, at whose collective wish they are established; and for a number of reasons, for example :

(a) during developmental stages of heavy capital expenditure,

(b) to provide services at same charge in sparsely as well as densely populated areas,

(c) to keep alternative channels (e.g. of communications) open for use in cases of national emergency,

(d) in interests of foreign or defence policy, to provide e.g. strategic air routes, or overseas shortwave broadcasts,

it may be considered desirable partially to meet expenses from taxation, whose rates under modern economic theory are fixed in any case largely by the need to control the spending power of the public.

Mr. P.C. Greenland, then Secretary of the Overseas Telecommunications Commission, and now Secretary to the Atomic Energy Commission, expressed the belief in 1950 that public corporations should be run on business lines, and should generally be expected to clear their

costs; he qualified this, however, by stating that the public corporation represents -

(a) "a tentative and experimental development in the direction of economic planning", and

(b) "the acceptance in some measure of the view that the provision of services essential to the existence and welfare of the community should be the responsibility of the community itself." (20)

Critics of Sir Frederick Eggleston have claimed that he did not recognise this basic social purpose of public enterprises. However, I believe he did recognise this, and that his work on the subject could be better described as a warning of the implications and dangers of a policy of bending commercial activities to suit social rather than commercial ends. Indeed, the confused history of the public corporation in Australia is proof of the accuracy of his warnings. However, in the Australian political and economic context public commercial enterprises have been organised to meet social needs, and without doubt, will continue to be so organised. The important point is that, once created, their primary function is social, with financial return in the commercial sense a secondary end only. Therefore, even if we entrust such enterprises to management by public corporation, their purposes, and the tests of efficiency we should apply to them, have much more in common with the government department than with private enterprise. In this sense also, the distinction between the corporation and the department is blurred, for the department as well as the corporation is required to carry out its work as economically as is consistent with satisfying the demands of public service.

In other words, then, efficiency cannot be an absolute concept in itself, but it must be related to the objective of the organisation. This is a basic principle which should be kept clearly in mind in any consideration of public institutions; unfortunately, however, it is too often neglected, and the neglect leads to much of our woolly thinking on the subject of public corporations.

Even if the methods of accountability to the people which our democratic form of society demands involve additional costs, it cannot be denied that public enterprise stands for social responsibility, and that this, in turn, requires that we persevere with methods for achieving accountability. We may pay an extra price in administration for democracy, but this extra price in itself does not constitute inefficiency I believe that a good case could be made out for arguing that socially-desirable government enterprises should be accorded the departmental form to ensure a measure of effective public control, and that to compensate them for the costs of accountability they should be exempted from taxation. To date taxation exemptions have been determined largely by the political colour of the government in control at the time of creation or reconstitution of each particular enterprise - Labour has generally granted exemptions while non-Labour has not. However, it may well be that when the advantages of departmental management pointed out by Professor Webb - for example, better co-ordination with overall government activities and freedom from cumbrous structure at top - are taken into account, the so-called extra cost of accountability will largely disappear.

It will be obvious at this stage that in my opinion, while there are many examples of efficient public corporations in Australia,

and while there are excellent grounds for creating corporations in special circumstances, too much use has been made of the corporation as a device of public administration in Australia. And yet I fully realise that no crusade for the wider use of conventional departments can be completely justified unless and until there is clear evidence that our regular Public Service machinery, which includes all the ministerial departments, is operating with the maximum possible degree of efficiency in the relative sense discussed above.

The Public Service itself faces many difficulties, not the least of which are :

(a) the unfortunate emphasis on ex-serviceman recruitment between the wars and the consequent uneven age structure,

(b) the suspicion of the graduate recruit and absence of any strong incentive to persuade him to joint the Service,

(c) the vast expansion of the Service during and after World War II and the consequent recruiting difficulties (in particular, the acceptance at the basic entry level, in a situation of over-full employment, of all persons who satisfied minimum entry qualifications, i.e. without any trace of the desirable competitive entry process in which only the better persons offering are selected), and

(d) the great difficulty experienced in attracting the better class of officer to Canberra, where the chief offices of departments, and consequently the most responsible positions, are situated (leading sometimes to inept administration and lack of co-ordination at the higher levels).

Those weaknesses in the overall structure of the Public Service have

been commented on by numerous observers, both Australian and overseas (21); and the Public Service Board itself is very conscious of them and of the need to overcome them. However, whatever measures are taken improvement must inevitably be a gradual process.

My second qualification is one which, for obvious reasons, is related to the first. Writers on the subject of organisational efficiency are increasingly emphasising the problem of "scale". While I do not dismiss the importance of financial incentive, I believe the degree of physical separation between management and employee, which varies according to the size of the organisation, is an aspect of efficiency common both in the fields of public and private employment; and that this in itself has a major bearing on the need for, and quality of supervision, and also on the question of incentive. The point here is that the Public Service is a huge conglomeration of sections and activities of all shapes and sizes, and that, through very scale, the problem of achieving and maintaining efficiency is a vast and complex one. In the smaller public corporation, on the other hand, staff are able to identify themselves more closely with the objectives and ideals of the organisation for which they work, and presumably it is for this reason easier to establish "team spirit" which is a major step towards efficient operation. Yet in the British Civil Service of the early nineteenth century, all departments operated as separate and watertight units. The disadvantages of this system, and the abuses it permitted, were shown clearly in the Northcote-Trevelyan Report of 1854 (22), a report which is widely regarded as the father of modern public services in British countries. It was clearly demonstrated that any advantages to be gained from independence of departments were outweighed by the advantages to be gained from co-

ordination and the adoption of standardised principles and procedures. If this argument was sound a century ago, it must be even sounder today, when the area of government operation is so much wider and affects the lives of citizens in so many different ways. Moreover the tremendous strides made in modernising and reforming the departments have been widely underrated.

The importance of classification:

Whatever the academic arguments may be for and against the public corporation there is no doubt that it has become an important and accepted part of public administration. However, I believe that the present state of affairs has been shown to be unsatisfactory, and that improvements in organisation can only come with the clarification and acceptance of a body of administrative principles to govern the use of public corporations. I believe also that a major aspect of this problem is that of evolving a system of classification of state activity to which the various alternative administrative forms can be related with a view to selecting the form most appropriate to each classification.

It is, of course, manifestly impossible to apply identical administrative provisions to tasks as widely separated as regulating commercial broadcasting stations and manufacturing aluminium ingots; and yet it is necessary to develop such a set of administrative principles to replace the unsatisfactory "constitutional conventions". Within the terms of reference of this thesis, I believe this can best be done by grouping our large number of public corporations into as small a number of classifications as possible, and then clarifying the principles required for the satisfactory functioning of each group. Such a clarification will of course facilitate an assessment of whether the corporate form is in fact the most appropriate for each particular activity.

It is necessary to point out at the outset of this discussion on classification that various contributors to the subject have used different starting points. For example :

(a) Mr. D.N. Chester began by considering the whole area of state administrative activity, and then placed the public corporation within this broad field before making further classifications;

(b) Professor Webb's discussion largely limited itself to the public corporations, but was concerned primarily with desirable functions rather than with functions actually possessed by existing authorities; while

(c) others such as Mr. East and Mr. Willoughby have started by examining the existing corporations and have attempted to box these according to certain characteristics, functional or otherwise.

I shall first refer briefly to a number of such studies in classification, and then put forward my own suggestions for a functional grouping. As this thesis is essentially a study of existing Commonwealth corporations I had intended that my classification should follow the third method. However I found that because of the diverse activities of the existing corporations, I could follow Chester and exclude purely legislative and judicial functions, but that apart from this the classification would in fact cover all phases of administrative activity - I could not even exclude advisory bodies altogether as Chester did in the British setting. Yet I believe that these differences of method have no very great significance, for it is the result, the classification itself, which is important as the framework for making decisions about administrative organisation.

Mr. Chester's study:

Mr. Chester begins his article "Public Corporations and the Classification of Administrative Bodies" with a brief history of the usage of the term "public corporation", in which he demonstrates the numerous and widely differing opinions on just what the term is intended to describe. He sums up this section of his article in the following words :

> "Recent writings thus indicate two possible extreme meanings for the term, viz :
>
> (i) confined to the National Coal Board, British Transport Commission and other boards with a statutory responsibility for the management of self-financing industrial or commercial undertakings;
>
> (ii) extended to mean all governmental bodies not otherwise classified as a government department or a local authority.
>
> Some writers appear to take up an intermediate position by including bodies which are not trading, e.g. the Regional Hospital Boards, but still leaving out a large number of boards". (23)

He demonstrates the "inconvenience" of this state of affairs with an argument along the following lines : it is often said that the public corporation is Labour's chosen instrument of nationalisation; but in view of the wide differences in the organisational pattern of, for example, the National Coal Board (expert and national) and the Port of London Authority (representative and regional), both of which are called public corporations, can we reasonably make such sweeping statements?

At present he believes the only answers seem to be, either to describe the Labour Party's chosen instrument, i.e. the public corporation, in the negative way of being an administrative body which is neither a department nor a local authority, or to draw the distinction between "significant features and incidental details", of which the latter may vary considerably without disturbing the status of the body as a public corporation. The difficulties here, in Chester's view, are that because of numerous inconsistencies, the distinction between the "three classes of administrative authority" (department, local authority and public corporation) is often blurred in practice, and that many of the differences between the public corporations themselves are too important to be classed as "incidental details", so that some subdivision of the term "public corporation" becomes essential for the sake of clarity (24). While Mr. Chester has drawn primarily from British experience, the relevance of his conclusions to the Australian scene, where there is far greater confusion than in the United Kingdom, is beyond question.

In an attempt to clear up the first difficulty Mr. Chester rules out bodies which are not legal entities, "non-governmental bodies" (although he concedes that the tests here are sometimes uncertain, e.g. in the case of universities receiving Exchequer grants, and "statutory" companies such as those which managed gas and electricity undertakings before nationalisation), judicial and legislative bodies, and "bodies whose sole function is to inquire and report or to advise". However, he also concedes that "no broad classification can avoid some bodies appearing in two or more categories". Broadly, what is left consists of a diverse group of "administrative bodies", of which the three main categories may be described as :

(i) ministerial departments

(ii) local authorities

(iii) the rest.

The implication is that, having excluded the various kinds of organisation mentioned at the beginning of this paragraph, in the administrative or executive field "the rest" and "public corporations" are synonomous. Mr. Chester then suggests certain tests to assess in which category particular bodies should be put, for "the names ..... do not help". In Britain, of course, there is no doubt that the Board of Trade and Board of Admiralty are ordinary departments : the nomenclature there may even be more confusing than in Australia due largely to the retention of traditional titles for modernised agencies. He places great importance on accountability, and here reveals perhaps the major area in which the Australian political climate provokes muddled thinking :

> "A practical approach ..... would be to classify according to whether Questions could be asked of the Minister in the House of Commons about the day-to-day affairs of the body ..... If the Minister or the Clerk at the Table could on any matter refuse to accept the question on the ground that the matter was a responsibility of the body, then that body must be included in the rest".

Such a differentiation unfortunately is rarely applied in Australia. The test for local authority, he suggests, should be whether the jurisdiction of the body covers a limited area, and whether its governing body is elected by the people of that area; i.e. if a body of local jurisdiction is appointed by the Government, it is not a local authority but part of the national rest . By elimination, therefore, the rest includes :

"Any governmental administrative body which has its own statutory powers and responsibilities and is neither a minister nor a local authority." (25)

With regard to the numerous agencies included in the rest, Chester comments that :

"..... their characteristics are too diverse to warrant generalisations being made about them as though they were a homogeneous group. There is, therefore, an obvious need to classify them so that general statements can be made which will be true of all bodies in a particular category."

He then refers to various systems of classification proposed by other writers. For example, Professor Friedmann, of Australian and Canadian as well as United Kingdom experience, suggested a threefold division :

(i) commercial corporations, designed to run an industry or public utility according to economic and social principles;

(ii) social service corporations, designed to carry out a particular social service on behalf of the government;

(iii) supervisory corporations, having essentially administrative and supervisory functions.

Sir Arthur Street suggested the following divisions :

(i) regulatory bodies (non-industrial), with administrative functions;

(ii) regulatory bodies (industrial), concerned with relationships between Government and industry, such as the Marketing Boards;

(iii) managerial bodies.

These are both typical of the "functional" approach. However Mr. H.R. Greaves, whose book "Civil Service in the Changing State" has become a standard text for students of public administration, opposed any attempt

to distinguish between social and economic services as being on occasion artificial or arbitrary. He argued that it was preferable to base his classification on an analysis of the reasons for setting up such bodies, and thus distinguished four main types :

(i) Regional;

(ii) Quasi-Judicial;

(iii) Trusteeship bodies;

(iv) Administrative or Managerial.

This Mr. Chester described as the "purpose" approach. (26)

In Chester's view, however, such approaches were not altogether satisfactory. For example, Friedmann's third category "by no means includes everything left after the commercial and social corporations have been taken out." Moreover, "constitutional characteristics do not correspond with the functional ..... We must also have a system of classification which throws further light on or pays regard to the main characteristic of the rest - their independence or semi-independence or autonomy. And this, indeed, brings us right back to the basic classification of administrative bodies, the departments and local authorities being, unlike the rest, both elective and responsible (27).

Chester's own system of classification is therefore based on an assessment of two "key points" :

(a) the extent to which these bodies have characteristics similar to those which provide the opportunities for parliamentary control of the departments; and

(b) the extent to which the Minister has statutory powers of control over or intervention in their affairs.

In making this assessment, he analyses the constitutional features of the various bodies in regard to finance, the character and tenure of the board, ministerial powers, and staff. He speculates that it may be possible from this method to grade bodies according to their independence, and gives the following hypothetical comparison of two such organisations:

Key Characteristic	Corporation A.	Corporation B.
Annual Income	Parliamentary appropriation.	From sales.
Borrowing	Parliamentary appropriation.	Own stock.
Composition of Board	Mainly serving Civil Servants.	Part-time business men.
Tenure of members	Removable at Minister's discretion.	Appointed for minimum period of fifteen years.
Minister's power of control	Can issue general directions, and his approval required at many points.	Can only control at a few minor points.
Staff	Civil Service	Not under Civil Service.

"Would anyone be likely to deny that, other things being equal, Corporation A would be likely to be less independent than Corporation B?" he asks. (28)

Although Chester describes this sketch as "fanciful" it has obvious value in the United Kingdom situation where there is some consistency in administrative practice. But I believe that his

analytical approach to this question of classification cannot contribute a great deal towards achieving order and clarity in thinking on the question of administrative organisation in the Australian context. Here it would often be found that Corporation A would be more independent than Corporation B in some respects but less so in others. In other words, this analytical approach takes over after the legislators and draftsmen have done their worst. The functional or purpose approaches, however, take us closer to those basic assumptions which motivate the legislators and draftsmen.

To put this proposition in another way, another Englishman, Edward Goodman, has distinguished four sets of causes for the striking variations found even within the commercial corporations in Britain. These were :

(i) differences in previous history and contemporary needs of the industries concerned;

(ii) the different personalities and abilities of the men around whom each organisation was built up;

(iii) the distinction between self-financing and dependent corporations;

(iv) the accidents of parliamentary debate and the changing moods of successive parliaments. (29)

The third-mentioned may be a logical and objective cause, but the overall effect of his finding is to reveal the influential role of illogical and emotive forces; and I believe the events surveyed in this thesis prove that this finding is equally applicable to Australian conditions. Therefore, any system of classification of government bodies based on an analysis of the statutory provisions applied to them cannot be any

more logical than the forces which framed those statutory provisions. Such a classification may be of academic interest, but can do little towards restoring order to our thinking and reason to our legislative processes.

An early Australian contribution:

Out of such considerations was born what was probably the first published attempt in Australia to consider this question of classification in what might be termed the modern era. The attempt was that of Dr. F.R.E. Mauldon, who presented a paper on "State Agencies of Administration in Victoria" at the Third Summer School of the Australian Institute of Political Science, which was held at Healesville, Victoria, during the Melbourne Centenary Celebrations in 1934-35. Dr. Mauldon introduced his paper with the observation that the Haldane Report on the Machinery of Government, presented in the United Kingdom in 1918, had provided a basis for much discussion, although for far less action, in countries with an administrative structure on the British model. He then pointed to the vast expansion of government activities in Australia since the First World War, regretting that there had been no far-reaching examination of the structure of administrative agencies; and proceeded to offer many significant facts and observations about Victorian practices as a basis for discussion by the conference (30). It was, of course, in Victoria that Irvine, Swinburne and Watt had made their great contribution towards introducing order into administration; but Victoria was unable to retain this order with the passing of these men from State politics.

Dr. Mauldon believed that traditionally state functions had

been either "constituent" or "ministrant". Of these, the first suggested purely regulatory functions of policing and protection of rights, the second long-established administrative services such as the registration of land titles. With the growth of the social service state, however, he believed it necessary to widen this classification into three groups, i.e.

(i) constituent and regulatory;

(ii) ministrant and social service;

(iii) developmental and public utility. (31)

The distribution of functions between Victorian government agencies was then examined, and a number of important aspects brought out (32). First, there was a "great reluctance to set up new Ministerial departments and new portfolios of full Ministerial rank." Second, there was a distinct tendency to combine regulatory and direct service functions in the one agency. Third, the distribution of functions among agencies other than departments followed this pattern :

Mainly constituent and regulatory	: 74	agencies (or groups of similar agencies such as Waterworks Trusts and Wages Boards.)
Mainly developmental and public utility	: 32	
Mainly ministrant and social service	: 38	

Fourth, the seemingly illogical grouping of functions under a Minister was usually due to the historic accident of the office-holder once being the man most closely involved in introducing the necessary legislation. Of these considerations, the third is a summary only of the contemporary Victorian situation, and the fourth applies fairly generally among the Australian States but not to the Commonwealth; however the first and second would seem to be as relevant in the Commonwealth sphere as in

Victoria. The first contributes to the large number of extra-departmental authorities, and the second to confusion and difficulty in arriving at a satisfactory functional classification. Moreover, this latter aspect, which applies (or applied until recently) for example to the Commonwealth Bank and the Joint Coal Board, has doubtful merit. Dr. Mauldon asks to what extent the performance of the regulatory function might colour the relation to the public sought in the provision of the service function.

This problem was examined in Tasmania, following the entry of the Transport Commission into the field of operating competitive road passenger services, by a Joint Committee of both Houses of the State Parliament in 1949. The Committee recommended that both regulatory and operative functions be carried out by the Commission, but that the branch operating road transport services should be clearly separated from the regulatory officers within the overall organisation and also that an Appeal Tribunal be created to hear appeals by interested parties against both regulatory decisions and changes in conditions applying to the road transport services (33). These recommendations, which were implemented by subsequent legislation, seem to show a trend in Australian thinking. Similarly the Savings Bank and later the Trading Bank were separated from the central banking functions of the Commonwealth Bank, while remaining within the Bank's overall organisation; and the Joint Coal Board established an Operations Division to control its mining as distinct from its regulatory functions. It is pertinent to note that the policy of the present Commonwealth Government is, whatever the underlying reason, to divorce completely regulatory and operation functions in the two corporations referred to above.

Dr. Mauldon's paper then went on to examine the terminology used in naming our administrative agencies. Names used freely in Victoria included commission, commissioner, board, council, committee, trust and trustees. He found that it was difficult to discover any regard for consistency. He had analysed the various terms used from four different aspects : nature of service rendered, size of membership, number of staff, and non-representation or representation of interests; but had found no criteria whatever to justify the use of the various terms. He then made a number of interesting suggestions from a belief that "a useful first step in the better ordering of our administrative arrangements would be a re-designation of some of the agencies themselves". (34) This is an excellent idea, and is equally desirable today in both Commonwealth and State fields; however, little notice was taken of his suggestions.

Dr. Mauldon concluded with an analysis of the various statutory provisions as they applied to Victorian agencies. The paper has been discussed here at some length since it is even today one of the most comprehensive Australian attempts to assess the rationale of various possible forms of administrative organisation as applied in this country. Before proceeding to an assessment of the relevance of the various approaches to the question of classification to the Commonwealth corporations, it seems appropriate at this stage to consider briefly two matters related to this resume of Dr. Mauldon's paper, i.e. whether there is any order in the terminology used for these corporations; and also a later study which, within a much wider topic, drew conclusions in the Commonwealth field somewhat similar to those arrived at by Dr. Mauldon in the Victorian setting.

Although the Trust has not appeared to any important extent in the Commonwealth field, the terms Board and Commission are used frequently, and it might be said interchangeably. Thus, what had been a Shipping Board became a Commission in 1956. An occasional Commonwealth corporation has also received the official title of Institute or Council or Organisation, although the former two are now almost defunct. It is, however, noticeable that the term Authority has come into increasing favour since the creation in 1949 of the Snowy Mountains Hydro Electric Authority. Here again, we seem to share a development apparent in the United Kingdom, where the Atomic Energy Authority and the Independent Television Authority are comparative newcomers. Yet we find new Commissions being created by the same Commonwealth Parliament which gave us the Australian Stevedoring Industry Authority and the Australian Wool Testing Authority, and it is almost impossible to see any logical or consistent distinction between the two. Moreover, with the development of Industrial Commissions, we find the Commission form now being applied to bodies with largely judicial characteristics. Confusion in terminology therefore contributes its share to the general misunderstanding of public corporations, and in the present illogical climate of political opinion an examination of nomenclature can give few leads in a search for an appropriate means of classifying the government activities involved.

Similar conclusions about Commonwealth practice were included in comments made in Series Four (Civil) Volume I of the official war history, "Australia in the War of 1939-1945", by Mr. Paul Hasluck, who is now Minister for Territories in the Menzies Government, and, as such, perpetrator of a system of political recruitment to the

Public Services of the Australian Territories. Mr. Hasluck remarked on a number of aspects of war organisation which were typical of the Australian administrative scene : these were the tendency to create new bodies for each new task that appeared, rather than to add this task to an existing organisation with related functions (i.e. the "ad hoc" habit referred to by other observers); the taking of decisions of this sort at the political level, not always as the outcome of analysis of need, but often for reasons associated with "the comfort of the Cabinet", such as the personalities, abilities and ambitions of ministers; and also the wide use of boards, commissions, councils and committees as major devices of administration, and the fact that not enough care was taken in the use of the terms themselves. In the latter connection Mr. Hasluck himself attempted a broad classification to identify the various agencies. The main group, he believed, "were comparable with branches of departments ..... in their functions," but:

> ..... differed from the usual departmental structure chiefly because they were a device for bringing into wartime administration experts or persons of high standing, either for full-time or part-time duty, or for associating in one executive task representatives from various branches of the administration or of the community."

Other groups consisted of representative bodies used for purposes of investigation, consultation and advice; and representative bodies used for co-ordinating activities of other bodies and establishing liaison between them. (35)

This kind of classification mixes both constitutional and functional characteristics. Other Australians, such as Professor Bland, have suggested classifications which are based on constitutional or other features derived from an analysis of the creating legislation.

The "analytical" approach:

In his submission to the Gibson Committee of Federal Parliament which inquired into broadcasting in the early nineteen-forties Professor Bland used what was in effect an analytical classification in describing the various possible alternatives for the organisation of the National Broadcasting Service. While he was well aware of inconsistencies apparent in the staffing, finance and other characteristics of existing bodies, he achieved some order by limiting his classification to a consideration of the form of the governing body itself. In this way, he identified eight varieties of administrative organisation operating in Australia :

(i) an ordinary department under control of a minister;

(ii) a single commissioner with statutory independence (e.g. N.S.W. Commissioner for Police);

(iii) an expert or specialist commission of three or more (e.g. State Electricity Commission of Victoria);

(iv) a large representative commission operating through a managing chairman or general manager (e.g. Melbourne and Metropolitan Board of Works);

(v) a half-official, half-representative board (e.g. N.S.W. Metropolitan Water, Sewerage and Drainage Board);

(vi) a representative board of directors operating through a general manager (e.g. Sydney County Council, which is not a multi-purpose municipal authority as its name suggests, but an authority charged with the generation and supply of electricity in the Sydney metropolitan area; and in which the Minister adjudicates in disagreements between the Council and the General Manager);

(vii) a non-representative commission operating through a general manager (e.g. the existing Australian Broadcasting Commission);

(viii) the method adopted for the German Post Office, which uses a board with the responsible minister as chairman, and his permanent head and branch heads as members. This arrangement applied to a certain extent in the Hospitals Commission and Water Conservation and Irrigation Commission in N.S.W., but was condemned here by working experience which showed that the Minister cannot be both a representative party man and a good administrator. (36)

Items two to seven in Bland's grouping would obviously come within Chester's category "the rest", with a big question mark against item eight. In this classification of course, Professor Bland was not concerned with those municipal activities which make up D.N. Chester's broad category of "local authorities" - this will be equally true of all other classifications of Commonwealth activity, for local government is under State and not Commonwealth Government control in the Australian Federal system.

Another Australian working on these lines was Mr. J.E. Willoughby, who suggested a somewhat similar classification in his prize-winning essay in the Sir George Murray Competition in 1943. Mr. Willoughby was concerned only with the statutory corporation, but did not limit himself to Australian experience. He discussed six possible types :

(i) the "National Board" suggested by Sidney and Beatrice Webb in their work "A Constitution for the Socialist Commonwealth of Great Britain" (1920); they envisaged a large degree of

autonomy, and a governing body of sixteen to include the principal executive officer as president, and five representatives each of the heads of departments of the undertaking, the employees, and the consumers. British countries have generally been wary of "the inherent conflict of all functional representation" and did not adopt the proposal, but many of the syndicalist French corporations would broadly fit the category, for the French policy of "tripartisme" is designed to permit consumers and employees to share management of nationalised industries with the State.

(ii) a board consisting of both members appointed by the government and members elected by local authorities and with a full time chairman as chief executive officer, leading to conflict of policy and administrative functions such as the Sydney Water Board (cf. Bland's fifth item);

(iii) a large board combining appointed members and representatives of affected interests, such as the Port of London Authority;

(iv) a board appointed not by the government but by independent appointing trustees, such as the London Passenger Transport Board. Described as a "panic attempt to remove appointments from political influence", this body of appointing trustees consisted of the Chairman of the London County Council, a representative of the London Advisory Committee, the Chairman of the London Clearing Bankers, and the Presidents of the Institute of Chartered Accountants and of the Law Society;

(v) a representative board of directors operating through an appointed general manager (Sydney County Council - cf. Bland's sixth item);

(vi) an expert commission (State Electricity Commission of Victoria - cf. Bland's third item). (37)

Such classifications serve the valuable purpose of facilitating judgments, from observation of the working of various enterprises, of the relative merits of the broad groups included. Thus Mr. Willoughby is convinced that the larger governing boards are too unwieldy, and that difficulties frequently arise with an overlapping of policy and executive functions; he points to the Sydney County Council as a successful undertaking, with the inference that its form could profitably be adopted elsewhere.

It is unfortunate, however, that in this country any attempt to relate other characteristics, such as method of financing, to such groupings is likely to achieve nothing but confusion, and there seems as a consequence to be little point in taking the broad analytical approach suggested by Mr. Chester any further. Classification by analysis of statutory provisions will have its uses, of course, in specialist studies. For example, in the field of public finance W.J. Campbell distinguished, with some minor variations, two broad categories, namely corporations functioning within the general budget, and those outside the Treasury orbit (38). Even in the accounting field, however, it is necessary to expand this classification to take cognisance of certain important variations in detail. Such a classification, in the field of Australian Commonwealth corporations, might take the following form :

(i) trading concerns whose revenue is reasonably expected to cover expenses. Even here expenditure must usually be kept within the limits of annual estimates approved by Parliament. If the Government requires any of these corporations to open unproductive services in the national interest, any loss incurred on these services opened at Government direction is

to be recouped from the Consolidated Revenue Fund (e.g. Commonwealth Railways);

(ii) enterprises in developmental stage, for which moneys are advanced by Parliament. These will later function as corporations in the first category (e.g. Snowy Mountains Hydro-Electric Authority);

(iii) enterprises financed by levy or special fee imposed on some relevant aspect of operations (e.g. Commodity Marketing Boards - on goods exported; and A.B.C. to 1948 - wireless licence fees);

(iv) bodies financed from moneys appropriated by Parliament in accordance with approved annual estimates (e.g. A.B.C. since 1948).

Again, the joint Commonwealth-State bodies would need to be distinguished in some way, and it would seem that the Commonwealth Bank as it is now organised would defy inclusion in any of these categories. It makes a huge annual profit, chiefly through the agency of its Note Issue Department, and this is applied to Bank Reserve Funds, to payment of part of interest charge on the National Debt, and to provision of advances, research grants, and scholarships.

In a similar way, a specialist in the personnel field might usefully be served by a classification on the basis of relevant statutory provisions. When Mr. R.S. Parker wrote his "Public Service Recruitment in Australia" in 1942, he was able to discuss a simple distinction which is still relevant in Britain and elsewhere : that is, whether, for staffing purposes, there is Public Service Board or independent control (39). However in recent times Australia has introduced a whole scale of variations between these two clear alternatives. Any

classification would have to take into account the following varieties :-

(i) corporations granted almost complete independence in staffing matters (e.g. the original Commonwealth Bank);

(ii) corporations which have been required by statute to adopt methods of selection, appointment and promotion of officers, and establishment and classification of offices, similar to those of the Public Service (e.g. Australian Broadcasting Commission from 1946);

(iii) corporations whose staff are to be employed under conditions similar to those applying to temporary staff under the Public Service Act (e.g. Australian Stevedoring Industry Board);

(iv) corporations which have been given power to determine terms and conditions of employment subject to the approval of the Public Service Board (e.g. Australian Whaling Commission and the Commodity Marketing Boards);

(v) corporations otherwise coming without group (iv), but which also require Public Service Board approval for recruiting methods (e.g. Snowy Mountains Hydro-Electric Authority);

(vi) corporations otherwise coming within group (v), but whose clerical and administrative establishments are subject to determination by the Public Service Board (e.g. Australian Atomic Energy Commission);

(vii) corporations whose staffs come under the Public Service Act, and which are treated as departments for that purpose (e.g. Federal Capital Commission and Australian Broadcasting Control Board).

Many of these varieties are recent developments, and one has now disappeared, but they are all necessary to cover the field of Commonwealth corporations. In fact, they are probably not comprehensive, for there are other factors which have tended to enlarge the area of uniformity, for example, the extension of acts complementary to the Public Service Act (e.g. Arbitration, Superannuation, Furlough and Compensation) to cover the employees of the various corporations, and the appointment of senior public servants, schooled in Public Service procedures, as members of governing bodies of public corporations. The joint authorities seem to be covered by group (i), but if we look to the Australian States we find further complications. South Australia provides us with corporations whose staffs come within the Public Service Act but where the particular governing body exercises all powers normally vested in the Public Service Commissioner (e.g. State Bank of South Australia). This is the formula applied by Section Nine of the Commonwealth Public Service Act to the so-called "Officers of Parliament", by which the Speaker of the House of Representatives and the President of the Senate jointly or separately control the staffs of the five "Parliamentary Departments" subject to the overall provisions of the Act. South Australia also provides at least one corporation in which, although the staff are completely separate from the Public Service, the Public Service Commissioner is given influence, through a responsibility to examine qualifications and report to the Minister, in the selection of the members of the governing body (Metropolitan Milk Board).

Another specialist classification is the legal one used by Professor Sawer (40). This includes the following categories :

(i) Crown Corporations - which are "beyond doubt agents of the Crown", e.g. where a minister is incorporated and where another authority is specifically made "subject to a minister"; these are corporations which, according to Professor Sawer, might just as well have been departments for most legal and administrative purposes.

(ii) "Autonomous Statutory Corporations" - where there is a large measure of recognised autonomy; there has been, according to Professor Sawer, a drift over the last few decades from this to the previous category, particularly in the Australian States, and as a result of Labour Party influence. This category is subdivided by Professor Sawer in this way :

(a) Marketing Authorities,

(b) Joint Commonwealth-State Authorities,

(c) Local and Regional Authorities,

(d) Government Banks,

(e) Miscellaneous.

(iii) "Other cases" - such as educational institutions, and the boards set up for the purpose of registering members of various trades and professions.

In fact, many of the important public corporations with which we have been dealing come within the "miscellaneous" sub-division of category (ii), and the legal approach makes no attempt to discriminate further between them. There is an important similarity between this approach and that of Mr. Chester in the United Kingdom - in both cases the degree of autonomy possessed by the corporation is regarded as being a major factor, perhaps the cardinal factor, in its classification.

Professor Friedmann, whose work has already been referred to, has demonstrated, however, how unscientific this basis of legal and judicial classifications is in the inconsistent and illogical Australian setting (41).

The futility of such an approach, from the point of view of the political scientist, is shown by the classification of extra-departmental public authorities, according to whether they are regarded as authorities of the Commonwealth or of a State, or not, for purposes of the application to their employees of the Commonwealth Employees' Furlough Act. This classification was drawn up by the Commonwealth Treasury Department, which administers that Act, primarily on the basis of legal opinions received (42). Some typical examples which reveal the inconsistency of this approach are shown in the following table, in which authorities with similar functions or characteristics, but differently classified, will be set opposite each other to facilitate comparisons :

Authority of the Commonwealth or a State.	Not an authority of the Commonwealth or a State.
Council of the Canberra University College.	Australian National University
Australian Aluminium Production Commission.	River Murray Commission.
Canberra Community Hospital Board (established under Australian Capital Territory Ordinance).	Royal Perth Hospital (decision in this case later reversed).
Brisbane Hospital Board.	
Queensland State Wheat Board.	Brisbane Milk Board.
Committee of Direction of Fruit Marketing (Queensland).	Egg Marketing Board of N.S.W.
Metropolitan Meat Industry Commission (N.S.W.).	Queensland Meat Industry Board.
Australian Meat Board.	

Authority of the Commonwealth or a State.	Not an authority of the Commonwealth or a State.
Cont.	
Mildura Vineyards Protection Board (Victoria).	Pastures Protection Board (N.S.W.)
Melbourne and Metropolitan Board of Works.	Sydney County Council.
Melbourne and Metropolitan Tramways Board.	
Electricity Authority of N.S.W.	Electricity Trust of S.A.

As a final comment on the legal aspect, it should be mentioned that some South Australian statutes specifically provide that the corporations they create are not authorities of or under the Crown.

So much, then, for systems of classification based on analyses of the statutory provisions relating to public corporations. It would be an interesting academic exercise to plot the degree of consistency with which a group of Australian Commonwealth corporations coming together under one category, say finance, would also come together under staffing, form of governing body, tenure of appointment of members, degree of ministerial control, and so on. No doubt some correlation would be revealed, but there is also no doubt that there would be many cases of inconsistency. While the lawyers, financial experts, and personnel specialists are all interested in public corporations, their points of emphasis are different; moreover, and generally speaking in common with scholars of public administration, their starting point is usually the legislation on which the corporation is built. This is largely inherent in the nature of the various fields of

study themselves. Thus it was a political scientist, namely Professor Webb, who in the Australian context delved beneath the surface of legislative provisions to query the root assumptions or motivating forces on which those provisions are based.

It is, then, to be expected that the political scientist in Australia will favour those other approaches to classification suggested by Mr. Chester but finally discarded in the British situation, i.e. the functional and purpose approaches. I shall attempt now to show the use to which these approaches can be put, but realise that in the final resort it is impossible to distinguish clearly between the two, since purpose is involved in any question of function. Thus Professor Webb does not attempt to make this distinction. He suggests a functional approach, but this involves also certain purpose characteristics. Even so, in Australia the immediate purpose used to justify corporationsis unfortunately not necessarily consistent with a functional classification.

The "purpose" approach:

The purpose approach itself is for this reason also of no great use in Australia. In the opening stages of this chapter, I referred to the results of an attempted evaluation of the immediate purpose in the creation of Australian Commonwealth corporations. However, being of necessity drawn from ministerial statements and the like, this approach suffered also from the defect that it rested on the basic assumptions which were made by those responsible, but which were not necessarily correct. Moreover, this is just the stage where those illogical and emotive forces described by Goodman are influential. For example, public hostility to increases in the size of the Public

Service, itself fostered by the non-Labour political parties, is not without influence in government decisions, for it is well understood that the staff of corporations generally are not included in Public Service employment statistics. The previously-quoted reference, by Mr. Paul Hasluck, to "cabinet comfort", is another case in point (43).

In a wider setting, many other arguments whose validity may be limited in time or geographical area also intrude, and further complicate any attempt to arrive at a basic classification in this way. For example, although many of the reasons advanced in the Commonwealth field are also used by Australian States, the latter appear to be motivated more frequently by the view that detailed political control leads to abuses such as the granting of favours, and must therefore be avoided, for this reason in particular, to ensure efficient management. It will be recalled that many observers credit Australia with the invention of the modern public corporation, and that its greatest advocates in the late nineteenth century made much of this argument. Moreover, during the nineteen-twenties and thirties, early scholars of public administration such as Sir Frederick Eggleston and Professor Bland furnished many examples of patronage and inefficiency in political management. In both cases, the relevant experience was drawn primarily from the operations of the State governments. Even as late as 1946, after a Royal Commission had investigated charges of corruption laid against the Tasmanian Forestry Department, and particularly the Minister in charge of it, the State Parliament created a Forestry Commission in place of the Department in order to prevent a recurrence of political mismanagement (44). I have expressed the view previously in this thesis that Commonwealth politics reach a higher standard than

State politics; and it is significant that two of the greatest managerial scandals in Commonwealth history have concerned supposedly independent, impartial and efficient (in the business sense) public corporations, i.e. the War Service Homes and Aluminium Production Commissions, rather than political managements.

The purpose approach to classifying government activity may well be useful in countries where a more or less orderly system exists for arranging government business. This can be illustrated by the example of a little-known country which rarely figures in administrative texts and comparisons. In recent discussions with Mr. Ebba Babbou, Budget Officer of the Imperial Ethiopian Light and Power Authority (a public corporation), I learned that there is in Ethiopia a clear distinction between the Ministry and the autonomous "Authority". The latter is used for commercial self-financing public enterprise, other examples being the Imperial Ethiopian Highway, Tobacco Monopoly, and Telephone and Telegraph Communications Authorities. These Authorities are separated from the general budget (although the Minister of Finance has an interest in the disposal of their profits); the Authorities themselves subsidise the pensions schemes of their staff, whereas the general Treasury subsidises pensions schemes of the departments; there is some distinction in conditions of employment as between departments and Authorities; the top executive of the Authority receives his appointment direct from the Emperor and takes instructions only from him, and not from his political advisers (with parliamentary machinery in its infancy, the Emperor, although a constitutional monarch, wields more power than royal heads of state in the older democracies); and the title "Authority" is generally used for non-departmental central government agencies. Even though this brief outline may present an

over-simplified picture, it does suggest that this new democracy follows clear cut principles in devising its organs of administration; and that Australia, where, after early leadership in the field, political "intrigues" have led to great inconsistency and confusion, and where many students from the newly-independent countries of South-East Asia come today to study public administration, could itself benefit by observing the practices of other lands and applying their lessons.

Outside Australia, of course, the reasoning behind the creation of public corporations is often closely connected with nationalisation policy. It is, of course, probably only the restrictive effect of the Commonwealth Constitution which prevents a similar state of affairs here; although nationalisation itself is possible and does occur in the individual Australian States. The Electricity Trust of South Australia, the Electricity Commission of N.S.W. and the Gas and Fuel Corporation of Victoria are typical of State public corporations managing nationalised industries. Professor Robson, in writing of France's experience, is not alone in using the term "public corporation" almost synonomously with "nationalised industry" (45). In that country nationalisation has been effected, and corporations established, for example, because of the popular moral revolt against the armament manufacturers (the so-called "Merchants of Death"), or because punitive action was popularly demanded against "collaborationist" directors, or because of the belief that only impartial State control can ensure fair treatment for the various interests concerned in the operation of a particular industry. Basically the French have argued, on economic, social, moral and economic grounds, that numerous industries and services should be nationalised and vested under the

control of public corporations, since unlike government departments, these can be so organised to permit participation in management by all the interested parties, through representation on the governing board. This solution is characteristic of the multi-party French political system; the inevitable conflicts of sectional interests lead to frustration, deadlock and angling for favours, and prevent stable and efficient management in much the same way as this is prevented in the French Government itself. Yet France is not inconsistent. Although we might express grave doubts about the policy adopted, this has resulted from a deliberate search for an appropriate device of management; and/a similar administrative pattern is thus applied to a large number of corporations. There has been no comparable endeavour in the history of the Commonwealth Parliament, and consequently no definite committal to such a policy. In fact, the Australian corporations have generally been "ad hoc" - each of them set up for a minor reason in the total scheme of national welfare, on the spur of the moment, and frequently without deliberate thinking about their effectiveness as an instrument of public administration. We may be more fortunate than the French, for while to effect any significant improvement they have to step backwards from an adopted policy and win acceptance for a new one, we have only to find a policy.

The "functional" approach:

Neither the reasons advanced by Australian politicians when introducing legislation to establish public corporations, nor the provisions of this legislation, can assist us in clarifying this policy. For this end, we should decide on a functional approach to the problem of classifying state activity, and then determine which form of

organication is best suited for each classification. This is the task suggested in broad outline by Chester, although my emphasis must necessarily differ from his in the Australian situation. However any attempt to classify in this way the whole range of Commonwealth administrative activities is beyond the scope of this thesis, and it will therefore be necessary to consider only the present and past Commonwealt corporations and group them into functional categories. This I hope will facilitate an assessment of whether or not the corporation has been the appropriate instrument for each category, and if so, what should be the main characteristics of such corporation . Some Australian attempts have been made to draw up such a classification.

For example, Mr. L.R. East, Chairman of the Victorian State Rivers and Water Supply Commission, was responsible for a functional classification of this sort, which was published in 1948 as part of an answer to the question "Why Have Boards and Commissions?" (46). Dealing with Victorian agencies only, Mr. East divided the field into eight distinct functional groupings. These were :

(i) Qualification Boards (e.g. Veterinary Surgeons Board);

(ii) Financial Boards (e.g. Superannuation Boards);

(iii) Industrial Boards (e.g. Workers' Compensation Board and Wages Board);

(iv) Social Boards (e.g. Aborigines Protection Board);

(v) Public Utility Boards and Commissions (i.e. "the true public corporations");

(vi) Institutional Boards (e.g. Zoological Board of Victoria, responsible for zoo administration);

(vii) Commodity Marketing Boards;

(viii) Restrictive Boards (e.g. Transport Regulation Board).

It might be argued that the Qualification and Restrictive Boards, and possibly even some others could be grouped under a single "Regulatory" category. Nevertheless this is a useful attempt to reduce to an orderly system that hybrid group of public agencies Chester describes as "the rest". Moreover, the range of functions of the State governments is wider than that of the Commonwealth, and we might therefore expect to find that a smaller number of categories will suffice for the latter.

In its Twenty-first Report dealing with the affairs of the Australian Aluminium Production Commission, the Joint Parliamentary Committee on Public Accounts paid some attention to the appropriateness of the corporation for various kinds of state activity. It referred to Professor Webb's earlier classification "according to the disposition of executive and managerial functions," (47) and also to the fact that Webb had specifically referred the Committee to the Canadian attempt to differentiate in actual legislation between three different types of corporations for purposes of financial control. These Canadian classifications, which follow functional lines, are :

(i) Departmental corporations, which have administrative, supervisory or regulative functions, closely akin to an ordinary department, and are financed by appropriations;

(ii) Agency corporations, which undertake trading, service or procurement functions and usually have revolving funds;

(iii) Proprietary corporations, which manage lending, financial, commercial or industrial operations and are expected to finance themselves from the sale of goods or services (48).

Professor Webb's views on the rationale of the public corporation were also contained in the submission prepared for the Public Accounts Committee during its Bell Bay enquiry; his criticisms of the notion of the "constitutional conventions" have already been noted (49). He expanded on these views in a review of the Public Accounts Committee's Report, and the essence of his argument is contained in the following passage :

> "The correct approach to the problem of statutory corporations as agencies of government is, I suggest, not to regard them as one category to which certain conventious or principles are applied, but to classify them according to their functions and, in the light of those functions, to deal with such issues as accountability and control from the centre. It is obvious, for instance, that controls appropriate to regulatory corporations will not be appropriate to marketing boards or to corporations which manage industrial enterprises. (50)

Webb, whose challenge against the basic assumptions on which public corporations have been framed has been given prominent attention in this thesis, actually moved through a kind of analytical classification to the broad functional approach. Both were advanced with a view to assisting in his main task of rationalising the public corporation. In the first, he distinguished two basic organisational patterns for public corporations, and saw important defects in both. In the first, where administrative ranks come to an apex in a general manager, who is in turn subject to a policy-making board, the three-way relationship (minister-board-general manager) complicates harmonious working relations, and there is also the problem of defining the spheres of responsibility of the board and its general manager. He might also have referred to

the added overhead costs involved in an organisation of this type. The second pattern, which is less common in Australia, involves a single authority combining policy-making and executive functions - in other words, the policy-making body consists of the executive heads of the corporation. This pattern also has many inherent difficulties; it was tried and abandoned by the British National Coal Board (51).

His broad functional approach was advanced as a result of his conclusion that the popular assumptions about public corporations have little basis in fact, but that the department has certain limitations which might justify the establishment of public corporations for reasons other than the now largely ficticious one of superior efficiency. The department's upper structure is uniform and rigid : there can be no sharing of the function of the permanent head to advise the minister and execute his orders. Its staff are, particularly in Commonwealth departments, promoted from within, they are bound by obligations of official secrecy, and are committed to carry out government policy decisions. Because of the first of these limitations, the department is unsuitable for that type of enterprise in which it is desired that extra-governmental interests should participate in management. Because of the second limitation, departmental administration is unsuitable

> "..... for institutions of higher learning, for research institutions and for services such as broadcasting which are required to provide the community with news services and to promote discussion of social and political problems". (52)

Thus, in Webb's view, the public corporation is the logical answer :

(a) where it is desired to have representative management, although

as has been shown by practical experience here and particularly in France this is only likely to succeed where the interests involved share broadly similar aims and ideas; and

(b) where "cultural autonomy" is an essential feature. With care, it is possible, to devise a corporation in such a way as to satisfy this requirement, without reversing the current curtailment of "economic autonomy". The Australian Broadcasting Commission is a generally successful illustration.

In Australia the corporation seems unfortunately also to be the logical answer in fields where it is desired to perform some task overlapping the constitutional boundary between Commonwealth and States. The Australian Aluminium Production Commission is an illustration, although scarcely a successful one. This appears to be one of the prices we have to pay in a modern community for an out-moded constitution. Although Webb does not enlarge on the regulatory function referred to in his review of the Public Accounts Committee report, it would seem very doubtful that the cumbrous public corporation (except in particular cases where the activity to be regulated is itself genuinely not suited to political management) is necessary here. In fact numerous regulatory functions have been carried out satisfactorily by ordinary departments. This and other comments in this final chapter are, of course, merely indicative of the kind of objective policy decision on administrative organisation which should be made and could be facilitated by the existence of a generally accepted framework classification of state activity.

A suggested Australian classification:

The functional classification I suggest for Commonwealth

corporations follows closely the pattern suggested by Webb, and allows for advisory and quasi-judicial activities, since corporations have functioned to a limited extent in these fields. The purely administrative function must also be included, for public corporations have operated with doubtful logic in this field also. The classification will need to be subdivided where appropriate to record the distinction between national and regional (or localised) corporations, although there will not be any of those regional sub-corporations of national corporations common in Britain and France. Undertakings of the "mixed" variety, in the traditional or shareholding sense of the word (although I believe the term might appropriately be used also to describe the representative or mixed-management bodies), as well as international corporations in which Australia participates, are excluded for convenience; but the "public companies", which I regard as public corporations in every sense of the word, although, of course, not statutory corporations, will be included in the appropriate category. The so-called "developmental" function presents a difficulty, but, where this object alone is present in the creation of a corporation, it will be included in the administrative category. Where the development is of a particular enterprise, and the intention that the corporation will continue as business manager of this enterprise, it will be included in the "public utility and trading enterprises" category.

It is necessary to comment for a moment on the activities excluded from this limited classification. In the wider field the traditional categories of state activity are the legislative, executive/administrative, and judicial. This is itself basically a functional

classification; but in the complex modern social service state it is inadequate either for the study of political science or of public administration. For the purpose of this thesis I have followed Chester and ignored the legislative and judicial functions. Chester also proposed that non-corporate and advisory bodies be discarded. The latter play an important part in Commonwealth administration, for example the Commonwealth Grants Commission and the Tariff Board. The study is, however, one of public corporations, and therefore the proposal that non-corporate bodies be discarded is accepted, corporate status at law being almost the only common mark of public corporations : in fact, this takes care of most advisory bodies in the Commonwealth setting. On the fringes of this classification, in a sort of no-man's land, are the pure quasi-judicial administrative tribunals, whose existence has been decried by no less a legal personage than Sir Garfield Barwick, Q.C. (53). These have also been excluded from this study, although they may have corporate status. However, I find it impossible to exclude the advisory and quasi-judicial functions altogether from my classification, since Australian public corporations have from time to time also operated with a clear charter in these fields. In another no-man's land is the quasi-legislative function, which claims considerable attention from students of political science and public administration, and by which authorities created for some other primary purpose issue regulations and other forms of delegated legislation. This regulation making is, in the Australian Commonwealth setting, usually reserved for the government departments whose ministers supervise corporations, although the Federal Capital Commission, for example, had its own power to issue by-laws. However there are no bodies with purely quasi-

legislative functions, and this can therefore be regarded as the by-product of the primary function or functions.

"Functional" is the term generally used to describe this sort of classification, and it is freely used by Webb, whose thoughts have largely provided the stimulus for the closing stages of this thesis. Yet, as I have pointed out, one must not be too fussy about its application here, for two categories suggested by Webb are indicative of important characteristics rather than functions in the strict sense. This raises the problem of what to do about the real function of bodies coming within these "characteristic" categories. I believe, to avoid confusion and also because it is the characteristic and not the function which dictates the use of the public corporation in such cases, that the entry under the "characteristic" category should suffice, with the function treated merely as a subsidiary consideration.

I believe, for these reasons, that a classification along the following lines would be of assistance as a framework for re-assessing basic assumptions about administrative organisation and for facilitating objective decisions about what forms, methods and procedures are most appropriate to particular public activities :

1. Administrative
    (a) National
    (b) Localised.
2. Regulatory
3. Management of public utilities and trading enterprises
    (a) National
    (b) Localised.

4. Management of cultural, research and higher learning institutions.
5. Representative or "mixed-management" services.
6. Co-operative Commonwealth-State ventures (regional only)
   (a) Regulatory
   (b) Management of public enterprises.
7. Advisory.
8. Quasi-judicial.

I believe that the public corporations surveyed in this thesis would fit into this classification as shown in the following table, which also includes reference, for comparison of functions and as evidence of inconsistency, to selected departments and non-corporate bodies operating in the various fields (54). The various commodity boards, which may be marketing, processing, advisory, research or publicity in function, and which have been given passing reference only in this thesis, are grouped as a single entry under category five; while all agencies requiring more than one entry in the classification are marked with an asterisk wherever appearing.

Category	Commonwealth Public Corporations	Selected Departments and other agencies.
Administrative (National)	*Repatriation Commission (1920-46).	*Department of Civil Aviation.
	War Service Homes Commission	*Department of Customs and Excise.
	*Development and Migration Commission	*Department of Health.
	National Insurance Commission	*Department of Supply.
	Australian Stevedoring Industry Board (and Authority)	Australian National Film Board
		Australian Shipbuilding Board
		Superannuation Board
		National Debt Commission.
		Military, Naval and Air Boards.
Administrative (Localised)	Federal Capital Commission	Board of Management, Australian War Memorial.
	*North Australia Commission	
	National Capital Development Commission	
Regulatory	*Commonwealth Bank (From 1924)	*Postmaster-General's Department (wireless regulation).
	Commonwealth Coal Commissioner	*Department of Civil Aviation (air (safety regulation).
	Australian Broadcasting Control Board	
	Reserve Bank of Australia (proposed)	

Regulatory (cont.)		*Department of Customs and Excise (import licensing). *Department of Health (supervision of National Health Service). Commonwealth Film Censorship Board. Literature Censorship Board.
Public utilities and trading enterprises (national).	*Commonwealth Bank Australian Commonwealth Shipping Board Australian Shipping Board Australian Coastal Shipping Commission Australian National Airlines Commission Overseas Telecommunications Commission (Australia) Qantas Empire Airways Ltd. Commonwealth Hostels Ltd. Commonwealth Banking Corporation (proposed). Flax Commission (post-1953).	*Postmaster-General's Department. *Department of Supply (Clothing and Munitions Factories). Flax Production Committee (pre-1953).

Public utilities and trading enterprises (localised).	Commonwealth Railways Australian Whaling Commission Snowy Mountains Hydro-Electric Authority	
Cultural, research and higher learning institutions.	Institute of Science and Industry Council for Scientific and Industrial Research. Commonwealth Scientific and Industrial Research Organisation. Australian Broadcasting Commission. Australian National University. Australian Atomic Energy Commission.	*Department of Supply (Research and Development Branch). *Commonwealth National Library (Parliamentary Department)
Representative or "mixed-management".	*Repatriation Commission (1920-1946) Commodity Marketing Authorities. *Stevedoring Industry Commission.	
Co-operative Commonwealth-State ventures (Regulatory).	*Joint Coal Board.	

Co-operative Commonwealth-State ventures (Management of public enterprises).	Australian Aluminium Production Commission. *Joint Coal Board (Operations Division)	River Murray Commission.
Advisory	*Development and Migration Commission. *North Australia Commission.	*Inter-State Commission Art Advisory Board. Commonwealth Archives Committee. Commonwealth Grants Commission. Atomic Weapons Test Safety Committee. Tariff Board. Australian Transport Advisory Council. Commonwealth Immigration Advisory Council. National Security Resources Board.
Quasi-Judicial	*Stevedoring Industry Commission.	*Inter-State Commission. Public Service Arbitrator. Coal Industry Tribunal. Taxation Boards of Review. Valuation Boards. War Pensions Entitlement Appeal Tribunals.

Conclusion:

Professor Webb has suggested that, in the modern setting, the logical justifications for the public corporation are those involved in the fourth (cultural), fifth (mixed-management), and sixth (co-operative Commonwealth-State) categories in this classification; and with this view I am in general agreement. The changing context of politics and public administration has drastically lessened the force of the older justifications which led to the creation of public corporations particularly in the third (public utility and trading enterprises) category.

I believe that such a system of classification of government activity as that suggested in the foregoing is an essential starting point in any endeavour to restore order to our thinking about public corporations, or about administrative forms as a whole. Admittedly, the details require refining - for example, I have some doubt as to whether an agency such as the Literature Censorship Board regulates or judges, and it may well be that the regulatory and quasi-judicial functions should be combined into a single category - but I believe the broad functional type of classification is the only kind on which such a crusade can be based,to have any hope of success. Advancing from this classification it will be necessary to make a comprehensive study of the various administrative provisions to discover which are most appropriate for each category. The Australian Broadcasting Commission today, for example, shows the way towards an administrative system which may well preserve cultural autonomy without disturbing the present close relationship to the central government in matters of finance and staffing.

In conclusion, it is necessary to repeat that, despite the confusions revealed and the cases of proven inefficiency, there are many efficient public corporations. This fact encourages some successful corporation heads, such as Sir Richard Boyer (55), to make light of the analytical proof of the trend away from managerial autonomy. Indeed, Sir Richard's arguments emphasise the dangers in drawing conclusions about corporations only from the legislative provisions which apply to them. The complicated history of the Commonwealth corporations, in which theory, legislation and practice not uncommonly follow different courses, shows conclusively that the physical organisation is only one part of successful management; the other is human relations. In the public corporations, with the more complicated relationships between board and minister on the one hand, and often board and general manager on the other, the latter assumes great importance. This of course opens the further important question of personalities, but this is one which this thesis has not attempted to answer.

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3. Chester, D.N., The Nationalised Industries : An Analysis of the Statutory Provisions (2nd. ed., London, George Allen and Unwin, 1951).

4. See following articles of L. Webb : "The Public Corporation in New Zealand", in Friedmann, W. (Ed.), The Public Corporation (Toronto, Carswell, 1954); "Freedom and the Public Corporation" in Public Administration (Sydney) Vol. XIII No. 2 (June 1954); and "Statutory Corporations Under Review" in ibid, Vol. XIV No. 3 (Sept.)1955).

5. Part IV of Public Service Act No. 21 of 1922; repealed by Public Service Act No. 63 of 1954; for ministerial statement see Commonwealth Parliamentary Debates, H. of R., 20 October 1954, p. 2137. For further comment, see Parker, R.S., Public Service Recruitment in Australia (Melbourne University Press, 1942), p.40.

6. For Professor Webb's view, see supra. p. 127 ; for Mr. Chifley's statement, see supra p. 396.

7. See, for example, discussion of Country Party politics and their effect on the operations of the Victorian Forestry Commission, in Eggleston, F.W., "Reflections of an Australian Liberal", (Melbourne, Cheshire, 1953) p. 146.

8. National Broadcast opening Australian Labour Party's Election Campaign, 6 May 1954.

9. Bridgeman Committee of Enquiry on the Post Office, Report (H.M.S.O. Command Paper 4149 of 1932) p.18 and elsewhere. I believe that this report deserves far greater attention than it has received, for it demonstrated how managerial efficiency could be increased by effecting various modifications, both financial and organisational, within the framework of a government department without detracting from the overall clear line of accountability to Parliament and the people through the person of the responsible Minister. For discussion of this report in the contemporary situation, see Dimock, M.E., British Public Utilities and National Development (London, George Allen and Unwin, 1933) especially pp. 158-178. For reference to the Haldane Committee, see supra. p. 55.

10. Acland Committee, Final Report of Reconstruction Committee - Forestry Sub-Committee (H.M.S.O. Command Paper 8881 of 1918). For interpretation of this report, and demonstration of how the same line of thinking has extended to other British enquiries (e.g. Crawford Committee on Broadcasting, and Weir Committee on Electricity Supply, both of 1925), see Goodman, E., Forms of Public Control and Ownership (London, Christophers, 1951), especially pp. 41-44.

11. See supra. p. 485.

12. Dimock, M.E., British Public Utilities and National Development (London, George Allen and Unwin, 1933), p. 157.

13. Ibid, p. 303.

14. Howatt, George (Lecturer in Political Science, University of Pennsylvania), in address "Evaluating the Hare-Clark System" before the Hobart Branch of the United Nations Association, 25 November 1957.

15. Infra, p. 578.

16. Supra, p. 207 ; for Senator Daly's speech see supra. pp. 238-40, and for Mr. Dedman's see supra. pp. 373-4.

17. For typical discussions, see Crawford, J.G., "The Formulation of Policy", (Commonwealth Public Service Board Training Document No. 607); Crawford, J.G., "The Role of the Permanent Head", in Public Administration (Sydney) Vol. XIII No. 3 (Sept. 1954); and Johnson, A., "The Expert : On Tap or on Top?" in ibid, Vol. XVI No. 3 (Sept. 1957).

18. Supra, pp. 123-7, and 484-8.

19. This is apparent in many modifications of Labour created corporations by Commonwealth non-Labour Governments. The State non-Labour Government which created the Tasmanian Government Insurance Office in 1919 selected the corporate form for this activity at least partly because it would not therefore enjoy tax concessions, etc., and thus hold any advantage over its private competitors. Indeed this situation has been accepted by subsequent State Labour Governments.

20. Greenland, P.C., "Statutory Corporation Finance", in Public Administration (Sydney), Vol. IX No. 2 (June 1950), pp. 271-2.

21. For an Australian example, see Hasluck, P., The Government and the People 1939-41 (Canberra, Australian War Memorial, 1952) pp. 483-6; for an American observer's views, see Scarrow, H.A., "Further Comments Upon the Recruitment of University Graduates to the Commonwealth Public Service", in Public Administration (Sydney), Vol. XIII No. 3 (Sept. 1954).

22. The Northcote-Trevelyan Report, presented to both Houses of the British Parliament in February 1854 (Command paper 1713); reprinted in Public Administration (London), Vol. XXXI, Spring 1954. For comments on the report and the situation in which it was written, see Hughes, E., "Civil Service Reform, 1853-5", in the same issue of this journal.

23. Chester, D.N., "Public Corporations and the Classification of Administrative Bodies", op. cit. p. 37.

24. Ibid, pp. 37-39.

25. Ibid, pp. 39-44.

26. Ibid, pp. 44-45.

27. Ibid, pp. 45-46.

28. Ibid, pp. 46-51.

29. Goodman, E., Forms of Public Control and Ownership (London, Christophers, 1951), p. 46.

30. Mauldon, F.R.E., "State Agencies of Administration in Victoria", in Duncan, W.G.K. (Ed.) Trends in Australian Politics (Sydney, Angus and Robertson, 1935), pp. 187-190.

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33. Report of Committee of both Houses of Parliament on Transport Bill (No. 5) 1948 (No. 110), and additional Transport matters, in Tasmania, Journals and Printed Papers of Parliament, 1949, Paper No. 29, p. 16.

34. Mauldon, F.R.E., "State Agencies of Administration in Victoria", op. cit., pp.203-8.

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36. Bland, F.A., "Broadcasting in Australia", in Public Administration (Sydney), Vol. III No. 4 (Dec. 1941), p.190. See also supra. pp. 107-9.

37. Willoughby, J.E., "Official Independence and the Statutory Corporation", in Public Administration (Sydney) Vol. IV No. 8 (December 1943), pp. 357-362.

38. Campbell, W.J., "The Statutory Corporation in New South Wales", in Public Administration (Sydney), Vol. XI No. 3 (Sept. 1953), p.109.

39. See discussion by Parker, R.S., Public Service Recruitment in Australia, op.cit, pp. 37-45.

40. Sawer, G., "The Public Corporation in Australia", in Friedmann, W. (Ed.) The Public Corporation (Toronto, Carswell, 1954), pp.17-31.

41. Supra, pp. 130-1.

42. Commonwealth Public Service Board memorandum 56/1828, dated 12/12/56, and attachments.

43. Supra, p. 566.

44. Report of the Royal Commissioner on Forestry Administration 1946, in Tasmania, Journals and Papers of Parliament, 1945-46, Paper No. 39, and 1946, Paper No. 1. For related legislation creating Forestry Commission see Forestry Act 10 Geo. VI No. 42.

45. Robson, W.A., "Nationalised Industries in Britain and France", in Robson, W.A. (Ed.), Problems of Nationalised Industry (London, George Allen and Unwin, 1952), p. 238.

46. East, L.R., "Why Have Boards and Commissions?", in Public Administration (Sydney), Vol. VII No. 2 (June 1948), p.69.

47. For discussion of this aspect, see infra p. 584.

48. Public Accounts Committee, Twenty-second Report, op. cit. p. 63; see also Mr. Webb's submission at Appendix 16 of that report. The relevant Canadian Legislation is the Financial Administration Act 1951 (Statutes of Canada, 15-16, Geo. VI, c.12).

49. Supra, p. 485.

50. Webb, L., "Statutory Corporations under Review", in Public Administration (Sydney) Vol. XIV No. 3 (Sept.1955), p. 162.

51. Webb, L., "Freedom and the Public Corporation", in Public Administration (Sydney) Vol. XIII No. 2 (June 1954), p. 104.

52. Ibid, pp. 105-107.

53. Barwick, Sir Garfield, speaking on "Courts, Lawyers and the Attainment of Justice", at Hobart on 15 September 1957. (The original E.W. Turner Memorial Lecture for the University of Tasmania).

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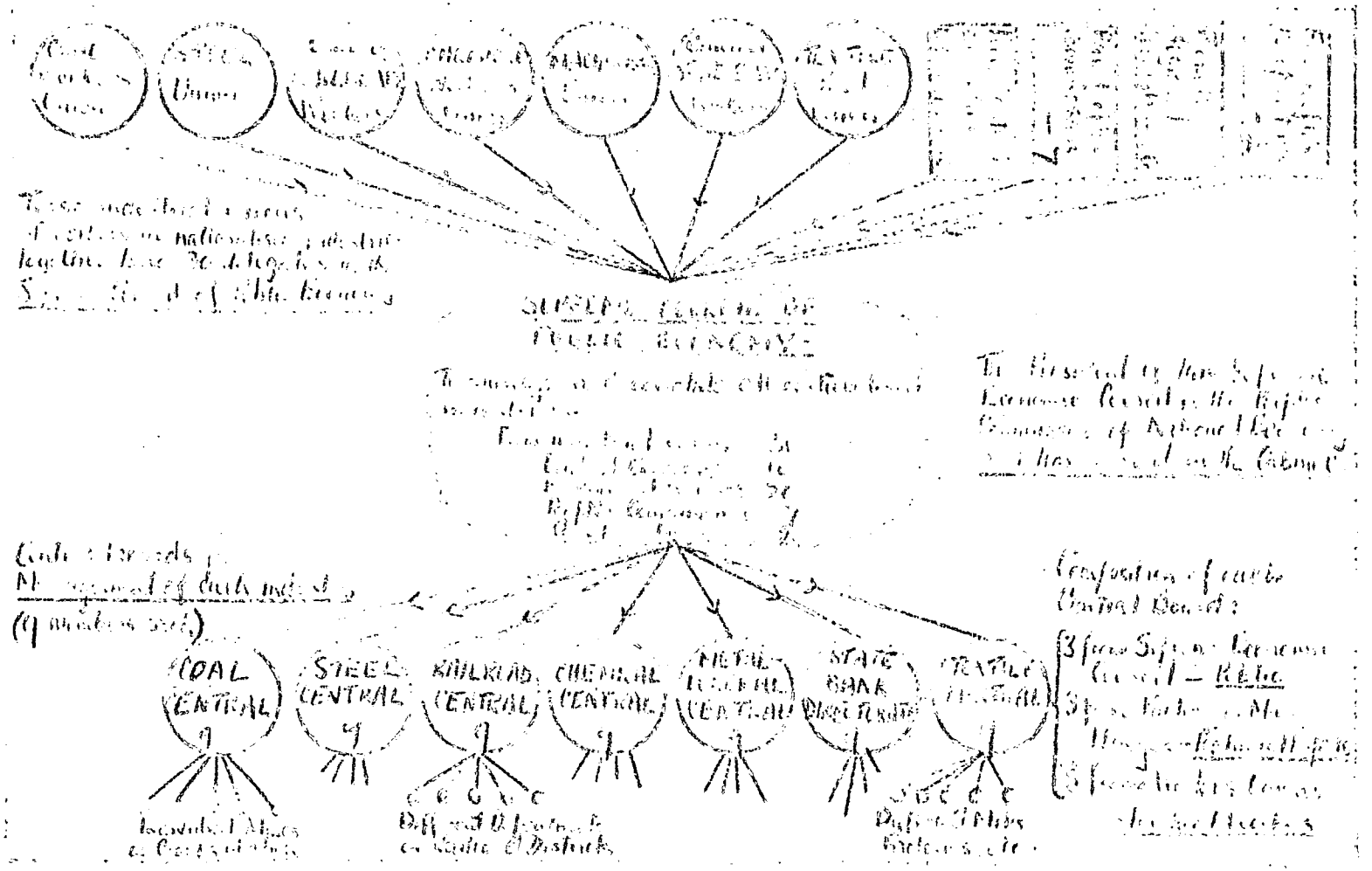
Appendix A (p. 60. refers)

COMMUNIST RECONSTRUCTION OF SOCIETY



Plan of the Economic Organisation of Soviet Russia.

A Plan published in "The Proletarian" - monthly official organ of Australian Communist Party - showing a scheme of a Supreme Economic Council to govern Soviet Russia, afterwards adopted at the A.C.T.U. Conference, 1921, for implementation in Australia.

Appendix B (p. 225 refers).

COMMODITY MARKETING BOARDS.

These notes do not in any sense represent either a comprehensive account or an analysis of the problems of the representative commodity boards - they are intended only to fill in, in briefest outline, a gap in the Commonwealth public corporations surveyed in this thesis.

The commodity marketing authorities which have been created by the Commonwealth Parliament are :

Dried Fruits Control Board 1924.

Dairy Produce Control Board 1924
(renamed Australian Dairy Produce Board 1947).

Canned Fruits Control Board 1926
(renamed Australian Canned Fruits Board 1938).

Wine Overseas Marketing Board 1929.
(renamed Australian Wine Board 1936).

Australian Meat Board 1935.

Australian Apple and Pear Board 1938.

Australian Wool Board 1945.
(renamed Australian Wool Bureau 1953)

Australian Wheat Board 1948.

Australian Egg Board 1948.

Australian Hide and Leather Industries Board 1948-55.

Australian Wool Testing Authority 1957.

The wheat and wool marketing authorities and the Hide and Leather Industries Board were originated during the war by National

Security Regulations, the year shown above being that of the Act giving statutory authority for their continuation. Certain other bodies (e.g. Barley Board, Tobacco Board) were also created under National Security Regulations, but ceased to function at the close of the war. The Australian Barley Board of today is a joint undertaking of the Victorian and South Australian State Governments.

Most of these organisations were provided by the Commonwealth Parliament at the request of the industries concerned, with the object of organising overseas marketing of produce in an orderly manner, and sometimes of advising Australian governments on production problems. The wool organisations differ in history and functions from the other Boards, being concerned broadly with research and publicity (and in the case of the Testing Authority, standards-testing) rather than marketing. The Wheat Board's function is to administer the post-war Wheat Stabilisation Plan in conjunction with the Wheat Boards or similar authorities of the State Governments.

These authorities have been organised as statutory corporations to permit representation of producers, processors, exporters and sometimes employees in management, in a form protected by the grant of statutory powers and rights. As a general rule they also include a representative of the Commonwealth Government as Chairman.

There are three broad patterns in the form of the governing bodies of these authorities. These vary according to overall size of the governing body, and may be described as early, middle and recent patterns. Some typical/constitutions were those of the Dried Fruits Control Board which consisted of one government nominee, five growers'

representatives and two members appointed because of their commercial experience; and the Canned Fruits Control Board which consisted of one government nominee, one member elected to represent privately-owned and proprietary canneries and one elected to represent co-operative and State-owned canneries.

Typical of the middle category was the original Meat Board, which had eighteen members representing the Commonwealth Government, and producers, processors and exporters on a State basis; the first Apple and Pear Board had sixteen members similarly distributed but with emphasis in distribution on the major fruit-growing states; and the Dairy Produce Board had seventeen members representative of interested groups.

Certain changes in constitution brought about by amending legislation in the post-war period have generally resulted from a realisation that boards of sixteen, seventeen and eighteen members are rather too big and clumsy to work efficiently. They have been reduced in size so far as the demand for adequate representation will allow. The re-organised Apple and Pear Board is typical of this recent trend. It now has twelve members :

One nominee of the Commonwealth Government.

Seven growers' representatives, two for Tasmania and one each for the other States.

Three exporters' representatives, one each for Tasmania and Western Australia and one for the other four States.

One employee representative.

Similarly the Meat Board's membership has been reduced from eighteen to twelve, and the Dairy Produce Board's membership from seventeen to twelve.

Other typical modern constitutions are :

(a) the Egg Board -

One nominee of the Commonwealth Government.

Five members representing the State egg-marketing organisations of New South Wales, Victoria, Queensland, South Australia and Western Australia.

One member with commercial experience.

One member representing the employees engaged in the handling, grading and processing of eggs.

(b) the re-constituted Wine Board -

One nominee of the Commonwealth Government.

Five representatives of proprietary and privately-owned wineries and distilleries.

Two representatives of co-operative wineries and distilleries.

Three representatives of grape growers who supply wineries and distilleries.

These Boards are normally financed by the imposition of a levy under a separate but complementary Act on exported produce, usually with the proviso that the board involved in each case may exempt particular classes of exports from the levy if it considers this course to be desirable. They are required to present an annual report on their operations to the Minister for presentation to Parliament. The Minister must normally approve the conditions for the granting of export licences, etc., recommended by the Boards; and the Boards, of course, are unable to fix the rates of the levies

by which they are financed, since the levies are the subject of separate enactments. Finally the Governor-General has the usual power to make regulations not inconsistent with the act. The Boards are empowered to appoint their own staff, but have been included with other statutory authorities in that trend towards uniformity of conditions of all staff under Commonwealth employment which has resulted in the legal requirement to seek Public Service Board approval for terms and conditions.

Appendix C (p. 371 refers).

EXTRACTS FROM TRANS-AUSTRALIA AIRLINES TRAINING DOCUMENT NO. 1/3/21.

"The Commission Status.

The corporation so established is the Australian National Airlines Commission. It is an entity created by Act of Parliament and therefore called a statutory corporation. The legal status, powers, duties and functions of a statutory corporation depend upon the provisions of the Act under which it is established, but in other respects it is subject to the general law. Generally such a corporation is established either to carry out purposes created as the result of a political decision or perform functions no longer capable of being performed efficiently by Government Departments, and the former usually acquires and carries on some existing

business, e.g. The Gas and Fuel Corporation of Victoria, or commences a new business, e.g. The Australian National Airlines Commission. All statutory corporations, whether called boards, commission or corporations, are known popularly as public corporations or semi-government authorities. Most public corporations have these characteristics :-

	Cf. Aust. Nat. Airlines Act Sections.
1. Corporate status apart from the Crown (i.e. the Commonwealth or State Government),	6 (1)
2. Board of Management,	7-14
3. Business Enterprise,	19
4. Monopoly of product or service,	46-49
5. Freedom from Governmental control, and 6. Responsibility to a Minister of State	25 (1)

and all public corporations have common basic powers and duties ancillary to corporate status viz.,

1. Powers to,	
(a) use a common seal, (b) sue and be sued at law,	6 (2)
(c) lease, sell and purchase real and personal property,	21 (1) & 6 (2)
(d) Delegate powers,	16
(e) appoint officers, and	17 & 18
(f) enter into contracts, and	23
2. Duties to,	
(a) hold meetings and	15 (1)
(b) report to Minister	40 & 41

In other words public corporations have been born of the need to separate traditional governmental functions performed by Departments

of State from the trading functions acquired or created by Governments and have a common basic structure.

Purpose.

Most public corporations are public utilities which do not compete with private enterprises in the sale of their product or service , e.g. the State Electricity Commissions. The Commission is unique among Commonwealth corporations, because it was injected into a competitive industry. The attempt to give it a monopoly in the industry was abortive and therefore the corporation has had to compete from scratch with private corporations already well entrenched in the industry .....

The Australian National Airlines Commission differs from Public Corporations such as British European Airways, British Overseas Airways Corporation, Quantas Empire Airways and New Zealand National Airways Corporation because it has not a monopoly of business. Moreover the Commission's powers, duties and functions are affected by the agreement between the Commonwealth and Australian National Airways contained in the Civil Aviation Agreement Act 1952 ..... The political and economic role of the Commission trading as Trans-Australia Airlines is therefore exceptional."

Appendix D (p.407 refers).

SECTION SEVENTEEN (ONE) OF THE PUBLIC SERVICE ACT 1922-57.

In addition to such duties as are elsewhere in this Act imposed on it, the Board shall have the following duties :

(a) to devise means for effecting economies and promoting efficiency in the management and working of Departments by -

(i) improved organisation and procedure;

(ii) closer supervision;

(iii) the simplification of the work of each Department, and the abolition of unnecessary work;

(iv) the co-ordination of the work of the various Departments;

(v) the limitation of the staffs of the various Departments to actual requirements, and the utilisation of those staffs to the best advantage;

(vi) the improvement of the training of officers;

(vii) the avoidance of unnecessary expenditure;

(viii) the advising upon systems and methods adopted in regard to contracts and for obtaining supplies, and upon contracts referred to the Board by a Minister; and

(ix) the establishment of systems of check in order to ascertain whether the return for expenditure is adequate;

(b) to examine the business of each Department and ascertain whether any inefficiency or lack of economy exists;

(c) to exercise a critical oversight of the activities, and the methods of conducting the business, of each Department;

(d) to maintain a comprehensive and continuous system of measuring and checking the economical and efficient working of each Department, and to institute standard practice and uniform instructions for carrying out recurring work; and

(e) such other duties in relation to the Public Service as are prescribed.

Appendix E (p.527 refers).

REASONS ADVANCED OR IMPLIED FOR THE CREATION OF PARTICULAR CORPORATIONS.

(compiled 1954).

CORPORATION	YEAR OF CREATION	GOVERNMENT INVOLVED.	REASONS GIVEN (For Code see Table p.526).
Commonwealth Bank	1911	Labour	A B C
River Murray Commission	1915	"	I
Commonwealth Railways	1917	Nationalist	A B C H
War Service Homes Commission	1918	"	B C
Institute of Science and Industry (now C.S.I.R.O)	1920	"	B C E
Repatriation Commission	1920	"	G
Shipping Board	1923	"	B C
Federal Capital Commission	1924	Nat.-C.P.	B C E H
North Australia Commission	1926	"	B C D E F
Development and Migration Commission	1926	"	B C D E F
Broadcasting Commission	1932	United Australia	A B
Aluminium Production Commission	1944	Labour	I C
Commonwealth Coal Commission	1944	"	C D E
Trans-Australia Airlines	1945	"	C

Cont.

Wool Realisation Commission	1945	Labour	J
Joint Coal Board	1946	"	I
Overseas Telecommunications Commission	1946	"	J
Stevedoring Industry Commission	1947	"	G K
Broadcasting Control Board	1948	"	B E
Whaling Commission	1949	"	C E
Stevedoring Industry Board	1949	"	ø
Snowy Mountains Hydro-Electric Authority	1949	"	C
Qantas Empire Airways Pty. Ltd.	1946	"	L M
Commonwealth Hostels Ltd.	1952	Liberal C.P.	C M
Atomic Energy Commission	1953	"	A.E.
The Commodity Marketing Boards	1924-53	All Parties	G

(ø) stated to be "the only alternative" when the representative Stevedoring Industry Commission failed.

Note: Although reasons B and C have rarely been put forward since the nineteen-twenties they have generally been accepted as the basic criteria on which the framework of the modern public corporation has been shaped.

Appendix E (p.537 refers).

COMPARATIVE SALARIES.

(This table was also compiled in 1954, and the salaries quoted are at 1954 rates. However they are included only to facilitate comparisons between Groups A and B; and recent marginal increases have not

affected the relativities shown herein.)

A. Examples of top salaries in public corporations.

(i) full-time offices

Chairman, Atomic Energy Commission	£4,250
Commonwealth Railways Commissioner	£3,750
Chairman, C.S.I.R.O. Executive	£3,500
Chairman, Broadcasting Control Board	£3,250
General Manager, Australian Broadcasting Commission	£3,250
Other Full-Time Members, Broadcasting Control Board	£3,000
Other Full-Time Members, C.S.I.R.O. Executive	£3,000
General Manager, Overseas Telecommunications Commission	£3,000

(ii) part-time offices

Chairman, Australian Broadcasting Commission		£1,250
Vice-Chairman,	Australian Broadcasting Commission National Airlines Commission Overseas Telecommunications Commission	£ 500
Other members,	National Airlines Commission Overseas Telecommunications Commission	£ 400
Other members, Australian Broadcasting Commission		£ 300

B. Examples of top salaries in other public offices.

Chief Justice, High Court	£5,000
Other Judges, High Court	£4,500
Chief Judge, Arbitration Court	£4,500
Permanent Heads of Prime Minister's, Treasury, Attorney-General's, Defence and Postmaster-General's Departments	£4,250
Commissioner of Taxation	£4,250
Chairman, Public Service Board	£4,000
Judge in Bankruptcy	£4,000

Chief of Naval Staff	£3,750
Chief of General Staff	£3,750
Permanent Heads of Works, Trade and Customs, Commerce and Agriculture, National Development, Supply and Defence Production Departments.	£3,500
Public Service Commissioners	£3,500
High Commissioners and Ambassadors	£3,500
Auditor-General	£3,500
Chief of Air Staff	£3,450
Permanent Heads of External Affairs, Interior, Civil Aviation, Health, Social Services, Immigration and Army Departments.	£3,250
Public Service Arbitrator	£3,250
Permanent Heads of Repatriation, Air, Navy, Labour and National Service, Territories and Shipping and Transport Departments.	£3,000

Appendix G (p. 10. refers).

ADDENDA

The following major developments have occurred since the main draft of this thesis was completed.

1. COMMONWEALTH BANK.

The legislation designed to divide the existing Commonwealth Bank into the Reserve Bank of Australia and the Commonwealth Banking Corporation, the latter comprising Trading, Savings and Development Banks each as distinct legal entities, which was resubmitted to the Senate on 13 March 1958, was again defeated by a combined vote of the

Labour Opposition in that Chamber. Now there seems little likelihood that there will be a further Double Dissolution of Federal Parliament on the Banking issue, but in view of the widely held belief that the non-Labour Parties are committed to the change and will resubmit the necessary legislation as soon as there is a chance of it surviving in both Houses of Parliament, it will probably be a very live issue in the next election campaign. (For note on earlier events, see supra p.445-6).

2. AUSTRALIAN ATOMIC ENERGY COMMISSION.

Legislation was passed early in 1958 to enlarge the Australian Atomic Energy Commission. As well as the existing Chairman, Deputy Chairman and third Member, all of whom hold office on a part-time basis, the Commission now includes a fourth member to hold office on a full-time basis and a fifth member "who will not necessarily be a full-time member". The fourth member is regarded as the "executive member", and is given the task of administering the affairs of the Commission within the policy laid down by the full Commission.

Advantages claimed for the increase in size are that the Commission now has a wider basis for consultation on the problems it is called upon to consider, that its responsibilities are growing in number and complexity, and that the inclusion of additional points of view will strengthen the Commission in dealing with them.

The fourth member has an unusual status - his responsibilities appear to be those possessed by the General Manager of the A.B.C. and T.A.A., but he is also a member of the Commission. Such mixtures of policy and administrative functions in other authorities have been

criticised by many observers in the past: moreover, the legislation appears to repeat the weakness of the 1924 Commonwealth Bank Act, which made the Governor of the Bank Chief Executive Officer sitting on the Board, but not Chairman of the Board. Following criticism by Professor Giblin and other authorities, the question was resolved in this case when the Bank Board was reconstituted in 1951. It is strange to note that the original Act constituting the Australian Atomic Energy Commission specifically provided that the Chairman was prohibited from engaging in any other paid employment except with the Minister's permission. Obviously the Minister has at some stage given this permission, although the phraseology of the Act suggests - but does not clarify the position - that Parliament would have preferred otherwise. This situation, in which the Chairmanship is in fact a part-time office only, contributed to the need for the amending legislation and the awkward form now to be applied to the Commission.

The Atomic Energy Act 1958 also included machinery provisions to bring conditions relating to vacation of office of members into line with recent changes in other corporations, and to clarify the powers and responsibilities of the Auditor-General.

(References: Commonwealth Parliamentary Debates, H.ofR., 25 March 1958, p. 615-6; Atomic Energy Act No.1 of 1958; for comparison with 1924 Bank Act, see supra p. 202.)

SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY

Legislation is now under consideration in the Federal Parliament to ratify the inter-governmental agreement on the use of water and other resources made available by the operations of the Snowy Mountains Hydro-Electric Authority. Presumably similar legislation will be enacted by the States involved.

(Reference: For note on agreement, see supra p. 401.; also Commonwealth Parliamentary Debates. S., 16 April 1957 from p. 506.)

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