

12. FINANCIAL LEGISLATION

Parliamentary control of government finances

The Parliament has the ultimate control over government finances. This control is two-fold. First, taxes are imposed and loans to the Government are authorised by legislation which must be agreed to by the Parliament. Secondly, government expenditure must also be authorised by legislation.

Section 83 of the Constitution states that ‘no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law’. This means that however much money the Government has, whether raised by taxation or by loan or even by sale of government assets, the money cannot be spent unless the Parliament has authorised the expenditure by an Act of Parliament (an appropriation Act).

The financial initiative of the Government and the financial powers of the two Houses

Although Parliament has the ultimate control by way of veto, the Government has what is known as the ‘financial initiative’. Only the Government, through the House of Representatives, can request that an appropriation be made or increased, or propose to impose or increase taxation. The Constitutional provisions (sections 53 and 56) are briefly as follows:

- appropriation bills cannot be initiated in the Senate;
- appropriation bills for ‘the ordinary annual services of the Government’—e.g. Appropriation Bill (No. 1)—cannot be amended by the Senate;
- bills imposing taxation cannot originate in or be amended by the Senate;
- the Senate may not amend any proposed law so as to increase any proposed charge or burden on the people;
- no appropriation bill can be passed unless the purpose of the appropriation has been recommended by a message from the Governor-General.

Appropriation and supply bills

The Parliament appropriates money annually from the Consolidated Revenue Fund to fund government expenditure by means of the following bills:

Main appropriation bills

Appropriation Bill (No. 1) is a key element in the Budget. It appropriates revenue for the provision of ordinary annual government services—that is, continuing expenditure by government agencies on services for existing policies.

Appropriation Bill (No. 2), also introduced with the Budget, includes appropriations for new policies, new capital expenditure, and payments to the States.

Appropriation (Parliamentary Departments) Bill, also introduced with the Budget, appropriates funds for the parliamentary departments.

Additional appropriation bills

Appropriation Bills (No. 3) and (No. 4) and the Appropriation (Parliamentary Departments) Bill (No. 2) are referred to as the additional or supplementary estimates. Appropriation Bill (No. 3) appropriates funds for ordinary annual services, while Appropriation Bill (No. 4) provides for other expenditure—that is, they parallel Appropriation Bills (No. 1) and (No. 2). They are necessary because almost invariably government departments will exhaust some of the funds provided by Appropriation Bills (No. 1) and (No. 2). The Appropriation (Parliamentary Departments) Bill (No. 2) performs the same function in respect of the parliamentary departments.

Other appropriation bills may be introduced to cover special expenditure—for example, Appropriation Bill (No. 3) 1971–72 was passed to fund the activities of the Australian Wool Commission. (The bills containing the additional estimates in that year were therefore numbered (No. 4) and (No. 5).)

Supply bills

Supply Bills (No. 1) and (No. 2) and the Supply (Parliamentary Departments) Bill are no longer part of the regular annual routine. Their function is to provide funds in the interim period when the main appropriation bills are not scheduled to pass before the commencement of the financial year on 1 July. This was the usual practice when the Budget was presented in August.

Supply bills can still be necessary if for some reason (such as an election) the current May Budget timetable is not able to be followed. If needed, supply bills would be introduced in April or May and the amounts appropriated would usually cover the first five months of the following financial year—that is, from 1 July to 30 November. As with the appropriation bills, (No. 1) would provide for ordinary annual services, and (No. 2) for other expenditure. The Supply (Parliamentary Departments) Bill would provide funds for parliamentary expenditure.

Advances to the Minister for Finance and Administration and Presiding Officers

Appropriations are made in the main appropriation bills No. 1 and No. 2, the parliamentary appropriation bill and supply bills for an allocation of funds for an Advance to the Minister for Finance and Administration, or Advances to the Presiding Officers, in order to meet emergency or unforeseen expenditure during the course of the financial year.

Appropriation and supply bill procedure

Appropriation bills and supply bills in their essentials follow the same stages as any other bill. Only the differences are described here.

The Budget

In the House of Representatives there is no special Budget procedure as such. The Budget depends upon the passage of the main appropriation bills for the year, the Treasurer's Budget speech being the second reading speech on Appropriation Bill (No. 1). As well as the main appropriation bills, the Budget includes other legislation to give effect to the financial proposals announced in the Budget speech, and the Budget papers—documents presented to Parliament containing information on government finances and related matters.

It is now the general practice for the Budget to take place in May. However, the traditional August Budget may still occur when a general election interrupts the usual parliamentary calendar.

Appropriation Bill (No. 1)

Message recommending appropriation

The introduction of the Appropriation Bill (No. 1) is preceded by the announcement by the Speaker of a message from the Governor-General recommending an appropriation for the purposes of the bill (S.O. 180(b)).

Introduction

Standing order 178 allows the bill to be introduced without notice by a Minister, in this instance the Treasurer.

Second reading—Budget speech and debate

In moving the second reading, the Treasurer delivers the Budget speech, in which he or she compares the estimates of the previous financial year with actual expenditure, reviews the economic condition of the nation, and states

the anticipated income and expenditure for the current financial year, including the taxation measures proposed to meet the expenditure. In making the Budget speech the Treasurer may speak without limitation of time (S.O. 1); however, about 30 minutes has become the practice. At the conclusion of the speech debate is adjourned on the motion of an opposition Member, usually the Leader of the Opposition.

The debate on the second reading of the Appropriation Bill (No. 1) is known as the 'Budget debate'. It is traditionally resumed by the Leader of the Opposition two nights after 'Budget night'. In the response to the Government's Budget proposals, the Leader of the Opposition (or a Member deputed by the Leader) may speak without limitation of time (S.O. 1); however, as with the Treasurer's speech, about 30 minutes has become the practice. Normal time limits apply to other speakers in the debate.

The Budget debate used to continue over several weeks. With the Budget presented in May a shorter period is available, as the appropriation bills have to be passed by the Parliament before the start of the financial year on 1 July (interim funding not being provided by supply bills). In recent years additional debating time has been gained by referring the appropriation bills to the Main Committee, which has extended its hours of operation for this purpose (*see p. 13*).

The scope of discussion in the Budget debate is almost unlimited, as the second reading of the main appropriation bill is specifically excepted from the rule of relevancy (S.O. 76).

The appropriation bills have been subject to a declaration of urgency (*see p. 70*).

Second reading amendment

An amendment of the widest scope in relation to public affairs may be moved to the motion for the second reading of the main appropriation bill (S.O. 145(b)). Such an amendment, usually moved by the Leader of the Opposition, would be expected to refer to aspects of the Budget with which the Opposition was dissatisfied. The amendment takes the form 'That all words after "That" be omitted with a view to substituting the following words: . . .' (e.g. 'this House condemns the Budget because . . .').

Consideration in detail

The House first considers the schedule of the bill which lists by government portfolio the services for which the appropriation is to be made and the amounts appropriated. After completing consideration of the schedule, the House then considers the remainder of the bill in the same way as an ordinary bill. It is usual, however, for the remainder of the bill to be taken as a whole and agreed to formally without further debate.

The order for considering the proposed expenditures (referred to as 'estimates') is the order in which they appear in the schedule, traditionally in alphabetical order of government departments. However, it is the usual practice for the House to agree, at a Minister's suggestion, to a different order of consideration, with departments grouped together for convenience of debate. The agreed order may be varied by further resolution to meet the convenience of the House.

The question put from the Chair in respect of each department or group of departments is 'That the proposed expenditure (or expenditures) be agreed to'. Debate may cover any aspect of administration or other matter which comes under the control of the department or departments under consideration.

Amendments to estimates

An amendment to an appropriation bill to increase, or extend the objects and purposes or alter the destination of, the appropriation recommended by the Governor-General must be preceded by a further message which must be announced before the amendment is moved (S.O. 180(d)). This requirement in effect prevents private Members from moving such amendments. However, a private Member may move to reduce the amount of a proposed expenditure or may move to omit items.

Appropriation Bill (No. 2) and Appropriation (Parliamentary Departments) Bill

Appropriation Bill (No. 2) and the Appropriation (Parliamentary Departments) Bill are also introduced without notice following a message from the Governor-General recommending appropriation.

The procedure for the passage of these bills is similar to that for the Appropriation Bill (No. 1) except that the wide range of debate and amendment allowed on the second reading of the main bill is not permitted and normal relevancy rules apply (unless there is agreement to have a cognate debate with Appropriation Bill No. 1). It is not usual for the bills to be considered in detail.

Budget documents and related legislation

Associated with the Budget are other related documents and bills. After the Treasurer's second reading speech on Appropriation Bill (No. 1) the debate is adjourned and Budget-associated documents, referred to as Budget papers or Budget related papers, are normally presented. The nature and titles of these documents vary. After the presentation of the documents a motion may be moved that the documents be made parliamentary papers. This motion may be debated but this is rare. If debate occurs it must be relevant to the motion to print and thus may not cover the subject matter of the documents, or for example, the state of the economy or events in the preceding financial year.

Other Budget related business may include the introduction of further Budget related bills (in 2005 in addition to Appropriation Bill (No. 2) and Appropriation (Parliamentary Departments) Bill (No. 1) for the 2005-06 financial year, there were two supplementary additional estimates bills (Appropriation Bills Nos. 5 and 6) for financial year 2004-05. Ministerial statements explaining Budget decisions in detail, and customs and excise tariff proposals connected with the Budget may also be presented. The term 'Budget measure' is used to describe bills introduced to implement the financial proposals announced in the Treasurer's Budget speech. That a bill is described as a Budget measure does not in itself bestow on it any special procedural status or immunity from amendment, as is sometimes assumed.

Additional appropriation bills and supply bills

Procedures for additional appropriation bills and supply bills, including the limitations on amendment, are the same as those for Appropriation Bills Nos 1 and 2, except that there is no special Budget speech or Budget debate as such—that is, the second reading speeches and debate are routine events. As in the case with Appropriation Bill (No. 1), there is a wide scope of amendment and debate allowed on the second reading of the bills for ordinary services of the Government—that is, (usually) Appropriation Bill (No. 3) and Supply Bill (No. 1).

Special appropriation bills

Only about a quarter of government agency expenses are authorised by the annual appropriations. Other government expenditure is authorised by special appropriation bills which appropriate funds for a specified purpose—for example, to finance a particular project or program. Special appropriation bills are often not specific in amount or duration. Those providing funds for an indefinite period are said to give 'standing appropriation'.

Special appropriation bills are distinguishable from ordinary bills in that they:

- contain words which appropriate revenue to the extent necessary to meet expenditure under the bill; or
- while not in themselves containing words of appropriation, would have the effect of increasing, extending the objects or purposes of, or altering the destination of, the amount that may be paid out of revenue under existing words of appropriation in an Act.

Special appropriation bills have no distinguishing title, format, or content, apart from the words of appropriation. In most cases the appropriation is incidental to the bill's main intention, and in some cases not immediately obvious.

Special appropriation bill procedure

With the following exceptions, procedures for introduction (including the requirement for notice to be given) and passage through later stages of these bills are identical to those described for ordinary bills.

Proceedings following second reading—Governor-General’s message

In accordance with section 56 of the Constitution and S.O. 180(a) appropriations must be recommended by a message from the Governor-General. However, unlike the situation with appropriation and supply bills, the message recommending the appropriation is announced after the second reading (S.O. 147).

The Chair announces the receipt of the message. The terms of the message state that the Governor-General recommends to the House that an appropriation be made for the purposes of the bill.

Consideration in detail—amendments

An amendment to increase, or extend the objects and purposes or alter the destination of the appropriation recommended by the Governor-General must be preceded by a further message which must be announced before the amendment is moved (S.O. 180(d)). The message in this instance recommends that an appropriation be made for the purpose of an amendment to the bill.

This requirement in effect prevents private Members from moving such amendments. A Member unable to move such an amendment may choose to put his or her view on the matter to the House in an appropriate second reading amendment—that is, present it as a declaration of opinion rather than as a proposed amendment to the text of the bill.

Taxation bills

Taxation bills impose a tax. Examples of taxation bills are income tax bills, customs tariff bills and excise tariff bills. Bills imposing ‘a charge in the nature of a tax’ (that is, where the charge is a revenue raising measure as distinct from a fee for a service) are also considered to be taxation bills. Section 55 of the Constitution states that laws imposing taxation shall deal only with the imposition of taxation and, except in the case of customs and excise laws, with one subject of taxation only.

Taxation assessment bills lay down the administrative procedures for assessing and collecting tax. As bills *dealing with taxation* they may be introduced without notice (S.O. 178) but in all other respects they are treated as ordinary bills.

Taxation bill procedure

Introduction

Taxation bills and any proposal to impose, increase, decrease, or alter the scope of a tax or duty must be introduced by a Minister (S.O. 179). Taxation bills (and any other proposal dealing with taxation) may be (and, to protect the revenue, inevitably are) introduced without notice (S.O. 178).

Consideration in detail—amendments

When the bill is considered clause by clause, any schedule, which may declare rates of tax or duty, is considered before the authorising clauses.

Only a Minister may move an amendment to increase, or extend the scope of a charge proposed beyond the total already existing under any Act of Parliament (S.O. 179(b)). A private Member may move an amendment to reduce a proposed tax, or to increase a proposed reduction back to its existing level.

A Member unable to move an amendment may choose to put his or her view on the matter to the House in an appropriate second reading amendment—that is, present it as a declaration of opinion rather than as a proposed amendment to the text of the bill.

Tariff proposals and tariff amendment bills

Customs (duties levied on imports and exports) and excise (duties charged on goods produced in Australia) tariff proposals are usually initiated by a motion, and not by a bill. The restrictions applying to taxation bills apply equally to tariff proposals; they must be introduced by a Minister and may be introduced without notice.

The moving of a tariff proposal is normally treated as a formal procedure for the purpose of initiating the collection of the duty. The motion may be debated and amended, although only a Minister may move an amendment to increase, or extend the scope of the charge in a proposal, unless the effect of the amendment to increase the charge or extend its scope would not exceed that already existing under an Act of Parliament (S.O. 179).

It is usual for the debate to be adjourned by an opposition Member. Tariff proposals are listed together on the Notice Paper under the one order of the day for the resumption of debate on the motions. Debate on a proposal may be resumed on a later day but this is a rare occurrence.

Periodically, tariff proposals are consolidated by a customs tariff or excise tariff amendment bill, which incorporates the provisions of the motions previously moved into the appropriate Tariff Act. These bills are retrospective in operation to the date on which collection commenced. After the tariff

amendment bill has been assented to, a motion is moved to discharge the superseded orders of the day from the Notice Paper.

In the absence of a tariff amendment bill, tariff proposals before the House towards the end of a period of sittings may be affirmed by means of a tariff validation bill. In this case the proposals are not discharged from the Notice Paper as they have not yet been incorporated in the tariff schedule by means of a tariff amendment bill.