

Procedural Information Bulletin No. 78

For the sitting period 27 September to 7 October 1993

TAXATION LEGISLATION

The previous *Bulletin* (pp 2-4) referred to the question of the validity under section 55 of the Constitution of the Taxation (Deficit Reduction) Bill 1993.

The Report of the Standing Committee on Legal and Constitutional Affairs on the bill, having been presented to the President during the adjournment, was tabled on the first day of sitting. The Committee found that there was a substantial risk that the bill would be held to be invalid under section 55. To the motion to take note of the report an amendment was passed, calling upon the government to heed the conclusions of the report. The government had already announced that it would divide the bill into a number of separate bills to avoid the possibility of the legislation being held to be invalid.

The new bills, having been rushed through the House of Representatives, were received by the Senate on 29 September. They consist of a bill making the assessment-type changes to taxation, a "test bill" designed to provoke a legal challenge to determine the question of whether an alteration in rates of taxation is an imposition of taxation (this bill deals with increases in the rates of fringe benefits tax and tax on friendly societies), a bill making the changes to income tax rates, and five separate bills making the changes to sales tax. The government continued its attempt to link the bills by including in the income tax bill a provision to the effect that it would not commence until all the other bills had commenced.

The first two bills were referred to the Legal and Constitutional Affairs Committee on the initiative of the Selection of Bills Committee on 30 September. The majority of the Committee subsequently reported that the first bill would be valid and both bills should be passed, but the non-government senators on the Committee raised doubts about the validity of the first bill.

On the motion of the Opposition, a special resolution was passed on 5 October to deal with the bills in packages and to bring them on for early debate.

The Senate dealt first with the bill relating to income tax. A declaratory resolution was passed, similar to a resolution passed in 1981 when the Senate dealt with sales tax legislation. This resolution in substance declares that the Senate, by proceeding with the bill as an amendable bill, is not committed to any view of whether it would be held to be a bill imposing taxation. The bill was then amended to remove the "linkage" commencement provisions.

A declaratory resolution was also passed in relation to the sales tax bills, declaring that the decision to make requests for amendments to those bills did not indicate a concluded view of whether they are bills imposing taxation. Requests for amendments to those bills were made on 7 October to remove the increased sales tax on wine and the so-called second round of sales tax increases due to commence on 1 July 1995.

The first two bills remain to be dealt with, but on 7 October a resolution was passed calling on the government to withdraw and redraft the first bill so as to put its validity beyond doubt. The provisions in that bill concerning the tax treatment of credit unions had been referred to the Finance and Public Administration Committee on 28 September, and the Committee has yet to report.

On 6 October the Finance and Public Administration Committee reported on the Customs Tariff (Deficit Reduction) Bill and Excise Tariff (Deficit Reduction) Bill, indicating that amendments may be required to overcome problems detected with the bills.

WITNESSES: MEMBERS OF OTHER HOUSES

The Select Committee on the Australian Loan Council reported on 30 September with a recommendation that the Senate request the House of Representatives and the houses of certain state parliaments to require the attendance of certain of their members before the Committee to give evidence. The majority of the Committee reported that it was desirable that those members give evidence, and they had declined invitations to do so. The Committee indicated that it had accepted advice that the Senate does not have the power to compel the attendance of members of other houses, and that the only method of securing their attendance is for their respective houses to order them to attend at the request of the Senate.

A motion was moved by the Chairman of the Committee, Senator Coulter, to make the requests to the various houses, and this motion was passed on 5 October. A message from the House of Representatives declining to accede to the request in respect of the Treasurer was received late on 7 October.

ORDERS FOR PRODUCTION OF DOCUMENTS

Senator Short made a statement on 27 September in relation to the documents tabled by the government in response to the order for the production of documents relating to an economic model used by the Treasury (see *Bulletin No. 77*, p. 4). The government had indicated that it would not respond to the order in so far as it required the production of documents not already in existence. Senator Short pointed out that an order may require the creation of documents not already in existence by the person or agency who has the information to compile the documents, and that a number of orders of the Senate have required the production of documents not already in existence. Senator Short indicated that he was giving the government an opportunity to reconsider the matter.

Documents were tabled on 5 October relating to the estimates for the Aboriginal and Torres Strait Islander Commission, in anticipation of an order for production of documents, notice of which had been given by Senator Panizza. The motion had not been moved at the end of the sitting period.

DISALLOWANCE MOTION BROUGHT ON EARLY

When a notice of motion for disallowance of delegated legislation is given for a future day, there is no procedure whereby the senator giving the notice can be compelled to move the motion on an earlier day. The motion can be dealt with earlier only by leave.

This was done on two occasions, on 28 and 30 September, when leave was granted to call on two disallowance motions, relating to United Nations declarations, notice of which had been given for future days. Agreement had been reached to deal with the motions early. The procedure must make it clear that the motion which is moved is the motion of which notice is given; otherwise if the motion is passed there could be doubt about its compliance with the statutory provisions relating to the giving of notice.

PRIVILEGE

The question of evidence given to Estimates Committee E and answers given to the Senate in relation to the diesel fuel rebate tax (see *Bulletin No. 77*, p. 4) was raised as a matter of privilege and referred to the Privileges Committee on 29 September. The reference to the Committee asks it to report on whether false or misleading

information was given to the Estimates Committee or to the Senate in relation to the proposed tax.

PROPOSED PROCEDURAL CHANGES: BROADCASTING

The Procedure Committee presented reports on 29 and 30 September.

The first report recommends that the Senate uphold the rulings by the President to the effect that motions pursuant to contingent notice to suspend standing orders to rearrange the Senate's business can be moved only once on each occurrence of the relevant contingency.

The second report proposed a radical rearrangement of the Senate's routine of business and times of sitting. This report was in response to a reference from the Senate on those subjects. The proposed new system would involve the Senate sitting four days a week and adjourning by no later than 8 pm each day. Various changes to the order of business and time limitations on business are proposed to make this feasible. The proposal has yet to be considered.

The second report also recommended that the President be authorised to extend the coverage of Senate and Senate committee proceedings by the in-house television system to organisations outside Parliament House on a subscription basis. A resolution to authorise this was passed on 5 October.

OTHER LEGISLATION AMENDED

Other legislation amended included:

- Arts, Environment and Territories Legislation Amendment Bill 1993, 28 September, in relation to ACT self-government provisions (a government amendment identical to an earlier circulated Opposition amendment was passed)
- Health and Community Services Legislation Amendment Bill 1993, 28 September
- Development Allowance Authority Amendment Bill 1993, 29 September
- Australian Citizenship Amendment Bill 1993, 29 September (the bill relating to the new naturalisation oath).

The motion to adopt the report of the committee of the whole on the Protection of the Sea package of bills was amended on 29 September. This motion is debatable and amendable, but it is usually passed as a formality. The amendment in question,

moved by Senator Margetts, amongst other things requires the government to table a report relating to the legislation by the end of 1994.

COMMITTEES

A reference to the Finance and Public Administration Committee was withdrawn by motion on notice on 28 September. The reference related to the Metway Bank, and in explanation of his motion Senator Parer indicated that the Bank had indicated that it did not wish the inquiry to proceed.

The following committee reports were presented during the sitting period:

Date tabled	Committee	Title
27.09.93*	Legal and Constitutional Affairs	Report on Constitutional Aspects of the Taxation (Deficit Reduction) Bill 1993 *Presented to the President 20.09.93
27.09.93	Industry, Science, Technology, Transport, Communications and Infrastructure	Report on Customs Tariff Amendment Bill 1993
29.09.93	Procedure	First Report of 1993
30.09.93	Procedure	Second Report of 1993
30.09.93	Joint Standing Committee on Foreign Affairs, Defence and Trade	Report on Australia, the World Bank and the International Monetary Fund
30.09.93	Australian Loan Council	Second Report
05.10.93	Scrutiny of Bills	Report on the Operation of the Committee
05.10.93	Legal and Constitutional Affairs	Report on Migration Laws Amendment Bill 1993
06.10.93	Finance and Public Administration	Report on Customs Tariff (Deficit Reduction) Bill 1993 and Excise Tariff (Deficit Reduction) Bill 1993

Date tabled	Committee	Title
06.10.93	Legal and Constitutional Affairs	Report on Taxation (Deficit Reduction) Bill (No. 1) 1993 and Taxation (Deficit Reduction) Bill (No. 2) 1993
06.10.93	Public Works	56th General Report
07.10.93	Estimates A-F	Reports
07.10.93	Employment, Education and Training	Report on the Operation of Section 45D and 45E of the <i>Trade Practices Act 1974</i>