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THE BUDGET AND REFERENCE OF PROPOSED EXPENDITURE TO COMMITTEES

The Treasurer's Budget speech in the House of Representatives is actually the second reading speech on Appropriation Bill No. 1 which appropriates funds for the ordinary annual services of the government. In the Senate on 11 May 2010, the speech and related Budget documents were tabled, a motion to take note of them was moved and the particulars of proposed expenditure (in other words, the provisions of the appropriation bills) were referred to the legislation committees for the budget estimates hearings. Replies by party leaders in the Senate on 13 May represented a continuation of the debate on the motion to take note of the documents. In the House of Representatives, the Opposition Leader's response is a continuation of the second reading debate on the bill itself.

An amendment to the order allocating portfolios to committees was agreed to on 12 May. The principal change was the relocation of the Climate Change and Energy Efficiency portfolio from the Finance and Public Administration Committees to the Environment, Communications and the Arts Committees.

The referral of the Budget particulars of proposed expenditure to legislation committees means that Commonwealth expenditure and the performance of agencies are broadly available for examination. Individual committees cannot restrict those terms of reference from the Senate, for example, by determining that particular agencies not appear. All agencies with a connection to the proposed expenditure should be available for examination, particularly where senators have indicated that they have questions for them. In this respect, Budget estimates are unlike the supplementary rounds of hearings which examine only those matters of which notice has been given in accordance with standing order 26. The breadth of estimates examination is reinforced by the various resolutions of the Senate on the accountability of publicly-funded agencies and the relevance of questions at estimates.

BUDGETARY INDEPENDENCE?

The Joint Committee of Public Accounts and Audit presented a statement to the Senate on 12 May 2010 on the draft estimates for the Australian National Audit Office. The

committee's statute was amended in 1997 to recast its functions to include a role in overseeing the budget for the ANAO, as a safeguard against the government of the day providing insufficient funds for the office to carry out its functions effectively.

The Senate Standing Committee on Appropriations and Staffing performs a similar function in relation to the budget of the Department of the Senate. Under standing order 19, the committee is required to determine the amount for inclusion in the parliamentary appropriations bill for the department. In practice, the figure is proposed following negotiations at officer level between the Department of the Senate and the Department of Finance and Deregulation. However, the Appropriations and Staffing Committee provides a safety valve should there be any fundamental disagreement between the department and Finance. In the past, the committee has supported the President of the Senate in negotiating on the Senate's behalf with the Finance Minister. A 1985 resolution sets out the process to be followed if difficulties arise. There were no such difficulties this year and the committee's report, determining the amount for inclusion in the 2010–11 parliamentary appropriations bill, was tabled on 13 May 2010.

Despite being proposed on several occasions, there is no similar committee of the House of Representatives. The value of such a committee was most recently canvassed in the House on 17 March 2010 (*Hansard*, pp. 2803-04). From time to time, proposals surface for a Parliamentary Commission to determine the budgets of all the parliamentary departments, but this model is unlikely to serve the Senate as well as the Appropriations and Staffing Committee has.

LEGISLATION

While several bills were dealt with during the week, principally during the time set aside on Thursdays for debate of non-controversial legislation, no significant procedural issues arose. The long-awaited Freedom of Information Amendment (Reform) Bill and the Australian Information Commissioner Bill were passed without amendment during this time, having been extensively amended in the House of Representatives in response to recommendations made by the Senate Finance and Public Administration Legislation Committee.

ORDERS FOR PRODUCTION OF DOCUMENTS

There was a great deal of activity in relation to orders for the production of documents during the period. Routine orders for the production of indexed lists of departmental and agency files, appointments and vacancies, and grants were tabled, the latter in time for the next round of estimates hearings. During the non-sitting period, further bilateral intergovernmental agreements made pursuant to the Fair Work Amendment (State Referrals and Other Measures) Act were tabled, along with the much heralded National Broadband Network Implementation Study (see Bulletin Nos. 237, 238 and 240). The National Human Rights Consultation report was tabled pursuant to order on 11 May, as well as further documents relating to the Education Services for Overseas Students Assurance Fund. A statement

responding to an order for documents relating to the determination and establishment of new therapeutic groups under the National Health Act repeated the misconception that because standing order 164 gives senators the right to take certain action in the chamber 30 days after the deadline for any return to order, there is in effect some leeway in complying with orders for documents. This misconception was the subject of comment in Bulletin No. 237.

Numerous new orders for documents were agreed to during the sitting period, including for documents on the primary schools building program, the Green Loans program and the home insulation program. These orders were initiated by the chairs of the references committees inquiring into these matters. Statements responding to some of these matters were tabled on 13 May. The release of documents on the primary schools building program was refused on the grounds that their release could be reasonably expected to cause damage to relations with the States. The statement by the Assistant Treasurer included a statement that this harm could also result from disclosure of the documents to the committee in camera, an assessment required by the Senate's order of 13 May 2009 relating to the process for making claims of public interest immunity. A statement from the relevant minister in relation to documents on the Green Loans program refused access on the basis that the requested reports had not yet been completed.

COMMITTEES

Committees tabled many reports on bills and other references both before and during the sitting period, indicating that while the work of the Senate is concentrated on sitting days, the work of committees is now almost continuous. Further references were made during the period, including of a private senator's bill inserting a public benefit test for religious and charitable organisations seeking tax exempt status. In previous sitting periods, several proposed inquiries touching on this subject with particular reference to alleged activities of the Church of Scientology had been rejected by the Senate. The COAG health reforms were referred to the Finance and Public Administration References Committee. A 'catch-all' reference was also agreed to, referring provisions of bills to be introduced in the House of Representatives during the estimates fortnight, which have commencement dates on or before 1 July 2010. The reference is a refinement of a similar mechanism adopted for the Budget estimates period last year. A committee may decline to examine a bill if, by unanimous decision, it considers that there are no substantive matters requiring consideration. Such decisions are to be reported to the Senate.

A new low performance mark for the provision of government responses to committee reports was set in relation to reports of the Parliamentary Joint Committee on the Australian Crime Commission. Responses to seven reports dating back to 2005 were tabled on 13 May 2010.

An order requiring the Treasury Secretary to appear before the Economics Legislation Committee at a mutually convenient time before June 30 was agreed to after significant

amendment. Although the Treasury Secretary has been a regular attendee at estimates hearings in recent years, his unavailability this year was not considered appropriate in light of his significant role in the recent review of taxation arrangements.

COMMITTEE OF PRIVILEGES

The Privileges Committee is currently inquiring into provisions of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 and possible conflict with the *Parliamentary Privileges Act 1987*. The bill collects and codifies the various secrecy provisions across the taxation legislation but is proposing to extend the existing law to make it an offence to disclose certain information to Parliamentary committees in certain circumstances. The Privileges Committee held one of its rare public hearings on 13 May and received evidence, including from the Clerk of the Senate, that was critical of the provisions. The committee is due to report out of sitting on 4 June 2010.

PROCEDURE COMMITTEE

The Procedure Committee's *First report of 2010* was presented out of sitting and tabled on 11 May 2010. Topics covered in the report included the consideration of private senators' bills and bills relying substantially on delegated legislation. The committee also considered the adoption of a 'Welcome to Country' ceremony before the opening of Parliament and has sought feedback from senators on several options.

A new reference for the committee was foreshadowed in an exchange between the President of the Senate and the Leader of the Australian Greens, Senator Bob Brown, on 11 May about rules for questions.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate.

Like this bulletin, these documents may be reached through the Senate home page at www.aph.gov.au/senate

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