

## Financial legislation

While the processing of financial legislation<sup>1</sup> follows basically the same pattern as that of ordinary bills, there are additional requirements imposed by the standing orders, and ultimately, by the Constitution. Constitutional requirements also influence the form of financial legislation.

### CONSTITUTIONAL PROVISIONS

#### Parliament's control of government finances by means of legislation

The Parliament has the ultimate control over government finances. This control is two-fold. First, taxes are imposed 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).<sup>2</sup>

#### The Consolidated Revenue Fund

Section 81 of the Constitution requires that all revenues or monies raised or received by the Executive Government of the Commonwealth must be paid into one Consolidated Revenue Fund (CRF). Other Funds referred to in previous editions—the Loan Fund and Trust Fund—and the other funds introduced by the *Financial Management and Accountability Act 1997*—the Reserved Money Fund and the Commercial Activities Fund—were abolished by the *Financial Management Amendment Act 1999*.

All appropriations are now made from the Consolidated Revenue Fund. Under transitional provisions any appropriation expressed to be an appropriation of the Loan Fund has effect as an appropriation of the CRF.<sup>3</sup>

#### Financial initiative of the Executive

What is called the 'financial initiative of the Executive'—that is, the constitutional and parliamentary principle that only the Government may initiate or move to increase appropriations or taxes—plays an important part in procedures for the initiation and processing of legislation.

The principle of the financial initiative, which is dealt with at length in *May*,<sup>4</sup> may be paraphrased as follows:

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1 The term 'money bill' is sometimes used in connection with financial legislation. However, usage of the term and definitions of what it encompasses have not been consistent.

2 Borrowings by the Commonwealth must also be authorised by legislation, *Financial Management and Accountability Act 1997*, s. 37.

3 *Financial Management Amendment Act 1999*, s. 6.

4 *May*, 23rd edn, pp. 848–57.

- The Executive Government is charged with the management of revenue and with payments for the public service.
- It is a long established and strictly observed rule which expresses a principle of the highest constitutional importance that no public charge can be incurred except on the initiative of the Executive Government.
- The Executive Government demands money, the House grants it, but the House does not vote money unless required by the Government, and does not impose taxes unless needed for the public service as declared by Ministers.

The financial initiative in regard to appropriation is expressed in, and given effect by, section 56 of the Constitution:

A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

As section 53 of the Constitution provides that proposed laws appropriating revenue or moneys shall not originate in the Senate, the 'House' referred to in this section is, for all practical purposes, the House of Representatives.

The principle of the financial initiative is also firmly expressed in the constitutional restrictions on the powers of Senate to initiate and amend financial legislation.

## Limits on the Senate's powers in respect of financial legislation

### *Initiation*

The form of bills introduced into the Senate is governed by the limitations imposed by section 53 of the Constitution that 'Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate.'

According to *Quick and Garran* this part of the Constitution crystallises into a statutory form what had been the practice under the British Constitution for more than 220 years prior to 1901. This view is based on a resolution of the House of Commons in 1678 that:

... all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.<sup>5</sup>

However, section 53 goes on to state 'But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.' In relation to these exemptions *Quick and Garran* states that a bill containing, inter alia, clauses authorising the imposition or appropriation of fines or other pecuniary penalties, when the object of those fines or penalties is to secure the execution of the proposed law, could be introduced in the Senate. Similarly, one dealing with a subject such as fisheries beyond territorial waters, and imposing or appropriating fees for licences to fish in such waters could be introduced in the Senate, as could a bill dealing with mining in Federal Territories and authorising the issue of licences to mine upon payments of fees. A

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<sup>5</sup> *Quick and Garran*, p. 667.

bill relating to navigation, requiring the owners of ferry boats to take out licences and pay fees could, says *Quick and Garran*, be brought into the Senate.<sup>6</sup>

The Whaling Bill 1935 designed, inter alia, to regulate the whaling industry in the Australian Antarctic Waters by the issue and control of licences to whaling companies registered in Australia, originated in the Senate and was agreed to by the House, after amendment.<sup>7</sup>

In its 1995 report on the third paragraph of section 53 of the Constitution, the House's Standing Committee on Legal and Constitutional Affairs recommended that bills which increase expenditure under a standing appropriation should not be originated in the Senate and that bills which affect the tax base or tax rates should be originated in the House of Representatives.<sup>8</sup>

### Amendment

The second paragraph of section 53 of the Constitution provides that 'The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government'. The third paragraph of section 53 provides 'The Senate may not amend any proposed laws so as to increase any proposed charge or burden on the people.' However, the Senate may request the House to make such amendments as the Senate itself is unable to make. The effect of these provisions is examined in more detail in the following chapter on 'Senate amendments and requests'.

Section 54 of the Constitution states that bills appropriating revenue or moneys for the ordinary annual services of the Government—that is, the main Appropriation Bills (and, in the past, the main Supply Bills)—shall deal only with such appropriation.

Section 55 of the Constitution requires that laws imposing taxation shall deal only with the imposition of taxation and furthermore with only one subject of taxation.

The importance of sections 54 and 55 is that they protect the Senate's right to amend non-financial measures. As the Senate is precluded from amending a main Appropriation Bill or a main Supply Bill or bills imposing taxation, these two sections together were inserted in the Constitution to prevent the House embodying in such bills other provisions (known as 'tacking'), a course which would prejudice the right of the Senate to amend such provisions.

## BILLS CONTAINING SPECIAL APPROPRIATIONS

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

- contain words which appropriate the Consolidated Revenue Fund 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 the Consolidated Revenue Fund under existing words of appropriation in a principal Act to be amended, or another Act.

Special appropriations may be specific or indeterminate in both amount and duration. Those not restricted in application to one financial year are known as standing

<sup>6</sup> *Quick and Garran*, pp. 667–8.

<sup>7</sup> J 1934–37/114; S. Deb. (30.10.35) 1059, 1180; VP 1934–37/508.

<sup>8</sup> PP 307 (1995).

appropriations. The majority of total expenditure from the Consolidated Revenue Fund is by way of special appropriation.<sup>9</sup>

Examples of bills which, while not in themselves containing words of appropriation, would increase or alter the destination of the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation, are:

- a principal Act to be amended—the Apple and Pear Stabilization Amendment Bill (No. 2) 1977 did not contain actual words of appropriation but extended for the 1978 season financial support under the *Apple and Pear Stabilization Act 1971*;
- another Act—The ABC/SBS Amalgamation Bill 1986 (cl. 30) provided that money already appropriated for the Special Broadcasting Service be directed to the Australian Broadcasting Corporation.

## Procedures peculiar to special appropriation bills

### *Introduction*

The introductory and other stages through which such bills pass are similar to those described in connection with ordinary bills. However, the principle of the financial initiative of the Executive plays an important part in procedures for initiation and processing of all legislation providing for appropriations of public moneys.

The requirement of section 56 of the Constitution for appropriations to be recommended by a message of the Governor-General is supplemented and given effect to by standing order 180:

- (a) All proposals for the appropriation of revenue or moneys require a message to the House from the Governor-General recommending the purpose of the appropriation in accordance with section 56 of the Constitution.
- (b) For an Appropriation or Supply Bill, the message must be announced before the bill is introduced.
- (c) For other bills appropriating revenue or moneys, a Minister may introduce the bill and the bill may be proceeded with before the message is announced and *standing order 147 (message recommending appropriation)* applies.
- (d) A further message must be received before any amendment can be moved which would increase, or extend the objects and purposes or alter the destination of, a recommended appropriation.

As the Governor-General acts on ministerial advice, it is not possible for a private Member to obtain the Governor-General's recommendation for an appropriation. Furthermore, when a recommendation is required, only a bill introduced by a Minister may be proceeded with before the message is announced (for appropriation and supply bills *see* p. 416). Therefore in practice only a Minister may introduce a bill which appropriates public moneys.

The permissive element in the standing order stating that such bills 'may be proceeded with before the message is announced' has become the firm practice, and messages concerning bills containing a special appropriation are announced after the bill has been read a second time,<sup>10</sup> not before the bill is introduced.<sup>11</sup>

<sup>9</sup> H.R. Deb. (29.10.81) 2828–9. *And see Odgers*, 11th edn, p. 289.

<sup>10</sup> S.O. 147.

<sup>11</sup> *But see* VP 1993–95/ 2169, 2185.

Special appropriation bills which also deal with taxation may be introduced without notice under standing order 178. In practice such bills have also been introduced pursuant to notice and by leave.

### *Second reading amendment*

In the case of a special appropriation bill, a private Member may move a reasoned amendment bearing on the appropriation, even though such an amendment could not be moved during the detail stage. The success of such a reasoned amendment would simply be declaratory of the opinion of the House and would not effect an amendment of the bill itself. Consequently, a second reading amendment is in order to the effect that a bill be withdrawn and re-drafted with a view to providing, for example, that a subsidy paid to gold producers also be paid as a bonus on gold recovered from gold mine dumps and tailings,<sup>12</sup> whereas an amendment to the bill to such effect could not be moved during consideration in detail unless a further message from the Governor-General recommending an appropriation for the purposes of the amendment was received. In response to a point of order that a proposed second reading amendment was out of order as it would increase the expenditure contemplated by the proposed legislation, the Speaker ruled that the proposed amendment was merely a declaration of opinion, that it, in itself, did not increase expenditure, and was therefore in order.<sup>13</sup>

### *Proceedings following second reading*

The procedure on special appropriation bills immediately following the second reading differs from ordinary bills in that the Governor-General's message recommending appropriation is then announced—that is, just before the detailed consideration of the clauses of the bill.

### *Message recommending appropriation*

Prior to August 1990 the terms of any message from the Governor-General recommending appropriation were made known to the House by the Speaker reading them out in full. Current practice is for the Chair just to announce the receipt of the message. The message normally takes the following form:

[Signature]

Governor-General

Message No. [ ]

In accordance with the requirements of section 56 of the Constitution, the Governor-General recommends to the House of Representatives that an appropriation be made for the purposes of a Bill for an Act [remainder of long title].

Canberra [date]

Messages may however contain precise details on the relevant purposes of the appropriation.<sup>14</sup> Messages recommending an appropriation have been received from the Deputy of the Governor-General<sup>15</sup> and, in the absence of the Governor-General from Australia, from the Administrator.<sup>16</sup>

12 VP 1959–60/140; H.R. Deb. (12.5.59) 2059–61, 2211. A more recent example is the amendment moved to the Private Health Incentives Bill 1998 that the bill be withdrawn and redrafted to provide for increased funding for the private hospital system, VP 1998–2001/72.

13 VP 1932–34/910.

14 VP 1987–89/896.

15 VP 1978–80/321; VP 1967–68/156.

16 E.g. VP 1977/176. Messages from the Governor-General and the Administrator have been received in respect of the same bill (the latter in respect of an amendment), VP 2002–04/1471.

The message is drafted within the Office of Parliamentary Counsel, which arranges for the Governor-General's signature and delivers the message to the Clerk of the House.<sup>17</sup>

On occasions in the past a message recommending appropriation was received after the House had completed consideration of a bill. In such cases the message was reported to the House at the first opportunity<sup>18</sup> and the bill was not transmitted to the Senate for its concurrence until the message had been reported. In other circumstances a message not announced at the usual time was announced later, including, by leave, during the consideration in detail stage.<sup>19</sup> Although such procedures may have conformed with the requirement of the then applying standing order, that an appropriation message should be announced after the bill had been read a second time,<sup>20</sup> it was generally the practice to announce the message immediately after the second reading, and this is now the required practice.<sup>21</sup> (A message recommending an appropriation for the purposes of an amendment should be announced before the amendment is moved—*see below*.)

When bills are considered together after standing orders have been suspended, and it is necessary in respect of any of the bills to announce a message recommending an appropriation, the motion for the suspension of standing orders has included a provision to enable the message(s) to be announced after the motion 'That the bills be passed' or 'That the bills be now read a second time', etc, has been agreed to.<sup>22</sup>

If after a prorogation, the House agrees to resume consideration of a lapsed bill in respect of which a message recommending an appropriation has been announced in the previous session, a new message is announced.<sup>23</sup>

#### MESSAGE FOR AMENDMENT

If a Minister wishes to move an amendment which would increase or extend the objects and purposes, or would alter the destination, of the appropriation so recommended by the Governor-General, a further message from the Governor-General is required.<sup>24</sup> The message in this instance recommends that an appropriation be made for the purpose of an amendment to the bill.<sup>25</sup>

A message from the Governor-General recommending an appropriation for the purposes of an amendment to be moved to a bill is announced before the amendment is moved.<sup>26</sup> Normally the message is announced immediately after the message recommending an appropriation for the purposes of the bill.<sup>27</sup> Such a message has been announced, by leave, after the consideration in detail stage had commenced.<sup>28</sup> Where a bill has not been accompanied by a message for the purposes of the bill, a message for the purposes of an amendment has also been announced before the House commenced to consider the bill in detail.<sup>29</sup> A message recommending that the purposes of the appropriation proposed by the main appropriation bill for the year be varied in accordance with an amendment to be

17 Messages required urgently may be received by facsimile.

18 VP 1978–80/321; VP 1968–69/573; VP 1993–95/2169, 2185; VP 1996–98/2993.

19 VP 1993–95/1023.

20 Former S.O. 296.

21 S.O. 147.

22 VP 1970–72/1033; VP 1968–69/525; VP 1998–2001/207.

23 *See* 'Lapsed bills' in Ch. on 'Legislation'.

24 S.O. 180(d).

25 VP 1993–95/2148; VP 1998–2001/882.

26 S.O. 180(d).

27 VP 1977/409; VP 1998–2001/882.

28 VP 1993–95/1023.

29 VP 1974–75/561–2.

moved by a Minister, the proposed amendment being specified in the message, was announced to the House immediately before the bill was further considered in detail.<sup>30</sup>

When the Governor-General by message recommends an appropriation for the purposes of an amendment requested by the Senate in a bill which originated in the House, the message is announced before the requested amendment is considered by the House.<sup>31</sup> A message cannot recommend appropriation to the House in respect of a Senate *amendment*, as the recommendation must be made to the House in which the proposal originated.<sup>32</sup> A replacement message has been provided where the long title of an appropriation bill has been amended.<sup>33</sup>

### *Consideration in detail*

The only additional consideration in respect of special appropriation bills at the detail stage, not in common with ordinary bills, is imposed by standing order 180 and the principle of the financial initiative of the Executive. As outlined above, no amendment of a proposal for the appropriation of any public moneys may be moved which would increase, or extend the objects and purposes or alter the destination of, the appropriation recommended unless a further message is received. This restriction effectively prevents private Members from moving such amendments.<sup>34</sup> A proposed amendment has been ruled out of order because it appeared to involve an appropriation,<sup>35</sup> or because its effect would be to increase the appropriation required,<sup>36</sup> alter the purpose of the appropriation,<sup>37</sup> alter the destination of the appropriation,<sup>38</sup> or go beyond the appropriation recommended.<sup>39</sup> The assessment of whether amendments proposed by private Members would be in order can be difficult. At one extreme it may be argued that virtually any change in any bill will have some financial impact and, at the other extreme, it may be claimed that, unless an amendment explicitly and directly increases or alters an appropriation, it may be moved by a private Member. It is considered that neither of these positions is valid and that the only proper course is to examine each proposed amendment on its merits. The test that should be applied is to ask what is expected to be the practical result or consequence of the amendment in so far as an appropriation is concerned. An amendment by a private Member to a bill may be out of order because, for instance, even though the bill as introduced does not have any direct financial impact, if it amends a principal Act, a Member could seek to use the opportunity provided by the bill to move an amendment which would increase or vary the appropriation in the principal Act. It has been considered that the provisions of standing order 180 do not prevent a private Member from moving an amendment which, if successful, would reduce 'savings' proposed in a bill, provided the effect was not to increase expenditure above that already provided for in the principal Act.<sup>40</sup>

It is not unusual for a Member to be advised in advance that a proposed amendment may be ruled out of order by the Chair on one of the grounds mentioned, but sometimes

30 VP 1974-75/944.

31 S.O. 181; VP 1978-80/286; VP 1974-75/544; VP 1998-2001/2025.

32 Constitution, s. 56.

33 VP 1990-92/1392; H.R. Deb. (26.3.92) 1308.

34 S.O. 180(d).

35 VP 1993-95/2596.

36 VP 1970-72/149-50; VP 1977/409.

37 VP 1932-34/929.

38 VP 1968-69/256.

39 VP 1917-19/280.

40 VP 1996/984.

Members have proceeded to propose an amendment so that they could make a particular point. A Member unable to move an amendment in such circumstances may choose to put his or her view on the matter to the House in an appropriate second reading amendment,<sup>41</sup> or to read the amendment they would have moved into the Hansard record.<sup>42</sup>

## APPROPRIATION AND SUPPLY BILLS

### Summary of annual financial legislation

The Parliament appropriates moneys from the Consolidated Revenue Fund on an annual basis in order to fund expenditure by the Government. Prior to 1999 the appropriation of funds by the annual appropriation bills expired at the end of the financial year on 30 June. The annual appropriations, although related to activity in a specific year, no longer lapse at the end of the year—appropriations for departmental expenses are open ended, while appropriations for administered expenses are limited to expenses incurred in that year.

**Appropriation Bill (No. 1)** is a key element in ‘the Budget’; it contains details of estimates for ordinary annual government services—that is, continuing expenditure by government agencies on services for existing policies.<sup>43</sup>

**Appropriation Bill (No. 2)** is also introduced as part of the Budget and appropriates funds for expenditure on new policies, new capital expenditure, and grants to the States under section 96 of the Constitution.

**Appropriation (Parliamentary Departments) Bill**, also introduced as part of the Budget, appropriates funds for the parliamentary departments.

**Appropriation Bills (No. 3) and (No. 4) and Appropriation (Parliamentary Departments) Bill (No. 2)** are referred to as the additional or supplementary estimates. Appropriation Bill (No. 3) appropriates funds for administrative expenses, while Appropriation Bill (No. 4) provides for capital expenditure—thus they parallel Appropriation Bills (No. 1) and (No. 2) respectively. They are necessary because departments 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.<sup>44</sup>

**Supply bills** make interim provision for expenditure when the main appropriation bills are not going to be passed before the start of the financial year on 1 July. Supply bills are no longer part of the normal annual routine, but were necessary in the past when Budgets were introduced in August. As with the appropriation bills, (No. 1) referred to salaries and administrative expenses and (No. 2) provided for capital expenditure. The Supply (Parliamentary Departments) Bill provided funds for parliamentary expenditure.<sup>45</sup>

The **Advance to the Minister for Finance and Administration**, and the advances to the Presiding Officers, are allocations of funds in the main appropriation bills and (if

41 VP 1985–87/1672; H.R. Deb. (14.5.87) 3282; VP 1987–89/864.

42 H.R. Deb. (29.5.02) 2586.

43 Since 1994 usually introduced in May. See Treasurer’s statement on change from the traditional August Budget, H.R. Deb. (17.12.93) 4398–400.

44 Now generally introduced between October and February, but traditionally in April when the Budget took place in August. Other appropriation bills introduced to cover special expenditure—for example as Appropriation Bill (No. 3)—may cause the additional estimates to be numbered differently—for example (No. 4) and (No. 5). For further coverage of additional appropriation bills see p. 421.

45 For further coverage of supply bills see p. 422.

introduced) the supply bills in order to meet emergency or unforeseen expenditure during the course of the financial year (*see* page 422).

### Ordinary annual services of the Government

The Constitution provides that a proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation (to avoid what is known as ‘tacking’ on to a bill other measures which the Senate could otherwise amend).<sup>46</sup> The Senate may not amend any proposed law appropriating revenue or moneys for the ordinary annual services of the Government.<sup>47</sup> The main appropriation bill (Appropriation Bill (No. 1)) for the year has, since soon after Federation, provided for the ordinary annual services of the Government, and a second appropriation bill has contained provision for expenditure not appropriately included in the main bill. The second bill (Appropriation Bill (No. 2)) has, in earlier years, been called Appropriation (Works and Buildings), Appropriation (Works and Services) and Appropriation (Special Expenditure). The second appropriation bill is considered, constitutionally, to be capable of amendment by the Senate.

Subsequent bills with equivalent purposes are treated similarly. Appropriation Bill (No. 3) and Supply Bill (No. 1) are for the ordinary annual services of the Government and are therefore not capable of amendment by the Senate. Appropriation Bill (No. 4) and Supply Bill (No. 2) are capable of amendment by the Senate, subject to the restrictions imposed by section 53 of the Constitution. As the parliamentary appropriation and supply bills are not for ordinary annual services of government they are therefore also subject to possible Senate amendment.

The distribution of appropriations between the (No. 1) and (No. 2) bills was the subject of negotiation and agreement between the Government and the Senate in 1965, when the Treasurer announced that henceforth there would be a separate bill (Appropriation Bill (No. 2)), subject to amendment by the Senate, containing appropriations for expenditure on:

- the construction of public works and buildings;
- the acquisition of sites and buildings;
- items of plant and equipment which are clearly identifiable as capital expenditure;
- grants to the States under section 96 of the Constitution; and
- new policies not authorised by special legislation (subsequent appropriations to be included in the Appropriation Bill (No. 1) not subject to amendment by the Senate).<sup>48</sup>

In 1999, with the introduction of accrual accounting to the Budget process, the Senate agreed to government proposals to vary the contents of the two appropriation bills as follows:

- items regarded as equity injections and loans be regarded as not part of the annual services;
- all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services;

<sup>46</sup> Constitution, s. 54.

<sup>47</sup> Constitution, s. 53.

<sup>48</sup> H.R. Deb. (13.5.65) 1484–5.

- all appropriations for existing asset replacement be regarded as provision for depreciation and part of ordinary services.<sup>49</sup>

## The components of the annual Budget

### *Appropriation Bill (No. 1)—the main appropriation bill*

The main appropriation bill for the year (Appropriation Bill (No. 1)) is an integral part of the Government's Budget proposals. The 'Budget' is the term ordinarily used for the annual financial statement presented to the House by the Treasurer<sup>50</sup> and includes the Appropriation Bills (Nos 1 and 2), the Appropriation (Parliamentary Departments) Bill, documents relating to the bills and other legislation to give effect to the Budget (*see* p. 420). The introduction of the Appropriation Bill (No. 1) is the first parliamentary step in placing the Budget before the House.

#### MESSAGE RECOMMENDING APPROPRIATION AND INTRODUCTION

The introduction of the Appropriation Bill (No. 1) is preceded by the announcement by the Speaker of a Governor-General's message recommending 'an appropriation for the purposes of a Bill for an Act to appropriate money out of the Consolidated Revenue Fund for the ordinary annual services of the Government, and for related purposes'.<sup>51</sup>

The long title of the bill introduced must be identical to the title of the bill cited in the Governor-General's message.<sup>52</sup> Before an amendment can be moved to an appropriation or supply bill's title a further message is necessary, specifying the long title as proposed to be amended.<sup>53</sup>

Standing order 178 allows the bill to be introduced without notice by a Minister, in this instance the Treasurer.<sup>54</sup>

#### 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.<sup>55</sup> In making the Budget speech, the Treasurer speaks without limitation of time (but in practice about 30 minutes) and 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 later in the Budget week. In the response to the Government's Budget proposals, the Leader of the Opposition (or a Member deputed by the Leader) speaks without limitation of time (but in practice about 30 minutes). The scope of discussion in the Budget debate is almost unlimited, as the standing order which applies the rule of relevancy makes the main

49 Senate Standing Committee on Appropriations and Staffing, *Thirtieth report*, March 1999. J 1999/620, 777.

50 Supplementary economic statements may be made at times other than the Budget in the form of a ministerial statement, by leave.

51 S.O. 180(b), e.g. VP 2002–2004/158.

52 In 1999 the Minister for Finance and Administration hand-amended the long titles of two appropriation bills in the Chamber, prior to the bills' presentation, to ensure consistency with the messages.

53 VP 1990–92/1392.

54 The Minister for Finance and Administration is responsible for administration of the Commonwealth Public Account and thus administers the bill. However the Treasurer is responsible for economic, fiscal and monetary policy and introduces the main appropriation bills.

55 H.R. Deb. (9.5.95) 68–75.

appropriation bill one of the exceptions from its provisions.<sup>56</sup> Until recent years the Budget debate traditionally continued over a period of several weeks. However, now that the Budget is (usually) presented in May less time is spent in considering it in order that the appropriation bills can be passed by the Parliament before the start of the financial year on 1 July. The appropriation bills have been subject to a declaration of urgency.<sup>57</sup> The Budget debate may be taken partly in the Main Committee.<sup>58</sup>

#### REASONED AMENDMENT

An amendment relating to public affairs beyond the scope of the bill may be moved to the motion for the second reading of the main appropriation bill.<sup>59</sup> Such amendments are often moved by the Leader of the Opposition or a shadow minister and can be expected to refer to aspects of the Budget with which the Opposition is dissatisfied.<sup>60</sup> On occasion the second reading amendment has been moved at a later stage in the debate.<sup>61</sup> This procedure allows opposition Members to address themselves to the main question and to address the House again (speaking to the amendment) later in the debate. The Leader of the House, in moving a motion to reduce the time limits for speeches on the second reading debate on the Appropriation Bill (No. 1) 1978–79 from 20 to 15 minutes, explained that opposition Members, on the basis of an amendment being moved after they had spoken once, had two opportunities to address the House; the reduced time limits were necessary to give the maximum number of government Members the opportunity to address the House.<sup>62</sup>

If such a reasoned amendment were carried this would, in effect, place the Government's position in jeopardy. In 1963, on the first Budget to which the revised financial procedures applied, the Leader of the Opposition unsuccessfully moved an amendment to the effect that, for reasons specified, the House was of the opinion that the Government no longer possessed the confidence of the nation.<sup>63</sup>

#### CONSIDERATION BY ESTIMATES COMMITTEES

Between 1979 and 1981 the House experimented with sessional orders providing for the proposed expenditures contained in Appropriation Bill (No. 1) to be considered in estimates committees.<sup>64</sup> An account of the operation of the estimates committees is given at page 359 of the first edition. In 2003 the Procedure Committee recommended that the House refer the proposed expenditures to its standing committees or committees composed of House members of joint committees, and that hearings be held for those departments where the responsible Minister or Presiding Officer was a Member of the House of Representatives.<sup>65</sup>

After copies of the budget documentation (*see* page 420) are presented in the Senate on Budget night, the 'particulars of proposed expenditure' (the schedules in the appropriation bills containing the estimates) and the Portfolio Budget Statements are referred to Senate legislation committees. This allows Senate consideration of the estimates before the

56 S.O. 76(c).

57 E.g. VP 1993–95/1052.

58 E.g. VP 1993–95/2101–2; H.R. Deb. (5.6.95) 1093. This is now usual.

59 S.O. 145(b); e.g. VP 1993–95/194; VP 1996–98/408–10.

60 E.g. VP 1985–87/1110. Not moved by Leader of the Opposition: VP 1993–95/193–4; VP 1996–98/408–10; VP 2002–04/1617–8.

61 E.g. VP 1978–80/990.

62 H.R. Deb. (24.8.78) 716.

63 VP 1962–63/524.

64 VP 1978–80/1011–13, 1589 (amended), VP 1980–83/419–21 (renewed and revised).

65 The recommendation was not acted on. Standing Committee on Procedure, *House estimates: consideration of the annual estimates by the House of Representatives*. PP 211 (2003). This report also discusses the background to the demise of the estimates committees after 1981.

appropriation bills have passed the House of Representatives. The Senate legislation committees in estimates mode conduct public hearings over a two week period while the House is engaged in the budget debate.<sup>66</sup>

#### CONSIDERATION IN DETAIL

The House or Main Committee first considers the schedule which expresses the services for which the appropriation is to be made, before considering the clauses.<sup>67</sup> The order for considering the proposed expenditures is the order in which the expenditures are shown in the schedule and they are traditionally listed in alphabetical order of government departments. As this order may not be convenient to individual Ministers or shadow ministers, it is the usual practice for a Minister to suggest an order for consideration, with some departments grouped together for convenience of debate.<sup>68</sup> When the House or Main Committee has agreed to the order, it is recorded as a resolution.<sup>69</sup> The agreed order may be varied by further resolution to meet the convenience of the House or the Committee.<sup>70</sup>

Debate which covers departmental activity and government policy in the area, as well as financial details, is in order. A private Member may not move an amendment which would infringe the financial initiative of the Executive.<sup>71</sup> A private Member may move to reduce the amount of the proposed expenditure or may move to omit or reduce items, but may not move to increase an amount or alter the purposes of the proposed expenditure. The traditional form of the amendment is ‘That the proposed expenditure for the Department of . . . be reduced by \$ . . .’.<sup>72</sup> The Member may then state the reason for moving the amendment, for example, ‘as an instruction to the Government to . . .’, ‘because the Government has failed to . . .’, ‘because, in the opinion of the House, the Government should . . .’. The reason is not recorded in the Votes and Proceedings.<sup>73</sup>

In 1941, under now superseded financial procedures, an amendment was successfully moved in Committee of Supply to reduce the first item by £1.<sup>74</sup> The Government resigned four days later.<sup>75</sup> However, a successful private Member’s motion to reduce a Budget appropriation does not necessarily place the Government in jeopardy. For example, in 1995 an appropriation in Appropriation Bill (No. 4) was reduced as a result of an amendment moved by an opposition Member.<sup>76</sup>

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.<sup>77</sup> An amendment to an appropriation bill which does not affect the appropriation recommended may be moved without obtaining a further message.<sup>78</sup>

<sup>66</sup> For details see *Odgers*, 11th edn, pp 364–9.

<sup>67</sup> S.O. 149(d).

<sup>68</sup> H.R. Deb. (14.9.78) 1043; H.R. Deb. (5.6.95) 1142 and VP 1998–2001/622–3 (Main Committee).

<sup>69</sup> E.g. VP 1978–80/387–8; VP 1993–95/2115 and VP 1998–2001/622 (Main Committee).

<sup>70</sup> E.g. VP 1978–80/399, 410; VP 1996–98/3096.

<sup>71</sup> A private Member would not have available the Governor-General’s message required by S.O. 180(d).

<sup>72</sup> E.g. VP 1977/353; 1993–95/324.

<sup>73</sup> H.R. Deb. (14.9.72) 1469; H.R. Deb. (5.10.93) 1638.

<sup>74</sup> The item reduced was for salaries for Senate staff. Nowadays a second reading amendment would be used to express disapproval of the Budget or government policies behind the Budget.

<sup>75</sup> VP 1940–43/190, 193, 195.

<sup>76</sup> VP 1993–95/2655 (proposed payment of \$243,537 to fund a Minister’s legal fees in relation to a State Royal Commission—the amendment was not opposed by the Government).

<sup>77</sup> VP 1974–75/944; 1990–92/1736, 1762–3.

<sup>78</sup> VP 1974–75/954; VP 1990–92/197.

After completing consideration of the schedule, the House or Main Committee 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.<sup>79</sup>

#### PROPOSED IMPROVEMENTS TO PROCEDURES FOR CONSIDERATION OF ESTIMATES

In 2003 the Procedure Committee reviewed arrangements for the consideration of the annual estimates by the House, in response to criticisms of then current practice. The committee focused on the problem of time allocation, noting that in recent years the estimates debates had been curtailed because of the time restraints imposed by the need to have the appropriation legislation introduced in mid-May agreed to by both Houses of the Parliament before the beginning of the financial year on 1 July. The committee's solution was to make better use of the opportunities offered by the Main Committee for 'parallel processing' by separating the general budget debate from the second reading of Appropriation Bill (No. 1) in order to enable the estimates debates—the consideration in detail stage—to begin much earlier. The committee proposed that the second reading would be agreed to without further debate immediately following the Leader of the Opposition's reply. After this, the 'budget debate' (on the motion 'That the House approves the Budget'), and the consideration in detail stage of the bill could take place concurrently.

Other recommendations aimed at making the proceedings more effective included:

- advance programming of the debates with a timetable printed on the Notice Paper;
- opening statements by the responsible Ministers and possible statements by relevant committee chairs;
- presentation of Portfolio Budget Statements in the House;
- a requirement for a Minister to be present.<sup>80</sup>

#### *Appropriation Bill (No. 2)*

This bill is also introduced without notice following the Speaker's announcement of a Governor-General's message recommending 'an appropriation for the purposes of a Bill for an Act to appropriate money out of the Consolidated Revenue Fund for certain expenditure, and for related purposes'.<sup>81</sup> The bill is introduced immediately after Appropriation Bill (No. 1). The procedure for the passage of the Appropriation Bill (No. 2) is similar to that for the main appropriation bill except that when the second reading is debated separately the wide range of debate and amendment allowed on the second reading consideration of the main bill is not permitted and normal relevancy rules apply. Should the House consider the bill in detail, it would be considered in the same manner as the main appropriation bill; that is, the schedule is considered before the clauses.<sup>82</sup> However, it is generally the practice for leave to be granted for the third reading to be moved immediately after the second reading. It is out of order to refer to Appropriation Bill (No. 2) estimates during the detail stage of Appropriation Bill (No. 1).

#### *Appropriation (Parliamentary Departments) Bill*

This bill is also introduced without notice following the introduction of Appropriation Bill (No. 2) and provides for funds for the operations of the parliamentary departments. The

<sup>79</sup> VP 1993–95/2124, 2120; VP 1998–2001/652.

<sup>80</sup> Standing Committee on Procedure, *House estimates: consideration of the annual estimates by the House of Representatives*. PP 211 (2003).

<sup>81</sup> E.g. VP 2002–2004/158–9.

<sup>82</sup> S.O. 149(d).

practice for the passage of the bill has been the same as that for Appropriation Bill (No. 2), with the rule of relevancy applying.

### *Budget papers and related documents*

Associated with the Budget are certain related documents and bills. After debate on Appropriation Bill (No. 1) has been adjourned, Budget-associated documents are normally presented. The nature and titles of these documents have varied. In 2004 the Treasurer presented the following papers:

- Budget Strategy and Outlook, containing information on the economic and financial outlook, together with information on the fiscal strategy (Budget paper No. 1).
- Budget Measures, providing a comprehensive statement on the budget expense, revenue and capital measures in the Budget (Budget paper No. 2)
- Federal Financial Relations, providing information on Commonwealth financial relations with the States, Territories and local government (Budget paper No. 3).
- Agency Resourcing, containing information on resourcing for Commonwealth agencies, including Appropriation Bills Nos 1 and 2, and the Appropriations (Parliamentary Departments) Bill (Budget paper No. 4).

Together with a pamphlet copy of the Treasurer's speech these documents are presented as the 'Budget Papers'. At the same time the Treasurer may also present other 'Budget related papers'. Alternatively such papers may be presented by another Minister or a Parliamentary Secretary at a later stage of proceedings. Portfolio Budget Statements, also listed as 'Budget related papers', are available from individual departments after the Budget.<sup>83</sup> Budget and Budget related documents may be accessed on the internet from the Department of Finance and Administration website.

After the presentation of the papers by the Treasurer a motion may be moved that the documents be made Parliamentary Papers. This motion may be debated but debate must be relevant to the motion, and does not allow the subject matter of the documents, including the state of the economy or events in the preceding financial year, to be debated.<sup>84</sup>

Other Budget related business may follow.<sup>85</sup> Budget related bills may be introduced,<sup>86</sup> ministerial statements explaining Budget decisions in detail are sometimes made or presented, and customs and excise tariff proposals connected with the Budget are often moved.

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 occasionally assumed.<sup>87</sup>

83 Portfolio Budget Statements (PBS) and Portfolio Additional Estimates Statements (PAES) are declared in Appropriation Acts to be relevant documents for the purposes of section 15AB of the *Acts Interpretation Act 1901*—that is, they may be used as extrinsic material in the interpretation of the Appropriation Acts. PBS and PAES are presented in the Senate but the practice has been not to present them in the House (a practice to which the Procedure Committee has objected, see Standing Committee on Procedure, *House estimates: consideration of the annual estimates by the House of Representatives*. PP 211 (2003): pp. 30–31).

84 H.R. Deb. (15.8.72) 139–42.

85 E.g. VP 1993–95/2029–31.

86 E.g. a Taxation Laws Amendment Bill.

87 H.R. Deb. (18.6.86) 902.

### Additional appropriation bills

Where an amount provided in the Appropriation Acts (Nos 1 or 2) is insufficient to meet approved commitments falling due in a financial year, additional or supplementary appropriation may be sought in further appropriation bills. These are usually designated Appropriation Bill (No. 3) for expenditure in respect of the ordinary annual services of the Government, and Appropriation Bill (No. 4) for expenditure in respect of other than the ordinary annual services. Similarly, an Appropriation (Parliamentary Departments) Bill (No. 2) may be introduced in respect of the departments supporting the Parliament. Appropriations may also be sought in these bills for new expenditure proposals. Appropriation Bill (No. 3) is not considered in the same detail as Appropriation Bill (No. 1). However, as with Appropriation Bill (No. 1), a wide range of debate and amendment is permitted on the second reading of an additional appropriation bill for expenditure for the ordinary annual services of the Government<sup>88</sup>—that is, (usually) Appropriation Bill (No. 3).

As well as providing for increased appropriations, additional appropriation bills may be used to reallocate funds previously appropriated for other purposes—Appropriation Bills (Nos 3 and 4) 1992–93 were introduced with this explanation.<sup>89</sup> Further additional appropriation bills may be introduced if funds provided by the Nos 3 and 4 bills prove insufficient—for example, Appropriation Bills (Nos 5 and 6) 1992–93 and 2003–2004.<sup>90</sup> In 1995 an amendment moved by an opposition Member to Appropriation Bill (No. 4) 1995–96 (to reduce expenditure on a proposal) was agreed to.<sup>91</sup>

On occasion additional appropriation bills are introduced for special purposes, for example:

- Appropriation Bill (No. 3) 1990–91 appropriated funds to meet urgent requirements arising as a consequence of the Gulf War;<sup>92</sup>
- Appropriation (Supplementary Measures) Bills (Nos 1 and 2) 1999 appropriated funds for book industry assistance, for a welfare program and for expenditure on environmental matters;<sup>93</sup>
- Appropriation (East Timor) Bill 1999–2000 appropriated funds for expenditure related to East Timor.<sup>94</sup>
- Appropriation (Tsunami Financial Assistance) Bill 2004–2005 and Appropriation (Tsunami Financial Assistance and Australia–Indonesia Partnership) Bill 2004–2005 appropriated funds for assistance to Indonesia in response to the December 2004 tsunami disaster.<sup>95</sup>

Such bills are preceded by the announcement of a Governor-General's message recommending appropriation<sup>96</sup> and may be introduced without notice.<sup>97</sup>

88 S.O.s 76(c), 145(b).

89 H.R. Deb. (24.11.92) 3401–3.

90 VP 1993–95/14; VP 2002–04/1591–2.

91 VP 1993–95/2655. The Senate subsequently agreed to a further amendment to the bill, which was agreed to by the House; VP 1993–95/2703–4.

92 VP 1990–92/515, H.R. Deb. (14.2.91) 652.

93 VP 1998–2001/803 (bills introduced on notice).

94 VP 1998–2001/1106–7.

95 VP 2004–05/219.

96 S.O. 180(b).

97 S.O. 178.

Appropriation Bill (No. 5) 1991–92 was introduced, while Appropriation Bills (Nos 3 and 4) were before the House, with the purpose of separating for urgent consideration certain appropriations from Appropriation Bill (No. 3),<sup>98</sup> which was later correspondingly amended.<sup>99</sup>

### Supply bills

Supply bills are no longer part of the regular annual routine. Their function was to provide funds in the interim period when the main appropriation bills were 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.<sup>100</sup> If such measures are necessary Supply Bills (Nos 1, 2 and Parliamentary Departments) would be introduced in April or May to appropriate money from the Consolidated Revenue Fund to make interim provision for expenditure for the following financial year from 1 July pending the passing of the main appropriation bills for that year. The amount provided in each supply bill was usually limited to not more than five months' requirements—that is, the first five months of the forthcoming financial year. The amounts provided in the supply bills, in the main, were based on expenditures or appropriations of the previous year and did not include expenditure for which a special appropriation existed in another Act.

Procedures for supply bills, including the financial initiative limitation on amendment, are the same as for appropriation bills. As in the case of the main appropriation bills, the wide scope of debate and amendment allowed in respect of Supply Bill (No. 1) for the service of the year<sup>101</sup> would not extend to Supply Bill (No. 2) providing for certain other expenditure. However, supply bills differ from the main appropriation bills in that there is no Budget speech or Budget debate, as such.

Supply bills additional to Supply Bills (Nos 1 and 2) have been introduced. Supply Bills (Nos 3 and 4) 1992–93 were introduced concurrently with Appropriation Bills (Nos 1 and 2) 1992–93, with the expectation that Parliament would agree to the earlier availability of the interim provisions.<sup>102</sup>

### Advance to the Minister for Finance and Administration

The Appropriation Acts (Nos 1 and 2) and, when they are used, the Supply Acts (Nos 1 and 2) each provide an appropriation of funds for what is known as the Advance to the Minister for Finance and Administration. These amounts enable the Minister for Finance and Administration to make moneys available for expenditure, particulars of which will afterwards be submitted to the Parliament, being expenditure that the Minister for Finance and Administration is satisfied is urgently required and was unforeseen or erroneously omitted from, or understated in, the Appropriation or Supply Act.

When expenditure has been charged to an advance a corresponding amount is included in the next equivalent appropriation bill—that is, advances from Supply Acts (Nos 1 and 2) in Appropriation Bills (Nos 1 and 2), as appropriate, and advances from Appropriation Acts (Nos 1 and 2) in Appropriation Bills (Nos 3 and 4). The only amounts which remain a

98 VP 1990–92/1372, H.R. Deb. (24.3.92) 969.

99 VP 1990–92/1392–4.

100 Supply bills were last used in 1996 when a general election in February (and change of government) meant that a May Budget was not practical.

101 S.O. 76(c).

102 VP 1990–92/1638–9, H.R. Deb. (18.8.92) 62–4.

charge to the appropriations for the Advance to the Minister for Finance and Administration are urgent and unforeseen expenditures which arise between the time of preparation of Appropriation Bills (Nos 3 and 4) and the close of the financial year.

The Minister for Finance and Administration accounts to the Parliament for expenditure from the advances by means of the presentation of monthly statements and an annual statement presented as soon as possible after 30 June each year.<sup>103</sup> The annual statement is examined by the Joint Committee of Public Accounts and Audit and reported on to both Houses. A motion may be moved to take note of a monthly statement.<sup>104</sup>

### Advances to the Speaker and President of the Senate

The Appropriation (Parliamentary Departments) Acts and Supply (Parliamentary Departments) Acts each contain provisions for:

- an Advance to the President of the Senate;
- an Advance to the Speaker of the House of Representatives; and
- a Joint Advance to the President and the Speaker.

These advances enable the President and the Speaker, separately in relation to the Departments of the Senate and the House of Representatives respectively, and jointly in relation to the Department of Parliamentary Services,<sup>105</sup> to make money available for expenditure, particulars of which will afterwards be submitted to Parliament, being expenditure they are satisfied is urgently required and was unforeseen or erroneously omitted from, or understated in, the relevant Appropriation or Supply Act.<sup>106</sup>

## TAXATION BILLS

Strictly, taxation bills are those which *impose* a tax or charge in the nature of a tax.<sup>107</sup> They cannot originate in, or be amended by, the Senate.<sup>108</sup> The form of a bill in this class is governed by section 55 of the Constitution which provides that laws imposing taxation shall deal only with the imposition of taxation (to avoid what is known as ‘tacking’—*see* p. 409), and, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; laws imposing duties of customs shall deal with duties of customs only and laws imposing duties of excise shall deal with duties of excise only. Examples of taxation bills are income tax bills, customs tariff bills and excise tariff bills. Certain bills imposing fees may be considered as taxation bills if the fees involved are revenue raising measures rather than charges having a discernible relationship with the value of services rendered (*see below*).

Reflecting the requirements of the Constitution, parliamentary practice distinguishes between bills dealing with taxation, such as tax assessment bills, and tax bills. Tax assessment bills provide the means for assessing and collecting tax. Tax bills, which impose the burden upon the people, are the bills which have been regarded as imposing taxation, and are therefore not capable of originating in the Senate or of being amended by

103 VP 1996/378; VP 1998–2001/1055. Prior to 1985 the practice was for the House to resolve to consider the annual statement in committee of the whole—for description of previous procedure *see* 1st edition.

104 VP 1987–89/222; VP 1998–2001/626.

105 And before amalgamation, the three joint departments.

106 VP 1993–95/1797; J 1993–95/1856, 2159, 3026, 3208; VP 1996–98/1786.

107 In practice the term is also sometimes used to describe bills which, while not actually imposing taxation, deal with taxation.

108 Constitution, s. 53.

the Senate. This practice has been recognised by the High Court as carrying out the constitutional provisions on a correct basis.<sup>109</sup> It has also been reviewed and accepted by the House's Standing Committee on Legal and Constitutional Affairs.<sup>110</sup>

A former Chief General Counsel of the Attorney-General's Department has advised that bills dealing with taxation can be further categorised as follows:

- A. provisions imposing taxation;
- B. other provisions dealing with the imposition of taxation (e.g. provisions removing or adding exemptions or deductions, increasing or reducing rates or otherwise defining a taxable amount); and
- C. provisions not dealing with the imposition of taxation (e.g. provisions for the assessment, collection and recovery of tax and provisions providing for penalties).<sup>111</sup>

It has been held by the High Court:

- that Part VIII of the *Customs Act 1901*, which dealt with the payment and computation of duties payable under the Customs Tariff, was not a law imposing taxation within the meaning of section 55 of the Constitution;
- that the Act imposing taxation is not the *Customs Act 1901–1910* (which is a Customs Regulation Act) but the Customs Tariff Act. To hold that a Customs Regulation Act was a law imposing taxation would deny the power of the Senate to originate or amend it;
- that the *Income Tax Assessment Act 1936–1939* was not a law imposing taxation within the meaning of section 55 of the Constitution;
- that the *Land Tax Assessment Act 1910* was not an Act imposing taxation within the meaning of section 55 of the Constitution. It is not every statute dealing with the imposition of taxation that is a taxing law. The Land Tax Assessment Act is certainly a law relating to taxation; that is, it deals with the imposition, assessment and collection of a land tax. That does not make it a law imposing taxation;
- that the provisions of the *Sales Tax Assessment Act (No. 2) 1930–1936*, imposing liability for an amount by way of additional tax in case of default, imposed penalties, not taxes, and did not make the Act a law imposing taxation; and
- that the *Sales Tax Assessment Act (No. 5) 1930–1953* was not a law imposing taxation and section 55 of the Constitution had no relation to it.<sup>112</sup>

A Sales Tax (Exemptions and Classifications) Bill is not a bill imposing taxation within the meaning of section 55 of the Constitution as the bill merely states goods which are exempt and classifies others for the purpose of imposition of sales tax.<sup>113</sup> Such a bill may be amended by the Senate<sup>114</sup> and amendments to such legislation have been moved by private Members in the House of Representatives (provided they satisfy the requirements of the standing orders).<sup>115</sup>

The High Court held in 1987 that:

109 Attorney-General's Department, *The Australian Constitution annotated*, AGPS, Canberra, 1980, pp. 179–81.

110 PP 307 (1995) 104–5.

111 Advice dated 30 August 1993 re Taxation (Deficit Reduction) Bill 1993 (attachment).

112 *The Australian Constitution annotated*, pp. 179–81.

113 H.R. Deb. (23.11.60) 3183–92.

114 VP 1940–43/236–7; VP 1960–61/289.

115 VP 1940–43/227–8; VP 1993–95/2133–5.

... The test under the second paragraph of s. 55 in deciding whether the subject of taxation imposed by an Act is single is whether, looking at the subject matter which is dealt with as if it were a unit by Parliament, it can then, in the aspect in which it has been so dealt with, be fairly regarded as a unit, or whether it then consists of matters necessarily distinct and separate.

It considered that, in applying this test, weight should be given to Parliament's understanding that the Act in question dealt with one subject of taxation only and that the Court should not resolve the question against Parliament's understanding unless the answer was clear.<sup>116</sup> The decision in this case reflected the established division between a tax Act and an assessment Act, the former being the Act imposing the tax. In this the Court held that adding a new category of fringe benefit did not amount to the imposition of taxation.

The High Court, in holding that section 34 of the *Migration Act 1958*, inserted by the *Migration Amendment Act 1987*, was invalid, said that the provision (which concerned the imposition of charges on certain passengers travelling to Australia), although purportedly exacting a fee for immigration clearance, was to be characterised as a tax and that the provisions of the section were a law 'imposing taxation'. It held that the expression 'fees for services' 'should be read as referring to a fee or charge exacted for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment'. The Court held that section 55 required that both an amending Act imposing taxation and the amended principal Act deal only with the imposition of taxation and that it was not within the competence of Parliament to purport to insert by an amending Act a provision imposing taxation in an existing valid Act which contained provisions dealing only with other matters.<sup>117</sup>

The Court similarly ruled that provisions in the *Copyright Amendment Act 1989*, amending the *Copyright Act 1968* to provide for a scheme to raise a fund to compensate copyright owners, imposed taxation and were therefore invalid.<sup>118</sup>

In the *Northern Suburbs General Cemetery Reserve Trust v. The Commonwealth* the High Court rejected a challenge to the Commonwealth's training guarantee legislation. The Court again recognised the distinction between laws imposing taxation and those dealing with the imposition of taxation.<sup>119</sup>

The traditional view, that the setting of rates or the increasing of taxation is not the imposition of taxation, was questioned in proceedings following the introduction of the Taxation (Deficit Reduction) Bill 1993. Contrary to previous practice, this bill introduced budget measures increasing a range of taxes, and including amendments to several principal Acts, in the one 'omnibus' bill. Nevertheless, the bill had been prepared with regard to the distinction recognised by the High Court between bills imposing taxation and those dealing with taxation, and the Chief General Counsel of the Attorney-General's Department was of the view that, applying the reasoning expounded by the High Court, none of the provisions actually imposed taxation. The constitutional validity of the bill was however challenged in the Senate and the matter referred to its Standing Committee on Legal and Constitutional Affairs. The committee received conflicting evidence, but reported that in its view there was a real risk which was significant that the High Court would find the bill, if enacted, to be a law imposing taxation within the meaning of section 55 of the

116 *State Chamber of Commerce and Industry v. Commonwealth of Australia* (1987) 73 ALR 161–2 (the *Second Fringe Benefits Tax Case*).

117 *Air Caledonie International v. The Commonwealth* (1988) 165 CLR 462.

118 *Australian Tape Manufacturers Association Ltd v. The Commonwealth* (1993)A 112 ALR 53.

119 *Northern Suburbs General Cemetery Reserve Trust v. The Commonwealth* (1993) 176 CLR 555.

Constitution.<sup>120</sup> In response the Government, rejecting the report's conclusions but to avoid uncertainty, withdrew the bill and replaced it with a package of eight separate bills. To allow the issue to be settled, one of the bills, the Taxation (Deficit Reduction) Bill (No. 2) 1993, was deliberately drafted as a test bill (by combining two minor rate increases involving different subjects of taxation) in order to facilitate a High Court challenge,<sup>121</sup> however, a challenge was not mounted.

In 2004 the High Court held that section 55 does not prevent the Commonwealth Parliament from combining provisions that impose taxation with (at least) provisions for the assessment, collection and recovery of taxation.<sup>122</sup>

## Procedures peculiar to taxation bills

### *Introduction*

The principle of the financial initiative of the Executive also plays an important part in the procedure of the House in relation to taxation bills, in that a proposal for the imposition or for an increase, or alleviation, of a tax or duty, or for the alteration of the incidence of such a charge, shall not be made (that is, a bill with such an objective shall not be introduced) except by a Minister.<sup>123</sup> It is considered that this prohibition extends not only to taxation rates ('incidence') but also to proposals which would increase or alleviate the sum of tax payable. Because of this restriction on private Members, a Member, wishing to have the Income Tax Assessment Act amended in respect of certain deductions, has given a notice of motion expressing his views and calling on the Government to introduce legislation.<sup>124</sup> Another option open to a private Member wishing to achieve a reduction in a tax rate or burden would be to introduce an amendment to a government bill (*see below*). In 1988, following presentation of a private Member's bill concerning certain taxation deductions, the Chair noted that the bill sought only to ensure that an earlier interpretation of certain provisions prevailed, and not to alleviate tax.<sup>125</sup> Private Members' bills have been introduced which sought to amend the Customs and Excise Tariff Acts to provide for mechanisms by which a decrease in duty could be effected by subsequent parliamentary action.<sup>126</sup> In 2002 a private Member's bill made provision for the Taxation Commissioner to assess certain amounts, which were stated in the objects clause of the bill as intended to be used in the calculation of a tax to be imposed and administered by another Act (and in the calculation of increased expenditure to be appropriated by another Act).<sup>127</sup> In the same year, having introduced a bill providing for the assessment and collection of a levy, a Member presented as a document a copy of a proposed companion bill providing for the imposition of the levy, as the standing orders prevented him from introducing the companion bill.<sup>128</sup>

120 Senate Standing Committee on Constitutional and Legal Affairs. *Constitutional aspects of the Taxation (Deficit Reduction) Bill 1993*. PP 453 (1993).

121 H.R. Deb. (27.9.93) 1096.

122 *Permanent Trustee Australia Limited v. Commissioner of State Revenue* [2004] HCA 53, note drawn from Australian Government Solicitor summary of case (by Graeme Hill) Nov. 2004.

123 S.O. 179(a).

124 NP 182 (29.11.95) 9872.

125 H.R. Deb. (10.11.88) 2793.

126 H.R. Deb. (5.3.2001) 24900, 24904.

127 Tobacco Excise Windfall Recovery (Assessment) Bill 2002, H.R. Deb. (16.9.2002) 6224–6. The introduction of the other two bills of the proposed package was noted as being dependent on government action.

128 Plastic Bag Levy (Assessment and Collection) Bill 2002. H.R. Deb. (21.10.2002) 8121–3; VP 2002–2004/510.

In order to protect the revenue by not giving advance notice of the Government's intention, a tax bill is invariably submitted to the House without notice.<sup>129</sup>

Bills dealing with (but not imposing) taxation are treated procedurally as ordinary bills, with the exception that under standing order 178 they may be introduced without notice. Bills relating to taxation and appropriating revenue fall into a dual category. Such composite bills have been introduced pursuant to notice,<sup>130</sup> without notice,<sup>131</sup> and by leave.<sup>132</sup>

### *Second reading amendment*

As with special appropriation bills, a reasoned amendment may be moved to a taxation bill which could not be moved as a detail stage amendment because of the principle of the financial initiative of the Executive. Thus in respect of the Government's legislative proposal to curtail a certain tax avoidance measure with effect from 17 August 1977, and others with effect from 7 April 1978, an amendment by a private Member to curtail such measures from 1 July 1977 would not have been in order, as it would have had the effect of producing an additional sum (charge) from taxation. However, a private Member's reasoned amendment to the effect that, while not denying the bill a second reading, the House was of the opinion that the operative date for all clauses in the bill terminating tax avoidance schemes should be 1 July 1977, was in order.<sup>133</sup>

### *Consideration in detail*

The order of consideration of taxation bills at this stage, as with appropriation or supply bills, differs from ordinary non-amending bills in that, when the bill is considered clause by clause, any schedule is considered before the authorising clauses.<sup>134</sup>

No Member, other than a Minister or Parliamentary Secretary, may move an amendment to increase or extend the scope of the charge proposed beyond the total already existing under any Acts of Parliament.<sup>135</sup> A Member prevented by the standing orders from moving an amendment may still wish to propose it, even though it will be ruled out of order. Alternatively, the Member may choose to express the matter in general terms in a second reading amendment, or to read into the Hansard record the text of the amendment he or she would have liked to move.<sup>136</sup> An amendment to reduce the tax imposed by a bill would be in order and thus, in moving an amendment to a government bill a private Member may do what he or she cannot do by introducing a private Member's bill—that is, propose the alleviation of a tax.<sup>137</sup> An amendment to a customs tariff proposal which sought to impose a duty on a date sooner than that stated in the legislative proposal, thereby having the effect of producing an additional sum (charge) from customs duties, has been ruled out of order.<sup>138</sup>

129 S.O. 178.

130 Income Tax (Arrangements with the States) Bill 1978; VP 1978–80/271.

131 Live-stock Slaughter Levy Collection Amendment Bill 1977; VP 1977/155.

132 Dairying Industry Research and Promotion (Miscellaneous Amendments) Bill 1976; VP 1976–77/217.

133 *Income Tax Assessment Amendment Act 1978* (Act No. 57 of 1978); VP 1978–80/203; H.R. Deb. (7.4.78) 1244–50; H.R. Deb. (5.5.78) 1924.

134 S.O. 149(d).

135 S.O. 179(b)(c). For a comment on this restriction on private Members see H.R. Deb. (15.5.80) 2873.

136 E.g. H.R. Deb. (29.5.2002) 2586.

137 E.g. VP 1993–95/2133–5.

138 VP 1926–28/481.

## Customs and excise tariff proposals

Customs (duties levied on imports and exports) and excise (duties charged on goods produced in Australia) tariff measures are usually not initiated by a bill, as considerations relating to timing and drafting make a bill an unsuitable vehicle to initiate the variety and number of tariff proposals that come before the House. Such measures are generally introduced by way of motion, in the form of custom tariff and excise tariff proposals. These, as ‘proposals dealing with taxation’, may be submitted to the House without notice.<sup>139</sup> Bass Strait freight adjustment levy proposals were regarded as duties of excise.<sup>140</sup>

The moving of a customs tariff (or excise tariff) proposal is normally treated as a formal procedure for the purpose of initiating the collection of the duty. It may be debated<sup>141</sup> and an amendment may be moved,<sup>142</sup> although a private Member’s amendment cannot have the effect of increasing or extending the scope of the charge proposed beyond the total already existing in any Acts.<sup>143</sup> It is usual for the debate to be adjourned by an opposition Member and for all tariff proposals to be listed together on the Notice Paper under the one order of the day. Debate on a proposal may be resumed on a later day<sup>144</sup> but this is a rare occurrence. Collection of duties is thus commenced on the authority of an unresolved motion, and this has been accepted as a convention.

When the Parliament is prorogued or when the House has expired by effluxion of time or been dissolved or is adjourned for a period exceeding seven days, a notice of a customs or excise tariff proposal may be published in the Gazette and the proposal is deemed to have effect as from such time after the publication of the notice as is specified in the notice. Any proposals given notice in this way must be proposed in the Parliament within seven sitting days of the next meeting of the House.<sup>145</sup>

Customs officers are provided with protection by the Customs and Excise Acts from commencement of proceedings for anything done by them for the protection of the revenue in relation to a tariff or tariff alteration.<sup>146</sup>

- until the close of a parliamentary session in which a customs or excise tariff or tariff alteration is moved, or until the expiry of 12 months, whichever happens first; or
- where a notice of a tariff proposal has been published in the Gazette, under section 273EA of the Customs Act or section 160B of the Excise Act, within seven sitting days of the House or six months from the date of publication of the notice, whichever happens first. Where the details of the notice are subsequently proposed in the Parliament within seven sitting days, the protection outlined in the first paragraph applies.

It has been considered that the validity of a tariff proposal is limited for these specified periods. When the Parliament was unexpectedly dissolved in November 1975, action was taken to publish a notice in the Gazette of those tariff proposals which were before the

139 S.O. 178.

140 *Bass Strait Freight Adjustment Levy Collection Act 1984*, s. 6.

141 VP 1978–80/1263; H.R. Deb. (1.5.80) 2522.

142 VP 1970–72/1104. The amendment in this instance was to the effect to omit from the excise tariff proposals all the excise on wine.

143 S.O. 179(b)(c).

144 VP 1970–72/1188; H.R. Deb. (13.9.72) 1352–6. A proposal has been agreed to on the day of its introduction, VP 1996–98/1599 (question put after closure motion agreed to).

145 *Customs Act 1901*, s. 273EA; *Excise Act 1901*, s. 160B.

146 *Customs Act 1901*, s. 226; *Excise Act 1901*, s. 114.

House at the time of dissolution. Some of these proposals had been in operation since September 1974. The proposals mentioned in the Gazette notice were moved in the House on the second day of the new Parliament.<sup>147</sup>

A customs tariff amendment bill or an excise tariff amendment bill, as the case may be, is usually introduced at an appropriate time to consolidate most of the outstanding proposals introduced into the House. These bills are retrospective in operation, in respect of each proposal, to the date on which collection commenced.

After a tariff amendment bill has received assent, unless a prorogation or dissolution has intervened causing the motions on the proposals to lapse, the Minister or Parliamentary Secretary usually moves to discharge the orders of the day in respect of those proposals now contained in the Act. For convenience this is usually done on the next occasion that tariff proposals are moved in the House. In the absence of a tariff amendment bill, tariff proposals then before the House may be affirmed towards the end of a period of sittings 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. A validation bill merely extends the force of tariff proposals.

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147 H.R. Deb. (19.2.76) 115–16.