

## Procedural Information Bulletin No. 79

*For the sitting period 18 to 28 October 1993*

### TAXATION LEGISLATION: EQUALLY DIVIDED VOTES

What may be fairly be called the saga of the taxation legislation (see *Bulletin* No. 78, pp 1-2) was played out during this period. The result was that the legislation was finally passed, but with the government accepting significant amendments. The proceedings on the legislation were also the occasion of a highly significant ruling by the President as to the effect of equally divided votes.

The importance of committee scrutiny of legislation was highlighted by the proceedings on the various taxation bills. The period began with a report by the Finance and Public Administration Committee on 18 October on the first bill in the package, the Taxation (Deficit Reduction) Bill (No. 1), dealing with income tax assessment changes. The report drew attention to difficulties with the proposals relating to the treatment of credit unions, and suggested that amendments would be necessary. On the following day the Industry, Science, Technology, Transport, Communications and Infrastructure Committee reported on proposed fringe benefits tax changes in relation to business travel, and advised the Senate that, because of difficulties referred to in evidence before the Committee, the government would seek the removal of the relevant provisions from the legislation so that the proposals could be further considered.

In proceedings on 19 and 20 October 1993 on the two bills still before the Senate at the beginning of the period, the Taxation (Deficit Reduction) Bills (Nos 1 and 2), a declaratory resolution was passed, as with the bills dealt with earlier, indicating that the decision of the Senate to make requests for amendments did not imply a concluded view that the bills were bills imposing taxation. The first of the bills was then the subject of extensive requests for amendments. Opposition amendments removed the provisions for retrospectivity in the taxation of unused annual leave, while government amendments dealt with the provisions relating to credit unions and fringe benefits tax. An Opposition attempt to have the second bill, the so called "test bill", divided into separate bills was defeated, but only after an accidental result in a division in favour of the amendments, caused by the absence of a government senator, was reversed when the question was put again by leave and the amendments were lost on an equally divided vote.

The sales tax bills were returned from the House of Representatives on 19 October, the government having agreed to the requests for amendments in relation to the sales tax on wine and having disagreed to the requests relating to the second round of sales tax increases. The government had settled a compromise on the wine tax, which was to be enacted by separate legislation. A motion that the remaining requests not be pressed was carried and the sales tax bills finally passed.

The new bills containing the compromise settlement on the wine tax were introduced on 20 October, exempted from the deadline for the receipt of legislation from the House of Representatives (see *Bulletin* No. 77, pp 1-2) and passed through all stages.

The Customs Tariff (Deficit Reduction) Bill 1993 and the Excise Tariff (Deficit Reduction) Bill 1993, containing increases in customs and excise duties on fuel, were dealt with on 21 October. There was no doubt that these were bills imposing taxation, and therefore no declaratory resolution was passed and all amendments were moved by way of requests. An amendment moved by Senator Harradine relating to indexation of the excise tariff changes was agreed to. The Opposition wished to amend the bills to defeat the increased duties on fuel, but moved their requests in a form that allowed the Greens (WA) senators to vote for some of the amendments while rejecting others. The amendments which were agreed to related to fuel for use in rail and shipping services, and were passed with the support of Senator Harradine and the Greens (WA).

The bills were returned from the House of Representatives on the same day with only Senator Harradine's amendment agreed to and the remainder of the requests rejected. In this situation, bills are considered in committee of the whole and motions may be moved under standing order 141 that the requests be pressed or that the requests not be pressed. Normally the government moves a motion that requests not be pressed. This motion was duly moved, and Senator Harradine indicated that he intended to vote not to press the requests. This gave rise to the prospect of equally divided votes on that motion.

Section 23 of the Constitution provides that questions arising in the Senate shall be determined by a majority of votes, and when the votes are equally divided the question shall be resolved in the negative. This rule allows an unambiguous result on most questions before the Senate. In relation to bills, for example, it has the effect that an equally divided vote on an amendment to a bill means that the amendment is not carried, while an equally divided vote on a clause of a bill or on the motion for the second or third reading of a bill means that the clause or the bill is defeated. The effect of equally divided votes, however, is not clear in relation to the motion in question. If a motion that requests not be pressed is defeated by a majority, it is clear that the Senate has resolved to press the requests. This clear result is not achieved, however, by defeat of the motion on an equally divided vote, because the vote would presumably be similarly equally divided on the question that the requests be pressed.

In anticipation of this situation, which has not previously arisen in the Senate, the President prepared and circulated to senators a draft ruling which he intended to give if

the situation arose. The ruling referred to a suggestion in *Australian Senate Practice* that, in the situation in prospect, no decision in relation to amendments, and, by implication, requests, could be taken to have been made by an equally divided vote. This suggestion is obviously unsatisfactory, in that it leaves the fate of amendments or requests, and of the bill, unresolved. The ruling indicated that a more rational interpretation of the effect of such a vote would be that the amendments or requests were lost and the bill should proceed without the amendments or requests. The rationale of this view is that, as an amendment or request requires a majority to be carried in the first place, an equally divided vote on a motion that an amendment be insisted on or a request be pressed indicates that there is no longer a majority in favour of the amendment or request. If a clause is struck out of a bill, which can occur by an equally divided vote, the negating of a motion not to insist on that amendment indicates that the clause still lacks majority support and therefore the amendment is insisted upon.

In the first vote on the motion that the requests not be pressed, in relation to the Excise Tariff (Deficit Reduction) Bill, the motion was carried by a majority because one of the Greens (WA) senators did not vote. In the vote on a similar motion in relation to the Customs Tariff (Deficit Reduction) Bill, the expected situation of an equally divided vote arose. The Leader of the Government in the Senate, Senator Gareth Evans, then moved the contrary motion, that the requests be pressed, with the intention of voting against that motion. He explained that he took this step in order to demonstrate that neither motion had a majority. The Opposition raised a point of order to the effect that it is not in order to move the contrary motion when the other motion has been determined. It was ruled by the Chairman of Committees, and, on appeal, by the President, that it is in order for either or both motions to be moved, and this ruling was upheld by a majority of the Senate on a motion to dissent from the ruling. Senator Evans' second motion was then negated by an equally divided vote, and the President delivered his anticipated ruling. A motion to dissent from that ruling was negated by a majority. The requests in dispute were thereby lost, and the bill was finally passed by a majority on the third reading.

There were suggestions that the validity of the legislation might be challenged on the basis that it was only the President's ruling that allowed the legislation to proceed, but it is unlikely that the High Court would entertain a challenge to the legislation on that basis.

The situation was made clearer than it might otherwise have been because the Greens (WA) senators, although voting to press the requests, voted to uphold the President's ruling and also voted for the third reading of the bills. Had they voted against the ruling, the motion of dissent would have been lost but there would not have been a clear majority in support of the ruling. Had they voted against the bills on the third reading, the bills would have been defeated on an equally divided vote.

With the passage of these bills, the government in the House of Representatives was able to agree to the amendments to the Taxation (Deficit Reduction) Bill (No. 3) removing the "linkage" commencement provisions from that bill. The amendments to the Taxation

(Deficit Reduction) Bill (No. 1) were also agreed to, and when those steps were reported to the Senate on 26 October the taxation bills were finally passed.

#### WITNESSES: MEMBERS OF OTHER HOUSES

Responses were received on 20 and 21 October from the Houses of the Victorian Parliament to the Senate's requests that those Houses require certain of their members to appear before the Senate Select Committee on the Australian Loan Council (see *Bulletin* No. 78, pp 2-3). The Victorian Houses did not accede to the requests to require their members to appear, but passed resolutions giving the members leave to appear if they thought fit. As those resolutions were passed without debate, it is not clear whether the view was taken that the Houses do not have the power to require their members to appear before a committee of another house, as was suggested in a press item, or whether the Senate's requests were declined for other reasons.

#### PRIVILEGE: CONTEMPT COMMITTED

The Senate found, on 21 October, by endorsing the findings of the Privileges Committee in its 42nd Report, that the Australian Securities Commission and officers of the Commission were guilty of a contempt. The findings related to the laying of a charge against an officer who gave evidence to a committee. An amendment by Senator Cooney to exonerate one of the officers was rejected. The Senate accepted the Committee's recommendation that no penalty should be imposed in view of subsequent action taken by the Commission.

Yet another case of alleged interference with a witness was raised on 27 October, and a motion to refer the matter to the Privileges Committee was given precedence by the President. The motion had not been dealt with at the end of the sitting period. The Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure had reported to the President that a witness before the Committee may have been threatened and subjected to adverse treatment because of evidence given to the Committee.

#### NEGATING OF CLAUSE

A clause was struck out of the Housing and Community Services Legislation Amendment Bill (No. 2) 1993 on 27 October. The clause was opposed because it conferred a wide immunity on a minister in respect of publication of information obtained under the legislation. After the clause was negated, the government successfully moved to insert a

substitute clause which was more acceptable to the Senate. An amendment could have been moved to omit the clause and insert the substitute clause, but the government did not wish to move the substitute clause until it was clear that the original clause would not be carried. This incident demonstrates the importance of the principle that every clause of a bill must be supported by a majority, which was referred to in the President's ruling on equally divided votes (see above).

## PRIVATE SENATORS' BILLS

During consideration of General Business on 28 October, two private senators' bills were passed and forwarded to the House of Representatives. A bill introduced by Senator Ian Macdonald dealing with exemption of local government allowances from the superannuation guarantee charge was agreed to, as was a bill introduced by Senator Watson to make the Auditor-General an officer of the Parliament.

## COMMITTEE REPORTS

As has already been indicated, committee reports played an important part in the consideration of legislation during this period.

The Select Committee on Superannuation continues its prodigious activity, with a further major report on superannuation legislation.

Following is a list of reports presented during the period.

<b>Date Tabled</b>	<b>Committee</b>	<b>Title</b>
18.10.93	Finance and Public Administration	Provisions of the Taxation (Deficit Reduction) Bill (No. 1) 1993 concerning the taxation treatment of credit unions
19.10.93	Industry, Science, Technology, Transport, Communications and Infrastructure	Provisions in the Taxation (Deficit Reduction) Bill 1993 which contain proposed amendments to the <i>Fringe Benefits Assessment Act 1986</i>
19.10.93	Community Affairs	Social Security Legislation Amendment Bill (No. 2) 1993
26.10.93	Rural and Regional Affairs	Australian Wool Research and Promotion Organisation Bill 1993,

		Wool International Bill 1993, Wool Legislation (Repeals and Consequential Provisions) Bill 1993 and Wool Tax (Nos 1 to 5) Amendment Bills 1993
27.10.93	Community Affairs	Social Security (Budget and Other Measures) Legislation Amendment Bill 1993
27.10.93	Legal and Constitutional Affairs	Social Security (Budget and Other Measures) Legislation Amendment Bill 1993
28.10.93	Foreign Affairs, Defence and Trade	Examination of annual reports No. 1 of 1993
28.10.93	Superannuation	Super Supervision Bills
28.10.93	Community Standards Relevant to the Supply of Services Utilising Electronic Technologies	Video and computer games and classification issues