

## Chapter 22 Financial Procedures

By convention, Appropriation bills (allocating money for expenditure) may be introduced on motion without notice and without debate. After introduction, the motion “that the bill be agreed to in principle” may be moved forthwith.<sup>1</sup> Taxation bills (raising revenue) are introduced on notice.

### 22.1 Appropriation bills

Appropriation bills give legislative sanction for the expenditure of public moneys from consolidated revenue and other sources.<sup>2</sup> It is on the motion “that the bill be now agreed to in principle” that the Treasurer makes their budget speech.<sup>3</sup> The tradition of laying the estimates for the expenditure of the year before the lower House first occurred in the United Kingdom House of Commons in 1380 when Speaker Guilesborough demanded of the Crown that a schedule of the exact sums needed, and the purposes for which they were required, be laid before the Commons.<sup>4</sup>

In the debate on the appropriation bills (called the ‘Budget Debate’), the general financial structure of the State is open to discussion. The debate may include the Government’s fiscal policy and legislative proposals as they affect that policy. Principles, and not details, are discussed.<sup>5</sup> Although the budget debate may be wide-ranging, remarks must always be based on financial issues contained in the Appropriation Bill and cognate bills.<sup>6</sup> The Speaker has, in the past, suspended the anticipation rule during the currency of the budget debate.<sup>7</sup>

The budget papers, together with the Appropriation and cognate bills, are to be considered in detail by the House (S.O. 244). This is the stage where administration and details are also debated.<sup>8</sup> The estimate of revenue and expenditure of each department is proposed as a separate clause. The responsible Minister is present at the Table when the Minister’s departmental estimate is being considered in detail. Debate is restricted to matters directly related to the estimates (S.O. 245(1)).<sup>9</sup> Detailed consideration by the House may be replaced by estimates committees (S.O. 246).<sup>10</sup>

The Upper House does not have power to not pass nor amend a provision of a bill appropriating money for the ordinary annual services of the Government. If the Upper House fails to pass or suggests amendments<sup>11</sup> to such a bill, the Lower House may send the bill to the Governor for assent with or without the suggested amendments.

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<sup>1</sup> VP 19/09/1995, p. 206.

<sup>2</sup> The Appropriation Bill was first passed in 1832. Short Address delivered to Members of the Royal Australian Historical Society by W.K. Charlton, Clerk of the Parliaments, 22 July 1944, p. 7.

<sup>3</sup> Member asked to remove a copy of the Budget Speech from the Chamber as it was the tradition of the House that copies of the speech were not available until the speech has been delivered, PD 02/06/1998, p. 5538.

<sup>4</sup> Laundy, Philip, *The Office of Speaker in the Parliaments of the Commonwealth*, 1984, pp. 13-4.

<sup>5</sup> PD 18/10/1990, p. 8775.

<sup>6</sup> PD 23/09/1992, p. 6329.

<sup>7</sup> VP 08/05/1997, pp. 855-6.

<sup>8</sup> PD 02/03/1973, p. 1505; PD 18/10/1990, p. 8775.

<sup>9</sup> PD 24/10/1990, pp. 9163, 9165 and 9196.

<sup>10</sup> The last occasion that an appropriation bill was committed was in 2000. See PD 20/06/2000, p. 7211. Recent practice has been to leave the detailed consideration of proposed budget estimates to the Legislative Council General Purpose Standing Committees which act as estimates committees.

<sup>11</sup> VP 27/06/1996, p. 350.

The meaning of "ordinary annual services of the Government" has not been tested in court but advice has been received that it should have a broad meaning to include "...those services provided or maintained within any year which the Government may, in light of its powers and authority, reasonably be expected to provide or maintain as the occasion requires through the departments of the public service and other State agencies or instrumentalities."<sup>12</sup> However, a narrower interpretation has been given in some other jurisdictions.<sup>13</sup>

Parliament has not traditionally been considered to be an "ordinary annual service of the Government" in that the Parliament is not responsible to the Executive. In fact, it is a fundamental principle of the Westminster system that the Executive is accountable to the Parliament and as such the Parliament must have the necessary resources to hold the Executive to account and should never be frustrated in this role by the Executive. However, in 1996 the Legislative Council attempted to amend the *Appropriation (Parliament) Bill* to provide for a "President's contingency fund to be used solely to fund any committees appointed by the Legislative Council to deal with matters referred to any committee in addition to the normal work of the standing committees appointed by the House." The Legislative Assembly exercised its right under section 5A of the *Constitution Act 1902* to transmit the bill to the Governor for assent without the Council's amendment. This act could be interpreted as an acknowledgment that the Parliament's budget was to be considered part of the ordinary annual service of the Government.<sup>14</sup>

If the Lower House rejects or fails to pass a bill appropriating money for the ordinary annual services of the Government, the Governor may dissolve the House for the purposes of a general election as it is assumed that the Government no longer has the confidence of the House (Const. Act s. 24B(3)).

When the Treasurer has been a member of the Upper House, the Premier has introduced the appropriation bills and standing orders have been suspended to allow the Treasurer to make a statement in respect of the budget from the floor of the Assembly at the commencement of the second reading debate (now the agreement in principle stage), with the Premier giving the speech at a later time. A proposed amendment to the motion of suspension of standing orders to allow the Treasurer to take questions has been consistently rejected by the House.<sup>15</sup> Procedures have also been adopted to allow further debate in the Assembly on the Appropriation bills after they have already been passed by the House,<sup>16</sup> and to allow concurrent debate on the Appropriation Bill and cognate bills and a motion to take note of the Address in Reply.<sup>17</sup>

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<sup>12</sup> Advice of the Crown Solicitor provided to the Auditor-General re: section 5A Constitution Act 1902, dated 30 September 1996, available in the Auditor-General's Report to Parliament, 1996, Volume Two, pp. 430-41.

<sup>13</sup> As noted in the abovementioned advice, in Western Australia a narrower interpretation of "ordinary annual services" applies. In 1994, the President of the Legislative Council of WA ruled that the setting up of a liver transplant unit at a hospital and the establishment of a counselling service by the Ministry of Justice to inform and assist next of kin during coronial inquiries were considered not to be ordinary annual services.

<sup>14</sup> PD 27/06/1996, p. 3759.

<sup>15</sup> VP 02/06/1999, p. 124; VP 22/04/1997, pp. 806-7, PD 22/04/1997, pp. 7826-8, VP 06/05/1997, p. 831; VP 15/05/1996, pp. 117, 118, VP 21/05/1996, pp. 145, 147, 149; VP 20/09/1995, p. 227 ff, VP 21/09/1995, p. 237ff, VP 21/09/1995, p. 250, VP 10/10/1995, p. 259.

<sup>16</sup> Standing and sessional orders were suspended to allow the consideration of a motion following the forwarding of the Appropriation Bill to the Legislative Council. The motion provided that members who had not spoken in the second reading debate on the Appropriation Bill and cognate bills prior to it being forwarded to the Legislative Council could speak to the motion for a period limited to 20 minutes each. VP 27/06/2001, p. 1351.

<sup>17</sup> VP 07/06/2002, p. 281.

Since 1993, a separate Appropriation Bill for the Parliament has been passed highlighting its independence from the ordinary annual services of the Government. However, the Executive is still responsible for determining the final allocations which will be made to the Parliament.

It is not uncommon for cognate bills dealing with specific financial matters to be introduced at the same time as the Appropriation bills.

## **22.2 Estimates committees**

Estimates committees are committees of Parliament set up to examine in detail the Government's estimates of revenue and expenditure for the following year and the Appropriation bills. A number of committees may be established to examine different program areas. The committees may call Ministers and officials of departments before them to explain the details of the budget and give an account of how money has been and is proposed to be spent. After holding hearings on the programs under consideration, the committees report to the House and recommend whether those items in the Appropriation bills should be approved or amended. Estimates committees may be established by either the Legislative Assembly or the Legislative Council or the two Houses may hold joint estimates committees meetings.

Standing order 246, allows for the appointment of estimates committees during the agreement in principle debate stage. Reports of these committees are considered in detail by the House and such consideration replaces consideration of the relevant clauses of the bills.

In accordance with standing order 246(3) failure of an estimates committee to report on any part of a proposed appropriation is taken to be a recommendation for that appropriation.

The Legislative Assembly held joint estimates committees with the Legislative Council from 1991 to 1994. Since 1995, the Legislative Assembly has not held estimates committees, despite passing resolutions proposing joint estimates committees with the Legislative Council, as the Houses have not agreed on the terms of such committees.<sup>18</sup>

Since 1995, the Legislative Council has continued to appoint estimates committees or to refer the estimates to its general purpose standing committees. The Speaker has declined to appear before the Council standing committee in its consideration of estimates for The Legislature.<sup>19</sup>

The procedure for the consideration of the reports of the estimates committees in the Assembly simply requires the Chair to propose the following question:

The question is "That the report of Estimates Committee.....be adopted".

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<sup>18</sup> VP 28/05/1998, pp. 643-56; VP 15/05/1996, pp. 123-4; motion calling on Leader of the House to establish estimates committee, VP 23/11/1995, p. 446.

<sup>19</sup> VP 17/06/1997, pp. 991-2. The Speaker is able to refuse such a request as the convention is that one House cannot compel a member of the other House to appear before one of its committees. See section 2.3 of Part Two for further information on this convention.

Members may speak for up to five minutes on this question and a Minister may speak for up to 15 minutes.

After each report is dealt with, the remaining clauses and schedules of the bills, not the subject of a report, are dealt with by the question:

"That the remaining clauses and schedules of the bill be agreed to".

### **22.3 Increasing the charge upon the Consolidated Fund**

Section 46 of the Constitution Act provides that "It shall not be lawful for the Legislative Assembly to originate or pass any vote, resolution or bill for the appropriation of any part of the Consolidated Fund, or of any other tax or impost to any purpose which has not been first recommended by a message of the Governor to the said Assembly . . .";<sup>20</sup> while, by s. 5 of the same Act, all bills for "appropriating any part of the public revenue, or for imposing any new rate, tax or impost shall originate in the Legislative Assembly".

The Assembly construes these provisions to mean that it is not competent for the House to increase any charge provided for in a bill as introduced, or involved in a motion, unless a message recommending increased expenditure is first received from the Governor<sup>21</sup> or the increase is proposed by a Minister.<sup>22</sup> In any additional message recommending an increase in expenditure the Governor may restrict amendments to specific paragraphs, subsections and sections.<sup>23</sup>

The above mentioned statutory provisions also give rise to the Assembly's claim that the Council may not amend an Assembly bill to increase any tax or charge upon the people. Should the Council exceed its rights and so amend a bill, the Speaker draws this to the attention of the House.<sup>24</sup> The Assembly may consider amendments made by the Council if proposed by a Minister or an additional message is first received from the Governor.<sup>25</sup> If this course is pursued the Council is informed by message of the circumstance.<sup>26</sup>

### **22.4 Temporary supply**

Section 25 of the *Public Finance and Audit Act 1983* provides for the payment of money during the first three months of the new financial year. If the Appropriation Bill has not received Assent before 30 September, or if it appears likely that Parliament will not have passed the bill before that date, it is necessary for Parliament to pass what is known as a Supply Bill which authorises expenditure for a stated period. If the estimates are then before Parliament, the money appropriated under a Supply Bill is at the rates set out in the Appropriation Bill. Should the Supply Bill be introduced before the presentation of the estimates, the rates are based upon those of the preceding year. There is no limit to the number of Supply bills which may be passed in any one year. During the financial year 1930-31, four such bills were passed before the Appropriation Bill was passed in June, 1931.

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<sup>20</sup> A message is not required for a bill introduced by, or a vote or resolution proposed by a Minister/s. Section 46(2) of the *Constitution Act 1902*.

<sup>21</sup> VP 24/07/1934, p. 131; PD 06/05/1992, p. 3681-2; PD 08/04/1992, p. 2434.

<sup>22</sup> A private member can introduce a bill that calls upon the Government to take certain steps or action so long as no reference is made to the appropriation of any specific money.

<sup>23</sup> VP 30/10/1940, p. 85.

<sup>24</sup> VP 04/12/1963, p. 437.

<sup>25</sup> VP 04/12/1963, p. 440.

<sup>26</sup> VP 04/12/1963, pp. 440-1; VP 10/12/1963, p. 449.

Since 1996, the need for a Supply Bill has been removed by the practice of passing the budget before the beginning of the financial year.

## 22.5 Taxation measures

Any bill that proposes to introduce a new tax must originate in the Legislative Assembly. This is by virtue of section 5 of the *Constitution Act 1902*, which states “all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.”

As noted, section 46 of the *Constitution Act 1902* provides that the House cannot pass any vote, resolution or bill for the appropriation of any part of the Consolidated Fund, or of any other tax or impost to any purpose which has not been first recommended by message of the Governor unless such measure is proposed by a Minister.<sup>27</sup>

Because private members cannot obtain such messages, the practical effect of this provision is that only Ministers are able to introduce a bill for a new tax for a stated purpose.<sup>28</sup>

The *Constitution Act 1902* and the standing orders of the House are silent as to whether private members may introduce bills or amendments that vary the incidence of an existing tax, i.e. affect the proposed revenue but not its expenditure and do not change the purpose of the tax.

The practice of the House has been to rule out amendments, which have the effect of increasing the sum of any proposed tax or impost. Rulings from the Chair have therefore precluded amendments which lower exemptions as this would increase the tax proposed,<sup>29</sup> amendments which extend the area of a tax;<sup>30</sup> or which omit a provision for exemption for a special class of taxpayer<sup>31</sup>.

However, on one occasion the Chair ruled that provision for the repeal or reduction of taxation or the granting or extension of exemptions can be effected in the same way as an ordinary bill.<sup>32</sup> As such it appears that a private member is able to introduce a bill to amend existing legislation, which provides for a taxing regime, where the effect of the amendment would be to reduce the given rate of taxation.

Private members are also able to introduce legislation that deal with matters associated with taxation such as taxation schemes and the collection of taxation so long as they do not appropriate monies from taxation to a particular purpose.<sup>33</sup>

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<sup>27</sup> Standing order 243 is in accordance with section 46 of the *Constitution Act 1902*. See also rulings by Speaker Levy, PD 25/10/1922, p. 3017 and Speaker Weaver, PD 27/04/1939, p. 4329.

<sup>28</sup> The Crown Solicitor has advised that private members' bills should not appropriate monies or taxes for particular purposes. See advice received from the Crown Solicitor re: Amendment of Land Tax Management Act and Land Tax Act – s.46, *Constitution Act 1902*.

<sup>29</sup> See for example, PD 14/03/1895, p. 4502.

<sup>30</sup> See for example, PD 25/10/1922, pp. 3012-7.

<sup>31</sup> See for example, PD 13/11/1940, p. 961 and PD 12/12/1911, p. 2677.

<sup>32</sup> See ruling of Speaker Kelly, PD 07/09/1978, p. 1195 where he noted that financial bills introduced by members who are not Ministers which reduce taxation do not require a message from the Governor.

<sup>33</sup> See ruling of Speaker Rozzoli, PD 28/08/1991, p 705.