



LEGISLATIVE COUNCIL FACT SHEETS

FACT SHEET 30: FINANCIAL LEGISLATION

Since the beginning of responsible government in New South Wales in 1856, there has been dispute between the two Houses on the question of the Council's powers over money bills.

The Consolidated Fund

The Consolidated Fund is the account into which the government deposits taxes, tariffs, excises, fines, fees, loans, income from Crown assets and other revenues once collected, together with transfers from the Commonwealth, and from which it withdraws the money it requires to cover its expenditure.

Section 45 of the *Constitution Act 1902* provides that the Consolidated Fund may 'be appropriated to such specific purposes as may be prescribed by any Act on that behalf'.

Money bills

The term 'money bill' refers to two types of bills: appropriation bills appropriating public revenue and taxation bills imposing any new tax, rate or impost.

Appropriation from the Consolidated Fund falls into two basic types: annual appropriations and special appropriations.

The most common form of appropriation bills are the annual the annual appropriation bills, which are introduced each year to provide for the expenditure of the government in the next financial year. Special appropriations (also known as standing appropriations) are permanent appropriations from the Consolidated Fund which are ongoing until such time as altered by legislation.

The passing of the annual appropriation bill and cognate bill each year provides the legislative authority for expenditure from the Consolidated Fund for, amongst other things, the ordinary annual services of the government.

Section 5: Money bills shall originate in the Legislative Assembly

Section 5 of the *Constitution Act 1902* states that the legislature has power 'to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever', provided that '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'.

This section has remained unchanged since the enactment of the Constitution Act in 1902.

Section 5A: Deadlocks over appropriation bills ‘for the ordinary annual services of government’

Section 5A of the *Constitution Act 1902* limits the powers of the Council in relation to money bills appropriating public revenue for the ordinary annual services of government. Section 5A(1) provides:

If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty’s pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

The effect of this section is that while it is open to the Council to reject, fail to pass or suggest amendments to bills appropriating moneys for the ordinary annual services of the government, notwithstanding the actions of the Council, the Assembly may direct that such bills, with or without any amendments suggested by the Council, be presented to the Governor for assent.

Section 5A(2) further provides that the Council is taken to have failed to pass any such bill if it is not returned to the Assembly within one month after transmission to the Council and the session continues. The effect of this provision is to prevent the Council, by inactivity, frustrating the wishes of the Assembly in respect of appropriations for ordinary annual services of the government. For section 5A to apply, however, the session must continue during this period and must not be prorogued.

Under section 5A(3), if a bill which is subject to the provision of section 5A becomes law under the section, then any provision in the Act dealing with ‘any matter other than such appropriation shall be of no effect’. This provision prevents the Assembly from ‘tacking on’ to appropriation bills provisions alien to ‘ordinary annual services of the Government’.

The expression ‘ordinary annual services of the Government’ contained in section 5A may be taken to denote services annually carried on and provided for by the government; that is, the normal functions for which appropriation of revenue or moneys is required.

However, section 5A applies only to a bill ‘appropriating revenue or moneys for the ordinary annual services of the Government’. With respect to all other bills, the mechanism for resolving deadlocks between the two Houses is laid out in section 5B of the *Constitution Act 1902*.

Under section 5B, a bill, other than a bill to which section 5A applies, which the Council rejects, fails to pass or passes with amendments to which the Assembly does not agree may be submitted to a referendum, after certain procedures have been followed.

The budget process

The State Budget covers a 12-month period from 1 July to 30 June, although forward estimates for the subsequent two years are also included in Budget Paper No 2. These forward estimates are for the information of Parliament, not for its approval.

The appropriation bills are introduced each year into the Assembly, at which time the Treasurer tables the budget papers and gives the budget speech. The term 'budget papers' means the official budget documents of the government tabled in parliament in connection with annual appropriation bills.

Following the tabling of the budget papers in the Council, a take-note debate on the papers proceeds concurrently with the debate on the appropriation bill in the Assembly. This procedure continues to this day.

The first form of committee scrutiny of the budget in New South Wales in recent times came in 1991.¹ During the period 1991 to 1994 joint estimates committees were established consisting of members of both the Council and Assembly. The establishment of these committees was the result of a memorandum of understanding, commonly known as the Charter of Reform, which was signed on 31 October 1991 by Premier Greiner and three non-aligned independents in the Assembly.²

However, since 1995, responsibility for the budget estimates process has rested solely with the Council, and it is now accepted that the Council alone performs the scrutiny function of budget estimates.

¹ The Council established a number of Estimates Committees in the period before the advent of responsible government in 1856.

² *LA Debates* (31/10/1991) 4004-4038 contains a copy of the Memorandum of Understanding; see also Griffith G, 'The New South Wales Legislative Council: An analysis of its contemporary performance as a house of review', *Australian Parliamentary Review*, Autumn 2002, Vol 17(1), p 53.