

# Legislation

## THE LEGISLATIVE FUNCTION OF PARLIAMENT

The Constitution vests the legislative power of the Commonwealth in the Federal Parliament, consisting of the Queen represented by the Governor-General, the Senate and the House of Representatives.<sup>1</sup>

The making of a law may be subject to complicated parliamentary and constitutional processes but its final validity as an Act of Parliament is dependent upon the proposed law being approved in the same form by **all** three elements which make up the Parliament.<sup>2</sup>

The Parliament has power to make laws for the peace, order and good government of the Commonwealth with respect to those matters defined by section 51 of the Constitution. Other constitutional provisions extend, limit, restrict or qualify this power, so that a full understanding of the Parliament's legislative power can only be gained from the Constitution as a whole. The Constitution in its wording concentrates on the Parliament's legislative power and does not detail in the same manner Parliament's other areas of jurisdiction and functions of substantial importance.<sup>3</sup>

## BILLS—THE PARLIAMENTARY PROCESS

The Constitution contains certain provisions which affect Parliament's legislative process, for example, the provisions relating to:

- financial or money bills (*see* p. 390);
- royal assent to bills (*see* p. 442);
- bills to alter the Constitution (*see* p. 411); and
- disagreements between the Houses.<sup>4</sup>

Another constitutional provision of direct relevance to the legislative process is section 50 which grants each House of the Parliament the power to make rules and orders with respect to the order and conduct of its business and proceedings and which, for the purposes of this chapter, gives authority for the standing orders which prescribe the procedures to be followed in the introduction and passage of bills.

The normal flow of the legislative process is that a bill<sup>5</sup> (a draft Act, or, in the terminology of the Constitution, a proposed law) is introduced into one House of

1 Constitution, ss. 1 and 2. For a more detailed account of the legislative power of the Commonwealth *see* Ch. on 'The Parliament'.

2 An Act to alter the Constitution under the Constitution, s. 128 must also have the approval of the electors. *See* Ch. on 'The Parliament'.

3 *See* particularly Constitution, ss. 49, 50, 52 and Ch. on 'The Parliament'.

4 *See* Ch. on 'Disagreements between the Houses'.

5 'Bill' is thought probably to be a derivative of medieval Latin 'Bulla' (seal) and meaning originally a written sealed document, later a written petition to a person in authority and, from the early 16th century, a draft Act (*The Shorter Oxford English Dictionary*, London, 1973). The process of petitioning the King went far back beyond Parliament. However the increasing part played by the Commons in making statutes was affected by a development of the procedure relating to petitions: the King's reply was entered on the back of the petition and judges turned into statutes such of the Commons requests as were suitable by combining a petition with its response. *See* Campion, pp. 10–14, 22–25; *see also* Ch. on 'Parliament and the citizen'.

Parliament, passed by that House and agreed to (or finally agreed to when amendments are made) in identical form by the other House. At the point of the Governor-General's assent a bill becomes an Act of the Parliament.<sup>6</sup> The legislative process is presented in diagrammatic form between pages 354 and 355.

In the House of Representatives all bills are treated as 'public bills', that is, bills relating to matters of public policy. The House of Representatives does not recognise what in the United Kingdom and some other legislatures are called 'private bills',<sup>7</sup> that is, bills for the particular interest or benefit of any person or persons, public company or corporation, or local authority. Hence there is also no recognition of what are termed 'hybrid bills', that is, public bills to which some or all of the procedures relating to private bills apply.<sup>8</sup>

Eighty two per cent of the annual average of 219 bills introduced into the Parliament during the period 1980 to 1996 originated in the House of Representatives.<sup>9</sup> Seventy eight per cent of all bills introduced into the Parliament during the same period finally became Acts.<sup>10</sup> The main priority in connection with the business of the House is the consideration of legislation which takes up some 50 per cent of the House's time.

Provided the rules relating to initiation procedures are observed any Member of the House may introduce a bill. Until more recent times there were only limited opportunities for private Members to introduce bills, but in March 1988 new arrangements were adopted and more opportunities became available (*see* Chapter on 'Private Members' business'). At the end of 1996 Members of the House had introduced a total of 126 private Members' bills (59, 1901–1987; 67, 1988–1996).<sup>11</sup>

## Form of bill

Bills usually take the form described below although it should be noted that not all the parts are essential to every bill (*see below*). The parts of a bill appear in the following sequence:

**Long title:** Every bill begins with a long title which sets out in brief terms the purposes of the bill or may provide a short description of the scope of a bill. The words commencing the long title are usually either 'A Bill for an Act to . . .' or 'A Bill for an Act relating to . . .'. The term 'long title' is used in distinction from the term 'short title' (*see below*). A procedural reference to the 'title' of a bill, without being qualified, may be taken to mean the long title. The long title is part of a bill and as such is capable of amendment<sup>12</sup> and must finally be agreed to by each House. Standing orders require that the title of a bill must agree with the order of leave or notice of presentation, and no clause may be included in any bill not coming within its title. In 1984 a bill was

6 Printed Acts (the laws of the Commonwealth) are to be found in the consolidated *Acts of the Parliament 1901–1973*, annual volumes prepared by the Attorney-General's Department, in consolidations in pamphlet form and in electronic form.

7 As distinct from a private Member's bill.

8 *May*, pp. 439, 519.

9 Due principally to the fact that the majority of Ministers are Members of the House and also the House's constitutional predominance in financial matters. *See* Ch. on 'The role of the House of Representatives'.

10 For the number of bills introduced and Acts passed by Parliament 1901–1996 *see* Appendix 17. The high level of legislation of the Australian Parliament compared, for example, with the United Kingdom and Canadian Parliaments, is due in part to the constitutional requirement (s. 55) of separate taxing bills for each subject of taxation and the federal nature of the Parliament and accompanying grants to the States. For details of bills introduced but not passed into law *see Bills not passed into Law and Bills which originally lapsed but subsequently passed, sessions 1901–02 to 1983–84*, Department of the House of Representatives, AGPS, 1985.

11 During the same period 425 private Senators' bills were introduced into the Senate.

12 E.g. VP 1993–95/1936.

withdrawn as not all the clauses fell within the scope of the bill as defined in the long title.<sup>13</sup> Difficult questions can arise in this area.<sup>14</sup>

**Preamble:** Like the long title, a preamble is part of a bill, but is a comparatively rare incorporation. The function of a preamble is to state the reasons why the enactment proposed is desirable and to state the objects of the proposed legislation. A preamble usually takes the following form:

‘WHEREAS ...’

‘AND WHEREAS ...’ (when a second paragraph is necessary).

The *Australia Act 1986* contains a short preamble stating that the Prime Minister and State Premiers had agreed on the taking of certain measures (as expressed in the Act’s long title) and that in pursuance of the Constitution the Parliaments of all the States had requested the Commonwealth Parliament to enact the Act.<sup>15</sup> The *Norfolk Island Act 1979* is an example of a bill with a longer preamble.

Some bills contain objects or statement of intention clauses, which can serve a similar purpose to a preamble—see, for example clause 3 of the *Life Insurance Bill 1994*.<sup>16</sup> Section 15AA of the *Acts Interpretation Act 1901* provides that in the interpretation of an Act a construction that would promote the purpose or object underlying the Act, whether expressly stated or not, must be preferred (*and see p. 455*)

**Enacting formula:** This is a short paragraph which precedes the clauses of a bill. The current words of enactment are as follows:

‘The Parliament of Australia enacts:’

Prior to October 1990 the words of enactment were:

‘BE IT<sup>17</sup> ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:’

Commenting on the original enacting formula, *Quick and Garra*n stated:

In the Constitution of the Commonwealth the old fiction that the occupant of the throne was the principal legislator, as expressed in the [United Kingdom] formula, has been disregarded; and the ancient enacting words will hereafter be replaced by words more in harmony with the practice and reality of constitutional government. The Queen, instead of being represented as the principal, or sole legislator, is now plainly stated [by section 1 of the Constitution] to be one of the co-ordinate constituents of the Parliament.<sup>18</sup>

**Clauses:** Clauses may be divided into subclauses, subclauses into paragraphs and paragraphs into subparagraphs. Large bills are divided into Parts which may be further divided into Divisions and Subdivisions.<sup>19</sup> When a bill has become an Act, that is, after it has received the royal assent, clauses are referred to as sections.

**Short title:** This is a convenient name for the Act, a label which assists in identification and indexing. Clause 1 of a bill usually contains its short title, and this clause describes the measure in terms as if the bill had been enacted, for example, ‘This Act may be cited as the<sup>20</sup> *Airports Act 1996*’. Since early 1976, a bill amending its principal Act or other Acts has generally included the word ‘Amendment’ in its short title. When a session of the Parliament extends over two or more calendar years and bills

13 VP 1983–84/903–4.

14 H.R. Deb. (18.5.88) 2511–18.

15 Act No. 142 of 1985.

16 *And see* D. C. Pearce and R. S. Geddes, *Statutory Interpretation in Australia*, 4th edn, Butterworths, 1996, pp. 118–9.

17 For bills with a preamble, the word ‘THEREFORE’ is inserted here.

18 *Quick and Garra*n, p. 386. The enacting formula in use in the United Kingdom since the 15th century is: ‘Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:’.

19 The heading of a Part is printed in capitals and includes a subject summary.

20 Note that ‘the’ is not part of the short title.

introduced in one year are not passed until an ensuing year, the year in the citation of the bill is altered to the year in which the bill finally passes both Houses. This formal amendment may be effected before transmission to the Senate after the passing of the bill by the House (when there may be a need to reprint the bill because it has been amended by the House) or before forwarding for assent.

It is not uncommon for more than one bill, bearing virtually the same short title, to be introduced, considered and enacted during the same year.<sup>21</sup> In this situation the second bill and subsequent bills are distinguished by the insertion of (No. 2), (No. 3), and so on, in the short title.<sup>22</sup> Alternatively, bills of a common subject may be distinguished with qualifying words contained in parenthesis within the short title.<sup>23</sup> In both these cases the distinguishing figures or words in the short title flow to the Act itself and its citation.

On other occasions a bill may, for parliamentary purposes, carry [No. 2] after the year of the short title to distinguish it from an earlier bill of identical title. This is so, for example, when it is known that the earlier bill will not further proceed in the parliamentary process to the point of enactment or when titles are expected to be amended during the parliamentary process.<sup>24</sup> This distinction in numbering also becomes necessary for bills subject to inter-House disagreement, in the context of the constitutional processes required by sections 57 and 128 of the Constitution.

**Commencement provision:** In most cases a bill contains a provision as to the day from which it has effect. Sometimes differing commencement provisions are made for various provisions of a bill (*and see below*). Where a bill has a commencement clause, it is usually clause 2, and the day on which the Act comes into operation is usually described in one of the following ways:

- the day on which the Act receives the royal assent;
- a date or dates to be fixed by proclamation (requiring Executive Council action). The proclamation must be published in the Gazette. This method is generally used if it is necessary for preparatory work, such as the drafting of regulations, to be done before the Act can come into force. Since 1984 information on proclamations has been entered in the Votes and Proceedings as deemed papers. Proclamation may be dependent on the meeting of specified conditions<sup>25</sup>;
- a particular date (perhaps retrospective) or a day of a stipulated event (e.g. the day of assent of a related Act); or
- a combination of the above (e.g. sections 1 to 6 to come into operation on the day of the royal assent, sections 7 to 9 on a date to be proclaimed).<sup>26</sup>

Unusual commencement dates have included:

- the day after the day on which both Houses have approved regulations made under the Act<sup>27</sup>;
- a 'designated day', being a day to be declared by way of a Minister's statement tabled in the House.<sup>28</sup>

21 For the numbering of appropriation and supply bills *see* p. 403

22 E.g. the *Excise Tariff Amendment Act 1994* was followed by an *Excise Tariff Amendment Act (No. 2) 1994*, etc.

23 E.g. *Income Tax (Deficit Deferral) Act 1994* and *Income Tax (International Agreements) Amendment Act 1995*.

24 E.g. the title of the *Income Tax (Rates) Amendment Act 1978* was amended by the House to *Income Tax (Rates) Amendment Act (No. 2) 1978*. The *Income Tax (Rates) Amendment Act 1978* [No. 2] also before the House took the place, in respect of title, of the original bill; the [No. 2] being the distinction for parliamentary purposes.

25 E.g. *Carriage of Goods by Sea Act 1991* (proclamation prevented until Minister had consulted industry representatives).

26 E.g. where legislation licenses a certain activity, it may be necessary to have sections authorising the issue of licences to have effect to enable licences to be obtained before the sections prohibiting the activity without a licence come into effect.

27 *Therapeutic Goods Act 1989*.

28 *Sales Tax (Customs) (Wine-Deficit Reduction) Act 1993*. VP 1993-95/396.

Since 1989 it has been the general practice, with legislation commencing by proclamation, for commencement clauses to fix a time at which commencement will automatically occur, notwithstanding non-proclamation. Alternatively, the commencement clause may fix a time at which the legislation, if not proclaimed, is to be taken to be repealed.<sup>29</sup>

In the absence of a specific provision, an Act comes into operation on the 28th day after the day on which the Act receives the royal assent.<sup>30</sup> This period acknowledges the principle that it is undesirable for legislation to be brought into force before copies are available to the public. Modern practice is to include an explicit commencement provision in each bill. For special provisions concerning constitution alteration bills *see* p. 445.

An Act may have come into effect according to its commencement clause, yet have its practical operation postponed, for example pending a date to be fixed by proclamation.<sup>31</sup> It is also possible for provisions to operate from a day to be declared by regulation. As regulations are subject to potential disallowance by either House, this practice may not commend itself to Governments. The Australia Card Bill 1986, having passed the House, was not further proceeded with following the threat of such a disallowance in the Senate.<sup>32</sup>

**'Activating' clause:** When provisions of a bill are contained in a schedule to the bill (*see below*), they are given legislative effect by a provision in a preceding clause. Current practice is for the insertion of an activating clause at the beginning of the bill (usually clause 3) providing that each Act specified in a schedule is amended or repealed as set out in the schedule and that any other item in a schedule has effect according to its terms.

**Definitions:** A definitions or interpretation clause, commonly clause 3 or 4, traditionally sets out the meanings of certain words in the context of the bill. Definitions may also appear elsewhere in a bill and for 'amending' bills will be included in schedules.

**Substantive provisions:** Traditionally, the substantive provisions of bills were contained in the remaining clauses. This is still the practice in respect of 'original' legislation. In the case of bills containing amendments to existing Acts, in the 37th Parliament a practice commenced of having only minimal provisions in the clauses (such as the short title and commencement details) and including the substantive amendments in one or more schedules.<sup>33</sup>

**Schedule:** Historically schedules have been used to avoid cluttering a bill with detail or with material that would interfere with the readability of the clauses. In earlier times amending bills commonly included schedules setting out amendments that, because of their nature, could more conveniently be set out in a schedule rather than in the clauses of a bill. During the 37th Parliament the practice started of including in schedules all amendments to existing Acts, whether amendments of substance or of less important detail. Office of Parliamentary Counsel Drafting Direction No. 1 of 1996 made it the standard practice in respect of government bills for all amendments and repeals of Acts to be made by way of numbered items in a schedule. Other items may be included in an

<sup>29</sup> Office of Parliamentary Council, Drafting Instruction No. 2 of 1989. There was previously no requirement for a proclamation to be made within any particular time limit, *see* S. Deb. (24.11.88) 2774-80. The Senate has ordered that details of unproclaimed provisions of Acts be regularly tabled, J 1987-89/1205.

<sup>30</sup> *Acts Interpretation Act 1901*, s. 5.

<sup>31</sup> E.g. *Broadcasting and Television Amendment Act 1982*, s. 24; Gazette S298 (29.11.83).

<sup>32</sup> H.R. Deb. (6.10.87) 749.

<sup>33</sup> E.g. Social Security and Veterans' Affairs Legislation Amendment Bill 1995.

amending/repealing schedule (e.g. transitional provisions). Other examples of the types of material to be found in schedules are:

- the text of a treaty to be given effect by a bill;
- a precise description of land or territory affected by a bill; and
- detailed rules for determining a factor referred to in the clauses (for example, technical material in a bill dealing with the construction of ships and scientific formulae in a bill laying down national standards).

While a schedule may be regarded as an appendix to a bill, it is nevertheless part of the bill, and is given legislative effect by a preceding clause (or clauses) within the bill. Schedules are referred to as 'Schedule 1', 'Schedule 2', and so on.

**Associated documentation:** Bills may also contain or be accompanied by the following documentation which, although not part of the bill and not formally considered by Parliament, may be taken into account by the courts, along with other extrinsic material, in the interpretation of an Act (*see* p. 455):

- **Table of Contents**—Historically, a Table of Contents (formally 'Provisions') was only provided for bills of 25 or more clauses, but in 1995 the Office of Parliamentary Counsel decided that such tables would be provided for all bills.<sup>34</sup> This table lists section/clause numbers and section/clause headings under Part and Division headings. The Table of Contents remains attached to the front of the Act.
- **Headings and notes**—Footnotes (if used), end notes, marginal notes and clause headings (Part, Division and Subdivision headings are deemed to be part of the bill).
- **Explanatory Memorandum**—This is a separate document presenting the legislative intent of the bill in terms which are more readily understood than the bill itself. A memorandum usually consists of an introductory 'outline' of the general purposes of the bill and 'notes on clauses' which explain the provisions of each clause. When a number of interrelated bills are introduced together their explanatory memorandums may be contained in the one document. From 1986 it was the practice that an explanatory memorandum was presented to the House by a Minister at the conclusion of the second reading speech. Since 1994 the presentation of explanatory memorandums for all bills other than appropriation and supply bills has been a requirement of the standing orders<sup>35</sup>, and the Minister or Parliamentary Secretary presenting the bill has been required to sign the explanatory memorandum. Section 15AB of the *Acts Interpretation Act 1901* provides, among other things, that in the interpretation of a provision of an Act, consideration may be given to an explanatory memorandum<sup>36</sup> (*and see* p. 455).

### **Preparation of bills—The extra-parliamentary process**

Government bills usually stem either from a Cabinet instruction that legislation is required (that is, Cabinet is the initiator) or from a Minister with the advice of, or on behalf of, his or her department seeking (by means of a Cabinet submission) approval of Cabinet. The pre-legislative procedure in the normal routine<sup>37</sup>, regardless of the source of

<sup>34</sup> Drafting Direction No. 9 of 1995.

<sup>35</sup> S.O. 215.

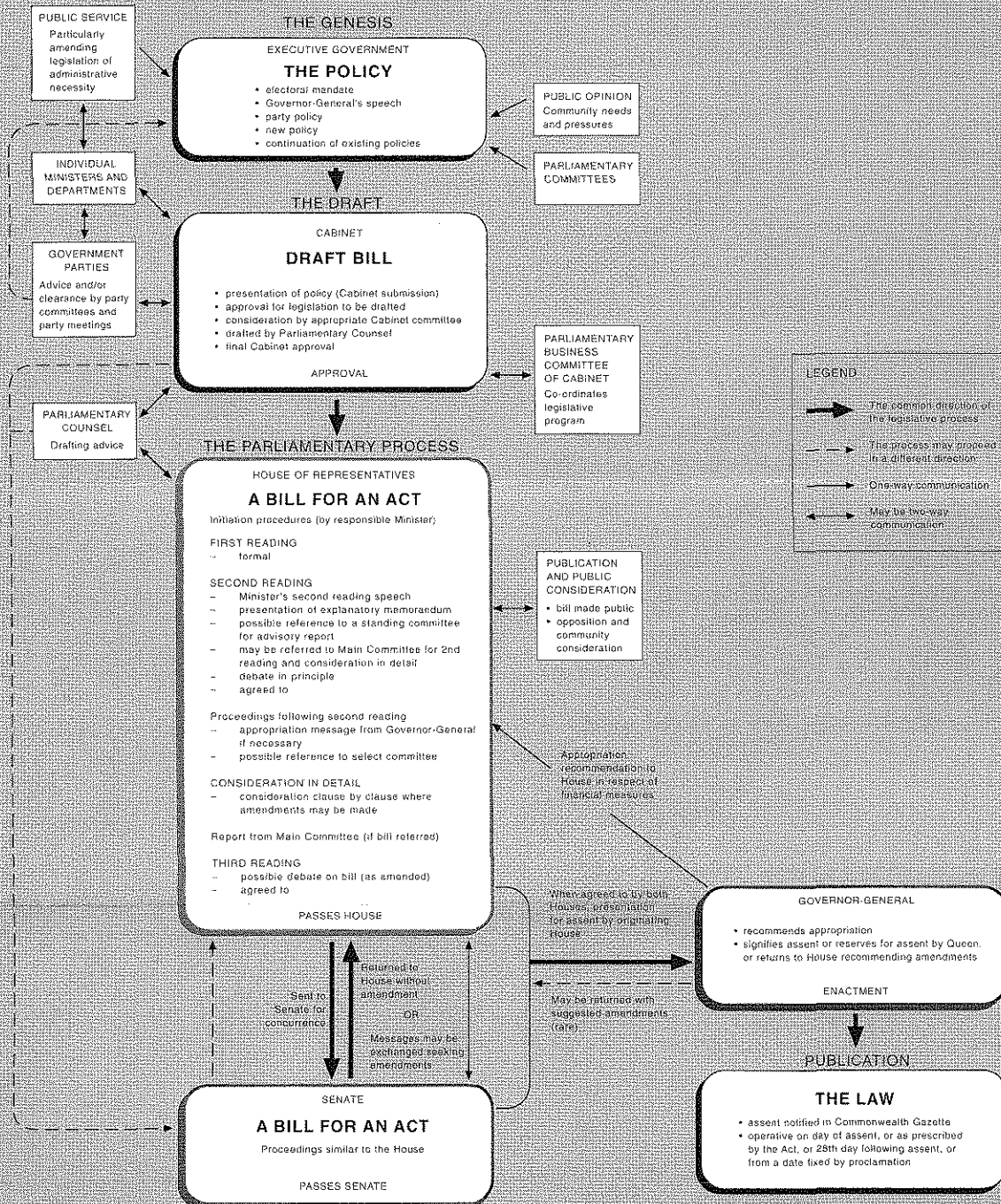
<sup>36</sup> *And see* Pearce and Geddes, *op cit*, pp 50–66.

<sup>37</sup> In the case of emergency or urgent legislation the normal steps in the extra-parliamentary legislative process may not be observed. For further information on the pre-legislative process *see* Department of Prime Minister and Cabinet, *Legislation Handbook*, AGPS, Canberra, 1988.

# The making of an Act of Parliament

## THE LEGISLATIVE PROCESS

(For ordinary, non-urgent government bills having passage in 'normal' manner)





the legislative proposal, is that within five working days of Cabinet approval for the legislation being received by the sponsoring department, or within 10 working days if Cabinet has required major changes to be made to the original proposals, final drafting instructions must be lodged with the Office of Parliamentary Counsel<sup>38</sup> by the sponsoring department. Parliamentary Counsel drafts the bill and arranges for its printing.<sup>39</sup>

A copy of the draft bill is provided to the sponsoring department for its clearance, in consultation with other interested departments and instrumentalities, and the Minister's approval. During these processes it is usual for government party committees to be consulted. The procedures for such consultation vary, depending on the party in government. When a proposed bill is finally settled, Parliamentary Counsel orders the printing of sufficient copies of the bill in the form used for presentation to Parliament and arranges for their delivery to officers of the House or the Senate. On occasion, when there has been insufficient time for a bill to be printed, Parliamentary Counsel has faxed a copy of the bill to the House, where photocopies have been made for the Minister to present and for circulation to Members.<sup>40</sup>

The Government's *Legislation Handbook* states that draft bills are confidential to the Government and may not be made public, before their introduction to the Parliament, without the authorisation of the Prime Minister or Cabinet.<sup>41</sup>

## Synopsis of major stages

The stages through which a bill normally passes are treated in detail in the pages which follow. Procedures for the passage of bills provide for the following stages:

- Initiation (S.O.s 211–214).
- First reading<sup>42</sup> (S.O.s 215 and 216).
- Possible referral to a committee for advisory report or to the Main Committee for second reading and consideration in detail stages (S.O.s 217A–217B).
- Second reading (S.O.s 217–220).
- Proceedings following second reading (including possible reference to a select committee) (S.O. 221).
- Consideration in detail (S.O.s 222–233).
- Report from Main Committee and adoption (for bills referred to Main Committee) (S.O. 234–236A).
- Reconsideration (possible) (S.O. 236B).
- Third reading (S.O.s 237–242).
- Transmission to the Senate for concurrence (S.O. 243).

38 The Office of Parliamentary Counsel, under the *Parliamentary Counsel Act 1970*, is under the control of the First Parliamentary Counsel who is answerable to the Attorney-General. The office is responsible for the drafting of bills for introduction into either House of the Parliament and amendments of bills, and other related functions.

39 Bills may be printed in a variety of forms from the inception of a draft bill to its presentation for assent. Some draft bills never proceed beyond the 'proof' stage. The authority to use the material in relation to a bill rests with the Parliamentary Counsel until the bill is introduced in Parliament, when it passes to the Clerk of the House while the bill is before the House of Representatives and the Clerk of the Senate while the bill is before the Senate.

40 E.g. Remuneration and Allowances Bill 1990, Remuneration and Allowances Amendment Bill 1990 and Remuneration and Allowances (Amendment) Bill 1990—VP 1990–93/123–4; 129–30; 133–4.

41 *Legislation Handbook*, July 1988, pp. 20–21.

42 The origin of the practice of reading a bill three times is obscure. Campion (p. 22) states that by 1580 it was already the usual (but not uniform) practice of the House to read a bill three times.

- Transmission<sup>43</sup> or return of bill from the Senate with or without amendment or request (S.O.s 244–261).
- Presentation for assent (S.O.s 265–269).

Each of the stages of a bill in the House has its own particular function. The major stages may be summarised as follows:

**Initiation:** Under the standing orders, all bills, except bills received from the Senate (see p. 412), must be initiated in one of the following ways:

- **By motion for leave**—By motion, usually moved on notice, for leave to bring in a bill, specifying its long title<sup>44</sup>, a procedure which has fallen into disuse.<sup>45</sup>
- **On granting of leave by the House**—On occasions a bill may be introduced by the simple granting of leave to a Minister to present the bill.<sup>46</sup>
- **On notice**—The common method of initiating a bill is by the calling on of a notice of intention to present the bill. The notice is prepared by the Office of Parliamentary Counsel, usually concurrently with the preparation of the bill. The notice follows a standard form:

I give notice of my intention to present, at the next sitting, a Bill for an Act [remainder of long title].

The long title contained in the notice must agree with the title of the bill to be introduced. The notice must be signed by the Minister or Parliamentary Secretary who intends to introduce the bill or by another Minister or Parliamentary Secretary on his or her behalf. As with all notices, the notice of presentation may be given by:

- delivering a copy to the Clerk at the Table, or
- in the case of Members other than Ministers, stating its terms to the House during the period for Members' statements on Mondays, and delivering a copy to the Clerk at the Table.<sup>47</sup>

- **By order of the House**—Under superseded procedures preliminary consideration of financial proposals occurred in the Supply or Ways and Means Committees of the whole House. The appropriate committee reported a financial resolution to the House, the House adopted the report and ordered a Minister to prepare and bring in a bill to carry out the resolution.<sup>48</sup> When these committees were abolished in 1963, this initiation procedure was nevertheless retained because of the possibility, however remote, that the procedure could be used, in a different form, in relation to certain tariff bills.<sup>49</sup>

43 A bill coming a first time from the Senate proceeds through all stages in the House as if it were a bill originating in the House.

44 VP 1962–63/485.

45 When this procedure was in common use the notice of motion for leave was capable of amendment, VP 1926–28/248. When the motion was moved the objects of the bill could be explained and reasons given for its introduction (Matrimonial Causes Bill 1955—private Member's bill, Mr Joske—VP 1954–55/190; H.R. Deb. (5.5.55) 451–4). While this would not ordinarily be the appropriate time for long debate, the motion could be debated, VP 1956–57/83; H.R. Deb. (18.4.56) 1415–20. An amendment could be moved, e.g. that the word 'amend' be omitted from the long title of the bill, and the word 'repeal' be substituted, VP 1929/21, and the question could be put to a division, VP 1956–57/84. The notice of intention to present a bill procedure was adopted in 1963 to save the time of the House spent on the motion for leave, which had become entirely formal. *Standing Orders Committee Report*, H of R 1 (1962–63) 39.

46 VP 1978–80/1502; VP 1996/351.

47 S.O. 211(b)(ii). Until 1984 all notices could be given orally.

48 VP 1962–63/450–4.

49 Considerations relating to timing and drafting make a bill an unsuitable vehicle to initiate the variety and number of tariff proposals which come before the House. Consequently it is the practice that customs and excise tariff proposals are initiated by a motion, and are later incorporated in a Customs/Excise Tariff Amendment Bill.

- **Without notice**—In accordance with the provisions of standing order 291, appropriation or supply bills or bills (including tariff proposals) dealing with taxation may be submitted to the House by a Minister without notice.

**First reading:** This is a formal stage only. On presentation of a bill the long title only is immediately read by the Clerk, and no question is proposed (*but see below* for arrangements for private Members' bills).

**Second reading:** This is the stage primarily concerned with the principle of the legislative proposal. Debate on the motion for the second reading is not always limited to the contents of a bill and may include, for example, reasonable reference to relevant matters such as the necessity for, or alternatives to, the bill's provisions. Debate may be further extended by way of a reasoned amendment (*see below*).

**Consideration in detail:** At this stage, the details of the bill are considered and amendments may be proposed or made.

**Third reading:** At this stage the bill can be reviewed in its final form after the shaping it may have received at the detail stage. When debate takes place, it is confined strictly to the contents of the bill, and is not as wide-ranging as the second reading debate (*and see below*). When a bill has been read a third time, it has passed the House.<sup>50</sup>

### The application of the same question rule to bills

The Speaker has the **discretionary** power under standing order 169 to disallow any motion the same in substance as another **resolved** during the same session. As proceedings on a bill are taken to be 'resolved' when a decision has been taken on the second reading, the standing order does not prevent identical bills merely being introduced.

In using his or her discretion in respect of a bill the Speaker would pay regard to the purpose of the rule, which is to prevent obstruction or unnecessary repetition, and the reason for the second bill. Hence, quite apart from the cases provided for in the Constitution, a Speaker might not seek to apply the rule to cases arising from Senate disagreement, and in the normal course of events it is only at such times that a bill would be reintroduced in the House and passed a second time. For example, there have been occasions when the Senate has rejected<sup>51</sup>, or delayed the passage of<sup>52</sup>, bills transmitted from the House and the House has again passed the bills without waiting the three months period provided for in the Constitution, presumably in the hope of a change of heart on the part of one or more Senators. In one case standing order 169 was suspended<sup>53</sup>, although in view of the Speaker's discretion in this matter the suspension may not have been necessary. It is also possible that a bill could seek to reintroduce provisions of a bill previously passed by the House but subsequently deleted from the bill by Senate amendment.<sup>54</sup>

Although there is no record of a motion on a bill being disallowed under the same question rule, in some circumstances the operation of the rule would be appropriate. In 1982 two identical bills were listed on the Notice Paper as orders of the day, one a private Member's bill and the other introduced from the Senate. Had either one of the bills been read a second time, or the second reading been negatived, any further

<sup>50</sup> S.O. 240.

<sup>51</sup> Post and Telegraph Rates Bill 1967 [No. 2], VP 1967–68/123. The second bill was not returned from the Senate.

<sup>52</sup> In 1975 the main appropriation bills were passed and sent to the Senate three times. The Senate eventually passed the original bills, VP 1974–75/953–6, 1015–21, 1067–70.

<sup>53</sup> VP 1967–68/123.

<sup>54</sup> Health Legislation Amendment Bill (No. 3) 1982; H.R. Deb. (10.11.82) 2998.

consideration of the other bill would have been preventable under the same question rule, but in the event neither bill was proceeded with.<sup>55</sup> During the 36th and 37th Parliament a number of private Members' bills lapsed pursuant to the provisions of standing order 104B, not having been re-accorded priority on one of the next eight private Members' days after introduction/consideration. In some cases the same measures were put forward again, and, no resolution having been reached on the previous occasion, no complaint under standing order 169 was raised.<sup>56</sup>

Sections 57 (double dissolution) and 128 (constitution alteration) of the Constitution, relating to the resolution of disagreements between the Houses, provide for the same bills to be passed a second time after an interval of three months.<sup>57</sup> These provisions over-ride the standing order.<sup>58</sup>

### **Classification of bills**

Bills introduced into the House of Representatives may be, for descriptive purposes, grouped into the following classes:

- Bills, by which no appropriation is made or tax imposed ('ordinary' bills);
- Bills containing special appropriations;
- Appropriation and supply bills;
- Bills imposing a tax or charge;
- Bills to alter the Constitution;
- Bills received from the Senate.

The procedures in the House for each class of bills have a basic similarity. The passage of a bill is, unless otherwise ordered, always in the stages of first reading, second reading, consideration in detail and third reading. For the purposes of this chapter procedures common to all classes of bills are described in detail under ordinary bills. As is evident in Table 7, significant variations or considerations apply to bills in other classes and they are described when that class is examined.

### **ORDINARY BILLS**

'Ordinary' bills for procedural purposes are those which:

- do **not** contain words which appropriate the Consolidated Revenue Fund or the Loan Fund;
- do **not** impose a tax (an ordinary bill may 'deal with' taxation without imposing it—see p. 398); and
- do **not** have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund or the Loan Fund under existing words of appropriation in the Principal Act to be amended or in another Act.

### **Initiation and first reading**

Ordinary bills are usually introduced by notice of intention to present or sometimes by leave. Ordinary bills 'dealing with taxation' may be introduced without notice.<sup>59</sup> When

<sup>55</sup> Institute of Freshwater Studies Bills, 1981 and 1982.

<sup>56</sup> E.g. VP 1990-92/1358, 1782.

<sup>57</sup> In each case, the second time a bill is presented it may in certain circumstances include amendments made or agreed to.

<sup>58</sup> VP 1950-51/189.

<sup>59</sup> S.O. 291.

the notice of intention to present the bill is called on by the Clerk, the Minister (or Parliamentary Secretary<sup>60</sup>) in charge of the bill rises and says 'I present the [short title of bill]'. The Minister then hands three signed<sup>61</sup> copies of the bill to the Clerk. These copies become the 'original' or 'model' copies of the bill.

It is the practice of the House that another Minister may present a bill for a Minister who has given notice.<sup>62</sup> When the notice is called on by the Clerk, the Minister who is to present the bill rises and says 'On behalf of the . . . , I present the [short title]'.<sup>63</sup>

There is no requirement for a Minister (or any Member) introducing a bill to present a printed copy. The standing order requires only that a 'fair copy' signed by the Minister be presented to the House. Nevertheless printed copies are usually available when the bill is introduced.<sup>64</sup>

The Clerk, upon receiving the copies from the Minister and without any question being put<sup>65</sup>, formally reads the bill a first time by reading its long title.<sup>66</sup> Once a bill is presented, it must be read a first time.<sup>67</sup> The long title of the bill presented must agree with the title used in the notice of intention to present (or with the order of leave to bring in the bill), and no clause may be included in the bill which does not come within its title.<sup>68</sup> Any bill presented and found to be not prepared according to the standing orders shall be ordered to be withdrawn.<sup>69</sup> Bills have been so discharged because:

- the long title did not agree with the long title given on the notice of presentation<sup>70</sup>;
- several clauses did not come within its long title<sup>71</sup>; and
- the long title described in the Governor-General's message recommending appropriation did not agree with the long title.<sup>72</sup>

A bill is not out of order if it refers to a bill that has not yet been introduced<sup>73</sup>, and a bill may be introduced which proposes to amend a bill not yet passed.<sup>74</sup>

60 As in other procedures of the House (except those relating to questions) all references to a Minister in the following text can be taken to include a Parliamentary Secretary.

61 S.O. 212; multiple copies being for administrative purposes.

62 VP 1996/215.

63 A Minister has presented a bill for another Minister to whom leave had been given, VP 1932-34/895. On 8 September 1932 the Prime Minister moved a notice for leave to bring in a bill on behalf of the Minister for Commerce, VP 1932-34/304. When the bill was brought up in May 1933 the Minister for Commerce had resigned from the Ministry, and a third Minister presented the bill, VP 1932-34/665.

64 The National Emergency (Coal Strike) Bill 1949 was presented (VP 1948-49/342) in roneoed form and printed later in the day.

65 Prior to 1963, under superseded procedures, a question was put on the first reading. The question could be decided on division and there is an instance of the first reading being negatived on division, VP 1940-43/483.

66 S.O. 216.

67 H.R. Deb. (28.3.73) 809.

68 S.O. 213; VP 1983-84/904.

69 S.O. 214; VP 1985-87/520.

70 VP 1983-84/903-4.

71 VP 1985-87/520.

72 VP 1934-37/306-9. The States Grants (Administration of Controls Reimbursement) Bill 1951 was not introduced as was intended on 26 September 1951 as a check indicated that the long title did not agree with the terms of the Administrator's message. A new message was prepared and the bill introduced on the next day, VP 1951-53/86, 106.

73 H.R. Deb. (26.9.24) 4846.

74 E.g. the Conciliation and Arbitration Bill (No. 2) 1951, 'A Bill for an Act to amend the *Conciliation and Arbitration Act 1904-1950*, as amended by the *Conciliation and Arbitration Act 1951*', which was introduced in the House on 14 March 1951 (VP 1950-51/327), when the Conciliation and Arbitration Bill 1951 was with the Senate (passed by the House on 9 March, VP 1950-51/319-20, and introduced in the Senate on 15 March, J 1950-51/226).

TABLE 7 CLASSES OF BILLS

<i>Description</i>	<i>Special nature</i>	<i>Provisions of Constitution and standing orders relevant to class<sup>1</sup></i>	<i>Major stages followed in respect of class<sup>2</sup></i>
<p>ORDINARY</p> <p><i>Examples</i> Acts Interpretation Bill, Trade Practices Bill, Parliamentary Papers Bill.</p>	<p>Bills that:</p> <p>(a) do <b>not</b> contain words which appropriate the Consolidated Revenue Fund or the Loan Fund;</p> <p>(b) do <b>not</b> impose a tax; and</p> <p>(c) do <b>not</b> have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund or the Loan Fund under existing words of appropriation in the principal Act to be amended or in another Act.</p>	<p>Constitution ss. 53, 57, 58, 59, 60. S.O.s 211–252, 264–269.</p>	<p><i>Initiation</i> on notice of intention to present; sometimes by leave; bills dealing with taxation may be presented without notice.</p> <p><i>First reading</i> moved; Clerk reads title; no debate allowed.</p> <p><i>Second reading</i> moved immediately (usually); Minister makes second reading speech; debate adjourned to a future day.</p> <p>Bill may be referred to Main Committee for remainder of second reading and detail stage.</p> <p>Second reading debate resumed; reasoned amendment may be moved; second reading agreed to; Clerk reads title.</p> <p><i>Consideration in detail</i> immediately following second reading. Amendments may be made.</p> <p>(<i>Report</i> by Main Committee to House, if bill referred; House adopts report)</p> <p><i>Third reading</i> moved; may be debated; agreed to; Clerk reads title. Message sent to Senate seeking concurrence.</p> <p>NOTE: Detail stage is often by-passed.</p>
<p>SPECIAL APPROPRIATION</p> <p><i>Examples</i> (a) States Grants Bill, Loan Bill; (b) An amending Judiciary Bill to alter the remuneration of Justices as stated in the principal Act.</p>	<p>Bills that:</p> <p>(a) contain words with appropriate the Consolidated Revenue Fund or the Loan Fund to the extent necessary to meet expenditure under the bill; or</p> <p>(b) while not in themselves containing words of appropriation, would have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund or the Loan Fund under existing words of appropriation in the principal Act to be amended or in another Act.</p>	<p>Constitution ss. 53, 56. S.O.s 221(a), 292, 294, 296–8.</p>	<p><i>Initiation</i> on notice of intention to present, sometimes by leave.</p> <p>Proceedings same as for ordinary bills except that immediately following second reading—</p> <p><b>Message from Governor-General recommending appropriation for purposes of bill is announced and if required, in respect of certain anticipated amendments to be moved during detail stage, a further message for the purposes of the proposed amendment is announced.</b></p> <p>Subsequent proceedings same as for ordinary bills.</p>

<b>APPROPRIATION AND SUPPLY</b>  <i>Examples</i> Appropriation Bills (No. 1) and (No. 2) Supply Bills (No. 1) and (No. 2).	Appropriation Bills appropriating money from the Consolidated Revenue Fund for expenditure for the year.  Supply Bills appropriating money from the Consolidated Revenue Fund to make interim provision for expenditure for the year pending the passing of the Appropriation Bills.	Constitution ss. 53, 54, 56. S.O.s 81(b), 220, 221(a), 226(a), 262, 291–2, 295–8.	<b>Message from Governor-General recommending appropriation announced prior to introduction. If required a further message for the purposes of proposed amendments is announced prior to consideration in detail.</b>  <i>Initiation without notice.</i> Proceedings otherwise same as for ordinary bills other than for sequence in detail stage.
<b>TAXATION</b>  <i>Examples</i> Income Tax Bills and Customs and Excise Tariff Bills.	Bills imposing a tax or a charge in the nature of a tax.	Constitution ss. 53, 55. S.O.s 226(b), 262, 291, 293.	<i>Initiation without notice.</i> Proceedings same as for ordinary bills. <b>Only Minister may move amendments to increase or extend taxation measures.</b>  NOTE: Governor-General's message is not required.
<b>CONSTITUTION ALTERATION</b>  <i>Example</i> Constitution Alteration (Referendums) 1977.	Bills to alter the Constitution.	Constitution s. 128. S.O. 263	Same as for ordinary bills but <b>with additional requirement for bill to be passed by absolute majority.</b>
<b>SENATE INITIATED</b>  <i>Examples</i> Same as for ordinary bills.	Same as for ordinary bills.	Constitution s. 53. S.O.s 253–61.	<b>Message from Senate reported transmitting bill to House for concurrence.</b> First reading; second reading moved; debate adjourned. Subsequent proceedings same as for ordinary bills. (Senate bills sometimes referred to Main Committee before moving of second reading) <b>Message sent to Senate notifying House agreement or, if amended, seeking Senate concurrence in amendments.</b>

1. Sections 57 to 60 apply to all classes and standing orders relevant to ordinary bills generally apply to all classes.
2. Regular or normal proceedings.

As no question is proposed or put, no debate can take place at the first reading stage. In respect of private Members' bills presented under arrangements for private Members' business on Mondays, when a notice of intention to present a bill is called on by the Clerk, the Member involved presents the bill and may speak for up to five minutes. The bill is then read a first time, and the next sitting Monday is appointed for the Member to move the second reading.

Immediately after presentation, the usual practice is that the Minister moves that the bill be read a second time and presents the bill's explanatory memorandum. Copies of the bill and the explanatory memorandum are distributed to Members in the Chamber. A bill is treated as confidential by the officers of the House until it is presented, and no distribution is made until that time.

### **Referral after first reading**

At least seven days after the first reading and before the debate on the motion for the second reading is resumed, a motion may be moved without notice 'That this bill be referred to the Main Committee for the remainder of the second reading and consideration in detail stages' or 'That the bill be referred to the . . . [committee] . . . for consideration and an advisory report'. In the case of government bills a Minister may present a list of bills proposed to be referred and (if seven days have elapsed since the first readings of all the bills on the list) move a single motion, without notice, that the bills be referred in accordance with the list.<sup>75</sup> In practice bills are often referred, by leave of the House<sup>76</sup> or by motion on notice<sup>77</sup>, before the end of the seven day waiting period. The Chief Government Whip, pursuant to powers bestowed by resolution of the House in relation to the conduct of business, rather than a Minister, usually moves the relevant motions. An amendment has been moved to a motion of referral.<sup>78</sup>

When these procedures were first introduced in 1994, referral to the Main Committee or to a committee for an advisory report occurred between the first and second reading stages. The standing order was revised in 1996 to allow, but not compel, the now normal practice of referral following the Minister's second reading speech. In cases where the second reading has not been moved immediately following the first reading (e.g. bills introduced from the Senate), bills have continued to be referred between the first and second reading stages, and Ministers' second reading speeches on these bills have been delivered in the Main Committee.

#### *Referral to committee for advisory report*

Pursuant to standing order 217A a bill may be referred to a committee for an advisory report. The motion of referral may specify a date by which the committee is to report to the House. Bills are referred to the standing committee, or to the committee formed of House of Representatives members of a joint standing committee<sup>79</sup>, most appropriate to the subject area of the bill. The participation of Members who are interested in the bill but not on the committee is facilitated by the provision that, for the purpose of consideration of bills referred for advisory reports, one or more members of the committee may be replaced by another Member. In addition the normal provision for the appointment of three supplementary members to a standing committee for a particular

<sup>75</sup> S.O. 217A.

<sup>76</sup> VP 1996/166.

<sup>77</sup> VP 1996/253.

<sup>78</sup> VP 1993-95/2456-7.

<sup>79</sup> These 'deemed' committees operate according to the provisions applying to standing committees of the House, S.O. 28BA.

inquiry also applies.<sup>80</sup> Standing and sessional orders have been suspended to enable a private Members' bill to be referred to a standing committee for an advisory report.<sup>81</sup>

Committee proceedings on a bill are similar to proceedings on other committee inquiries; the committee may invite submissions, and it may hold public hearings before reporting its recommendations to the House. The report is presented in the same manner as other committee reports, with committee members expecting to be able to make statements. Motions to take note of the report are not moved however, as opportunity for debate will occur during subsequent consideration of the bill if it is proceeded with.

After the committee has presented its report, and if the bill is to be proceeded with, the (remainder of the) second reading and the consideration in detail stages will follow in the House, or the bill may be referred for these stages to the Main Committee.<sup>82</sup> If the Government accepts changes to the bill recommended by the advisory report, these are incorporated into government amendments moved during the consideration in detail stage. As with other committee reports, a formal government response is made to a committee's advisory report on a bill. This may be tabled when the House resumes consideration of the bill following the presentation of the report.<sup>83</sup> Alternatively, in speaking to the bill or moving amendments reflecting the committee's recommendations, a Minister may foreshadow a formal response at a later date.<sup>84</sup>

Although the standing orders provide for bills to be referred to a committee at least seven days after the first reading and before the resumption of debate on the motion for the second reading, referral at other times (e.g. before the seven days expires or during debate on the second reading) may occur following the suspension of standing orders.<sup>85</sup> A bill cannot be referred after the completion of its consideration in detail.<sup>86</sup>

The standing order establishing the general purpose standing committees provides for the referral, by the House or a Minister, of any matter, including a pre-legislation proposal or bill, for standing committee consideration.<sup>87</sup> Occasionally a bill may be referred to a committee by a Minister directly, prior to its introduction to the House, rather than through the advisory report mechanism.<sup>88</sup> Standing and sessional orders have been suspended to enable bills to be referred to a joint committee for an advisory report.<sup>89</sup>

### *Referral to the Main Committee*

The Main Committee is an extension of the Chamber of the House, operating in parallel to allow two streams of business to be debated concurrently. It is an alternative venue rather than an additional process. For a description of Main Committee procedures generally see Chapter on 'Motions'.

In respect of legislation, proceedings in the Main Committee are substantially the same as they are for the same stage in the House. The significant difference, stemming from the lack of opportunity in the Committee for divisions, is the provision for the 'unresolved question'. Proceedings on a bill may be continued regardless of unresolved

80 S.O. 28B(c).

81 VP 1993-95/2286-7.

82 S.O. 217B.

83 VP 1993-95/1151.

84 H.R. Deb. (20.10.94) 2466.

85 VP 1993-95/921-2.

86 S.O. 224.

87 S.O. 28B(b).

88 H.R. Deb. (9.2.95) 835.

89 VP 1993-95/2678; VP 1996/265.

questions unless agreement to an unresolved question is necessary to enable further questions to be considered, in which case the bill is returned to the House.<sup>90</sup>

At the conclusion of the bill's consideration in detail the question is put, forthwith and without debate, 'That this bill be reported to the House, without amendment' or 'with (an) amendment(s)' ('and with (an) unresolved question (s)'), as appropriate.<sup>91</sup> If the Committee does not desire to consider the bill in detail it may grant leave for the question 'That this bill be reported to the House without amendment' to be moved forthwith, immediately following the second reading.<sup>92</sup>

A bill may be returned to the House at any time during its consideration by the Main Committee by any Member moving, without notice or the need for a seconder, 'That further proceedings be conducted in the House'.<sup>93</sup> A bill may also be recalled to the House at any time by motion moved in the House.

## Second reading

Although it has been stated that the second reading is the most important stage through which a bill has to pass<sup>94</sup>, it is debatable whether any one stage of a bill may be regarded as more critical than any other stage. For example, it might be argued that the third reading of a bill, at which point a bill finally passes the House, is at least equally important.<sup>95</sup> Nevertheless, the whole principle of the bill is at issue at the second reading stage, and is affirmed or denied by a vote of the House.<sup>96</sup>

Copies of a bill having been circulated, the second reading may be moved immediately after the first reading (the usual practice—*see below*) or, by leave of the House, at a later hour that day. If the second reading is moved at a later hour, debate may not proceed immediately unless leave of the House is obtained. The arrangements for private Members' bills provide that after the first reading, the next sitting Monday shall be appointed for the Member introducing a bill to move the second reading.<sup>97</sup>

On the infrequent occasions when copies of the bill are not available, leave may be granted for the second reading to be moved forthwith<sup>98</sup>, or at a later hour that day.<sup>99</sup> If leave is refused, the second reading is set down for the next sitting.<sup>100</sup> Alternatively standing orders may be suspended to enable the second reading to be moved forthwith.<sup>101</sup> It is the practice at the commencement of a new session for a Minister to place a contingent notice of motion on the Notice Paper as follows:

*Contingent on any bill being brought in and read a first time: Minister to move—That so much of the standing orders be suspended as would prevent the second reading being made an order of the day for a later hour.*<sup>102</sup>

90 S.O. 277.

91 S.O. 234.

92 S.O. 222(c).

93 S.O. 270. The motion is successful even if opposed. VP 1993–95/2477–8; 2470 (motion that further proceedings be conducted in the House moved immediately after second reading speech).

94 May, p. 472; *Odgers*, 7th edn, p. 256.

95 As Leader of the Opposition Menzies stated, concerning the need for support by an absolute majority for the second reading of a Constitution Alteration Bill, a bill does not pass until it is read a third time; many Members might vote for the second reading, anticipating an opportunity in committee of having amendments made which would make it acceptable, and then support the third reading, H.R. Deb. (10.4.46) 1216–17.

96 May, pp. 472.

97 S.O. 218.

98 S.O.s 217–18; VP 1968–69/583 (copies of the National Health Bill 1969 not available for distribution).

99 VP 1950–51/151.

100 VP 1956–57/49.

101 Either without notice, VP 1951–53/443; or pursuant to contingent notice, VP 1956–57/109.

102 First given regularly, NP 27 (9.5.56) 138.

A motion pursuant to this contingent notice, only once moved in the House to date<sup>103</sup>, only requires the concurrence of a simple majority to be effective.

If the second reading is not to be moved forthwith, a future day is appointed for the second reading, and meanwhile the bill is printed.<sup>104</sup> The House appoints, on motion moved by the Minister, the day (that is, the next sitting or some later date) for the second reading to be moved.<sup>105</sup> The motion is open to amendment and debate. An amendment must be in the form to omit 'the next sitting' in order to substitute a specific date or day. Debate on the motion or amendment is restricted to the appointment of a day on which the second reading is to be moved, and reference must not be made to the terms of the bill.<sup>106</sup> The second reading is set down as an order of the day on the Notice Paper for the next sitting or a specific date.<sup>107</sup>

During the 37th Parliament the House adopted the practice of having bills presented together with explanatory memorandums, with the second reading not being moved immediately following the first reading but being made an order of the day for the next sitting. When the order was called on on a later day, the Minister moved the second reading, delivered his or her second reading speech, and further debate followed immediately. This practice was discontinued on the recommendation of the Procedure Committee, which felt that it helped Members to have the terms of the Minister's second reading speech available when preparing their own speeches.<sup>108</sup>

There may be reasons, other than the unavailability of printed copies of the bill, for the second reading to be set down for a future day. The Government may want to make public the terms of proposed legislation, with a view to enabling Members to formulate their position over a period in advance of the Minister's second reading speech and the second reading debate.<sup>109</sup>

The common practice, however, is for the second reading to be moved immediately after the bill has been read a first time. The terms of the motion for the second reading are 'That this bill be now read a second time'<sup>110</sup> and in speaking to this motion the Minister makes the second reading speech, explaining, *inter alia*, the purpose and general principles and effect of the bill. This speech should be relevant to the contents of the bill.<sup>111</sup> The time limit for the Minister's second reading speech (for all bills except the main appropriation bill for the year) is 30 minutes.<sup>112</sup> A second reading speech plays an important role in the legislative process and its contents may be taken into account by the courts in the interpretation of an Act (*see* p. 455). Ministers are expected to deliver a second reading speech even if the speech has already been made in the Senate. It is not accepted practice for such speeches to be incorporated in Hansard.<sup>113</sup>

103 VP 1985–87/1071; H.R. Deb. (20.8.86) 288 (moved after the second reading speech).

104 S.O. 217.

105 VP 1956–57/50.

106 H.R. Deb. (9.6.03) 587.

107 NP 46 (11.2.75) 5085.

108 PP 108 (1995), pp. 3–4.

109 H.R. Deb. (12.2.75) 134.

110 S.O. 217.

111 The Deputy Speaker explained to a Minister whose second reading speech was ranging beyond the contents of a bill that a certain latitude was allowed during a second reading speech. However when the second reading debate occurred it would be difficult for the Chair to rule against speeches made in reply to the subjects raised by the Minister, H.R. Deb. (22.2.72) 38–41.

112 S.O. 91.

113 For an exception to this rule *see*, H.R. Deb. (27.8.80) 804–13. This instance preceded the comprehensive position set down by Speakers Snedden and Jenkins on the incorporation of material in Hansard (H.R. Deb. (21.10.82) 2339–40; (10.5.83) 341–2. On one occasion, instead of a second reading speech being made in the normal manner Members have been referred to the Senate Hansard (H.R. Deb. (30.11.95) 4447), and on another a brief summary of the provisions has been given and Members then referred to the Senate Hansard (H.R. Deb. (12.11.92) 3359).

When the second reading has been moved forthwith pursuant to S.O. 218, it is mandatory<sup>114</sup> for debate to be adjourned after the Minister's speech, normally on a formal motion of a member of the opposition executive. There can be no division on the adjournment of the debate under these circumstances.<sup>115</sup> A second question is then put in the form 'That the resumption of the debate be made an order of the day for the next sitting'. This motion is open to amendment and debate, although neither is usual. Debate on the motion or amendment is restricted to the appointment of the day on which debate on the second reading is to be resumed and reference must not be made to the terms of the bill. An amendment must be in the form to omit 'the next sitting' in order to substitute a specific day or date, for example, 'Tuesday next'<sup>116</sup> or '11 December 1989'.<sup>117</sup>

Debate may not be resumed for some time, depending on the Government's legislative program, and during this time public and Members' attitudes to the proposal may be formulated.

An order of the day set down for a specified day is not necessarily order of the day No. 1 for that day, nor does it necessarily mean that the item will be considered on that day.<sup>118</sup>

The fixing of a day for the resumption of a debate is a resolution of the House and may not be varied without a rescission (on seven days' notice) of the resolution.<sup>119</sup> However a rescission motion could be moved by leave or after suspension of standing orders. In 1973 the order of the House making the second reading of a bill an order of the day for the next sitting was rescinded on motion, by leave, and the second reading made an order of the day for that sitting.<sup>120</sup> The purpose of fixing 'the next sitting' or a specific future day ensures that, without subsequent action by the House, the order of the day will not be called on **before** the next sitting or the specified day.

On occasions debate may ensue, with the leave of the House, immediately after the Minister has made the second reading speech.<sup>121</sup> By the granting of leave, the mandatory provision of standing order 218 concerning the adjournment of the debate no longer applies, and a division may be called on any subsequent motion for the adjournment of the debate.<sup>122</sup> Alternatively, after the second reading speech, debate may, by leave, be adjourned until a later hour on the same day that the bill is presented.<sup>123</sup> If leave is refused in either of these cases, the same effect can be achieved by the suspension of standing orders. The contingent notice described above has been moved to this end after the Minister's second reading speech.

If the second reading has been set down for a future sitting day, on that day the Minister makes the second reading speech when the order of the day is called on, and debate may be adjourned by an opposition Member<sup>124</sup> in the normal way. The second

114 S.O. 218. The mandatory requirement is a provision which ensures that the House will have some time to study the bill before it is proceeded with. This provision does not apply to a second reading moved pursuant to contingent notice, as standing orders have been suspended.

115 VP 1968-69/117.

116 VP 1970-72/596-8.

117 VP 1978-80/1473.

118 NP 45 (5.12.74) 4942. For example the House resolved on 28 November 1974 to make resumption of the second reading debate on the Family Law Bill 1974 an order of the day for 11 February 1975, VP 1974-75/383-4. The item was listed as order of the day No. 3 but was not called on, NP 46 (11.2.75) 5085.

119 S.O. 170.

120 VP 1973-74/243.

121 E.g. VP 1978-80/1188; VP 1990-92/1963, 2001.

122 H.R. Deb. (21.3.72) 906.

123 VP 1968-69/312.

124 VP 1974-75/449.

reading debate may proceed forthwith however, as the provision concerning the mandatory adjournment of debate when the second reading has been moved immediately after the first reading does not apply.

As with all adjourned debates, when an adjourned second reading debate is resumed, the Member who moved the adjournment of the debate is **entitled** to the first call to speak.<sup>125</sup> However, usually it is the opposition spokesperson on the bill's subject matter who resumes the debate, and this may not be the same Member who obtained the adjournment of the debate. On resumption of the second reading debate the Leader of the Opposition, or a Member deputed by the Leader—in practice a member of the opposition executive—may speak for 30 minutes. The Member so deputed, usually the shadow minister, is usually, but not necessarily, the first speaker when the debate is resumed.

The second reading debate is primarily an opportunity to consider the principles of the bill and should not extend in detail to matters which can be discussed at the consideration in detail stage. However it is the practice of the House to permit reference to amendments proposed to be moved at the consideration in detail stage. The Chair has ruled that a Member would not be in order in reading the provisions of a bill *seriatim* and debating them on the second reading<sup>126</sup>, and that it is not permissible at the second reading stage to discuss the bill clause by clause; the second reading debate should be confined to principles.<sup>127</sup>

Debate however is not strictly limited to the contents of the bill and may include reasonable reference to:

- matters relevant to the bill;
- the necessity for the proposals;
- alternative means of achieving the bill's objectives;
- the recommendation of objectives of the same or similar nature; and
- reasons why the bill's progress should be supported or opposed.

Discussion on these matters should not however be allowed to supersede debate on the subject matter of the bill.

When a bill has a **restricted** title and a limited subject matter, the application of the relevancy rule for second reading debate is relatively simple to interpret.<sup>128</sup> For example, the Wool Industry Amendment Bill 1977, the long title of which was 'A Bill for an Act to amend section 28A of the *Wool Industry Act 1972*',<sup>129</sup> had only three clauses and its object was to amend the *Wool Industry Act 1972* so as to extend the statutory accounting provisions in respect of the floor price scheme for wool to include the 1977–78 season. Debate could not exceed these defined limits.<sup>130</sup> The Overseas Students Tuition Assurance Levy Bill 1993 was a bill for an Act to allow levies to be imposed by the rules of a tuition assurance scheme established for the purposes of section 7A of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, and contained only three clauses, thus allowing only a limited scope for debate.

To a lesser extent, the relevancy rule is easily interpreted for a bill with a restricted title to amend named parts of the principal Act even though the bill may contain a

125 S.O. 88; H.R. Deb. (16.9.58) 1251.

126 H.R. Deb. (24.11.20) 6906.

127 H.R. Deb. (22.11.32) 2601.

128 H.R. Deb. (29.3.35) 541–2.

129 VP 1977/149. Act No. 43 of 1977.

130 H.R. Deb. (26.5.77) 1941.

greater number of clauses than the above examples. The Speaker ruled that the scope of debate on the States Grants (Special Financial Assistance) Bill 1953 should not permit discussion of the ways in which the States might spend the sums granted, that the limits of the debate were narrow and that he would confine the debate to whether the sums should be granted or not. The Speaker's ruling was dissented from, following which the Speaker stated that the expenditure methods of the States were clearly open for discussion.<sup>131</sup> A good example of an amending bill with a restricted title was the Ministers of State Amendment Bill 1988, the long title of which was 'A Bill for an Act to amend section 5 of the *Ministers of State Act 1952*'.<sup>132</sup>

When a bill has an **unrestricted** title, for example, the Airports Bill 1995, whose long title was 'A Bill for an Act about airports' and which contained a large number of clauses, the same principles of debate apply, but the scope of the subject matter of the bill may be so wide that definition of relevancy is very difficult. However, debate should still conform to the rules for second reading debates. General discussion of a matter in a principal Act which is not referred to in the amending bill has been prevented.<sup>133</sup>

### *Amendment to question for second reading*

An amendment to the question 'That this Bill be now read a second time' may be moved by any Member (but generally would be moved by an opposition Member). Known as a second reading amendment, it may only take one of two forms, that is, a '6 months' amendment'<sup>134</sup> or a 'reasoned amendment'.<sup>135</sup>

A '6 months' amendment is in the form 'That the word "now" be omitted from, and the words "this day 6 months" be added to the question'.<sup>136</sup> No amendment may be moved to this amendment. The question proposed upon such an amendment is 'That the word proposed to be omitted stand part of the question', and if this question is decided in the affirmative, the amendment is defeated and the question on the second reading is then restated. Debate may then continue on the motion for the second reading. The acceptance by the House of such an amendment would mean that the bill has been finally disposed of.<sup>137</sup> This form of amendment is rarely used as, from a debating and political viewpoint, it suffers by comparison with a reasoned amendment. On the last occasion it was moved on the motion for the second reading, the mover proposed to add 'this day six months in order that the Government may confer...'.<sup>138</sup> Although the amendment was permitted by the Chair, the inclusion of the additional words was strictly out of order.

A reasoned amendment enables a Member to place on record any special reasons for not agreeing to the second reading, or alternatively, for agreeing to a bill with qualifications without actually recording direct opposition to it. It is usually declaratory of some principle adverse to or differing from the principles, policy or provisions of the bill. It may express opinions as to any circumstances connected with the introduction or prosecution of the bill or it may seek further information in relation to the bill by committees or commissions, or the production of papers or other evidence.

131 VP 1951-53/714; H.R. Deb. (8.10.53) 1170.

132 H.R. Deb. (14.4.88) 1635.

133 H.R. Deb. (19.11.35) 1768-9.

134 S.O. 219; VP 1945-46/419. This form of amendment is identical to the form of a third reading amendment.

135 S.O. 220.

136 This procedure originated as a way of avoiding the direct negative, the assumption being that within the time specified the session would be over and the bill would lapse. Redlich, Vol. III p. 89.

137 S.O. 219.

138 VP 1961/51.

The fact that the moving of a reasoned amendment permits Members who have already spoken to the second reading to speak again to the amendment may influence the use or timing of the procedure.

**Relevancy and content:** The standing orders<sup>139</sup> specify rules governing the acceptability of reasoned amendments.

An amendment must be relevant to the bill.<sup>140</sup> In relation to a bill with a restricted title, an amendment dealing with a matter not in the bill, nor within its title, may not be moved.<sup>141</sup> In relation to a bill with an unrestricted title, an amendment dealing with a matter not in the bill, but which is relevant to the principal Act or to the objects of the bill as stated in its title, may be moved even though the clauses have a limited purpose.

For example, the Apple and Pear Stabilization Amendment Bill (No. 2) 1977 had as a long title 'A Bill for an Act to amend the *Apple and Pear Stabilization Act 1971*' and the object of the bill was to extend financial support to exports of apples and pears made in the 1978 export season. The bill dealt with extension of time of support only, not with the level of the support.<sup>142</sup> A second reading amendment to the effect that the bill be withdrawn and redrafted to increase the level of support was in order as the level of support was provided in the principal Act.<sup>143</sup>

The case of the Commonwealth Electoral Bill 1966 provides a good example of acceptable and unacceptable second reading amendments. The long title was 'A Bill for an Act to make provision for Voting at Parliamentary Elections by Persons under the age of Twenty-one years who are, or have been, on special service outside Australia as Members of the Defence Force'. A second reading amendment was moved to the effect that, while not opposing the passage of the bill, the House was of the opinion that the vote should be given to **all persons** in the 'call-up' age group. The amendment was ruled out of order by the Speaker as the broad subject of the bill related to voting provisions for members of the **defence forces** under 21 years, whereas the proposed amendment, relating to all persons in the 'call-up' age group regardless of whether or not they were members of the defence forces, was too far removed from the subject of the bill as defined by the long title to be permissible under the standing orders and practice of the House. Dissent from the ruling was moved and negatived.<sup>144</sup> Another Member then moved an amendment to the effect that, while not opposing the passage of the bill, the House was of the opinion that the vote should be given to **all persons in the Defence Force** who had attained the age of 18 years.<sup>145</sup> This amendment was permissible as the practice of the House is to allow a reasoned amendment relevant to the broad subject of the bill.

The incorporation of an extensive quotation in a second reading amendment is not allowed.<sup>146</sup> Speaker Halverson has ruled<sup>147</sup> that a second reading amendment should not be accepted by the Chair if, when considered in the context of the bill, and with regard to the convenience of other Members, it could be regarded as of undue length, and that it is

139 S.O. 220.

140 For general examples of amendments ruled out of order as not being relevant see VP 1967-68/18; VP 1970-72/1144.

141 An amendment proposed by the Leader of the Opposition to the Commonwealth Conciliation and Arbitration Bill 1949 was ruled out of order by the Deputy Speaker as it was outside the specific proposals set forth in the long title of the bill, VP 1948-49/344, 358.

142 VP 1977/380; H.R. Deb. (1.11.77) 2609.

143 VP 1977/422.

144 VP 1964-66/603; H.R. Deb. (12.5.66) 1812.

145 VP 1964-66/604.

146 H.R. Deb. (28.11.88) 3368.

147 Private ruling.

not in order for a Member to seek effectively to extend the length of his or her speech by moving a lengthy amendment, without reading it, but relying on the fact that the amendment would be printed in Hansard.

**Anticipation of amendment:** A reasoned amendment may not anticipate an amendment which may be moved during consideration in detail.<sup>148</sup> Following a Member's explanation that an amendment had been drafted not with reference to the clause but with reference to the principle of the bill, an amendment which could possibly have been moved in committee (i.e. the former consideration in detail stage) was allowed to be moved to the motion for the second reading.<sup>149</sup> The principle underlying an amendment which a Member may **not** move during consideration in detail may be declared by means of a reasoned amendment (*see also* pp. 394 and 400). A second reading amendment to add to the question an instruction to the former committee of the whole was ruled out of order on the ground that the bill had not yet been read a second time.<sup>150</sup>

**Addition of words:** A reasoned amendment may not propose the addition of words to the question 'That this Bill be now read a second time'.<sup>151</sup> The addition of words must, by implication, attach conditions to the second reading.<sup>152</sup> The Senate has not adopted this rule, on the basis that as a House of review, it should be allowed every opportunity to project viewpoints.<sup>153</sup>

**Direct negative:** In addition to the rules in the standing orders governing the contents of reasoned amendments, it is the practice of the House, as it is the practice of the House of Commons<sup>154</sup>, that an amendment which amounts to no more than a direct negation of the principle of a bill is open to objection.

**Form of amendment:** The usual form of a reasoned amendment is to move 'That all words after "That" be omitted with a view to substituting the following words: ...'. Examples of words used are:

- the bill be withdrawn and redrafted to provide for ...
- the bill be withdrawn and a select committee be appointed to inquire into ...
- the House declines to give the bill a second reading as it is of the opinion that ...
- the House disapproves of the inequitable and disproportionate charges imposed by the bill ...
- the House is of the opinion that the bill should not be proceeded with until ...
- the House is of the opinion that the ... Agreement should be amended to provide ...

148 S.O. 220; VP 1920–21/90. There is a sound reason for this rule because, if the wording of a second reading amendment is similar to the wording of a detail amendment and the second reading amendment is defeated, the moving of the detail amendment could be prevented by the application of the 'same question' rule (S.O. 109).

149 VP 1951–53/246; H.R. Deb. (29 and 30.11.51) 3140. The Speaker accepted a second reading amendment, some aspects of which could have been moved in committee, as it was the wish of the House (it was felt preferable to have one clear-cut issue than to be involved in numerous discussions in committee), H.R. Deb. (10.9.52) 1214–16; and *see* H.R. Deb. (28.9.54) 1666. *See also* VP 1978–80/727—in this case the proposals of the Opposition were so complicated that resources were not available to draft committee amendments. Following an assurance that the amendments would not be moved in committee, the proposals were incorporated into a second reading amendment.

150 The amendment was also ruled out of order on the ground of irrelevancy, VP 1912/143.

151 S.O. 220; VP 1940/87. Until a change in the standing orders in 1965 this prohibition was not explicit and attempts to move amendments seeking to add words to the motion for the second reading were ruled out of order on the basis of House of Commons practice.

152 *May*, 475. However, other kinds of amendment with conditional wording have been accepted by the House ('... will not decline to give the bill a second reading if ...', VP 1993–95/1777–8).

153 J 1977/399; *Odgers*, 5th edn, p. 309.

154 *May*, p. 475.

- whilst welcoming the measure of relief provided by the bill, the House is of the opinion that . . .
- the House notes with approval that, in response to public pressure, the Government has introduced this limited bill, but deplores . . .
- whilst not opposing the provisions of the bill, the House is of the opinion that . . .
- whilst not declining to give the bill a second reading, the House is of the opinion that . . .

**Debate and questions put:** Immediately the Member moving the second reading amendment has finished his or her speech, the Speaker calls for a seconder. If the amendment is not seconded, there may be no further debate on the amendment and no entry relating to the proposed amendment is made in the Votes and Proceedings.<sup>155</sup> When seconded, the Speaker states that ‘The original question was “That this Bill be now read a second time”, to which the honourable Member for . . . has moved, as an amendment, that all words after “That” be omitted with a view to substituting other words’. (With a ‘6 months’ amendment the Speaker would state the amendment in full.) The Speaker then proposes the immediate question ‘That the words proposed to be omitted stand part of the question’<sup>156</sup> which question is open to debate. By convention, if the Member has allowed sufficient time, copies of the terms of a reasoned amendment are duplicated and circulated in the Chamber.

A Member who moves an amendment or a Member who speaks following the moving of an amendment, is deemed to be speaking to both the original question and the amendment. A Member who has spoken to the original question prior to the moving of an amendment may again be heard, but shall confine his or her remarks to the amendment. A Member who has spoken to the original question may not second an amendment subsequently moved.

A Member who has already spoken in the second reading debate can only move a second reading amendment by leave of the House.<sup>157</sup> The time limits for speeches in the debate are 20 minutes for a Member speaking to the motion for the second reading or to the motion and the amendment, including a Minister or Parliamentary Secretary speaking in reply. A limit of 15 minutes applies for a Member who has spoken to the motion and is addressing the amendment.<sup>158</sup>

A Member may amend his or her amendment after it is proposed with the leave of the House (for example to correct an error in the terms of the words proposed to be substituted).<sup>159</sup> An amendment may only be withdrawn by leave of the House.<sup>160</sup>

If the question ‘That the words proposed to be omitted stand part of the question’ is resolved in the affirmative, the amendment is disposed of.<sup>161</sup> Debate may then continue on the motion for the second reading. No amendment may be moved to any words which the House has resolved shall stand part of a question<sup>162</sup>, so it is not possible for a further second reading amendment to be moved.

If the question ‘That the words proposed to be omitted stand part of the question’ is resolved in the negative, another question shall be put ‘That the words proposed to be

155 S.O. 160.

156 S.O. 176.

157 VP 1987–89/570.

158 S.O. 91.

159 VP 1978–80/239.

160 VP 1937–40/369.

161 S.O. 176.

162 S.O. 181; VP 1940/86–7.

inserted [the words of the amendment] be so inserted'.<sup>163</sup> If this question is agreed to, a final question 'That the motion, as amended, be agreed to' would then be put.<sup>164</sup>

**Effect of agreeing to reasoned amendment:** As the House has never agreed to a reasoned amendment, it has no precedent of its own to follow in such circumstances. The act of carrying a reasoned amendment is not technically conclusive. The House, by agreeing to the motion, as amended, refuses to read the bill a second time on a particular day and gives its reasons for such refusal. Although it seems unlikely, if a reasoned amendment were carried, that any further progress would be made, it could be argued that the amendment would not necessarily arrest the progress of the bill, as procedural action could be taken to restore the bill to the Notice Paper and have the second reading moved on another occasion. This approach was taken by the Chair during consideration of the Family Law Bill 1974, on which a free vote was to take place, when the effects of the carriage of an amendment expressing qualified agreement were canvassed in the House. The reasoned amendment moved to the Family Law Bill proposed to substitute words to the effect that, **whilst not declining to give the bill a second reading**, the House was of the opinion that the bill should give expression to certain principles.<sup>165</sup>

Speaker Cope informed the House that the effect of carrying the amendment would be that the question for the second reading would not be carried<sup>166</sup>, but this would not necessarily prevent progress of the bill, which would be a matter for government consideration.<sup>167</sup> In view of the circumstances a contingent notice of motion was given by a Minister that on any amendment to the motion for the second reading being agreed to, he would move that so much of the standing orders be suspended as would prevent a Minister moving that the second reading of the bill be made an order of the day for a later hour that day.<sup>168</sup>

Subsequently a Member put the point that the second reading amendment, if agreed to, should not be regarded as requiring the withdrawal of the bill for any period but would enable the bill to go straight into committee for examination. He asked newly elected Speaker Scholes for his opinion on the contingent notice of motion. Speaker Scholes replied to the effect that if the immediate question ('That the words . . . stand . . .') was defeated, the motion for the second reading would not have been carried and it could not, at that stage, proceed. That would not prevent the bill proceeding at another time and it certainly would not require the bill to be withdrawn and redrafted. At a subsequent time the House could reinstate the motion 'That this bill be now a read a second time', and debate could then recommence on that question. The contingent notice would enable the second reading to be reinstated. If the contingent notice was called on and agreed to, the second reading of the bill would be made an order of the day for a later hour of the day. It would then be up to the House as to when the order would be considered (perhaps immediately). If the motion 'That this bill be now read a second time' were to proceed, it would be a completely new motion for that purpose and open to debate in the same manner as the motion for the second reading then before the House.<sup>169</sup>

Any determination of the effect of the carrying of a second reading amendment in the future may well depend upon the wording of the amendment. If the rejection is definite

163 S.O. 176.

164 S.O. 186.

165 VP 1974-75/449.

166 H.R. Deb. (12.2.75) 180.

167 H.R. Deb. (13.2.75) 320.

168 NP 56 (4.3.75) 6006.

169 H.R. Deb. (28.2.75) 934-5.

and uncompromising, the bill may be regarded as having been defeated. However wording giving qualified agreement such as 'whilst not declining to give the bill a second reading...' or 'whilst not opposing the provisions of the bill...', could be construed to mean that the House refuses at that particular time or on that particular day to read the bill a second time, and gives its reasons for such refusal, but that the bill is not otherwise disposed of. In other words the progress of the bill is arrested for the time being and the second reading may be moved on another occasion.

On the other hand it could be argued that the House may be better advised to follow the practice that, after a reasoned amendment of any kind has been carried, no order is made for a second reading on a future day. This would be consistent with the practice in cases of the second reading being negatived.

In the House of Commons the modern practice is that after a reasoned amendment has been carried, no order is made for a second reading on a future day<sup>170</sup>; that is, the bill is effectively disposed of. However, in the House of Commons reasoned amendments record reasons for not agreeing to the second reading and amendments agreeing to the second reading with qualifications are not the practice.<sup>171</sup>

#### *Reasoned amendment in the Main Committee*

The view has been taken that an unresolved question on a second reading amendment prevents further consideration of a bill in the Main Committee.<sup>172</sup>

#### *Determination of question for second reading*

When debate on the motion for the second reading has concluded, and any amendment has been disposed of, the House determines the question on the second reading 'That this bill be now read a second time'. On this question being agreed to, the Clerk reads the long title of the bill.

Only one government bill has been negatived at the second reading stage in the House of Representatives<sup>173</sup>, but there have been a number of cases in respect of private Members' bills.<sup>174</sup> It may also be considered that a bill whose second reading has been negatived is left in the same position as a bill in respect of which a second reading amendment has been agreed to. It could be argued that the bill is technically still before the House and can afterwards be proceeded with.<sup>175</sup> The basis of this argument is the word 'now', as negating the second reading motion is a decision that the bill be not 'now' read a second time but this does not prevent it being read a second time on some subsequent occasion. However, the practice of the House has invariably been that, in cases where the second reading has been negatived the motion for the second reading has not been moved again.

The modern practice of the House of Commons is that defeat on second reading is fatal to a bill.<sup>176</sup>

#### *Bill reintroduced*

Should the Government wish to further proceed with a bill, the second reading of which has been negatived or subjected to a successful amendment, the appropriate

<sup>170</sup> *May*, p. 475.

<sup>171</sup> *May*, p. 474–5.

<sup>172</sup> VP 1993–95/2504–5, 2516; VP 1996/363.

<sup>173</sup> VP 1922/207.

<sup>174</sup> VP 1937–40/496; VP 1976–77/130, 442–3, 487.

<sup>175</sup> *May*, 19th edn, p. 498.

<sup>176</sup> *May*, p. 473.

course to take would be to have the bill redrafted in such a way and to such an extent that it becomes a different bill including, for example, a different long title. Alternatively, standing orders could be suspended to enable the same bill to be reintroduced, but this would be an undesirable course to take.

### *Bill not proceeded with*

From time to time a bill will be introduced and remain on the Notice Paper until the reactions of the public to the proposal are able to be made known to the Government and Members generally. As a result of these representations, following an advisory report on the bill from a committee, or for some other reason<sup>177</sup> the Government may wish to substantially alter the bill from its introduced form. This may not always be possible because the proposed amendments may not be within the title of the bill or relevant to the subject matter of the bill and may therefore be inadmissible under the standing orders.<sup>178</sup> In this case, and sometimes in the case where extensive amendments would be involved, a new version of the bill is introduced. If this is done, the Government either allows the order of the day in respect of the superseded bill to remain on the Notice Paper until it lapses on dissolution or prorogation, or a Minister or Parliamentary Secretary moves for the discharge of the order of the day.<sup>179</sup> The new version of the bill is proceeded with notwithstanding the existence or fate of a previous similar bill. Discharge of a bill may occur before the presentation of the second version<sup>180</sup>, or after the second version has passed the House.<sup>181</sup>

### **Proceedings following second reading**

Immediately after the second reading of a bill has been agreed to, standing order 221 determines that:

- (a) a message recommending an appropriation of revenue and/or moneys in connection with the bill may be announced (this applies to special appropriation bills only);
- (b) a motion 'That this bill be referred to a select committee' may be moved; and
- (c) an instruction of which notice has been given may be moved.

Sessional orders in effect in 1977 and 1978 provided that a bill could also be referred to a legislation committee (*see below*).

Proceedings on the basis of paragraph (b) or (c) of standing order 221 are rare. Subsequent action must proceed forthwith according to the terms of standing order 222. The following procedures are listed in the order of frequency of occurrence<sup>182</sup>:

- by leave of the House proceeding immediately to the third reading, thereby bypassing the consideration in detail stage (the equivalent procedure in the Main Committee being for leave to be given to proceed immediately to the report stage);
- by the House or the Main Committee proceeding to consider the bill in detail.

177 E.g. following the report of a joint select committee the Telecommunications (Interception) Amendment Bill 1986 was replaced by another bill incorporating many of the committee's recommendations, VP 1985-87/1029, 1343, 1608.

178 S.O. 227.

179 S.O. 191; VP 1974-75/534. *See Bills not passed into Law and Bills which originally lapsed but subsequently passed, sessions 1901-02 to 1983-84*, Department of the House of Representatives, AGPS, 1985.

180 VP 1973-74/190; H.R. Deb. (16.5.73) 2219-20.

181 VP 1976-77/512, 524; H.R. Deb. (1.12.76) 3083.

182 *See Appendix 17.*

If the motion for the second reading of a private Member's bill is agreed to, further consideration must be accorded precedence over other private Members' business and the Selection Committee may allot times for consideration of the remaining stages.

### *Reference to select committee*

When a motion is moved immediately after the second reading, under standing order 221, 'That this bill be referred to a select committee',<sup>183</sup> the motion is moved without notice, and requires a seconder if moved by a private Member. The motion may be debated<sup>184</sup>, but debate on the motion should not continue a discussion in the nature of a second reading debate<sup>185</sup>, nor should the merits of the bill be discussed.<sup>186</sup> Similarly amendments to be proposed to a bill should not be discussed until the bill reaches the detail stage.<sup>187</sup> Such a motion has included the names of the members of the proposed committee and procedural matters in relation to its appointment.<sup>188</sup> A motion to refer a bill to a select committee under standing order 221 has not to date been agreed to by the House and the ability of the House to refer bills to standing committees for advisory reports has, for practical purposes, meant that the provision is now only likely to be used in the most exceptional circumstances.

Procedures following the report of a select committee appointed under standing order 221 have not therefore been required by the House. The standing orders provide that, when a bill has been referred to a select committee and reported, a time shall be fixed, on the motion without notice of the Member in charge of the bill, for the consideration of the bill as reported.<sup>189</sup>

A motion to refer a bill to a select committee may not be moved after the House has considered the bill in detail.<sup>190</sup> The principle involved is that, the House having completed its detailed consideration of the bill, the bill should not be referred for consideration by a lesser body. The standing order also has the effect of permitting a motion to be moved in the House to refer the bill to a select committee while the bill is being considered in detail. This occurred on one of the two occasions when a bill was referred to a select committee.<sup>191</sup>

General purpose standing committees are expressly empowered to report on bills referred to them by a Minister or by the House.<sup>192</sup> To enable a motion to be moved to refer a bill to a standing committee following its second reading, it has been considered necessary to move the suspension of standing orders<sup>193</sup>, as standing order 221 was judged not to apply in that the committees were not select committees. Current procedures provide for the reference of a bill to a committee for an advisory report following its first reading (*see* p. 362).

A proposal to refer a bill to a select or joint select committee established for that purpose, or in practice any other existing committee, may be moved by means of a

183 VP 1974-75/266.

184 H.R. Deb. (24.10.74) 2897-900.

185 H.R. Deb. (18.5.20) 2160-1.

186 H.R. Deb. (21.8.25) 1651-6.

187 H.R. Deb. (18.5.20) 2160-1.

188 VP 1925/66.

189 S.O. 223.

190 S.O. 224.

191 VP 1901-02/455, 519-20; VP 1985-87/1029; 1343, 1608 (the latter case involved a joint select committee)—*see* 2nd edn, p. 392.

192 S.O. 28B.

193 VP 1987-89/225-7; VP 1993-95/2399.

second reading amendment.<sup>194</sup> Such amendments have on all occasions been rejected by the House.

### *Instructions to a committee*

An instruction empowers a committee, including the Main Committee, to consider matters not otherwise referred to it.<sup>195</sup>

Instructions may be 'permissive' to empower the committee to do something which it could not otherwise do, or 'mandatory' to define the course of action which the committee must follow. Before 1950 the House had a standing order enabling an instruction for the division or consolidation of bills<sup>196</sup> under which the following 'mandatory' instruction was unsuccessfully moved: 'That, as the inclusion in a single measure of more than one substantive amendment of the Constitution is unjust . . . it be an instruction to the Committee to divide the Bill into four Bills, so as to allow each proposed alteration to be dealt with as a separate measure'.<sup>197</sup> A 'mandatory' instruction has also been proposed in the following terms: 'That it be an instruction to the Committee to insert a clause to the effect that . . .'.<sup>198</sup>

An example of a 'permissive' instruction is: 'That the Committee be instructed by the House that it has power to consider the taking of a census of military service of all kinds and in all places'. This motion was moved pursuant to contingent notice and negatived but may well have been ruled out of order as it proposed to widen the scope of the bill.<sup>199</sup>

The standing orders provide that no instruction can be given to a committee to do that which it is already empowered to do, or, in the case of a select committee, to deal with a question beyond the scope of the bill as read the second time.<sup>200</sup> An instruction to the Main Committee requires notice and can only be moved before the Committee has met to consider the bill.<sup>201</sup> Examples of such notices have been notices contingent on the bill in question being read a second time.<sup>202</sup> A motion which a Member was proposing to move, pursuant to contingent notice, was ruled out of order on the ground that such a motion could not be moved by a Member other than the Member who had given notice of the proposed instruction.<sup>203</sup> The motion of instruction is open to debate<sup>204</sup>, and an amendment may be moved.

The only instruction to which the House has agreed was in the terms 'That the Committee be instructed that they have power to take into consideration an amendment to allow . . .'. The bill was agreed to in committee with a new clause, added under the power conferred by the instruction of the House.<sup>205</sup> However, as in this case the new clause fell within the unrestricted title of the bill in question, the need for the instruction was doubtful.

At the time of the abolition of the committee of the whole, an instruction to the committee had not been attempted for many years. In the modern practice of the House

194 VP 1959-60/155, 261; VP 1961/133-4.

195 S.O. 299.

196 This standing order was omitted from the standing orders adopted on 21 March 1950, VP 1950-51/36.

197 VP 1910/186.

198 VP 1917-19/278. This proposed instruction was ruled out of order not because of its 'mandatory' nature, nor because it was beyond the scope of the bill (although the clause it proposed to be inserted was ruled out of order as being outside the scope of the bill when it was moved) but because a Member other than the Member who had given notice proposed to move it.

199 VP 1937-40/408.

200 S.O. 300.

201 S.O. 301.

202 VP 1937-40/408; NP 45 (3.10.22) 201 (not moved).

203 VP 1917-19/278.

204 H.R. Deb. (7.6.39) 1421-6.

205 VP 1906/61.

both the necessity for and the practicality of the procedure may be regarded as questionable.

### *Reference to legislation committee*

Thirteen bills were considered by legislation committees pursuant to sessional orders operating from August 1978. Sessional orders were adopted in March 1981 for the 32nd Parliament<sup>206</sup>; however no bills were referred. The sessional orders provided that, immediately after the second reading or immediately after proceedings under standing order 221 had been disposed of, the House could (by motion on notice carried without dissentient voice) refer any bill, excluding an appropriation or supply bill, to a legislation committee (in effect, for its consideration in detail stage). For a description of the operation of legislation committees *see* pages 331–2 and 341–2 of the first edition.

### *Leave to move third reading/report stage forthwith*

If the House does not refer a bill to a select committee, or if an instruction is not moved and agreed to, the standing orders provide that, at this stage, the House may dispense with the consideration of the bill in detail and proceed immediately to the third reading. If the Speaker thinks Members do not desire to debate the bill in detail, he or she asks if it is the wish of the House to proceed to the third reading forthwith. If there is no dissentient voice, the detail stage is superseded and the Minister moves the third reading immediately. One dissentient voice is sufficient for the bill to be considered in detail. For a bill referred to the Main Committee the equivalent by-passing of the detail stage is achieved by the granting of leave for the motion ‘That the bill be reported to the House without amendment’ to be moved forthwith.<sup>207</sup>

In 1996 the detail stage was by-passed in the consideration of approximately 62% of bills.

### **Former committee of the whole**

The words ‘committee stage’ found in earlier publications about the procedures of the House, and also in descriptions of the practice of the Senate and other legislatures, refer to what the House now knows as the ‘detail stage’ (described below).

Prior to 1994 the consideration in detail stage in the House of Representatives was taken in a committee of the whole—that is, a committee composed of the whole membership of the House (apart from the Speaker). Committee of the whole consideration took place (in the Chamber) at the same place in proceedings as the current detail stage and procedures<sup>208</sup> were similar to current procedures—the essential practical differences being the title (Chairman or Deputy Chairman) and seating position (between the Clerks at the Table) of the occupant of the Chair, and the time limits applying to speeches.

The abolition of the committee of the whole was one of the reforms flowing from the 1993 Procedure Committee report *About time: bills, questions and working hours*<sup>209</sup>, and accompanied other changes to the legislative process, including the provision for bills to be referred to committees for advisory reports, and the establishment of the Main Committee.

206 VP 1978–80/321–4; VP 1980–81/133–4.

207 E.g. VP 1993–95/2658–9; VP 1996/335.

208 Described in earlier editions. The origin of the committee of the whole is covered at p. 233 of the 2nd edition.

209 PP 194 (1993) 7–8.

Rulings and precedents relating to the consideration of bills in the committee of the whole, where appropriate, have continuing application to the consideration in detail stage, whether in the House or the Main Committee.<sup>210</sup>

### Consideration in detail

After the bill has been read a second time, and if it is the wish of the House or Main Committee, the House or Committee proceeds to the detailed consideration of the bill.

The function of this stage is the consideration of the text of the bill clause by clause and schedule by schedule<sup>211</sup>, and the making of such amendments in the bill as are acceptable to the House or Committee. However, the powers of the House or Committee at this stage are limited. For instance, the decision given on the second reading in favour of the principle of a bill means that, at the detail stage, the bill should not be amended in a manner destructive of this principle, and an amendment which is outside the scope of the bill is out of order.<sup>212</sup>

While the House or Main Committee should not amend a bill in a manner destructive of the principle affirmed at the second reading, they may negative a clause or clauses, the omission of which may nullify or destroy the purposes of the bill. They may also negative clauses and substitute new clauses, such a procedure being subject to the rule that any amendment must be within the title or relevant to the subject matter of the bill, and otherwise in conformity with the standing orders of the House.<sup>213</sup>

In the detail stage the title and the preamble (if any) stand postponed without any question being proposed.<sup>214</sup> The reason for postponing the title is that an amendment may be made in the bill which will necessitate an amendment to the title.<sup>215</sup> The purpose of postponing the preamble is that the House or Main Committee has already affirmed the principle of the bill on the second reading, and therefore has to settle the clauses first, and then to consider the preamble in reference to the clauses only. The preamble is thus made subordinate to the clauses instead of governing them. The words of enactment at the head of the bill are not put<sup>216</sup>, as these words are part of the framework of the bill.

The text of the bill is considered in the following order (unless leave is given to take the bill 'as a whole' or to group clauses or schedules together):

- clauses as printed and new clauses, in their numerical order;
- schedules as printed and new schedules, in their numerical order;
- postponed clauses (not having been specially postponed until after certain other clauses);
- preamble (if any), and
- title.<sup>217</sup>

### *Moving of motions and amendments during consideration in detail*

A motion (including an amendment) moved during consideration in detail need not be seconded.<sup>218</sup> Although there is no requirement for notice to be given of proposed

210 VP 1993-95/807.

211 S.O. 226. The House or Main Committee may decide to examine the bill in greater detail, e.g. paragraph by paragraph.

212 *May*, p. 491-2.

213 S.O. 227. See VP 1974-75/863 for a proposed new clause ruled out of order as it did not come within the title nor was it relevant to the subject matter of the bill.

214 S.O. 225.

215 S.O. 231.

216 S.O. 225.

217 S.O. 226.

218 S.O. 279.

amendments, the Speaker has appealed to Members to have proposed amendments in the hands of the Clerk at least one hour before they are to be moved<sup>219</sup>, to allow time to ensure that they are in order and to prepare the appropriate announcements for the questions to be put, and in time for them to be printed and circulated to Members before they are considered. Members are encouraged in the practice of circulating amendments as early as possible so as to enable the Minister or Parliamentary Secretary in charge of the bill and other Members to study the effect of the amendments before they are put for decision. Amendments which the Government or Opposition may wish only to move in certain circumstances, for example, depending on developments in the House or negotiations between parties, may be held under embargo by the Clerks until their release is authorised by the Minister or other Member responsible. Where amendments have been printed and circulated, it is acceptable for a Member to move 'the amendment (or 'amendment No. . . .') circulated in my name' rather than read the terms of the amendment in full. In reply to a Member's request that a lengthy amendment be read, the Chair has stated that it is quite customary for amendments to be taken as read when they have been circulated.<sup>220</sup>

In debate on any question during consideration in detail each Member may speak any number of periods each not exceeding five minutes.<sup>221</sup> If no other Member rises at the conclusion of a Member's period of five minutes, the Member may continue if he or she wishes. An extension of a Member's speaking time may be agreed to, the extension not to exceed two and a half minutes. However, as there is no limit on the number of occasions on which a Member may speak during the detail stage, it is unlikely that such an extension would be sought.

Debate must be confined to the subject matter of the clause, schedule or amendment before the House or Main Committee<sup>222</sup>, and cannot extend to other clauses or schedules which have been, or remain to be, dealt with. Discussion of matters relating to an amendment ruled out of order is not permitted.<sup>223</sup> When the question before the Chair is that a particular clause be agreed to, the limits of discussion may be narrow. When a bill is considered, by leave, as a whole, the debate is widened to include any part of the bill.<sup>224</sup> However, discussion must relate to the clauses of the bill, and it is not in order to make a general second reading speech.<sup>225</sup>

If an amendment is moved to a clause (schedule, or so on) upon which the House or Committee wishes to vote, the Chair may propose a question in one of the following forms:

- When the amendment is to omit words, the question proposed is 'That the words proposed to be omitted stand'.<sup>226</sup>
- When the amendment is to omit words and substitute or add others, the question is 'That the words proposed to be omitted stand'. If this question is agreed to, the amendment is disposed of; if negatived, a further question is proposed 'That the words proposed to be inserted (added) be so inserted (added)'.<sup>227</sup>

219 H.R. Deb. (24.8.84) 398.

220 H.R. Deb. (22.11.51) 2633.

221 S.O. 91.

222 S.O. 228.

223 H.R. Deb. (14.9.61) 1195-6.

224 H.R. Deb. (25.10.55) 1856.

225 H.R. Deb. (16.5.61) 1903.

226 S.O. 175.

227 S.O. 176.

- When the amendment is to insert or add words, the question proposed is 'That the words proposed to be inserted (added) be so inserted (added).'<sup>228</sup>

(In these illustrations the word 'words' may be replaced by 'paragraph', 'subparagraph', 'subclause', 'section', 'schedule', and so on.) An advantage and the probable origin of the question being put in the form 'That the words proposed to be omitted stand', is that it enables Members to vote from their normal seats in the Chamber; that is, the 'ayes' who go to the right of the Speaker on a division can usually be presumed to be government Members.

If no Member objects, the question may be proposed in the form 'That the amendment be agreed to' in any of the above contingencies<sup>229</sup>, and this is now common practice whether or not there is to be a vote on the question. This form of putting the question is in any case necessary when two proposed amendments to omit words and insert others occur at the same place; otherwise the negating of the first amendment by agreeing to the question 'That the words proposed to be omitted stand' will preclude the moving of the second amendment.

If a clause (or schedule, and so on) is amended, a further question is proposed 'That the clause (schedule, and so on) as amended, be agreed to'.<sup>230</sup> If the bill is being considered as a whole, the further question proposed is 'That the bill, as amended, be agreed to'. If the title is amended, the further question proposed is 'That the title, as amended, be the title of the bill'.<sup>231</sup>

**Inadmissible amendments:** Examples of amendments ruled out of order by the Chair have been amendments that were held to be:

- not relevant to the clause under consideration<sup>232</sup>;
- not within the scope of the bill<sup>233</sup>;
- outside the scope of the bill and the principal Act<sup>234</sup>;
- not consistent with the context of the bill<sup>235</sup>;
- ironical<sup>236</sup>;
- not in conformity with the standing orders<sup>237</sup>; or
- in conflict with the Constitution.<sup>238</sup>

If the title of the bill is unrestricted, an amendment dealing with a matter not in the bill, but which is relevant to the principal Act or to the objects of the bill as stated in its title, may be moved, even though the clauses have a limited purpose.<sup>239</sup> An amendment

228 S.O. 177.

229 S.O. 178.

230 S.O. 229.

231 S.O. 231.

232 VP 1961/291 (two proposed amendments).

233 VP 1946-48/527.

234 VP 1961/76-7.

235 VP 1945-46/278.

236 Amendments designed to alter the short title of the Government Preference Prohibition Bill 1914 to (a) the Anti-Trades and Labour Unions Bill 1914, (b) the Government Preference to Contractors, Lawyers, Doctors, and Others Bill 1914, and (c) the Government Preference to the Bar Association, to the British Medical Association, to the Contractors' and Employers' Associations, etc. Bill 1914, were ruled out of order, VP 1914/48-9. Similarly amendments proposing to substitute 'Reduciary', 'Reductionary' and 'Inflationary' for 'Fiduciary' in the Fiduciary Notes Bill 1931 (on the ground of being outside the scope of the bill), VP 1929-31/503.

237 VP 1945-46/420. The Wheat Export Charge Bill 1946 proposed to add a subclause to the effect that the bill should not be submitted for Royal Assent until approved by a majority of wheat growers at a postal ballot. The Chair ruled the amendment was not in order as the standing orders required a bill which had passed both Houses to be forwarded for assent, and a committee of the whole, by amendment to a bill, could not alter the operation of the standing orders.

238 VP 1946-48/527; but enforcement of the standing orders is the main concern of the Chair, which may not be in a position to judge constitutional implications.

239 S.O. 227; H.R. Deb. (31.5.28) 5400.

to add further Acts to a schedule of Acts to be amended by a Statute Law (Miscellaneous Provisions) Bill has been permitted, the long title of the bill being '... to make various amendments to the statute law of the Commonwealth ...'.<sup>240</sup>

If the title is restricted, an amendment dealing with a matter not in the bill, nor within its title, may not be moved.

It is the practice of the House that amendments may not be moved to a schedule containing an Agreement to be given effect by the bill in which it is contained, but an amendment to the clauses of the bill for the purposes of withholding legislative effect from the Agreement is in order, as is an amendment moved to the approval clause of the bill.<sup>241</sup>

No amendment, new clause or schedule shall be at any time moved which is substantially the same as one already negatived, or which is inconsistent with one that has already been agreed to, unless a reconsideration of the bill has intervened.<sup>242</sup>

An amendment which purports to omit a clause or schedule is not in order as the correct course, if a clause/schedule is opposed, is to vote against the question 'That the clause/schedule be agreed to'.

**New clauses:** The procedure for dealing with proposed new clauses is to consider them in their numerical order<sup>243</sup>, that is, at the point of consideration at which the new clause is to be inserted in the bill<sup>244</sup>, or at the end of the bill in the case of a proposed addition.<sup>245</sup> A proposed new clause can be amended in the same manner as an existing clause.<sup>246</sup> A new clause may be out of order for many of the same reasons as an amendment (*see above*), and in particular will not be entertained if it:

- is beyond the scope of the bill;
- is inconsistent with clauses agreed to or substantially the same as a clause previously negatived;
- is in effect a redrafting of a clause which is already in the bill; or
- should be moved as an amendment to an existing clause in the bill.

If more than one new clause is proposed to a bill, each is treated as a separate amendment. However, several proposed new clauses, which may comprise a new Part or Division, may be moved together by leave.<sup>247</sup> New Parts or Divisions may only be moved together by leave.

**Clauses:** Proceedings on the detailed consideration of a bill begin by the Chair calling the number of the clause, for example, 'Clause 1', and stating the question 'That the clause be agreed to'.<sup>248</sup> If it is the wish of the House or Main Committee to consider a group of clauses together, for example, clauses 1 to 4, the Chair states the question 'That the clauses be agreed to'. The question is proposed without any motion being moved. A clause may be divided: a clause has been ordered to be considered by Divisions<sup>249</sup>, by

240 VP 1983–84/145–6.

241 VP 1934–37/484; VP 1940/74.

242 S.O. 233. *See e.g.* VP 1964–66/491, where an amendment to a proposed new clause was ruled out of order by the Chair as the amendment was substantially the same as a proposed amendment to an earlier clause negatived.

243 S.O. 226.

244 VP 1978–80/1210–13; VP 1993–5/2146.

245 VP 1974–75/193; VP 1993–5/2047–8.

246 VP 1983–84/689.

247 VP 1980–83/914; VP 1983–84/86, 91.

248 S.O. 225.

249 VP 1962–63/342. Consideration of the clause had begun before it was ordered to be considered by divisions and the first question following the order was 'That the clause to the end of Division 1 be agreed to' (thereafter 'That Division 2 be agreed to' etc.).

proposed sections<sup>250</sup> and by paragraphs.<sup>251</sup> It has also been ordered that clauses be taken together<sup>252</sup> but it is usual when it is desired that clauses be taken together for leave to be obtained. Leave is necessary if a Member wishes to move, as one amendment, to omit more than one clause and substitute another Part.

An amendment may be moved only when the clause to be amended is before the House or Main Committee. When a clause has been amended, the Chair proposes a further question 'That the clause(s) as amended, be agreed to'<sup>253</sup> before proceeding to the next part of the bill.

**Clauses postponed:** A clause<sup>254</sup>, clauses which have been taken together by leave<sup>255</sup>, a clause and an amendment moved to the clause<sup>256</sup>, or a clause which has been amended<sup>257</sup>, may be postponed. The postponement may be specific, for example, 'until after clause 6'.<sup>258</sup> If not specific, postponed clauses are considered after schedules and before the preamble, or if there is no preamble, before the title.<sup>259</sup> Part of a clause may also be postponed.<sup>260</sup>

A postponement of a clause is regarded as a motion, not an amendment. The motion to postpone a clause may be debated.<sup>261</sup> Debate is limited to the question of postponement, and the bill or the clause may not be discussed. In relation to the Family Law Bill 1974 the House agreed to a procedural motion which, inter alia, postponed clauses 1 to 47 until after clause 48<sup>262</sup>, the clause that was attracting the attention of most Members. On occasions a motion has been moved that a clause be postponed 'as an instruction to the Government that ...'<sup>263</sup> or 'so that the Government may redraft it to provide ...'.<sup>264</sup> The proposed instruction was not recorded in the Votes and Proceedings.

**Schedules:** With the exception of a schedule containing an Agreement to be given effect by a bill in which it is contained, a schedule to a bill can be amended<sup>265</sup> or omitted and another schedule substituted<sup>266</sup> and is treated in the same manner as a clause. The questions proposed are 'That the schedule (or 'Schedule 2', for example) be agreed to'.<sup>267</sup> When a schedule has been amended, the further question is put 'That the schedule, as amended, be agreed to'.<sup>268</sup>

With the introduction of the practice of including substantive amendments to existing Acts in schedules (*see* p. 353), some schedules became very extensive, possibly consisting of hundreds of items. In such cases amendments could be moved to individual

250 VP 1960-61/270. The clause proposed to insert new sections in the principal Act. Consideration of the clause had begun and the first question was 'That the clause to the end of proposed section 24 be agreed to'.

251 VP 1959-60/264. The clause had been debated before the order and the first question after the order was 'That the clause to the end of paragraph (a) be agreed to' (thereafter 'That paragraph (b) be agreed to' etc.).

252 VP 1932-34/260, 332.

253 S.O. 229.

254 VP 1974-75/583.

255 VP 1970-72/975.

256 VP 1970-72/1294.

257 VP 1956-57/192.

258 VP 1970-72/975.

259 S.O. 226.

260 VP 1970-72/771.

261 VP 1962-63/28; H.R. Deb. (27.2.62) 222-34.

262 VP 1974-75/639-40.

263 H.R. Deb. (18.5.56) 2269.

264 H.R. Deb. (18.5.56) 2294.

265 *See* for example VP 1974-75/227; VP 1993-95/2390-1 for alteration of terms within a schedule; VP 1976-77/555 for an amendment proposing to add a part at the end of a schedule.

266 VP 1956-57/199-200.

267 VP 1993-95/2394.

268 VP 1993-95/2342; VP 1996/321.

items, items could be omitted, or omitted and other items substituted, and items could be inserted or added.<sup>269</sup>

In October 1996 the Procedure Committee responded to concerns that the new drafting practice, in conjunction with the practice, pursuant to standing order 226, of taking schedules as a whole, had removed the right of Members to debate and vote on individual amendments. The committee recommended that the standing order be amended to provide that schedules be considered in their numerical order before the clauses, that items within a schedule be considered in their numerical order, and that where appropriate, the practice applying to the consideration of clauses apply to the consideration of the items of the schedule.<sup>270</sup>

**Preamble:** When all clauses and schedules have been agreed to, the preamble is considered. A preamble may be debated and amended.<sup>271</sup> The questions proposed from the Chair are 'That the preamble be agreed to' and, where appropriate, 'That the preamble, as amended, be agreed to'.

**Title:** Where a bill is considered clause by clause, the long title is the last part of the bill to be considered. The title is amended<sup>272</sup> if a clause has been altered beyond the terms of a bill's title as read a second time, as every clause within the bill must come within the title of the bill.<sup>273</sup> The title may also be amended if a bill is amended in such a way as to reduce its scope.<sup>274</sup> When a title is amended, the Chair proposes the question 'That the title, as amended, be the title of the bill'. When the amendment of the title occurs in the Main Committee the amendment would need to be specially reported to the House.<sup>275</sup>

**Reconsideration:** Parts of the bill may be reconsidered while it is still being considered in detail, with the leave of the House or Main Committee. A clause has been reconsidered, by leave, immediately after it has been agreed to<sup>276</sup>, shortly after the clause has been agreed to<sup>277</sup> and after the title has been agreed to.<sup>278</sup> A clause, previously amended, has been reconsidered, by leave, and further amended<sup>279</sup>, and a new clause previously inserted has been reconsidered, by leave.<sup>280</sup> Two clauses have been reconsidered together, by leave.<sup>281</sup>

**Bill considered as a whole, or by parts:** In many instances leave is granted for the bill to be considered as a whole. The Chair asks 'Is it the wish of the House (Committee) to consider the bill as a whole'. If there is no dissentient voice, the Chair then proposes the question 'That the bill be agreed to'. If, among circulated amendments, there is an indication that a clause is to be opposed, the bill cannot be taken as a whole.

Amendments may be moved to any part of the bill when the bill is considered as a whole but they must be taken in the order in which they occur in the bill. In the case of more than one amendment, the amendments may, by leave, be moved together.<sup>282</sup> This

269 E.g. VP 1996/319–332, 453–7.

270 Standing Committee on Procedure, *Bills—Consideration in detail: Review of the operation of standing order 266*.

271 VP 1929–31/929.

272 VP 1976–77/269.

273 S.O. 213.

274 VP 1996/258.

275 S.O. 231; VP 1976–77/270; VP 1993–95/1417, 1405.

276 VP 1976–77/289.

277 VP 1973–74/154.

278 VP 1974–75/676.

279 VP 1977/152.

280 VP 1974–75/690.

281 VP 1961/30.

282 VP 1978–80/198 (opposition amendments and proposed new clause not agreed to); VP 1978–80/287 (government amendments made); VP 1996/194; 257.

course may be consistent with the objectives of taking the bill as a whole. Although Members may be willing to have groups of amendments moved together by leave, it is not always possible for this to be done in the way desired. An example would be where there were both government and opposition amendments on the same matter, in which case the amendments would be taken in a way which did not result in agreement to one amendment making the other redundant, if possible. When an amendment is made to a bill taken as a whole, the further question is proposed 'That the bill, as amended, be agreed to'.

On occasions parts of the bill may be considered together, by leave. The Chair may be aware, because of circulated amendments or personal knowledge, that a Member wishes to move amendments to particular clauses, for example, clauses 10 and 19. If the House or Main Committee does not wish to consider the bill as a whole and have the Member move the amendments together, by leave, it may, for example, be willing to consider clauses 1 to 9 together, clause 10 (to which the Member may move an amendment), clauses 11 to 18 together, and then the remainder of the bill (at which stage the Member will move the second amendment). Schedules have been taken together<sup>283</sup>, the clauses and the schedule have been taken together<sup>284</sup>, and a bill has been considered by Parts (clause numbers shown).<sup>285</sup> In each instance leave was required.

### **Report stage (for bills considered by Main Committee)**

If a bill has been considered in detail by the Main Committee, when the bill has been fully considered, the question is put 'That this bill be reported to the House, without amendment' or 'with (an) amendment(s)' ('and with (an) unresolved question(s)'), as appropriate. After this question has been agreed to, a copy of the bill certified by the Clerk of the Committee together with schedules of any amendments made by the Committee and any questions which the Committee was unable to resolve are transmitted to the Speaker for report to the House.<sup>286</sup>

The Speaker reports the bill to the House at a time when other business is not before the House.<sup>287</sup> If a bill is reported from the Main Committee without amendment or unresolved question, the question may be put at once 'That the bill be agreed to'. This is the usual practice, although the House, if it wishes, may appoint a different time for the question to be put. In either case no debate or amendment is allowed to this question.<sup>288</sup>

If a bill is reported with amendments or with questions which the Main Committee had been unable to resolve, the standing orders provide that a future time shall be appointed for taking the report into consideration and that the schedules of amendments or unresolved questions shall in the meantime be printed. The report may be considered immediately if copies of the schedules have already been circulated among Members<sup>289</sup>, and this is the usual practice. In the event that copies of the schedules have not been circulated the report may still be considered at once by leave of the House, or, if leave is not granted, following the suspension of standing orders. Since the establishment of the Main Committee the following contingent notice of motion has appeared on the Notice Paper:

283 VP 1956-57/198-200.

284 VP 1960-61/333.

285 VP 1948-49/268.

286 S.O. 234, e.g. VP 1996/146, 4679.

287 S.O. 234, e.g. VP 1996/467-9.

288 S.O. 236A.

289 S.O. 235, e.g. VP 1996/467-9.

*Contingent on any report relating to any bill being received from the Main Committee: Minister to move—That so much of the standing orders be suspended as would prevent the remaining stages being passed without delay.*

The motion is effective if agreed to by a simple majority.

When the report is considered, the House deals first with any unresolved questions<sup>290</sup> (these are generally proposed amendments to the bill, but unresolved second reading amendments are also possible). Separate questions, open to debate or amendment, are put on each unresolved matter, but by leave, unresolved questions may be taken together.<sup>291</sup> The House then deals with any amendments made by the Main Committee. A single question is put 'That the amendments made by the Main Committee be agreed to'. No debate or amendment to this question is permitted. No new amendments to the bill may be moved except if necessary as a consequence of the resolution by the House of any question left unresolved by the Main Committee. Finally, the question is put 'That the bill (or the bill, as amended) be agreed to'. Once again, no debate or amendment of this question is allowed.<sup>292</sup>

## Reconsideration

At any time before the moving of the third reading a bill, on motion without notice by any Member, may be reconsidered in detail, in whole or in part, by the House.<sup>293</sup>

In the days of the former committee of the whole this practice was known as recommittal—the bill being returned to the committee for reconsideration. Precedents relating to the recommittal of bills, where appropriate, have continuing relevance to reconsideration.

The motion for reconsideration must be seconded if not moved by a Minister.<sup>294</sup> Motions have been moved to reconsider clauses to a certain extent<sup>295</sup>, for the reconsideration of certain amendments<sup>296</sup> or to enable further amendments to be moved.<sup>297</sup> Clauses can be reconsidered in any sequence which the House approves.<sup>298</sup> An amendment to alter the scope of reconsideration may be moved to the motion to reconsider, that is, by adding other clauses or schedules to those proposed to be reconsidered or by omitting certain clauses or schedules proposed to be reconsidered.<sup>299</sup> If a bill is ordered to be reconsidered without limitation, the entire bill is again considered in detail. A bill, or that part of the bill reconsidered, may be further amended.<sup>300</sup> In the case of a partial reconsideration, only so much of the bill as is specified in the motion for reconsideration may be considered.<sup>301</sup> Several bills which have been taken together have been reconsidered in order that an amendment could be moved to one of the bills.<sup>302</sup>

290 E.g. VP 1996/146.

291 VP 1993–95/1524–5.

292 E.g. VP 1993–95/1286.

293 S.O. 236B.

294 H.R. Deb. (15.11.73) 3459.

295 VP 1905/95.

296 VP 1906/114.

297 VP 1906/114.

298 H.R. Deb. (27.9.05) 2836.

299 VP 1917–19/85–6.

300 VP 1917–19/84.

301 H.R. Deb. (27.9.05) 2832.

302 VP 1962–63/360.

The motion for reconsideration may be debated<sup>303</sup> but debate is confined to the reasons for reconsideration. On the motion for reconsideration, details of a proposed amendment should not be discussed<sup>304</sup>, nor can the general principles of the bill and the detail of its clauses be debated.<sup>305</sup> A Member moving for reconsideration can give reasons but cannot revive earlier proceedings.<sup>306</sup> A Member who has moved for the reconsideration of a clause is in order in speaking to a motion to reconsider another clause moved by another Member, but is not in order in moving the reconsideration of a further clause as the Member has exhausted his or her right to speak.<sup>307</sup>

There is no limit on the number of times a bill may be reconsidered, and there are precedents for a bill being reconsidered a second time<sup>308</sup>, a third time<sup>309</sup> and a fourth time.<sup>310</sup>

### Third reading and final passage

When a bill has been agreed to by the House at the consideration in detail stage, or following a report from the Main Committee, the standing orders provide that the Speaker shall notify the House and for a future day to be fixed, on motion, for the bill's third reading.<sup>311</sup>

This procedure is however rarely used in practice in order to minimise unnecessary delay. The procedure for moving the third reading is based on one of the following alternatives, in order of frequency:

- in the case of the detail stage being by-passed, the House grants leave for the third reading to be moved forthwith after the second reading (*see* p. 377);
- following the adoption by the House of a Main Committee report on a bill, leave is usually granted for the third reading to be moved forthwith; or
- if leave is not granted for the third reading to be moved forthwith, a Minister may move a contingent notice of motion which usually appears on the Notice Paper. The motion is traditionally in the following form:

I move, pursuant to contingent notice, That so much of the standing orders be suspended as would prevent the motion for the third reading being moved without delay.

This motion is effective if agreed to by a simple majority.

The motion moved on the third reading is 'That this bill be now read a third time'.<sup>312</sup> The motion may be debated<sup>313</sup>, although such debates are not common. The third reading stage has been described as a review of the bill in its final form.<sup>314</sup> The scope of debate is more restricted than at the second reading stage, being limited to the contents of the bill, that is, the matters contained in the clauses and schedules of the bill. It is not in order to re-open or repeat debate on matters discussed on the motion for the second reading or during the detail stage, and it has been held that the debate on the motion for the third

303 H.R. Deb. (8.11.73) 3040-5.

304 H.R. Deb. (2.8.07) 1379; H.R. Deb. (4.7.23) 640.

305 H.R. Deb. (5.9.17) 1661.

306 H.R. Deb. (31.3.20) 1094.

307 H.R. Deb. (27.10.09) 5070.

308 VP 1917-19/83-4, 85-6; VP 1914-17/458, 464.

309 VP 1911/164, 199 (2); VP 1903/44 (2), 47.

310 VP 1901-02/150, 151, 166, 175.

311 S.O. 237.

312 S.O. 238.

313 VP 1978-80/273; H.R. Deb. (31.5.78) 2886-7; VP 1996/264.

314 *May*, 20th edn, p. 528.

reading is limited to the bill as agreed to by the House to that stage.<sup>315</sup> Clauses may not be referred to in detail in the third reading debate<sup>316</sup>, nor may matters already decided during the detail stage be alluded to.<sup>317</sup> The time limits are as for a debate not otherwise provided for, that is, 20 minutes for the mover and 15 minutes for other Members. In practice, the opportunity to speak at this time may be taken by a Member who for some reason has been unable to participate in earlier debate (perhaps because of a guillotine), or, unacceptably, by a Member attempting to continue earlier debate.

A reasoned amendment cannot be moved to the motion for the third reading.<sup>318</sup> The **only** amendment which may be moved to the motion for the third reading is 'That the word "now" be omitted from, and the words "this day six months" be added to, the question', which question, if carried, finally disposes of the bill.<sup>319</sup> The question proposed by the Chair on the moving (and seconding) of such an amendment is 'That the word proposed to be omitted stand part of the question', which, if agreed to, disposes of the amendment. Debate may then continue on the motion for the third reading. If the question on the amendment is negatived, a further question would be proposed 'That the words proposed to be added be so added'<sup>320</sup> which, if agreed to, would be followed by the question 'That the motion, as amended, be agreed to'. If no Member objects, the question 'That the amendment be agreed to' may be put instead of the question 'That the word proposed to be omitted stand part of the question'.<sup>321</sup> A third reading amendment is rare and one has never been agreed to by the House.

When the question on the third reading is agreed to, the bill is read a third time by the Clerk reading its long title.<sup>322</sup> At this point the bill has passed the House and no further question shall be put.<sup>323</sup> The bill, as soon as administratively possible, is then transmitted by message to the Senate seeking its concurrence (*see* p. 389).

### *Rescission of third reading*

The House has, on occasions, rescinded the third reading resolution. In 1945 standing orders were suspended to enable the rescission of the resolution relating to the third reading of the Australian National Airlines Bill, and to enable the third reading of the bill to be made an order of the day for a later hour. Subsequently a message from the Governor-General recommending an appropriation of revenue and moneys in connection with the bill was announced and the bill was read a third time.<sup>324</sup>

The vote on the third reading of the Constitution Alteration (Simultaneous Elections) Bill 1974, which did not attract an absolute majority as is required by the Constitution, was rescinded following a suspension of standing orders. Due to a malfunction, the division bells had not rung for the full period and several Members had been prevented from participating in the division on the third reading. The question on the third reading was put again, and passed by an absolute majority.<sup>325</sup>

315 H.R. Deb. (7.11.35) 1418.

316 H.R. Deb. (3.12.18) 8637.

317 H.R. Deb. (4.5.60) 1381.

318 The Speaker ruled out of order a proposed amendment 'That all words after "That" be omitted with a view to inserting the following words in place thereof: "the Bill be postponed for six months in order that a referendum of the Australian people might be taken to determine the acceptability or otherwise of the measure"', VP 1951-53/272.

319 S.O. 239; VP 1974-75/344 (not carried).

320 S.O. 176.

321 S.O. 178.

322 The 'reading' of the bill by the Clerk has been taken to be a necessary formality, H.R. Deb. (30.10.13) 2789.

323 S.O. 240.

324 VP 1945-46/213.

325 VP 1974/28-9; H.R. Deb. (6.3.74) 131-5.

The resolution on the third reading of the National Health Bill 1974 [No. 2], which had been passed on the voices, was rescinded, by leave, immediately following the third reading, and the question put again, as opposition Members desired a division on the question.<sup>326</sup>

The second and third readings of the Customs Administration (Transitional Provisions and Consequential Amendments) Bill 1986 were rescinded by leave, following the realisation that the second reading had not been moved, and the order of the day was called on again.<sup>327</sup>

The recorded decisions of the committee of the whole and the House on the committee, report and third reading of the Copyright Amendment Bill 1988 were rescinded on motion following the suspension of standing orders, a misunderstanding having occurred during the previous consideration.<sup>328</sup>

The recorded decision of the House on the third reading of a bill has been rescinded on motion following the suspension of standing orders. The bill was then considered in detail and amended, and the question on the third reading put again. At the previous sitting leave had been given for the third reading to be moved forthwith (i.e. omitting the detail stage) and intended government amendments to the bill had not been moved.<sup>329</sup> (See p. 425 for rescission of agreement to Senate amendments).

## PRINTING AND OTHER ADMINISTRATIVE ARRANGEMENTS IN CONNECTION WITH BILLS

Once a government bill has been drafted and approved for presentation to Parliament the Office of Parliamentary Counsel orders the printing of copies of the bill which are forwarded to the appropriate parliamentary officers. A bill is kept confidential until it is introduced, when the custody of copies and the authority to print passes to the Clerk of the House while the bill is before the House and to the Clerk of the Senate while the bill is before the Senate.

The role of officers of the House in the distribution of bills was recognised early in the history of the House. In 1901 Speaker Holder drew the attention of Members to the fact that copies of a circulated bill had not passed through the hands of officers of the House, and expressed the view that it would be well in the future if the distribution of bills took place through the recognised channel. Prime Minister Barton stated that he would take particular care that in future all necessary distribution was done through the officers of the House. A few days later the Speaker repeated that the distribution of bills was a matter for the officers of the House, and one for which they accepted full responsibility.<sup>330</sup>

**Introduced copy:** A Minister or Parliamentary Secretary on presenting a bill hands three signed copies to the Clerk of the House. The title of the Minister responsible is shown on the first page of the bill. If there are any typographical errors in these copies, the errors are corrected by the Office of Parliamentary Counsel and initialled in the margin of the bill by the Minister (or Parliamentary Secretary). Similarly, private Members sign and present three copies of bills they introduce and initial any necessary

326 VP 1974-75/467; H.R. Deb. (19.2.75) 474.

327 VP 1985-87/893; H.R. Deb. (30.4.86) 2774.

328 VP 1987-89/925.

329 VP 1993-95/1803-4.

330 H.R. Deb. (19.6.01) 1247; H.R. Deb. (26.6.01) 1618.

corrections.<sup>331</sup> All future prints of the bill are based on these copies. Copies of a bill are circulated in the Chamber immediately after presentation.

**Third reading print:** If a bill has been amended at the detail stage, a 'third reading print', incorporating the amendment(s), is obtained. The copies of the third reading print also have printed on the top left hand corner the Clerk's certificate recording the agreement of the House to the bill and certifying that it is ready for transmission to the Senate. It is the responsibility of officers of the House to arrange for a bill's reprinting, which may involve, *inter alia*, the renumbering of clauses and consequential alteration of cross-references. This may take some days in the case of a sizeable bill which has been heavily amended. The third reading print is checked exhaustively to ensure that the copy of the bill transmitted to the Senate accurately reflects all changes made to the bill by the House. This unavoidable delay is a factor of some importance in the programming of business in the closing stages of a period of sittings or on other occasions when it is the desire of the Government for a bill to be passed by both Houses expeditiously.

### Deputy Speaker's amendments

Amendments of a verbal or formal nature may be made, and clerical or typographical errors may be corrected, in any part of a bill by the Clerk acting with the authority of the Deputy Speaker.<sup>332</sup> In practice only bills introduced in the House are so amended. The advice of the Parliamentary Counsel is first obtained as to whether or not any such amendment should be made. This type of correction is normally made prior to the transmission of the bill to the Senate but has also been made after the bill has been returned from the Senate.

### Clerk's certificate and transmission to the Senate

Immediately a bill has been passed by the House without amendment, a certificate, to be signed by the Clerk of the House, is affixed to an introduced copy of the bill. The certificate is in the following form:

This Bill originated in the House of Representatives; and, having this day passed, is now ready for presentation to the Senate for its concurrence.<sup>333</sup>

[Signature]

*Clerk of the House of Representatives*

House of Representatives

[Date bill passed House]

A copy of the bill bearing the Clerk's certificate is placed inside a message to the Senate, together with a second copy of the bill, for possible Senate publication.<sup>334</sup> When a bill has been amended in its passage through the House, a copy of the third reading print, which has the Clerk's certificate printed on it rather than affixed, is placed in the message for transmission to the Senate, instead of a copy of the unamended bill. Again a second copy of the bill is enclosed for possible Senate publication.

The message takes the following form<sup>335</sup>:

331 A private Member has presented a replacement copy of a bill, after a line of type had been omitted from the bill presented previously, VP 1993-95/2241.

332 S.O. 241, The Senate Chairman of Committees has similar authority.

333 S.O. 242.

334 S.O. 243.

335 J 1977/383.

Message No. [ ]

Mr/Madam President

The House of Representatives transmits to the Senate a **Bill for an Act** [remainder of long title]; in which it desires the concurrence of the Senate.

[Signature]

Speaker

House of Representatives

[Date of despatch]

The message to the Senate is signed by the Speaker or, if the Speaker is unavailable, by the Deputy Speaker.<sup>336</sup> Because of the unavailability of the Speaker and the Deputy Speaker, a Deputy Chairman (the former equivalent of a member of the Speaker's panel) as Deputy Speaker has signed two messages to the Senate transmitting bills for concurrence.<sup>337</sup>

In cases where standing orders are suspended to enable related bills to be considered together, the bills are transmitted to the Senate by means of one message. For example, in 1965, 32 bills relating to decimal currency, which were together read a third time in the House<sup>338</sup>, were transmitted to the Senate within the one message.<sup>339</sup> Similarly, on other occasions, nine Sales Tax Assessment Amendment Bills have been transmitted to the Senate in the one message.<sup>340</sup>

It is the responsibility of the Serjeant-at-Arms to obtain the Clerk's signature on the certified copy of the bill and the Speaker's signature on the message and, if the Senate is sitting, to deliver the message to the Bar of the Senate, where a Clerk at the Table accepts delivery. If the Senate is not sitting, the Serjeant-at-Arms delivers the message to the Clerk of the Senate. Senate practice is that the bill is reported by the President when the Senate Minister representing the Minister responsible for the bill in the House indicates that the Government is ready to proceed with the bill.<sup>341</sup>

## THE FINANCIAL PROCEDURES OF THE HOUSE

The financial procedures of the House give effect to the basic parliamentary and constitutional principle of the financial initiative of the Crown, which briefly summarised, is that only the Government of the day, through the House of Representatives, may initiate appropriations or taxes, or move amendments to increase or extend the objects and purposes or alter the destination of any appropriation, or move to increase or extend the incidence of a tax or charge.<sup>342</sup> Consequently, while the processing of financial legislation follows basically the same pattern as that of ordinary bills, there are additional requirements imposed by the Constitution and standing orders. These requirements and the resulting procedural differences are noted under the heading of the class of bill to which they apply.

The term 'money bill' is sometimes used in connection with financial legislation. Money bills may be defined as the bills referred to in section 53 of the Constitution as 'bills appropriating revenue or moneys'. However the term is also sometimes used to refer only to those 'bills appropriating revenue or moneys for the ordinary annual

336 S.O. 370.

337 J 1968-69/207-8.

338 VP 1964-66/472, 515.

339 J 1964-66/452-3.

340 J 1983-84/1066-7; 1985-87/536; 1990-92/94-5.

341 *Odgers*, 7th edn, p. 252.

342 For more discussion of the principle of the financial initiative of the Crown see Ch. on 'The role of the House of Representatives'.

services of the Government', which may not be amended by the Senate. Looser usage has seen the term 'money bill' applied to all bills which may not originate in the Senate under section 53, that is, to include bills imposing taxation.<sup>343</sup> In view of this lack of precision the use of the term 'money bill' is of limited use.

Until the practice was abandoned in 1994<sup>344</sup>, the Office of Parliamentary Counsel had printed on the bottom right hand corner of the introduced copy of bills the following notation to indicate its view of the type of bill ('M' indicating the requirement for a message from the Governor-General):

MM	Appropriating loan moneys;
MR	Appropriating revenue;
MRM	Appropriating revenue and loan moneys;
TMR	Dealing with taxation and appropriating revenue;
T*	Imposing taxation;
T	Dealing with taxation;
O	Other.

### Former financial procedures

Financial procedures operating prior to 1963, involving consideration of appropriation and revenue measures by the Committee of Supply and the Committee of Ways and Means respectively, are described in previous editions of *House of Representatives Practice* (first edition, pp. 345–6; second edition, pp. 408–9).

### The Consolidated Revenue Fund, the Trust Fund and the Loan Fund

The Commonwealth Public Account, the main bank account of the Commonwealth held by the Reserve Bank, comprises all public moneys held by the Commonwealth or its agents and contains the moneys of three major funds; namely, the Consolidated Revenue Fund, the Trust Fund and the Loan Fund.<sup>345</sup>

The Consolidated Revenue Fund<sup>346</sup> is the main working fund of the Commonwealth. It comprises all revenues or moneys raised or received by the Commonwealth Government to be appropriated for the purposes of the Commonwealth subject to the Constitution. The main sources of receipts are taxation, customs and excise duties, receipts from business undertakings, and other departmental receipts except those which by law are required to be paid to a trust account. No public money may be spent (drawn from the Treasury of the Commonwealth) except under appropriation made by law.<sup>347</sup>

The main payments from the Consolidated Revenue Fund are for payments to or for other levels of government, social security and health benefits and repatriation pensions and benefits, departmental expenditure, defence services, interest and other debt charges, and advances and payments to statutory authorities dependent on the Budget.

The Loan Fund<sup>348</sup> is an account of all moneys raised by loans upon the public credit of the Commonwealth other than moneys raised by bank advances in pursuance of

343 See *Legislation Handbook*, p. 34.

344 Office of Parliamentary Counsel, Drafting Direction No. 10 of 1994.

345 For a more detailed account of these funds and related matters see *Commonwealth Financial Management Handbook*, Department of Finance, AGPS, 1992.

346 Established by the Constitution, s. 81.

347 Constitution, s. 83.

348 Established by the *Audit Act 1901*, s. 55.

agreements under the Audit Act.<sup>349</sup> Some Acts authorise the Treasurer to borrow on the credit of the Commonwealth Government.<sup>350</sup> The legislation authorising the raising of loans usually provides authority for the money raised to be applied to the purpose for which it is raised. These Acts may also provide for an appropriation of the Consolidated Revenue Fund for repayment of the moneys borrowed, for payment of interest and for the expenses of raising the loans.

It is customary for loan bills to authorise borrowing for the current year. Attempts to have a loans bill provide standing authority have been resisted.<sup>351</sup>

The Trust Fund<sup>352</sup> comprises four groups of accounts:

- moneys held in trust for persons and authorities other than the Commonwealth;
- working accounts covering certain factories, stores and services, i.e. Commonwealth Government quasi-commercial activities;
- other moneys (not in groups 1 or 2) held in trust under the authority of Parliament to meet future payments, e.g.:
  - the Loan Consolidation and Investment Reserve Trust Account (for repurchasing or redeeming securities which represent portion of the public debt of Australia);
  - Debt Retirement Reserve Trust Account (which has a similar function in respect of Commonwealth securities issued on behalf of Territory or State Governments);
  - Australian Land Transport Development Trust Fund;
- funds and accounts not part of the accounts of the Minister for Finance (i.e. the National Debt Sinking Fund).

Most Trust Accounts are established by the Minister for Finance under the authority of the Audit Act. Some have been authorised by other Acts for purposes defined in those Acts. Section 62A of the Audit Act also authorises the expenditure of moneys standing to the credit of a trust account for purposes defined when the account was established; a further appropriation is not required. However, all moneys credited to the Trust Fund from the Consolidated Revenue Fund or the Loan Fund require an appropriation of those funds.

## **BILLS CONTAINING SPECIAL APPROPRIATIONS**

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

- contain words which appropriate the Consolidated Revenue Fund or the Loan 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 or the Loan 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, and as such not subject to the

349 *Audit Act 1901*, s. 20.

350 Section 57 of the *Audit Act* prohibits the spending of any moneys of the Loan Fund unless authorised by Act of Parliament.

351 VP 1987–89/126.

352 Established by the *Audit Act 1901*, s. 60.

annual authorisation of Parliament, are known as standing appropriations. It has been estimated that about 70 per cent of total expenditure from the Consolidated Revenue Fund is by way of special appropriation.<sup>353</sup>

### Examples of special appropriation bills

Examples of bills containing words to appropriate the Consolidated Revenue Fund (only) are the:

- Housing Assistance Bill 1996 (cl. 11);
- Airports (Transitional) Bill 1996 (cl. 86);
- Telstra (Dilution of Public Ownership) Bill 1996 (sch. 1).

An example of a bill containing words to appropriate the Loan Fund (only) is the Loan Bill 1996.

An example of a bill containing words which appropriate both the Consolidated Revenue Fund and the Loan Fund is the States Grants (Primary and Secondary Education Assistance) Bill 1996 (cl. 88).

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 or the Loan 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 Crown plays an important part in procedures for initiation and processing of all legislation providing for appropriations of public moneys.

Section 56 of the Constitution provides:

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, in part, that proposed laws appropriating revenue or moneys shall not originate in the Senate, the 'House' referred to in section 56 is for all practical purposes the House of Representatives.

Standing order 292, in its effect on procedure in the House, supplements the requirements of section 56 of the Constitution:

No proposal for the appropriation of any public moneys shall be made unless the purpose of the appropriation has in the same session been recommended to the House by message of the Governor-General, but a bill, except an Appropriation or Supply Bill, which requires the Governor-General's recommendation may be brought in by a Minister and proceeded with before the message is announced. No amendment of such proposal shall be moved which would increase, or extend the objects and purposes or alter the destination of, the appropriation so recommended unless a further message is received.

353 H.R. Deb. (29.10.81) 2828–9. See also *Odgers*, 7th edn, pp. 306–7.

It would not be possible for a private Member to obtain the Governor-General's recommendation for an appropriation. Furthermore, standing order 292 provides that, of those bills requiring a Governor-General's message, only those brought in by a Minister may be introduced and proceeded with before the message is announced (for appropriation and supply bills *see* p. 405). Therefore in practice only a Minister may bring in a bill which appropriates public moneys.

The permissive element in the standing order stating that such bills 'may be brought in . . . and 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>354</sup>, not before the bill is introduced.<sup>355</sup>

Special appropriation bills which also deal with taxation may be introduced without notice under standing order 291. 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 which could **not** be moved as a detail stage amendment. The success of such an 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>356</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>357</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.

After the Governor-General's message recommending an appropriation is announced, a motion may be moved, as for ordinary bills, to refer a special appropriation bill to a select committee.<sup>358</sup>

**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:

354 S.O.s 296, 221.

355 *But see* VP 1993-95/2169, 2185.

356 VP 1959-60/140; H.R. Deb. (12.5.59) 2059-61, 2211; *see also* VP 1978-80/397 where an amendment was moved to the Apple and Pear Stabilization Bill 1978 to the effect that 'the Bill should be withdrawn and re-drafted with a view to bringing forward a Bill which increases the rate of stabilization payments to (a) \$3 per box of apples . . .'; and H.R. Deb. (15.5.80) 2872-3.

357 VP 1932-34/910.

358 VP 1974-75/561.

[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>359</sup> Messages recommending an appropriation have been received from the Deputy of the Governor-General<sup>360</sup> and, in the absence of the Governor-General from Australia, from the Administrator.<sup>361</sup>

The message is prepared 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>362</sup>

Officers of the House examine all legislation presented to the House to ensure that the provisions of the Constitution and the standing orders are observed. Part of this scrutiny involves examination as to whether clauses have the effect of appropriating revenue or moneys in cases where a message may not have been provided. In other cases a message may have been provided but may not be thought to be necessary (if, for example, the appropriation has been made under a separate Act, possibly an Appropriation Act). If there is any doubt, the matter is raised as soon as practicable with the Office of Parliamentary Counsel.

On occasions, possibly because of considerations outlined above, a message recommending appropriation has been received after the House has completed consideration of a bill. In such cases the message has been reported to the House at the first opportunity<sup>363</sup> and the bill has not been transmitted to the Senate for its concurrence until the message is reported. In other circumstances a message not announced at the usual time has been announced later, including, by leave, during the consideration in detail stage.<sup>364</sup> Although such procedures may conform with the requirement of standing order 296 that an appropriation message shall be announced after the bill has been read a second time, it is generally the practice to announce the message immediately after the second reading (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' has been agreed to.<sup>365</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>366</sup> The message in this instance recommends that an appropriation be made for the purpose of an amendment to the bill.<sup>367</sup>

359 VP 1987–89/896.

360 VP 1978–80/321; VP 1967–68/156.

361 VP 1977/176.

362 On occasion messages required urgently have been received by fax.

363 VP 1978–80/321; VP 1968–69/573; VP 1993–95/2169, 2185

364 VP 1993–95/1023.

365 VP 1970–72/1033; VP 1968–69/525.

366 S.O. 292.

367 VP 1993–95/2148.

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>368</sup> The message is announced normally immediately after the message recommending an appropriation for the purposes of the bill.<sup>369</sup> Such a message has been announced, by leave, after the consideration in detail stage had commenced.<sup>370</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>371</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 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>372</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>373</sup> In the case of a requested amendment the message recommends an appropriation for the purpose of a request by the Senate for an amendment to the bill.<sup>374</sup> A replacement message has been provided where the long title of an appropriation bill has been amended.<sup>375</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 292 and the principle of the financial initiative of the Crown. 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>376</sup> A proposed amendment has been ruled out of order because its effect would be to increase the appropriation required<sup>377</sup>, alter the purpose of the appropriation<sup>378</sup>, alter the destination of the appropriation<sup>379</sup>, and go beyond the appropriation recommended.<sup>380</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

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368 S.O. 297.

369 VP 1977/409.

370 VP 1993-95/1023.

371 VP 1974-75/561-2.

372 VP 1974-75/944.

373 S.O. 298; VP 1978-80/286; VP 1974-75/544.

374 VP 1993-95/2358.

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

376 S.O. 292.

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

378 VP 1932-34/929.

379 VP 1968-69/256.

380 VP 1917-19/280.

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 292 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>381</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 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>382</sup>

## TAXATION BILLS

Strictly, taxation bills are those which **impose** a tax or charge in the nature of a tax.<sup>383</sup> They cannot originate in, or be amended by, the Senate.<sup>384</sup> The form of a bill in this class is governed by section 55 of the Constitution which provides that laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with **one subject of taxation** only (to avoid what is known as 'tacking'); 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*).

The principle of the financial initiative of the Crown 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>385</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>386</sup> Another option open to a private Member wishing to achieve a reduction in a tax rate or burden is to introduce an amendment to a government bill.<sup>387</sup> This is consistent with S.O. 293, which would prevent a private Member from introducing such a measure as a bill, but which only prevents a private Member from moving amendments to a bill to increase or extend the incidence of the charge (unless the charge is increased or the incidence of the charge so extended does not exceed that already existing by virtue of any Act). In 1988 following presentation of a private Member's bill concerning certain taxation deductions, the Chair noted that the

381 VP 1996/984.

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

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

384 Constitution, s. 53.

385 S.O. 293.

386 NP 182 (29.11.95) 9872.

387 VP 1993-95/2133-5.

bill sought only to ensure that an earlier interpretation of certain provisions prevailed, and not to alleviate tax.<sup>388</sup>

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 and so on. 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 the Senate. This practice has been recognised by the High Court as carrying out the constitutional provisions on a correct basis.<sup>389</sup> It has also been reviewed and accepted by the House's Standing Committee on Legal and Constitutional Affairs.<sup>390</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>391</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>392</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>393</sup> Such

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

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

390 PP 307 (1995) 104–5.

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

392 *The Australian Constitution Annotated*, pp. 179–81.

393 H.R. Deb. (23.11.60) 3183–92.

a bill may be amended by the Senate<sup>394</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>395</sup>

The High Court held in 1987 that:

... 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>396</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>397</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>398</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>399</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

394 VP 1940-43/236-7; VP 1960-61/289.

395 VP 1940-43/227-8; VP 1993-95/2133-5.

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

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

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

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

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 Constitution.<sup>400</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>401</sup>; however a challenge was not mounted.

### **Procedures peculiar to taxation bills**

**Introduction:** Tax proposals, with the exception of customs or excise tariffs, are initiated by a bill which may only be introduced by a Minister or a Parliamentary Secretary.<sup>402</sup> 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>403</sup>

Bills dealing with (but not imposing) taxation are treated procedurally as ordinary bills, with the exception that under standing order 291 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>404</sup>, without notice<sup>405</sup>, and by leave.<sup>406</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 Crown. 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>407</sup>

**Consideration in detail:** The order of consideration of taxation bills at this stage, as with appropriation or supply bills, differs from ordinary bills in that, when the bill is considered clause by clause, any schedule, which usually declares rates of tax or duty, is considered before the authorising clauses.<sup>408</sup>

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

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

402 S.O. 293.

403 S.O. 291.

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

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

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

407 *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.

408 S.O. 226.

No Member, other than a Minister or Parliamentary Secretary, may move an amendment to increase, or extend the incidence of, the charge defined in a proposal unless the effect of the amendment to increase the charge or extend its incidence would not exceed that already existing under an Act of Parliament.<sup>409</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. 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>410</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>411</sup>

### 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>412</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>413</sup> and an amendment may be moved<sup>414</sup>, although the amendment cannot have the effect of increasing or extending the incidence of the charge defined in the proposal unless the charge so increased or the incidence of the charge so extended does not exceed that already contained in an existing Act.<sup>415</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>416</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. Bass Strait freight adjustment levy proposals are regarded as duties of excise.<sup>417</sup>

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, the Minister may publish a notice of a customs tariff proposal or an excise tariff proposal 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>418</sup>

409 S.O. 293. For a comment on this restriction on private Members see H.R. Deb. (15.5.80) 2873.

410 E.g. VP 1993-95/2133-5.

411 VP 1926-28/481.

412 S.O. 291.

413 VP 1978-80/1263; H.R. Deb. (1.5.80) 2522.

414 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.

415 S.O. 293.

416 VP 1970-72/1188; H.R. Deb. (13.9.72) 1352-6.

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

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

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>419</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 six 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 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>420</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 the royal 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.

## APPROPRIATION AND SUPPLY BILLS

### Summary

The Parliament appropriates moneys from the Consolidated Revenue Fund on an annual basis in order to fund expenditure by the Government over a given financial year. A number of Acts are regularly passed in each financial year to provide funds without which the Government and the federal public services of the country could not continue. These Acts are known as Appropriation Acts and Supply Acts, supplemented by what is known as the Advance to the Minister for Finance. The following bills are introduced into the House each year:

**APPROPRIATION BILLS**—appropriate moneys from the Consolidated Revenue Fund for expenditure by the Government:

<sup>419</sup> *Customs Act 1901*, s. 226; *Excise Act 1901*, s. 114.

<sup>420</sup> H.R. Deb. (19.2.76) 115–16.

**Appropriation Bill (No. 1):** This bill is a key element in 'the Budget'; it contains details of estimates for ordinary annual government services—salaries, administrative expenses, and so on. Funds are appropriated for use until 30 June of the following year.<sup>421</sup>

**Appropriation Bill (No. 2):** Is also introduced with the Budget and appropriates funds for expenditure on public works, purchase of sites, (capital expenditure generally) and grants to the States under section 96 of the Constitution. Funds are appropriated for use until 30 June of the following year.

**Appropriation (Parliamentary Departments) Bill:** Also introduced with the Budget, appropriates funds for the parliamentary departments for use until 30 June of the following year.

**Appropriation Bills (No. 3) and (No. 4) and Appropriation (Parliamentary Departments) Bill (No. 2):** These bills are referred to as the additional or supplementary estimates. Appropriation Bill (No. 3) appropriates funds for salaries and 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 almost invariably government departments will exhaust some of the funds provided by Appropriation Bills (No. 1) and (No. 2). They appropriate funds for the remainder of that financial year. The Appropriation (Parliamentary Departments) Bill (No. 2) performs the same function in respect of the parliamentary departments.<sup>422</sup>

**Other appropriation bills:** May be introduced to cover special expenditure, such as new policies, for example, Appropriation Bill (No. 3) 1971–72 was passed to fund the activities of the Australian Wool Commission. (The bills containing the additional estimates in that year were therefore numbered (No. 4) and (No. 5).)

**SUPPLY BILLS**—When the main appropriation bills will not pass before the commencement of the financial year, the Parliament may pass supply bills to provide funds in the interim. This has been the usual practice when the Budget has been presented in August. Usually introduced in April or May, these have made interim provision for expenditure for the following financial year until the main appropriation bills—that is (No. 1) and (No. 2)—have been passed. The amounts provided have usually been sufficient to cover the first five months of the financial year, that is, from 1 July to 30 November, and they have later been validated by the main appropriation bills. As with the appropriation bills, (No. 1) refers to salaries and administrative expenses and (No. 2) provides for capital expenditure. The Supply (Parliamentary Departments) Bill provides funds for parliamentary expenditure. When the Budget occurs in May the appropriation bills can be expected to pass before 1 July and supply bills are then not necessary.

**ADVANCE TO THE MINISTER FOR FINANCE**—Appropriations are made in Appropriation Bills (Nos 1 and 2), the parliamentary appropriation bill and the supply bills for an allocation of funds for the Advance to the Minister for Finance, and advances to the Presiding Officers, in order to meet emergency or unforeseen expenditure during the course of the financial year.

421 Traditionally, this bill has been introduced in August, but in 1994 and 1995 it was introduced in May (Treasurer's statement on change, H.R. Deb. (17.12.93) 4398–400). In 1996 the Budget was presented in August, but re-scheduled to May in 1997.

422 Traditionally, these bills have been introduced in April, but the timing has varied: February in 1993–94; November in 1994–95; October in 1995–96.

## 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>423</sup> The Senate may not amend any proposed law appropriating revenue or moneys for the ordinary annual services of the Government.<sup>424</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, over the 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.

In 1965, following consideration by the Government as to whether bills were classified as being for the ordinary annual services of the Government, 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>425</sup>

The Treasurer made this announcement on the motion for the second reading of the Supply Bill (No. 1) 1965–66 and, immediately after debate was adjourned, presented the Supply Bill (No. 2) 1965–66 incorporating the new format. Future appropriation bills were to be Appropriation Bill (No. 1) for the ordinary annual services of the Government described as expenditure 'for the service of the year' and Appropriation Bill (No. 2) for purposes outlined above and described as expenditure 'in respect of the year'. The appropriation and supply bills do not include expenditure for which a special appropriation or standing appropriation of the Consolidated Revenue Fund exists in other Acts for purposes specified in those Acts.

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, the expenditure being described as 'for the service of the year', and are therefore not capable of amendment by the Senate. Appropriation Bill (No. 4) and Supply Bill (No. 2) appropriating revenue 'in respect of the year' 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.

<sup>423</sup> Constitution, s. 54.

<sup>424</sup> Constitution, s. 53.

<sup>425</sup> H.R. Deb. (13.5.65) 1484–5.

## 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>426</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. 407). 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:** Appropriation and supply bills are specifically excluded from the provisions of standing order 292 which allows a proposal for the appropriation of public moneys to be brought in and proceeded with before the Governor-General's message is announced. Consequently the introduction of the Appropriation Bill (No. 1) is preceded by the announcement by the Speaker of a Governor-General's message which transmits particulars of proposed expenditure for the service of the year (contained in a schedule of the bill) and recommends an appropriation of revenue accordingly.<sup>427</sup>

Standing order 291 allows the bill to be introduced without notice by a Minister, in this instance the Treasurer.<sup>428</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>429</sup> In making the Budget speech, the Treasurer speaks without limitation of time 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. 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. The scope of discussion in the Budget debate is almost unlimited as the standing order which applies the rule of relevancy makes the main appropriation bill one of the exceptions from its provisions.<sup>430</sup> The Budget debate has traditionally continued over a period of several weeks. However, when the Budget is presented in May less time may be 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 (interim funding not being provided by the supply bills). The appropriation bills have been subject to a declaration of urgency.<sup>431</sup> The Budget debate has been taken partly in the Main Committee.<sup>432</sup>

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

427 VP 1996/368–9.

428 The Minister for Finance 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.

429 H.R. Deb. (9.5.95) 68–75.

430 S.O. 81.

431 VP 1993–95/1052.

432 E.g. VP 1993–95/2101–2; H.R. Deb. (5.6.95) 1093; VP 1996/505, 540–2.

**Reasoned amendment:** An amendment of the widest scope in relation to public affairs may be moved to the motion for the second reading of the main appropriation bill.<sup>433</sup> Any amendment would be usually moved by the Leader of the Opposition and it would be expected to refer to aspects of the Budget with which the Opposition was dissatisfied.<sup>434</sup> When the number of opposition Members is comparatively few, it has sometimes been the practice for a Member, other than the Leader of the Opposition, to move the second reading amendment at a later stage in the debate.<sup>435</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>436</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>437</sup> In 1941 under the now superseded financial procedures, an amendment was successfully moved in Committee of Supply to reduce the first item by £1. The Government resigned four days later.<sup>438</sup>

**Consideration by estimates committee:** Between 1979 and 1981 the House experimented with sessional orders providing for the proposed expenditure contained in Appropriation Bill (No. 1) to be considered in estimates committees.<sup>439</sup> An account of the operation of the estimates committees is given at page 359 of the first edition.

**Consideration in detail:** The House or Main Committee first considers the schedule (Schedule 3) which expresses the services for which the appropriation is to be made, before considering the clauses.<sup>440</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>441</sup> When the House or Main Committee has agreed to the order, it is recorded as a resolution.<sup>442</sup> The agreed order may be varied by further resolution to meet the convenience of the House or the Committee.<sup>443</sup>

A private Member may not move an amendment which would infringe the financial initiative of the Crown.<sup>444</sup> A private Member may move to reduce the amount of the

433 S.O. 220; e.g. VP 1993–95/194; VP 1996/408–10.

434 VP 1985–87/1110. Not moved by Leader of the Opposition: VP 1993–95/193–4; VP 1996/408–410.

435 VP 1978–80/990.

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

437 VP 1962–63/524.

438 VP 1940–43/190, 193, 195.

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

440 S.O. 226.

441 H.R. Deb. (14.9.78) 1043; H.R. Deb. (5.6.95) 1142 (Main Committee).

442 VP 1978–80/387–8; VP 1993–95/2115 (Main Committee).

443 VP 1978–80/399, 410.

444 S.O. 292.

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>445</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 committee, the Government should . . .'. The reason is not recorded in the Votes and Proceedings.<sup>446</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>447</sup> An amendment to an appropriation bill which does not affect the appropriation recommended may be moved without obtaining a further message.<sup>448</sup>

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>449</sup>

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

This bill is also introduced without notice following the Speaker's announcement of a Governor-General's message transmitting to the House particulars of certain proposed expenditure in respect of the year and recommending an appropriation of revenue accordingly.<sup>450</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>451</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 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 documents and related papers*

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 vary. In 1995 and 1996 the Treasurer presented the following papers:

445 E.g. VP 1977/353; 1993–95/324.

446 H.R. Deb. (14.9.72) 1469; H.R. Deb. (5.10.93) 1638.

447 VP 1974–75/944; 1990–92/1736, 1762–3.

448 VP 1974–75/954; VP 1990–92/197.

449 VP 1993–95/2124, 2120.

450 VP 1996/369–70.

451 S.O. 226.

- 'Budget Statements' containing detailed information on the Budget figuring and measures and explanatory material on the broader economic context;
- 'The Commonwealth Public Account' containing information relating to the Consolidated Revenue Fund (including the Appropriation Bills (Nos 1 and 2) and the Appropriation (Parliamentary Departments) Bill), the Loan Fund and the Trust Fund; and
- 'Commonwealth Financial Relations with Other Levels of Government' providing information on funds for the States, Territories and local government.

Together with a pamphlet copy of the Treasurer's speech these documents were presented as the 'Budget Papers'. At the same time the Treasurer has also presented other 'Budget related papers'. Such papers may be presented by another Minister or a Parliamentary Secretary, perhaps at a later stage of proceedings. Portfolio Budget Statements, also listed as 'Budget related papers', are available from individual departments after the Budget.<sup>452</sup>

After the presentation of the papers a motion may be moved that the papers be printed. This motion may be debated but debate must be relevant to the motion to print, and does not allow the subject matter of the papers, including the state of the economy or events in the preceding financial year, to be debated.<sup>453</sup>

Other Budget related business may follow.<sup>454</sup> Budget related bills may then be introduced<sup>455</sup>, ministerial statements explaining Budget decisions in detail are sometimes made, 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>456</sup>

### **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 is sought in 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).

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>457</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.<sup>458</sup> In 1995 an

452 VP 1993–95/2029.

453 H.R. Deb. (15.8.72) 139–42.

454 VP 1993–95/2029–31.

455 E.g., Sales Tax Amendment Bills.

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

457 H.R. Deb. (24.11.92) 3401–3.

458 VP 1993–95/14.

amendment moved by an opposition Member to Appropriation Bill (No. 4) 1995–96 (to reduce expenditure on a proposal) was agreed to.<sup>459</sup>

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

- Appropriation Bill (No. 3) 1971–72 appropriated money to be lent to the Australian Wool Commission<sup>460</sup>;
- Appropriation Bill (No. 3) 1973–74 was for the service of the year in respect of salary and allowances for members of the defence services and civilian employees<sup>461</sup>;
- Appropriation Bill (No. 3) 1990–91 appropriated funds to meet urgent requirements arising as a consequence of the Gulf War.<sup>462</sup>

In each of these cases the usual additional appropriation bills were introduced later in the year as (No. 4) and (No. 5).

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>463</sup>, which was later correspondingly amended.<sup>464</sup>

## Supply bills

If the main appropriation bills for a financial year will not be passed before the start of that financial year (as has traditionally been the case), supply bills are introduced to make interim provision. 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 pending the passing of the main appropriation bills for that year. The amount provided in each supply bill is 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, are based on expenditures or appropriations of the previous year and do not include expenditure for which a special appropriation exists 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>465</sup> does not extend to Supply Bill (No. 2) which provides 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>466</sup>

459 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.

460 VP 1969–72/858.

461 VP 1974/42, H.R. Deb. (12.3.74) 280.

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

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

464 VP 1990–92/1392–4.

465 S.O. 81.

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

## **Advance to the Minister for Finance**

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. These amounts enable the Minister for Finance to:

- make advances that will be recovered during the financial year;
- make moneys available for expenditure, particulars of which will afterwards be submitted to the Parliament, being expenditure that the Minister for Finance is satisfied is urgently required and was unforeseen or erroneously omitted from, or understated in, the Appropriation or Supply Act; and
- make moneys available for expenditure pending the issue of a warrant of the Governor-General.<sup>467</sup>

The Advances to the Minister for Finance under the Supply Acts may be used to anticipate the passing of the Appropriation Bills (Nos 1 and 2) if it is necessary to make urgent payments. Expenditure on existing services or newly approved services, for which provisions in the Appropriation Acts (Nos 1 and 2) were insufficient, or for which no provision has been made, may be charged to the Advance to the Minister for Finance.<sup>468</sup> The corresponding amount would then be included in the Appropriation Bill (No. 3) or (No. 4), as appropriate. The only amounts which remain a charge to the appropriations for the Advance to the Minister for Finance 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 accounts to the Parliament for expenditure from the advances by means of the tabling of monthly statements and (as required by the Appropriation Acts) an annual statement presented as soon as possible after 30 June each year.<sup>469</sup> The annual statement is examined by the Joint Committee of Public Accounts and reported upon to both Houses. A motion may be moved to take note of a monthly statement.<sup>470</sup>

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

The Appropriation (Parliamentary Departments) Acts and Supply (Parliamentary Departments) Act 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 other parliamentary departments, 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>471</sup>

<sup>467</sup> Under s. 32 of the *Audit Act 1901* the Minister for Finance prepares a schedule of moneys to be drawn from the Commonwealth Public Account and notifies the Auditor-General who certifies that the moneys so required do not exceed the amount available for expenditure in accordance with the appropriation. The Governor-General may then issue a warrant authorising the withdrawal of the amounts specified from the Commonwealth Public Account.

<sup>468</sup> *Audit Act 1901*, s. 36A.

<sup>469</sup> VP 1996/378. 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.

<sup>470</sup> VP 1987–89/222.

<sup>471</sup> VP 1993–95/1797; J 1993–95/1856, 2159, 3026, 3208.

## CONSTITUTION ALTERATION BILLS

The passage of a bill proposing to alter the Constitution is the same as for an ordinary bill, with the exception that the third reading must be agreed to by an absolute majority. Such a bill may be initiated in either House.

### Absolute majority

Section 128 of the Constitution provides that a bill proposing to alter the Constitution must be passed by both Houses, or by one House in certain circumstances (*see below*), by an absolute majority. If, on the vote for the third reading, no division is called for and there is no dissentient voice, the Speaker draws the attention of the House to the constitutional requirement that the bill must be passed by an absolute majority and directs that the bells be rung. The bells having ceased ringing the Speaker again states the question and, if no division is called for and there is no dissentient voice, the Speaker directs that the names of those Members present agreeing to the third reading be recorded by the tellers in order to establish that the third reading had been carried by an absolute majority.<sup>472</sup> If a bill initiated in the House is amended by the Senate and that amendment is agreed to by the House, thus causing a change to the bill, the question on the amendment must also be agreed to by the House by an absolute majority.<sup>473</sup> It follows that an absolute majority is **not** required in the case of the House disagreeing to an amendment of the Senate as there is no change to the bill as agreed to by the House.<sup>474</sup>

There was some uncertainty in the past as to whether a bill proposing to alter the Constitution required an absolute majority on the second reading as well as on the third reading.<sup>475</sup> In 1965 the Attorney-General expressed the following opinion:

My own view is that the Second Reading of a Bill is no more than the process through which the Bill passes before it reaches the stage at which the House can decide whether or not to pass it; the passing of the Bill occurs when the question on the Third Reading is agreed to. The fact that amendments can be made in the Committee stage after the Second Reading, and that the Bill can be refused a Third Reading, or re-committed before the Third Reading is agreed to, confirms this view. I am accordingly of the opinion that an absolute majority is not required at the Second Reading stage and that there is no need to record such a majority at that stage.<sup>476</sup>

This opinion is supported by standing order 240, which states 'After the third reading no further question shall be put, and the bill shall have passed the House'. In recent years the practice has been to establish the existence of an absolute majority only on the third reading, that is, the final act in the passage of the bill through the House.

If a bill does not receive an absolute majority on the third reading, it is laid aside and cannot be revived during the same session.<sup>477</sup> However in the case of the Constitution Alteration (Simultaneous Elections) Bill 1974, the bill failed to gain an absolute majority on the third reading<sup>478</sup> because of a malfunction of the division bells.<sup>479</sup> On the same day the House agreed to a suspension of standing orders to enable the vote to be rescinded and taken again.<sup>480</sup> The question 'That this bill be now read a third time' was then put again and, on division, was agreed to by an absolute majority.<sup>481</sup>

472 VP 1976-77/597-600.

473 VP 1917-19/556.

474 VP 1973-74/609-10.

475 H.R. Deb. (9-10.4.46) 1216-17.

476 Opinion of Attorney-General, dated 17 August 1965.

477 S.O. 263; J 1974/55.

478 VP 1974/19.

479 VP 1974/26.

480 VP 1974/28.

481 VP 1974/29.

## Disagreements between the Houses

Section 128 of the Constitution provides for the situation where there is a deadlock between the Houses on constitution alteration bills. It is possible under certain conditions for a constitution alteration bill twice passed by one House to be submitted to referendum (and hence, if approved, assented to and enacted) even though not passed by the other House. These provisions are discussed in the Chapter on 'The Parliament'.

## BILLS RECEIVED FROM THE SENATE

Bills received from the Senate are either ordinary bills or constitution alteration bills. Only a minority of bills are in fact received from the Senate. Between 1980 and 1996 on average 21 bills were received each year from the Senate. Bills received from the Senate represented about 11 per cent of all legislation introduced into the House.

The form of bills introduced into the Senate is governed by the limitations, imposed on the Senate by the Constitution, that a proposed law appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate.<sup>482</sup> 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>483</sup>

However 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 (*see also* p. 426).<sup>484</sup> On exemptions from the prohibition in section 53 of the Constitution, *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 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>485</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>486</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

482 Constitution, s. 53.

483 *Quick and Garran*, p. 667.

484 Constitution, s. 53.

485 *Quick and Garran*, pp. 667–8.

486 J 1934–37/114; S. Deb. (30.10.35) 1059, 1180; VP 1934–37/508.

Senate and that bills which affect the tax base or tax rates should be originated in the House of Representatives.<sup>487</sup>

**Introduction and first reading:** A bill introduced into and passed by the Senate is conveyed to the House under cover of a message transmitting the bill for concurrence. The message takes the following form:

The Senate has passed a Bill for "An Act [remainder of long title]", and transmits it to the House of Representatives for its concurrence.

If the House is sitting, the message is delivered to the Chamber by the Usher of the Black Rod where it is received at the Bar by a Clerk at the Table (in practice, by the Serjeant on duty); if the House is not sitting, the message is delivered to the Clerk of the House<sup>488</sup> or other officers.

Inside the Senate message is a copy of the bill bearing the certificate of the Clerk of the Senate:

THIS bill originated in the Senate; and, having this day passed, is now ready for presentation to the House of Representatives for its concurrence.

At a convenient time in the day's proceedings the Speaker reads the terms of the message to the House. The action of reading the message in effect presents the bill to the House. The bill is then read a first time without any question being put<sup>489</sup> and, to the extent necessary, is proceeded with as if it was a bill originating in the House.<sup>490</sup> The bill thereafter proceeds in the same manner as for an ordinary bill.

**Subsequent proceedings:** If the second reading is to be moved forthwith, copies of the bill must be available for distribution in the Chamber. Stocks of the bill are usually received from the Senate when the message transmitting the bill is sent to the House.<sup>491</sup> Should copies of the bill not be available, leave is required to move the second reading forthwith.<sup>492</sup>

It is common, following the first reading of a bill brought from the Senate, for a motion to be moved that the second reading be made an order of the day for the next sitting instead of moving the second reading forthwith.<sup>493</sup> When, on a future sitting day, the order of the day is called on, the second reading is moved and the second reading speech made. The debate may then be adjourned to a future day.<sup>494</sup> However, the second reading debate may proceed immediately<sup>495</sup> as the mandatory provision concerning the adjournment of the debate when the second reading has been moved immediately after the first reading does not apply. When copies of the bill are available, it may be the wish that the second reading be moved at a later hour rather than immediately. Leave is required to move 'That the second reading be made an order of the day for a later hour this day'. When the second reading is moved in these circumstances at a later hour, the debate may not proceed immediately unless leave is obtained.

It is usual for a contingent notice to be on the Notice Paper enabling a Minister to move the suspension of standing orders to permit a bill received from the Senate to be passed through all its stages without delay.<sup>496</sup> In the case of a Senate bill for which a

487 PP 307 (1995).

488 S.O. 372.

489 S.O. 215.

490 S.O. 253.

491 VP 1993-95/138.

492 VP 1974-75/383.

493 VP 1996/302.

494 VP 1977/256.

495 VP 1996/257-8.

496 VP 1993-5/92, H.R. Deb. (13.5.93) 892-4.

private Member has responsibility for carriage, it has been considered that subsequent proceedings should follow the procedures for private Members' bills (*see* Chapter on 'Private Members' business').

If the bill is not amended by the House, the Clerk's certificate is attached to the top right hand corner stating that 'This Bill has been agreed to by the House of Representatives without amendment'.<sup>497</sup> It is returned to the Senate by message in the following form<sup>498</sup>:

The House of Representatives returns to the Senate the Bill for an Act [remainder of long title], and acquaints the Senate that the House of Representatives has agreed to the Bill without amendment.

Amendment of Senate bills by the House necessitates further procedural steps being taken by both Houses (*see* p. 439).

## PROCEDURAL VARIATIONS FOR PASSAGE OF BILL

### All stages without delay

Previous discussion on processes concerning bills has concentrated on the ordinary passage of legislation, that is, procedures applying when the standing orders of the House are being observed. On occasions, the House may consider it expedient to pass a bill through all its stages without delay, either by granting leave to continue consideration at each stage when consideration would normally be adjourned until the next sitting day, or by suspension of the standing orders to enable its immediate passage.

**By leave:** When it is felt necessary or desirable to proceed immediately with a bill which would normally require introduction on notice, a Minister or Parliamentary Secretary may ask leave of the House to present it. If there is no dissentient voice, the Minister (Parliamentary Secretary) presents the bill. If copies of the bill are available, the second reading may then be moved.<sup>499</sup> If copies of the bill are not available, the Minister (Parliamentary Secretary) must obtain the leave of the House to move the second reading forthwith.<sup>500</sup> The second reading debate may then ensue, by leave. At the conclusion of the debate and any proceedings immediately following the second reading, the House may grant leave for the third reading to be moved forthwith.<sup>501</sup> Alternatively, after the detail stage has been completed, the remaining stages may proceed immediately, with the leave of the House.<sup>502</sup>

**Suspension of standing orders:** When it is wished to proceed with a bill as a matter of urgency, but it is not considered desirable or expedient to seek leave at the appropriate stages, or leave has been sought and refused<sup>503</sup>, the standing orders may be suspended with the concurrence of an absolute majority if the suspension is moved without notice, or a simple majority if moved on notice, to enable the introduction and passage of a bill through all its stages without delay. It is usual for a set of contingent notices for the suspension of standing orders to be on the Notice Paper, to avoid the need for an absolute majority in these circumstances. Once the standing orders have been suspended, leave is not necessary to proceed to the various stages of the bill.<sup>504</sup>

497 S.O. 254.

498 J 1977/282.

499 VP 1993-95/118.

500 VP 1974-75/383.

501 VP 1976-77/492.

502 VP 1974-75/424-5, 536.

503 VP 1977/336.

504 VP 1978-80/365-6.

## Bills considered together

It is not unusual, to meet the convenience of the House, for standing orders to be suspended to enable related bills to be considered together. A motion for the suspension of the standing orders may, depending on the particular circumstances, provide as follows:

- For:
  - (a) a number of bills to be presented and read a first time together;
  - (b) one motion being moved without delay and one question being put in regard to, respectively, the second readings, the detail stage, and the third readings, of all the bills together; and (if appropriate)
  - (c) messages from the Governor-General recommending appropriations for some of the bills to be announced together.<sup>505</sup>

This procedure facilitates consideration by the House of, for example, related taxation bills such as the Wool Tax (Nos 1 to 5) Amendment Bills<sup>506</sup>, where, because of the constitutional requirement that laws imposing taxation shall deal with one subject of taxation only<sup>507</sup>, a number of separate but related bills are presented to the House. Such a motion to suspend standing orders is moved early in each session in relation to sales tax bills. The Minister has normally explained to the House in moving the motion that no immediate introduction of sales tax legislation is contemplated. By agreeing to the motion then, speculation as to the anticipated introduction of sales tax bills, which could result if the motion were introduced later, is avoided.<sup>508</sup>

- For the calling on together of several orders of the day for the resumption of debate on the motion for the second reading of a number of bills, with provision that they may be taken through their remaining stages together.
- For the calling on together of several orders of the day for resumption of debate on the motion for the second reading of a number of bills, with provision for:
  - (a) a motion being moved 'That the bills be now passed'; and
  - (b) messages from the Governor-General recommending appropriations in respect of some of the bills being then announced together.<sup>509</sup>

In such a case as the group of 32 bills dealing with decimal currency<sup>510</sup> and in other cases where the passing of a number of related bills is a formal matter, this form of procedure is of great advantage in avoiding unnecessary use of the time of the House.

## Cognate debate

When there are two or more related bills before the House, it frequently suits the convenience of the House when debating the first of such bills to allow reference to the other related bills. A proposal for such a debate, which is known as a cognate debate, is usually put to the House by the Chair, seeking the agreement of the House to the proposal. Upon the conclusion of the debate separate questions are put as required on

505 VP 1976-77/433.

506 VP 1993-95/28.

507 Constitution, s. 55.

508 VP 1987-89/613; H.R. Deb. (3.6.88) 3252; VP 1993-95/26-7.

509 VP 1970-72/1033.

510 VP 1964-66/472, 510.

each of the bills.<sup>511</sup> The House has allowed the subject matter of 16 bills to be debated on the motion for the second reading of one of those bills.<sup>512</sup>

In the 37th Parliament the House followed a more formal procedure under which leave could be sought to declare that bills were cognate bills. If leave was granted and such a declaration was made, in moving for the second reading of the first bill the Minister or Parliamentary Secretary, and other Members in speaking to the second reading, could refer to the subject matter of any of the bills. Separate questions would subsequently be put on each bill, but no separate debate could take place on the motions for the second reading of, or on any amendments to, the other bills. The procedure was abandoned on the recommendation of the Procedure Committee.<sup>513</sup>

### **Bills declared urgent**

There is no set period of time for the length of debate on any stage of a bill during its passage through the House. The length of time for debate on each stage of a bill's passage may be influenced by such factors as:

- its subject matter—whether the bill is of a controversial nature, whether it has the general agreement of the House, or whether it is of a 'machinery' kind;
- the nature of the Government's legislative program;
- the urgency connected with the passage of the bill;
- agreement reached between Government and Opposition; and
- the number of Members from each side who wish to speak on the bill.

In some cases, however, the Government may wish to curtail or limit one or more stages of debate on a bill and finds it necessary to move the closure motion (the 'gag'), which has the effect of curtailing debate on the question immediately before the House.<sup>514</sup> On other occasions the Government may resort to the use of the procedure for the limitation of debate (the 'guillotine'), prescribed in detail by standing order 92, which motion is usually passed prior to the commencement of the debate it proposes to limit.

The guillotine procedure was introduced to the House in 1918.<sup>515</sup> The original standing order, adopted by a division on party lines, was essentially similar to present standing order 92, but with an hour being permitted for debate on the motion for the allotment of time and ten minutes for individual speeches. These time limits were reduced in 1931 and 1950 to those currently applying (that is, 20 minutes and five minutes respectively). There was also the requirement that the declaration of urgency be approved by an affirmative vote of not less than 24 Members (which in effect then meant that at least a quorum of Members, including the occupant of the Chair, had to be present). This requirement was removed in 1950 on the grounds that it was unconstitutional.<sup>516</sup>

It was not until 1958 that the guillotine was applied to more than one bill in the same declaration of urgency, following the suspension of standing orders.<sup>517</sup> These were related bills debated cognately. The first occasion the procedure was used for unrelated bills was in 1971—strong objection was taken and even government Members spoke

511 H.R. Deb. (21.11.79) 3323. For more discussion see Ch. on 'Control and conduct of debate'.

512 H.R. Deb. (28.9.88) 1009.

513 PP 108 (1995).

514 For discussion of the closure motion see Ch. on 'Control and conduct of debate'.

515 H.R. Deb. (4.10.18) 6682–5; H.R. Deb. (9.10.18) 6715–53; H.R. Deb. (16.10.18) 6967–78.

516 Section 40 of the Constitution states that questions in the House '... shall be determined by a majority of votes ...'.

517 VP 1958/27.

against the action.<sup>518</sup> However this was to become a common occurrence. Statistics for the number of bills declared urgent each year since 1918 are given at Appendix 17. It can be seen that this figure increased considerably, to a record of 132 bills in 1992. The increase was attributed by Governments to the imposition from 1986 of Senate deadlines for the receipt of legislation from the House.<sup>519</sup> The use of the guillotine declined significantly after the provision of increased debating time with the establishment of the Main Committee.<sup>520</sup> Another contributing factor to the decline in the 37th Parliament was that with the introduction of three sitting periods each year instead of two, the Government could introduce bills during one period with the expectation that they would not pass until the next.

The preparation of the documentation necessary for use in the Chamber for the process of declaring bills urgent and allotting time and their subsequent passage, requires great care and can be very time-consuming. Also, because of the desirability of giving Members reasonable notice of government intentions in such matters, it is imperative that detailed advice of such intentions be given well in advance.

The guillotine may not be moved in the Main Committee, but, having been agreed to in the House, may be applied to bills considered in the Main Committee. However, because of the delay involved in moving business to and from the Main Committee, it is presumed that in normal circumstances bills needing urgent consideration would be taken in the House.

### *Declaration of urgency*

The first step is for a Minister to declare that the bill is an urgent bill and this declaration may be made:

- (1) on the reading of a message from the Governor-General recommending an appropriation in connection with any bill (no precedent for this);
- (2) on the calling on of a motion for leave to introduce a bill, a procedure which has fallen into disuse<sup>521</sup>;
- (3) on the calling on of a notice of presentation (no precedent for this);
- (4) on the consideration of any motion preliminary to the introduction of a bill, a procedure which has fallen into disuse<sup>522</sup>;
- (5) at any stage of a bill; or
- (6) on the consideration of Senate amendments or requests for amendments to a bill.<sup>523</sup>

If it is desired to apply a guillotine to a bill prior to the occurrence of any of the above options (1) to (4) it is necessary to suspend standing orders to enable this to be done.<sup>524</sup> Standing orders must also be suspended if it is desired to include more than one bill in the declaration of urgency and to move one motion for the allotment of time in respect of the bills; as many as 67 bills have been dealt with together in this way.<sup>525</sup> If the time for consideration of a bill is to continue beyond the time fixed by the standing or sessional orders for the adjournment of the House, it is necessary to include, in the motion for suspension of standing orders, a provision to suspend standing order 48A (automatic

<sup>518</sup> VP 1971/577–83; H.R. Deb. (4.5.71) 2477–2508.

<sup>519</sup> H.R. Deb. (21.11.89) 2558–64).

<sup>520</sup> H.R. Deb. (9.11.94) 2950.

<sup>521</sup> VP 1917–19/531.

<sup>522</sup> VP 1959–60/208–9.

<sup>523</sup> VP 1917–19/554. This declaration was unnecessary as the bill had previously been declared urgent, VP 1917–19/531.

<sup>524</sup> VP 1974–75/17.

<sup>525</sup> VP 1990–93/1838–43.

adjournment) for the sitting in order to avoid an interruption at that time.<sup>526</sup> Also if two or more bills are to be included in the declaration of urgency, and the allotment of time will provide for one or more of them to be called on and considered after 11 p.m., a provision to suspend the eleven o'clock rule<sup>527</sup> for the sitting must be included in the motion to suspend standing orders.

The question 'That the bill be considered an urgent bill' is put forthwith, no debate or amendment being permitted.<sup>528</sup> A declaration of urgency has been withdrawn, by leave, when the House was proceeding to a division on the question.<sup>529</sup>

When a bill has been declared urgent, the declaration is also taken to apply to Senate amendments<sup>530</sup> or requests<sup>531</sup>, and a motion for allotment of time may be moved in respect of them without a further declaration of urgency.

### *Allotment of time*

On the declaration of urgency being agreed to, a Minister may move a motion or motions specifying the times to be allotted for debate to the various stages of the bill, but it is not necessary to cover every stage.<sup>532</sup> Examples are:

- For the initial stages of the bill<sup>533</sup> (up to, but not inclusive of, the second reading of the bill), until . . . (rarely used).
- For the second reading<sup>534</sup> and the reporting of a message from the Governor-General recommending an appropriation, until . . .
- In relation to the detail stage:
  - (a) For the detail stage<sup>535</sup> (or the remainder of the detail stage<sup>536</sup>, if consideration in detail has commenced), until . . . , or
  - (b) For the detail stage:
    - (i) to the end of clause . . . , until . . . (and so on, clauses or parts separately or in groups)
    - . . .
    - (v) remainder of the detail stage, until . . .<sup>537</sup>, or
  - (c) For the detail stage (Appropriation Bill (No. 1)):
    - (i) Schedule
      - Department of . . . , until . . .
      - Department of . . . , until . . .
      - . . .
    - (ii) Remainder of bill until . . .<sup>538</sup>
- For the remaining stages, until . . .<sup>539</sup>
- For all stages, until . . .<sup>540</sup>

526 VP 1978-80/783-5.

527 Or such other time as may be set. S.O. 103.

528 A Member has spoken by indulgence at this time; H.R. Deb. (3.6.88) 3235-6.

529 VP 1961/127.

530 VP 1950-51/142-3; VP 1993-95/560-5, 663.

531 VP 1993-95/287-8, 359.

532 H.R. Deb. (5.12.35) 2669.

533 VP 1917-19/531.

534 VP 1974-75/1068.

535 VP 1974-75/717.

536 VP 1974-75/1091.

537 VP 1956-57/244.

538 VP 1993-95/529-30.

539 VP 1993-95/330.

540 VP 1978-80/785.

• In respect of Senate amendments (or requests):

- (a) For the consideration of the Senate's amendments and for the remaining stages until . . .<sup>541</sup>, or
- (b) For No. 1 etc., until . . .<sup>542</sup>
- (c) For Group 1—Amendments 1 . . .<sup>543</sup>  
For Group 2—Further Amendments . . .<sup>543</sup>

The above are examples of terminating the stages of a bill at a **fixed time** but there are instances where it is more practicable to express the allotment of time in hours. This is the case when a bill is to be debated over a number of days and it is desirable that other business should intervene during that period. While this method has generally fallen into disuse in respect of an ordinary bill<sup>544</sup>, it has often been used for the Appropriation Bills (Nos 1 and 2).<sup>545</sup> On an occasion when the estimates were declared urgent and times had been fixed for their consideration, and a point of order was raised that the estimates had priority of other business until disposed of, it was ruled that the times fixed were terminating times, and that, although the estimates had been declared urgent, the House should not be prevented from conducting other business.<sup>546</sup> Terminating times expressed in hours for a group of bills have been changed to fixed times.<sup>547</sup>

The allotment of time for a group of bills may provide for their consideration over more than one sitting day. In this case the ordinary routine of business may be followed at the commencement of proceedings on the second sitting day before consideration of the outstanding bills is resumed.<sup>548</sup>

It has been the practice in recent years for the Minister to move an allotment of time in respect of 'all stages of the bills' when several bills are under guillotine together and the second reading debate on the first of the bills has not been resumed.<sup>549</sup> Where standing orders have been suspended to enable one motion for the allotment of time to be moved for several bills the details may vary depending on whether amendments are to be moved—where there are no amendments provision may be made for 'the remaining stages', but where there are amendments the allotment would allow for a consideration in detail stage. The reporting of a message from the Governor-General recommending an appropriation is not necessarily included in the motion for allotment of time.<sup>550</sup>

A Minister may move the allotment of time for a bill which has been declared urgent, either immediately, as is usual, or at any time during any sitting of the House but not so as to interrupt a Member who is speaking.

The allotment of time may break up the detail stage<sup>551</sup>, for example:

- (1) groups of clauses<sup>552</sup>;

541 VP 1987–89/600—in this case the motion also encompassed bills being considered for the first time.

542 VP 1950–51/142–3.

543 VP 1993–95/1886.

544 VP 1970–72/581; VP 1934–37/489–90.

545 VP 1970–72/298–300.

546 VP 1946–48/289.

547 VP 1970–72/581, 613.

548 VP 1993–95/330, 337–346.

549 VP 1993–95/329–30.

550 VP 1958/28–9; VP 1993–95/330.

551 Referred to as 'committee stage' in examples cited.

552 VP 1951–53/587.

- (2) parts, groups of clauses (with exceptions), postponed and excepted clauses, new clauses, Schedule, remainder of detail stage<sup>553</sup>;
- (3) clause 1 (clause 2 to be considered postponed), groups of Articles in Schedule, schedules of the Schedule, postponed clause 2 and remainder of detail stage<sup>554</sup>;
- (4) to the end of a particular Part, remainder of detail stage<sup>555</sup>; or
- (5) section of a clause, remainder of clause, new clauses, groups of clauses, remainder of detail stage.<sup>556</sup>

An allotment of time may be varied by motion without notice without an additional declaration of urgency.<sup>557</sup>

Debate on the motion for the allotment of time may not exceed 20 minutes, each Member speaking being allowed five minutes. Time taken to deal with a motion of dissent from a ruling of the Chair is counted as part of the 20 minutes.<sup>558</sup> An amendment may be moved to the motion for allotment of time<sup>559</sup>, and it has been found necessary, when midnight has intervened during consideration of the motion, for the word 'tomorrow' to be omitted from the motion and the word 'today' substituted.<sup>560</sup> When the time allotted for consideration of the second reading of a bill has expired during the debate on the motion for allotment of time, the Chair has ruled that it was in order to put the questions on the allotment of time and on the second reading.<sup>561</sup> The allotted time has been extended for the second reading<sup>562</sup>, for the second reading and the detail stage<sup>563</sup>, and has been extended and further extended for the detail and remaining stages.<sup>564</sup> In the consideration of Appropriation Bill (No. 1) a motion may be moved, without notice, to vary the order of consideration of proposed expenditures<sup>565</sup>, and the time allotted for the consideration together of the proposed expenditures for two departments has been varied to allow the proposed expenditures to be considered separately for stated times.<sup>566</sup>

### *Proceedings under guillotine*

If an allotment of time is in the form 'for the remaining stages', at the expiry of time the immediate question before the Chair is put and then any further question is put which is needed to dispose of the business before the House—for example, the question 'That the remaining stages of the bill be agreed to'.<sup>567</sup> However, if there are government amendments (which have been circulated at least two hours before the expiration of the allotted time) to be taken into account in such circumstances and the time for the remaining stages of the bill has expired before the detail stage has been reached, or when time has been allotted for the completion of the detail stage but it has expired, the House determines immediately the question 'That the bill and the amendments (and/or new

553 VP 1937-40/134-5.

554 VP 1932-34/476-7.

555 VP 1954-55/154.

556 VP 1960-61/276.

557 VP 1970-72/613-15; VP 1987-89/880, 881; VP 1993-95/663.

558 H.R. Deb. (20.6.50) 4547.

559 VP 1978-80/1075.

560 VP 1923-24/165-6.

561 H.R. Deb. (4.11.52) 4100-5.

562 VP 1934-37/335-6.

563 VP 1948-49/342.

564 VP 1920-21/242, 252.

565 VP 1968-69/542.

566 VP 1968-69/550.

567 VP 1993-95/89.

clauses) circulated by the Government be agreed to. The final question is then put 'That the bill be now read a third time'.<sup>568</sup>

When the time for each stage expires in accordance with the allotment of time, the debate is interrupted and the Chair puts (1) the question immediately before the Chair and (2) any other question necessary to conclude proceedings for that stage.<sup>569</sup> At the expiration of time for the detail stage, the immediate question is put by the Chair and a further question is then put on the remainder of the bill (including postponed clauses) and any amendments, new clauses and schedules, copies of which have been circulated by the Government among Members at least two hours before the expiration of the allotted time<sup>570</sup>, even though such amendments have not been moved.

By resolving that particular stages of certain bills should conclude at specified times, the House overrides, by deliberate decision, the requirement in the standing orders for a motion for a future day to be fixed for the third reading. It is therefore in order for the Minister to move that the bill be read a third time without the grant of leave. Even when debate concludes before the expiry of time, it is considered that leave is not required, although there are precedents to the contrary.<sup>571</sup>

If the allotment of time agreed to relates to the remaining stages of the bill, and the time expires during the second reading debate, and there are circulated government amendments to be taken into account, the following sequence is followed:

- question—That the words proposed to be omitted stand part of the question (if there is a second reading amendment);
- question—That the bill be now read a second time;
- message(s) from the Governor-General to be announced;
- question—That the bill and the amendments (new clauses and schedules) circulated by the Government be agreed to;
- question—That the bill be now read a third time.<sup>572</sup>

When the expiry of time has prevented the Opposition from moving intended amendments which had been circulated, the Chair has allowed the unmoved amendments to be incorporated in Hansard so that the intentions of the Opposition could be recorded.<sup>573</sup>

The closure motion cannot be moved while any proceedings in respect of which time has been allotted are being debated.<sup>574</sup> This prohibition also applies to a motion for reconsideration of a bill, as such a motion is considered to come within 'the remaining stages of the bill'. However, the closure can be moved on the motion for allotment of time.<sup>575</sup> The closure can also be moved on a motion moved after the second reading to refer the bill to a select committee, if it has not been included in the motion for allotment of time.<sup>576</sup> Such a motion would not be considered to be included in the motion for allotment of time if the bill is considered in the following stages: (1) second reading; (2) detail stage; (3) remaining stages. It would be considered to be included if the bill is considered as follows: (1) second reading; (2) remaining stages.

568 VP 1970-72/619-25.

569 VP 1978-80/445.

570 S.O. 92(e); VP 1983-84/716.

571 VP 1987-89/886 (two bills) and 1990-92/359-61 (three bills)—*but see also* VP 1985-87/1286 (three bills).

572 VP 1970-72/620-5; and see, for a more limited number of questions, VP 1990-92/361-2; VP 1993-95/381-2.

573 H.R. Deb. (11.4.86) 2129-2; H.R. Deb. (6.9.93) 932-3, 934-5.

574 S.O. 92(g).

575 VP 1937-40/428-9.

576 VP 1934-37/481-3.

A motion to reconsider the bill may be moved at the appropriate time during consideration of the remaining stages of a bill.<sup>577</sup>

A Member has been named and suspended while a question was being put after the expiration of the allotment of time.<sup>578</sup>

## PROCEDURE FOLLOWING SENATE CONSIDERATION

### Limitations on Senate power of amendment

Section 53 of the Constitution, as well as limiting the rights of the Senate in the initiation of legislation, provides that the Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue for the ordinary annual services of the Government. Nor may the Senate amend any proposed law so as to increase any proposed charge or burden on the people. However the Senate may, at any stage, return to the House any proposed law which the Senate may not amend, requesting the omission or amendment of any items or provisions therein. It further provides that, except as provided in the section, the Senate has equal power with the House in respect of all proposed laws.

Since the Senate delayed the passage of the additional appropriation bills in 1974 and the main appropriation bills in 1975, it has been generally recognised that the Senate may refuse to pass any bill, including a bill for the ordinary annual services of the Government. The constitutional difficulties of 1974 and 1975 are discussed in the Chapter on 'Disagreements between the Houses'.

The standing orders of both Houses establish procedures for dealing with amendments made to a bill by the other House. The amendment procedures, and provision for negotiation by message, are designed to cover every contingency, but in the event of the negotiations between the Houses finally failing, the bill may be laid aside, or, in the case of a bill which originated in the House of Representatives, resort may be had to the procedures of section 57 of the Constitution.

### Agreement by Senate without amendment (or requests)

Should the Senate agree to a bill without amendment, or without requests in the case of those bills which the Senate may not amend, the bill is accordingly certified by the Clerk of the Senate and returned to the House by message. The terms of the message are not announced to the House in full, the Speaker merely stating 'I have received a message from the Senate returning the [short title] without amendment (or requests, as appropriate)'. The message is announced at a convenient time in the day's proceedings between items of business. When a message is received notifying Senate agreement to a bill, the final step in the legislative process is for the bill to be forwarded to the Governor-General for the royal assent (*see* p. 442).

In a message agreeing to a bill without amendment, the Senate has added the following rider:

The Senate records its protest against the inclusion in the Bill of provisions similar to those already included in a Bill passed by the Senate this Session and transmitted for the concurrence of the House of Representatives, and declares that the matter is not to be regarded as a precedent.<sup>579</sup>

<sup>577</sup> VP 1923-24/175.

<sup>578</sup> VP 1923-24/147.

<sup>579</sup> VP 1920-21/471.

## Senate amendments

When a bill which the Senate may amend is in fact amended by the Senate, a schedule of the amendments is prepared indicating where the amendments occur in the bill and detailing the amendments. This schedule accompanies the bill, and is certified by the Clerk of the Senate.

The standing orders provide that, when a bill is returned from the Senate with amendments, the amendments shall be printed, unless the House otherwise orders, and a time fixed for taking the amendments into consideration.<sup>580</sup> The amendments are printed as a schedule; the bill is not reprinted with the amendments incorporated. A suggestion that a bill be reprinted incorporating Senate amendments has been rejected.<sup>581</sup> In practice a printed stock of the schedule of Senate amendments usually accompanies the message, in which case the consideration of the Senate's amendments may take place forthwith.<sup>582</sup>

It may not, however, suit the convenience of the House to proceed immediately with consideration of the amendments and a Minister or Parliamentary Secretary may move that the amendments be taken into consideration at the next sitting or at a later hour.<sup>583</sup>

Several related bills have been returned with amendments under cover of the one message and the amendments to each bill have been considered separately.<sup>584</sup> An amendment to the title of a bill has been mentioned in a Senate message.<sup>585</sup>

It was originally the practice, in the early years of the century, for Senate amendments to be taken clause by clause. However, it is now established practice for multiple amendments to a bill to be taken together, by the Minister or Parliamentary Secretary in charge of the bill moving that the amendments be agreed to or that the amendments be disagreed to. If the Minister (Parliamentary Secretary) is prepared to accept only some of the amendments, they are grouped accordingly and the relevant motion moved in respect of each group. A motion may be moved separately in respect of an individual amendment, for example, if the Minister (Parliamentary Secretary) is aware that Members desire a separate vote on a particular matter. Whether amendments are to be taken together or separately is decided by arrangements of which the Chair has no knowledge; he or she puts the question in accordance with the motion moved.<sup>586</sup> By agreement of the House, the amendments may be considered in specified groups and a specified order other than their numerical order.<sup>587</sup> When the House's consideration of Senate amendments has been subject to a guillotine motion, the grouping of amendments has been determined by the decision of the House on the allotment of time.<sup>588</sup> An amendment may be agreed to with or without amendment, agreed to with a consequential amendment<sup>589</sup>, agreed to in part with a consequential amendment<sup>590</sup>, agreed to with a modification, agreed to with a modification and a consequential amendment<sup>591</sup>, disagreed to<sup>592</sup>, or disagreed to but an amendment made in its place.<sup>593</sup> An

580 S.O. 244.

581 H.R. Deb. (20.6.50) 4517-18.

582 VP 1996/357-8.

583 VP 1996/279.

584 VP 1932-34/350-2.

585 VP 1913/193, 195.

586 H.R. Deb. (8.12.87) 3004-5.

587 VP 1974-75/483.

588 VP 1993-95/1886.

589 VP 1974-75/837.

590 VP 1906/159.

591 VP 1909/222-3.

592 VP 1996/289.

593 VP 1993-5/849-54.

amendment relevant to the Senate's amendments may be made.<sup>594</sup> A motion to agree to a Senate amendment has been withdrawn, by leave.<sup>595</sup>

No amendment may be moved to an amendment of the Senate that is not relevant to the Senate amendment. A further amendment may not be moved to the bill unless the amendment is relevant to, or consequent upon, either the acceptance or the rejection of an amendment of the Senate.<sup>596</sup> Standing orders have been suspended in the House to enable a Minister to move an amendment which was not relevant to Senate amendments being considered.<sup>597</sup> Such an amendment has been made, following the suspension of standing orders, prior to<sup>598</sup>, and after<sup>599</sup>, consideration of the Senate's amendments. If the Senate made an amendment which was not relevant to the amendments made by the House to a Senate bill, it would be necessary for the House to suspend standing orders to enable the amendment to be considered.

As an alternative to the House considering Senate amendments, consideration may be postponed, or the bill may be laid aside.<sup>600</sup>

In 1913 the Committee of Public Accounts Bill was returned to the House with amendments. The Prime Minister explained that he proposed to withdraw the bill and thus set aside the Senate's amendments. The Prime Minister believed that the Senate had, in asserting its rights, exceeded its own intention by taking away the right of the House to appoint its own committees. The Government believed that it could achieve the object that both it and the Senate had in instituting a Joint Public Accounts Committee by withdrawing the bill and substituting another which carried out that intention. The bill was laid aside and the Committee of Public Accounts Bill (No. 2) introduced immediately.<sup>601</sup>

When the House agrees to a Senate amendment, a message is sent to the Senate acquainting it that the House has agreed to the amendment made by the Senate in the bill.<sup>602</sup> If the House has disagreed to an amendment made by the Senate but, in place thereof, has amended the bill, the bill is returned to the Senate by message with a schedule annexed which indicates the amendment made by the House. The schedule contains reference to each amendment of the Senate which has been amended by the House, and is certified by the Clerk.<sup>603</sup> The message also indicates that the House desires the reconsideration of the bill by the Senate in respect of the amendments disagreed to, and desires the concurrence of the Senate in the amendments made by the House.<sup>604</sup> If a Senate amendment has been disagreed to (*see below*), a message is sent to the Senate acquainting it that the House has disagreed to the amendment for the reasons indicated in a schedule annexed to the bill and desires the reconsideration by the Senate of the bill in respect of the amendment.<sup>605</sup> Where standing orders have been suspended to enable an amendment to be moved that is not relevant to the Senate's amendments, the Minister moves 'That in the message returning the bill to the Senate, the Senate be requested to

594 VP 1990-93/1107-10.

595 VP 1910/84.

596 S.O. 246.

597 VP 1974-75/480, 489; VP 1993-95/2680-6.

598 VP 1973-74/249-51; VP 1993-95/2680-6.

599 VP 1973-74/268.

600 S.O. 245.

601 VP 1913/215, H.R. Deb. (16.12.13) 4505-7.

602 S.O. 247; J 1996/360.

603 S.O.s 247, 249.

604 S.O. 247; J 1974-75/752; 1993-95/2344.

605 S.O.s 247, 248; J 1974-75/752; VP 1996/289-91; J 1996/387, 431 (reasons not recorded in Journals).

reconsider the bill in respect of the amendment made by the House to [clause specified].<sup>606</sup>

### *Rescission of agreement to Senate amendments*

The resolution adopting the committee of the whole report agreeing to Senate amendments to a bill has been rescinded on motion following the suspension of standing orders. This action followed a message from the Senate informing the House of errors in the Senate schedule of amendments on the bill previously transmitted to the House. The corrected schedule of amendments was then considered and agreed to.<sup>607</sup>

### **Committee of Reasons**

Whenever amendments (not requests for amendment) made by the Senate are disagreed to, a committee of three Members is appointed by the House, on motion without notice, to draw up reasons for the House disagreeing to such amendments. A reason is needed for an amendment disagreed to, even if all other amendments are agreed to or amendments made in their place.<sup>608</sup> A committee of reasons is not appointed to draw up reasons of the House for disagreeing to Senate amendments where amendments are made in their place<sup>609</sup> or a substitute amendment is made.<sup>610</sup> The procedure is purely formal in that the committee, composed of government Members, immediately after its appointment presents reasons which have been prepared in advance. The practice has been subject to some derision.<sup>611</sup> When the committee brings up its reasons, copies of which are circulated, a Minister or Parliamentary Secretary moves that the committee's reasons be adopted. An amendment cannot be moved to the reasons, as the question before the Chair is that the reasons be adopted<sup>612</sup>, but an amendment has been moved to that question.<sup>613</sup> The committee of reasons procedure can be somewhat cumbersome and it is important that the government position is resolved and conveyed in sufficient time for the necessary arrangements to be made. On one occasion when there was confusion regarding the Government's position, it was necessary for leave to be granted for the 'reason' on one Senate amendment to be read to the House at a later time and made part of the earlier resolution.<sup>614</sup>

### **Senate requests for amendments**<sup>615</sup>

Section 53 of the Constitution reads, in part:

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government. (*paragraph 2*)

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. (*paragraph 3*)

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein, and the House or Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modification. (*paragraph 4*)

606 VP 1974-75/490; 1993-95/2686.

607 VP 1990-92/1645-54 (amendments not passed by the Senate had mistakenly been included in the schedule).

608 S.O. 248; VP 1993-95/2276-8.

609 VP 1974-75/488-9 (Senate amendment No. 9, which the House disagreed to and made an amendment in its place, was not included with the amendments disagreed to and reported on by the committee of reasons); VP 1993-95/1413-4.

610 VP 1970-72/1200, 1202.

611 H.R. Deb. (8.12.83) 3557-8.

612 H.R. Deb. (8.12.83) 3557-8.

613 VP 1913/204.

614 VP 1987-89/1002.

615 For a detailed summary of Senate requests for amendments to bills since 1901 see Appendix 18.

Senate standing orders<sup>616</sup> supplement the constitutional expression 'at any stage' by providing that requests may be made:

- upon the motion for the first reading;
- in committee after the second reading has been agreed to;
- on consideration of any message from the House referring to the bill; or
- on the third reading of the bill.

In practice requests are made during the Senate committee (detail) stage.

Upon the adoption of the report from a committee recommending the Senate make a request, the message is sent to the House returning the bill and requesting the House **itself** to make the desired amendment to the bill as indicated in a schedule annexed to the bill. Agreement must thus be reached with respect to the amendment requested before the bill proceeds to the third reading stage in the Senate.<sup>617</sup> In practice, for convenience, where the Senate has made both request(s) and amendment(s) to a bill, one document, in two parts, containing the request(s) and amendment(s) has been returned to the House. In these circumstances the House on the first occasion only considers the request(s) and communicates its decision(s) to the Senate. Although the detail of the Senate amendment(s) has been included in the material circulated to Members, such amendments are not in fact considered unless and until the bill is eventually returned to the House after the resolution of the requests (*and see below*).

Occasionally a question has arisen in respect of certain bills as to their constitutional status in terms of Senate amendment. In 1967, five of seven bills relating to off-shore petroleum:

- the Petroleum (Submerged Lands) (Royalty) Bill 1967;
- the Petroleum (Submerged Lands) (Exploration Permit Fees) Bill 1967;
- the Petroleum (Submerged Lands) (Production Licence Fees) Bill 1967;
- the Petroleum (Submerged Lands) (Pipeline Licence Fees) Bill 1967; and
- the Petroleum (Submerged Lands) (Registration Fees) Bill 1967;

imposed fees and royalties and hence, superficially at least, seemed capable of Senate amendment. The five bills were introduced into the House, however, with the Parliamentary Counsel's notation of 'T\*' which indicated his opinion that the bills imposed taxation and were not capable of Senate amendment. One of the bills sought to impose a royalty and the remaining four sought to provide for the payment of fees and licences. The Senate proceeded with all bills on the basis that they were bills which the Senate could amend and each was returned 'without amendment'.<sup>618</sup>

The Clerk of the House questioned the classification of these bills (excepting the Petroleum (Submerged Lands) (Royalty) Bill) with the Parliamentary Counsel and also included in his query the Broadcasting Stations Licence Fees Bill 1964 and the Television Stations Licence Fees Bill 1964 which had been similarly denoted 'T\*'. The reply stated that, to come within the exception in section 53 of the Constitution, the moneys payable under a bill must be in substance, and not merely in form, 'a fee for a licence' or 'a fee for services'; the language of the bill itself could not be regarded as conclusive, as there might be political or other reasons for the use of the word 'fees' to refer to an exaction that is, in substance, taxation. *May* states:

<sup>616</sup> Senate S.O. 140.

<sup>617</sup> *Odgers*, 7th edn, p. 316. After the House has made requested amendments, the Senate has recommitted a bill and made further requests, *see* p. 433.

<sup>618</sup> VP 1967-68/304.

Payments which are intended to cover the expenses of a government department in performing services for the public or sections of the public and are retained by the department, are not regarded as charges. Such payments may take the form of fees or licences.

This rule is not allowed to legitimize charges so disproportionate to the cost of the services rendered or so broadly based as to amount to taxation.

The Speaker has ruled that, in the case of a licence granted by a government department, the payment charged for the issue of the licence, if it is a small fee of an administrative character, should not be considered a charge upon the subject necessitating a Ways and Means resolution, but that if the fee charged did more than this, a Ways and Means resolution would be necessary. If the fees are payable into the Consolidated Fund a Ways and Means resolution is rendered necessary . . .

In view of this ruling a Ways and Means resolution has been regarded as necessary in any case where the charge for a fee or licence has been unduly high or without a defined limit.<sup>619</sup>

The Counsel's opinion held that similar principles should be applied in relation to the interpretation of section 53, except that the fact that fees were paid into the Consolidated Revenue Fund would not prevent the exception applying because, by section 81 of the Constitution, all revenues or moneys raised or received by the Executive Government of the Commonwealth formed one Consolidated Revenue Fund. The amount of the fees in the bills in question was quite substantial; they were not payable for any service rendered to the licensee and their magnitude was such that they could hardly be regarded as merely fees for administrative costs in connection with the licences, permits or registration.

With regard to the 1964 Broadcasting and Television Bills which the Senate had returned without requests<sup>620</sup>, the fees imposed were clearly of a revenue character and were in no way related to administrative costs or services. The use of the word 'fee' instead of 'tax' might well be regarded as a euphemism, according to the Counsel's opinion. Although similar bills were introduced in each year from 1972 to 1977 inclusive, only in 1973<sup>621</sup>, 1976<sup>622</sup> and 1977<sup>623</sup> were the bills in question returned from the Senate but in each case they were returned without amendment which was inconsistent with the Senate's action in 1964.

The matter was considered in the Senate in 1973 in regard to the Broadcasting Stations Licence Fees Bill and the conclusion drawn that there was a reasonable doubt whether the bill should be classified as a bill imposing taxation and therefore it was felt proper to lean towards a ruling which preserved the Senate's amendment power.<sup>624</sup> Some of the bills involved substantial increases, for example, the Broadcasting Stations Licence Fees Amendment Bill 1977 and the Television Stations Licence Fees Amendment Bill 1977 followed announcements in the Budget and increased fees by commercial broadcasters and commercial television licensees respectively by 20 per cent.<sup>625</sup>

The Seas and Submerged Lands (Royalty on Minerals) Bill 1973, which was also denoted 'T\*' was proceeded with in the Senate on the basis of the 1967 precedent.<sup>626</sup>

The problem is not however a substantial one while the bills are returned from the Senate in the same form as they are received from the House of Representatives, but the relative constitutional positions of the Houses may require consideration should the

619 *May*, p. 731.

620 VP 1964-66/229.

621 VP 1973-74/544.

622 VP 1976-77/380, 582.

623 VP 1977/272.

624 *Odgers*, 6th edn, p. 591.

625 H.R. Deb. (18.8.77) 469-70.

626 *Odgers*, 6th edn, p. 591.

Senate amend such a bill rather than request an amendment as it did in 1964 in relation to the Television Stations Licence Fees Bill.<sup>627</sup>

On other occasions the Senate's decisions in relation to its power of amendment have been questioned, for example:

- In 1903 the Senate, considering the Sugar Bounty [Bonus] Bill, reported the bill from committee of the whole with requests, recommitted the bill, rescinded the resolution of request, and reported the bill with amendments and an amended title.<sup>628</sup>

When the message from the Senate was reported, the Speaker pointed out that one Senate amendment was of such a nature that, if passed, would 'increase' a 'proposed charge or burden on the people', and the alteration, if sought, should have been by request and not by amendment. The committee of the whole reported to the House that it had disagreed to amendment No. 3 (of 10 amendments) for the following reason:

Because the Bill is a proposed law appropriating revenue or moneys, and amendment No. 3 is an infraction of the provisions of section 53 of The Commonwealth of Australia Constitution Act, which prohibits the Senate from originating a proposed law appropriating revenue or moneys or from amending any proposed law so as to increase any proposed charge or burden on the people; and the Committee does not deem it necessary to offer any further reason, hoping the above may be sufficient.

The committee agreed to the other Senate amendments. The Senate did not insist on its amendment, but requested the House to make an amendment. The requested amendment was made, with a modification, and the Senate agreed to the modification.<sup>629</sup>

- In 1908 the Senate returned the Manufactures Encouragement Bill with eight amendments. The Speaker drew the attention of the House to two of the proposed amendments, one of which involved the possible alteration of the destination of certain sums of money and the other of which altered the destination of a grant. He was of the opinion that under a previous ruling of the President of the Senate<sup>630</sup> the two amendments were beyond the authority of the Senate and if the House decided to accept them its privileges should be guarded by some reference in the message returned to the Senate. The House agreed to all the amendments, resolving that '... whilst of opinion that Amendments Nos 7 and 8 made by the Senate strictly are in excess of the powers of the Senate (as declared by the President of the Senate on the 3rd October, 1907), yet, in view of the insignificant nature of the excess, the House agree to those Amendments on condition that the matter is not to be drawn into a precedent'.<sup>631</sup>
- In 1910 the Senate amended the Appropriation (Works and Buildings) Bill 1910–11 in respect of a geographical location. Before the House resolved into committee of the whole to consider the amendment, the Speaker stated that his opinion was that the Senate amendment was out of order as it altered the destination of the vote and enabled the money to be expended at a place not recommended by the estimates forwarded with the Governor-General's message. The committee reported that it disagreed with the amendment 'Because it alters the destination of the Vote'. The Senate insisted on its amendment. The House adopted the report of the committee

627 VP 1964–66/229, 235–6.

628 J 1903/49, 55, 60–1. Title originally 'Sugar Bonus Bill'.

629 VP 1903/55, 57–8, 68, 70, 72.

630 S. Deb. (3.10.07) 4165–7.

631 VP 1908/105.

of the whole, insisting on disagreeing to the amendment insisted on by the Senate, but as a consequential amendment omitted the whole item. The Senate then no longer insisted on its amendment and agreed to the consequential amendment made by the House.<sup>632</sup>

- In 1932 the Senate considered the Financial Emergency Bill. Before the question on the second reading was put, the President answered a point of order that the bill offended section 55 of the Constitution (tax bills to deal with taxation only) by stating that because certain provisions of the bill might cause a minor court to oblige some citizens under certain circumstances to contribute sums of money to the revenue, that was not, in his opinion, a reason why the bill should be regarded as a taxation measure; such persons might avoid all liability by meeting their obligations; strictly speaking, the bill was one which sought to lessen, rather than increase, the burden upon the taxpayer.<sup>633</sup> The committee reported the bill with an amendment. When the message from the Senate was reported in the House, the Speaker drew the attention of the House to the fact that the message covered an amendment made by the Senate which might be in conflict with section 53 and the report of the committee of reasons appointed to draw up a reason for the House disagreeing to the amendment stated:

That the Amendment increases a proposed charge or burden on the people and accordingly is an infringement of section fifty-three of the Constitution.

The Senate, whilst of the opinion that it was not clear that the amendment would have the effect of increasing the charge or burden upon the people, refrained at that stage from any determination of its rights under the Constitution, and did not insist on its amendment disagreed to by the House.<sup>634</sup>

- In 1981 the Senate returned the States Grants (Tertiary Education Assistance) Bill with amendments. Before consideration was given to the message the Speaker made a statement drawing attention to an amendment proposing the omission of a clause. The clause in question gave the Minister certain powers concerning the introduction of fees. The House subsequently resolved that it considered the effect of the purported amendments would be to increase the burden on the people and declined to take the amendments into consideration. The bill was laid aside.<sup>635</sup>
- In 1988 the Senate returned with amendments the States Grants (Technical and Further Education Assistance) Bill. The Deputy Speaker made a statement drawing attention to one amendment which proposed the deletion of a certain category of students which were, under the bill, to be disregarded for the purposes of calculating certain payments; that is, if the amendment was made, the group would be included. The statement noted that the amendment could be said to increase the proposed charge or burden on the people. The Minister later quoted legal opinion which questioned the Senate action on this point. The amendment was rejected, and the bill returned to the Senate. The Senate returned the bill again insisting on the amendment, but the House insisted on disagreeing to it.<sup>636</sup> On 6 March 1989 the Senate resolved not to insist on the amendments in question.<sup>637</sup>

632 VP 1910/130-1, 134, 138.

633 J 1932-34/140.

634 VP 1932-34/350, 352.

635 VP 1980-83/667-8.

636 VP 1987-89/994-7, 1014-5; H.R. Deb. (21.12.88) 3776-82, 3828-33; J 1987-89/1366-9, 1375-6.

637 J 1987-89/1435-6; S. Deb. (6.3.89) 512-8.

- In 1991 the Senate returned the Social Security Legislation Amendment Bill (No. 4) with amendments which extended eligibility for certain benefits to a group of people (farmers in financial hardship). The Deputy Speaker made a statement querying whether the amendments should have been pursued as requests, but, in order to avoid delaying the measure, the House agreed to the amendments. Later, the Speaker made a detailed statement to the effect that one of the Senate's amendments would indeed increase the charge or burden on the people. He noted that the First Parliamentary Counsel had agreed with this conclusion on the matter but that the Clerk of the Senate had contested the Counsel's arguments. The Speaker stated that the Clerk of the House would ensure that messages from the Senate returning bills would be examined to protect the interests of the House. A motion endorsing the Speaker's statement was then carried.<sup>638</sup>
- In 1992 the Senate returned the Local Government (Financial Assistance) Amendment Bill with amendments, one of which increased the maximum amount of financial assistance to be paid to a State. The Speaker made a statement querying whether the amendment should have been pursued as a request. The House declined to consider the purported amendment, stating that it considered its effect would be to increase the burden on the people in contravention of section 53 of the Constitution, but informed the Senate that a request for the amendment would be considered. The Senate returned the purported amendment as a request for amendment (while not conceding that it should have been a request), and the House then made the requested amendment.<sup>639</sup>

Difficult questions of interpretation can arise on the issue of the Senate's right to amend bills. At one extreme, almost every amendment will cause some degree of 'charge or burden on the people',<sup>640</sup> whilst at the other extreme it may be felt that unless an amendment 'necessarily, clearly and directly' causes an increased 'charge or burden' it is available to the Senate. It is considered that neither position is appropriate and that, in examining any such question, the better course is to ask what are the probable, expected or intended practical consequences of the proposed amendment.

It has been considered that a Senate alteration which would reduce 'savings' from the level proposed in a bill can be made as an amendment where the alteration would not lead to expenditure beyond that covered in the existing law—that is, where expenditure would not be greater than under the status quo.<sup>641</sup>

### *Inquiries into the interpretation and application of the 3rd paragraph of s. 53*

In 1994 the question of the interpretation and application of the provisions of the third paragraph of section 53 of the Constitution was referred by each House to its respective Standing Committee on Legal and Constitutional Affairs. The Senate reference was partly transferred to its Procedure Committee in May 1996. In November 1995 the House committee, having earlier circulated and received comments on an exposure report, presented a comprehensive final report, canvassing in detail the issues involved

<sup>638</sup> VP 1990–91/1236–44, 1298.

<sup>639</sup> VP 1990–92/1598–9, 1628.

<sup>640</sup> In *The State of Western Australia v. The Commonwealth* (Matter No. P4 of 1994) the High Court heard submissions on s. 53. It was argued that the *Native Title Act 1993* was invalid, it being claimed that s. 53 had been contravened because the Senate had amended the bill in ways which would involve a burden on the people. One of the amendments was to establish a parliamentary committee, and it was argued that this would involve administrative and other expenses. While the Court did not hold that s. 53 was justiciable, it commented that none of the Senate amendments appeared to increase a charge or burden on the people.

<sup>641</sup> VP 1996/937.

and recommending, inter alia, that there should be a compact concerning the interpretation and application of the provisions of paragraph 3 between the Houses. Among other things, the committee recommended that:

- the third paragraph of section 53 should be regarded as applicable to proposed laws relating to appropriation and expenditure (other than proposed laws appropriating revenue or moneys for the ordinary annual services of Government);
- the third paragraph should continue to apply to a bill containing a standing appropriation where a Senate alteration to it would increase expenditure under the appropriation;
- where a bill does not contain an appropriation, the Senate should not amend it to increase expenditure out of a standing appropriation, whether or not the bill itself affects expenditure under the appropriation;
- a bill which increases expenditure under a standing appropriation should not be originated in the Senate;
- the third paragraph should be regarded as applicable to tax and tax related measures<sup>642</sup>;
- fines, penalties, licence fees and fees for services should not be regarded as charges or burdens on the people for the purposes of the third paragraph;
- bills which affect the tax base or tax rates should be originated in the House of Representatives;
- the third paragraph applies to all Senate amendments which would increase a charge or burden on the people, including amendments which would increase a tax rate or expand a tax base regardless of whether the bill originated in the Senate or the House;
- where a bill does not itself propose a charge or burden, the Senate should not amend the bill to increase the rate or incidence of taxation;
- for the purposes of determining whether an alteration moved in the Senate to a bill increases a proposed charge or burden, the alteration should continue to be compared to the existing level of the charge or burden and not the level of the charge or burden proposed by the bill;
- a request should be required where an alteration to a bill is moved in the Senate which will make an increase in the expenditure available under an appropriation or the total tax or charge payable legally possible;
- the Houses should negotiate a procedure which would allow the Senate to make requests for amendments to bills originated in the Senate where the third paragraph prohibits a Senate amendment, the procedure being based on the provisions of the fourth paragraph of section 53 and the subject of a compact between the Houses.<sup>643</sup>

In November 1996 the Senate Procedure Committee reported on the matter, proposing the terms of an agreement for the interpretation and application of the third paragraph, including provisions to the effect that:

- the paragraph apply to bills in respect of appropriations only if such bills contain appropriations, or amend Acts which do so in such a way as to affect expenditure under the appropriation, and that it should not apply to bills originating in the Senate;

642 See also for example views of Sir Kenneth Bailey, Sir Robert Garran (April 1950) and Attorney-General Duffy (Opinion 90/15078, November 1990).

643 House of Representatives Standing Committee on Legal and Constitutional Affairs. *The third paragraph of Section 53 of the Constitution: final report*, November 1995; PP 307 (1995).

- government ‘amending’ bills which increase expenditure should contain a clause appropriating the additional money and be classified as appropriation bills and be first introduced in the House;
- where a government bill originating in the House amends an Act containing such an appropriation—before the moving of each proposed Senate amendment to such a bill, the responsible Senate Minister should state the Government’s view as to whether the amendment would affect expenditure from the appropriation and give reasons for that view;
- a Senate amendment stated by a Minister to have the effect of increasing expenditure from such an appropriation would be moved as a request;
- a similar approach in respect of bills ‘involving’ taxation—a proposed Senate amendment would be moved as a request where the Minister stated that it would raise the level of taxation;
- a bill which increases the level of taxation or the amount of tax payable by taxpayers should be classified as a bill ‘imposing’ taxation—and therefore be first introduced in the House and not able to be amended by the Senate. (The committee recognised that if this provision was adopted the procedure in relation to bills ‘involving’ taxation would rarely be invoked.)<sup>644</sup>

Notes commenting on the Senate committee’s proposals were presented to the House on 2 December 1996.<sup>645</sup> These notes drew attention to a number of matters, including the fact that the procedures recommended by the committee for the consideration of Senate alterations did not seem to cover ‘non-amending’ bills, that is, ‘original bills which contained a special appropriation clause’. It was pointed out that Senate alterations to such bills which led to increased expenditure were caught by the constitutional provision, yet the Senate committee’s proposals seemed not to allow for them. It was also pointed out that the report was silent on the question of the test or criteria to be applied to proposed Senate alterations.

### **Requested amendments made**

When the message containing a request is announced to the House, the House shall thereupon, or at a later time to be fixed, consider the requested amendment.<sup>646</sup> The House may make any omissions or amendments<sup>647</sup> with or without modifications<sup>648</sup> or with modifications and a consequential amendment.<sup>649</sup> The House may make amendments requested by the Senate involving appropriation only if a message from the Governor-General recommending an appropriation for the purposes of the requested amendment has been made to the House.<sup>650</sup> Any omissions or amendments are made by the Clerk in the bill, which is then returned to the Senate. The substance of the message is as follows:

The House of Representatives returns to the Senate **a Bill for an Act** [long title], and acquaints the Senate that the House of Representatives has considered the message of the Senate requesting the House to make certain amendments in such Bill.

The House of Representatives has made the requested amendments.

644 Senate Procedure Committee, *First report of 1996*, ‘Section 53 of the Constitution / Incorporation into the standing orders of continuing and sessional orders’, November 1996.

645 VP 1996/937.

646 S.O. 262.

647 VP 1974–75/942–3.

648 VP 1974–75/910–11; and see Appendix 18, Customs Tariff (British Preference) Bill 1906.

649 VP 1973–74/642–5.

650 VP 1993–95/2358, 9.

After the reporting of a message from the House advising that the House had made requested amendments, the Senate has recommitted a bill in order to make further requests.<sup>651</sup>

### **Requested amendments not made**

The House may decide not to make the requested amendment<sup>652</sup>, and in this instance a message is sent to the Senate in the following form:

The House of Representatives returns to the Senate a **Bill for an Act** [long title], and acquaints the Senate that the House of Representatives has considered the message of the Senate requesting the House to make an amendment in such Bill.

The House of Representatives has not made the requested amendment.<sup>653</sup>

On the bill's return the Senate may pass it without the requested amendment having been made or may seek to press or insist on its request (*see below*).

If unwilling to comply with a Senate request, instead of responding to the request the House may lay the bill aside.<sup>654</sup>

### *Requested amendment not made, but effect achieved by other means*

In 1901 the Consolidated Revenue Bill (No. 1) was ordered to be laid aside following a Senate request that the bill be amended so as to show the items of expenditure. Prime Minister Barton explained that estimates were circulated with the bill but the estimates were not part of the bill in the form of a schedule. He assured the House that there was no attempt to belittle or injure the Senate. The bill having been referred back to the House, and being a House bill, was now at the disposal of the House. A course was proposed which enabled the House to concede to the Senate message but which would put the course of procedure into a correct constitutional channel. A motion 'That the bill be laid aside' having been agreed to, standing orders were suspended to enable a replacement bill, the Consolidated Revenue Bill (No. 2) with scheduled estimates, to be introduced and pass all stages that day.<sup>655</sup>

### **Bills which the Senate may amend, in parts, and must request, in parts**

In considering a bill which constitutionally it is capable of amending, the Senate may nevertheless have to request amendments in respect of certain parts of the bill. For example, the Social Security Legislation Amendment Bill (No.1) 1995, a **special** appropriation bill, was capable of amendment by the Senate but not so as to increase any proposed charge or burden on the people. In the Senate the bill was reported with amendments and a request.<sup>656</sup> In such instances the message returning the bill to the House indicates a request for amendment, set out in a schedule, and informs the House that the amendments, set out in another schedule, have been made to the bill. As, in such a case, a bill, having been reported with a request, has not proceeded to the third reading stage in the Senate, the House can only consider the request. If the requested amendment is to be made, a Governor-General's message recommending an appropriation for the purposes of the requested amendment is announced to the House, the requested

651 J 1996/434-5, 443, 446 (the further requests had in fact been negatived when the bill was first considered by the Senate).

652 VP 1993-95/2429.

653 J 1993-95/3884.

654 VP 1980-83/668.

655 H.R. Deb. (14.6.01) 1174-86; VP 1901-02/61-2; and *see* Appendix 18.

656 J 1993-95/3723-4.

amendment made<sup>657</sup> and the Senate informed accordingly by message, whereupon the bill is read a third time.<sup>658</sup> The bill is returned to the House indicating that the Senate has agreed to the bill as amended by the House at the request of the Senate and the House's agreement to further amendments is sought and may be obtained.<sup>659</sup>

### Pressed requests

On occasions the Senate, on receiving a message from the House that the House has not made a requested amendment, has pressed or insisted upon its request. There has been a difference of opinion as to the constitutionality of the action of the Senate in pressing requests. However, the House, while passing a preliminary resolution refraining from determining its constitutional rights or obligations, has on most occasions taken the Senate's message into consideration. The arguments of those who advocate the constitutional propriety of pressed requests include the following<sup>660</sup>:

- The term 'at any stage' in section 53 of the Constitution means that the sending of requests is not limited to one occasion.
- There is no prohibition in the Constitution.
- The writers of the Constitution did not intend such a prohibition.
- The Senate could easily circumvent such a prohibition (i.e. by slightly modifying the request on each occasion).
- That the difference between an amendment and request is procedural only.

The alternative constitutional position is expressed by *Quick and Garran*:

There does, however, seem to be a substantial constitutional difference between the power of suggestion and the power of amendment, as regards the responsibility of the two Houses. A short analysis will make this clear. In the case of a bill which the Senate may amend, the Senate equally with the House of Representatives is responsible for the detail. It incorporates its amendments in the bill, passes the bill *as amended*, and returns it to the House of Representatives. If that House does not agree to the amendments, the Senate can "insist on its amendments," and thus force the House of Representatives to take the responsibility of accepting the amendments or of sacrificing the bill; whilst the House of Representatives cannot force the Senate to take a direct vote on the bill in its original form.

On the other hand, in the case of a bill which the Senate may not amend, the House of Representatives alone is responsible for the form of the measure; the Senate cannot strike out or alter a word of it, but can only suggest that the House of Representatives should do so. If that House declines to make the suggested amendment, the Senate is face to face with the responsibility of either passing the bill as it stands or rejecting it as it stands. It cannot shelve that responsibility by insisting on its suggestion, because there is nothing on which to insist. A House which can make an amendment can insist on the amendment which it has made; but a House which can only "request" the other House to make amendments cannot insist upon anything. If its request is not complied with, it can reject the bill, or shelve it; but it must take the full responsibility of its action. This provision therefore is intended to declare the constitutional principles (1) that the House of Representatives is solely responsible for the form of the money bills to which the section relates; (2) that the Senate may request alterations in any such bill; (3) that if such request is not complied with, the Senate must take the full responsibility of accepting or rejecting the bill as it stands.<sup>661</sup>

This view is supported by legal opinion, notably an opinion presented to the House on 16 March 1943<sup>662</sup>, which made the following points:

657 VP 1993-95/2358-9.

658 J 1993-95/3783.

659 VP 1993-95/2381-2.

660 See also *Odgers*, 7th edn, pp. 320-22.

661 *Quick and Garran*, pp. 671-2.

662 *Constitutional opinion on whether the Senate has a right to press a request for the amendment of a money bill*—by Sir Robert Garran, Sir George Knowles, Professor K. H. Bailey and Mr G. B. Castieau, VP 1940-43/514 (not ordered to be printed).

- The words 'at any stage' in section 53 of the Constitution do not, in a parliamentary context, mean the same thing as 'at any time and from time to time'. They plainly refer to the recognised stages in the passage of a bill through the Chamber.
- The question is not one of strict law on which the courts will pronounce. It is a matter of constitutional propriety, as between the Houses themselves.
- The question (should) be answered by reference to general considerations, drawn from the provisions of sections 53 to 57 of the Constitution as a whole.
- The plain implication of the *Quick and Garran* view was that the Senate can make a given request but once at any particular stage of a bill.
- As stated by Sir Harrison Moore, the consequence of the opposite view was that the distinction between the power to request and the power to amend was merely formal.
- Sir Isaac Isaacs indicated that, once the Senate had made a request, its power of suggestion in regard to a matter was exhausted as far as that stage was concerned; it has no right to challenge again the decision of the House in respect to matters in regard to which it has made requests and received a definite answer.<sup>663</sup>
- Sir John Latham stated that the only practical way in which a distinction might be drawn between making a request and amending a bill was by taking the view that a request could be made only once and that, having made it, the Senate has exercised all the rights and privileges allowed by the Constitution.<sup>664</sup>
- A different opinion, expressed in the Senate by Sir Josiah Symon, that the Constitution gave the Senate substantially the power to amend, though in the form of a request<sup>665</sup> meant that the Constitution, in declaring that the Senate might not amend but might request amendments, was contradicting itself, cancelling in the fourth paragraph of section 53 what it had enacted in the second. In respect of this view the opinion tabled in the House stated that the Constitution did intend a substantial difference; it was thought clear that the Constitution did not intend to stultify itself by giving back in one clause what it had taken away in another.
- The essence of the difference between an amendment and a request was that in the case of a request the form of the bill rests solely with the House. To press a request was to insist upon it—which was a contradiction in terms and unconstitutional.

On the 17 occasions<sup>666</sup> on which the Senate has pressed or insisted upon requests for amendments to bills the House has considered and dealt with the Senate messages as summarised below (*see* Appendix 18 for details):

- On ten occasions the pressed requests were accepted, accepted in part and compromise reached over requests not accepted, or alternative amendments made and compromise reached. It has been usual in such circumstances for the House to declare that it is refraining from the determination of its constitutional rights with respect to the messages purporting to press the requests:

Customs Tariff Bill [1902]  
 Excise Tariff (Spirits) Bill [1906]  
 Customs Tariff (British Preference) Bill [1906]  
 Customs Tariff Bill [1907]  
 Customs Tariff Bill [1921]

663 H.R. Deb. (3.9.02) 15691.

664 H.R. Deb. (30.11.33) 5249.

665 S. Deb. (9.9.02) 15824.

666 To end of 1996.

Customs Tariff Bill [1933]  
Income Tax Bill 1943  
Veterans' Entitlements Bill 1985  
States Grants (Schools Assistance) Bill 1988  
Wool Tax (Nos 1 to 5) Amendment Bills 1991.

- On two occasions replacement bills were introduced and passed incorporating the amendments requested:  
Appropriation Bill 1903–4  
Supply Bill (No. 3) 1916–17.
- On two occasions the pressed requests were not accepted, were not further pressed, and the bills passed by the Senate:  
Appropriation Bill 1921–22  
Customs Tariff Bill (1936).
- On three occasions the House declined to consider messages purporting to press requests, the bills concerned being subsequently discharged:  
Sales Tax Amendment Bills (Nos 1A to 9A) 1981  
Dairy Industry Stabilisation Levy Amendment Bill 1985  
Student Assistance Amendment Bill 1994.

*Odgers* suggests that in respect to the pressing of requests the Houses have interpreted the rule 'by application'—in effect that the Senate's right to press requests has been established by usage.<sup>667</sup> As against this suggestion the comments of others are relevant, for example:

The reality of the situation is that a government has often been prepared to forfeit constitutional niceties for the sake of getting its legislation made. It may be faced with the choice of modification of its proposals or having its bill rejected thereby setting in train the section 57 double dissolution procedure. Often the subject matter of the requests will not warrant this. The somewhat plaintive words of Latham on reiterated Senate requests for the inclusion of certain items in the Customs Tariff in 1933 exemplify this:

The Constitution has provided for such a case (rejection of a bill by the Senate) in section 57, under which this House is placed in a position to force a double dissolution. It appears to me, however, that the three items rabbit traps, spray pumps, and dates, however important they may be, hardly justify a double dissolution.

But this may not always be the attitude adopted. The day could well come when the House of Representatives declines to consider reiterated requests and asserts that the Senate is acting unconstitutionally with the possible consequences, as far as the operation of section 57 is concerned, adverted to previously.<sup>668</sup>

If the House refuses to accede to a request the Senate can press its claim to finality by refusing to pass the bill.

In recent years when a message has been received from the Senate purporting to press requests for amendments, it has been the practice of successive Speakers to make a statement referring to the principles involved and which the House has endorsed, whether declining to consider the message or not. In a 1988 case the Deputy Speaker made the following statement on behalf of the Speaker:

I draw the attention of the House to the constitutional question this message involves. The message purports to repeat the requests for amendments contained in Message No. 274 which the House rejected at its sitting earlier today. The 'right' of the Senate to repeat and thereby press or insist on a request for an amendment has never been accepted by the House of Representatives.

<sup>667</sup> *Odgers*, 7th edn, p. 322.

<sup>668</sup> D. Pearce, 'The Legislative Power of the Senate', in *Commentaries on the Australian Constitution*, Leslie Zines (ed.), Butterworths, Sydney, 1977, p. 130.

On several previous occasions when a request was pressed on the House by repetition the House had regard to the claim that the public welfare required passage of the legislation which was the subject of the pressed request and gave the pressed request the House's consideration notwithstanding that the House resolved to refrain from determining its constitutional rights. The House so informed the Senate of the terms of its resolution in its message to the Senate in reply.

It is not certain whether the Senate's right to press a request by repetition is justiciable in the courts. However it is a matter of constitutional propriety as between the Houses based on the provisions of sections 53 to 57 of the Constitution. Strong arguments that the Constitution does not give the Senate the right to press a request were advanced by Quick and Garran who were intimately involved in the development of the Constitution. Their views may be found on pages 671–2 of their treatise on the Constitution.

In 1943, some 40 years later, the question was examined by four eminent constitutional lawyers, Garran, Knowles, Bailey and Castieau, who, after considering other learned opinion, summed up the question in the following words:

In our opinion, the Constitution in denying the right of amendment and conferring the right of request intended a substantial difference. In this we respectfully agree with the views expressed by Sir Harrison Moore, Sir Isaac Isaacs and Sir John Latham. We think it clear that the Constitution did not intend to stultify itself by giving back in one clause what it had taken away in another. The essence of the difference between request and amendment is that in the case of a request the right of decision as to the form of the Bill rests solely with the House of Representatives. To press a request is to insist upon it—which is a contradiction in terms, and also in our opinion unconstitutional.

Other more recent legal opinion has been of a similar view, including the opinions of Professors Richardson, Sawyer and Pearce.

I respectfully agree with these opinions, as I had reason to indicate to the House as recently as 11 April 1986. I might also add that my immediate predecessors, Speaker Snedden on 21 October 1981 and Speaker Jenkins on 20 August 1985, also indicated their agreement to these opinions in similar statements.

It rests with the House whether it will consider Message No. 295 insofar as it purports to press the requests that were contained in Message No. 274.

In the circumstances of the present case, the House may deem it expedient to pass a resolution, as has been done on occasions in the past, that the public welfare demands the early passage of the legislation and that the House refrains from determining its constitutional rights.<sup>669</sup>

On more recent occasions the Chair has read out shorter statements to the same effect (referring to rather than quoting the opinions of the constitutional lawyers).<sup>670</sup>

In 1986 the Senate purported to press requests concerning the Veterans' Entitlements Bill 1985. After a statement by the Speaker, the House refrained from determining its constitutional position and considered the message forthwith. The Minister indicated that the requested amendments were not acceptable to the Government in the form that they were in but that they would be acceptable in another form, which was indicated in a schedule, if proposed in conjunction with certain other amendments. This course was followed and the Senate subsequently rescinded its requests and requested the House to amend the bill as proposed.<sup>671</sup>

In its 1995 report on the third paragraph of s. 53 of the Constitution the Standing Committee on Legal and Constitutional Affairs stated:

The conclusion that pressing requests is unconstitutional (and was not intended to be the practice when the Constitution was drafted) is supported by the literal meaning of the word 'request'. 'Request' can be defined as 'the act of asking for something to be given, or done, especially as a favour or courtesy'. To press and therefore insist on an amendment is to demand and this is not in keeping with the words of the fourth paragraph. The Committee suggests that the fact requests have been pressed in the past does not give the practice validity.<sup>672</sup>

669 VP 1987–89/1012–3; see also VP 1980–83/613–4.

670 E.g. VP 1990–92/921; VP 1993–95/1108–9, 1870.

671 VP 1985–87/820–1, 831–8, 856–8.

672 PP 307 (1995) 148.

### The issue of possible division of bill

In June 1995 the Senate sought to divide the Human Services and Health Legislation Amendment Bill (No. 1) 1995 and it returned the measure to the House in the form of two bills, in which it sought the concurrence of the House.<sup>673</sup> Consideration of the Senate message was made an order of the day for the next sitting, but the order was not called on. The Government did, however, later introduce the Human Services and Health Legislation Amendment Bill (No. 3) and the Therapeutic Goods Amendment Bill 1995, replacing the original proposals and incorporating minor amendments.<sup>674</sup> The bills were passed by the House, although a second reading amendment was moved which, *inter alia*, referred to 'the incompetent way in which the legislation was originally managed in its passage through the Parliament, so that the original Bill was divided by the Senate and thus rendered inoperable'.<sup>675</sup> The Senate passed the Human Services and Health Legislation Amendment Bill (No. 3) on 29 November 1995. The Therapeutic Goods Amendment Bill had not been passed at the time of prorogation of the Parliament and dissolution of the House on 29 January 1996 but the measure was re-introduced and passed early in the 38th Parliament.

It is considered that the established rules and practices of the Houses provide ample opportunity for the consideration and amendment of bills by each House and that the division of a bill in the House in which the bill did not originate is highly undesirable.

### Proceedings in case of continued disagreement

Standing order 250 deals with subsequent proceedings in the case of continued disagreement. It provides:

If the Senate returns the bill with a message informing the House that it—

- I. Insists on the original amendments to which the House has disagreed<sup>676</sup>;
- II. Disagrees to amendments made by the House on the original amendments of the Senate<sup>677</sup>; or
- III. Agrees to amendments made by the House on the original amendments of the Senate, with further amendments<sup>678</sup>:

the House may, as to I.—

Agree, with or without amendment, to the amendments to which it had previously disagreed<sup>679</sup> and make, if necessary, consequential amendments to the bill; or insist on its disagreement to such amendments<sup>680</sup> and make, if necessary, amendments relevant to the rejection of the amendments of the Senate;

and may, as to II.—

Withdraw its amendments and agree to the original amendments of the Senate<sup>681</sup>; or make further amendments to the bill consequent upon the rejection of its amendments; or make new amendments as alternative to which the Senate has disagreed; or insist on its amendments to which the Senate has disagreed;

and may, as to III.—

673 VP 1993–95/2184; J 1993–95/3425.

674 VP 1993–95/2389–90; H.R. Deb. (28.9.95) 1942–5.

675 VP 1993–95/2435.

676 VP 1973–74/614.

677 VP 1973–74/321.

678 VP 1905/153.

679 VP 1905/178–9, 190.

680 VP 1973–74/614. A more recent case concerned the States Grants (Technical and Further Education Assistance) Bill 1988. In this case the Senate did not insist on two amendments disagreed to by the House, insisted upon two disagreed to by the House and agreed to an amendment made by the House in place of one Senate amendment. The House insisted on disagreeing to the amendments insisted upon by the Senate. The Senate later resolved not to insist on the amendments; VP 1987–89/1014–5, J 1987–89/1435–6.

681 VP 1973–74/321.

Agree, with or without amendment, to such further amendments of the Senate, making consequential amendments to the bill, if necessary; or disagree thereto and insist on its own amendments which the Senate has amended.

There is precedent for the Senate not insisting on its amendments to which the House insisted on disagreeing, but making further amendments, consequent on the rejection of its amendments, and requesting the concurrence of the House in these amendments.<sup>682</sup> When the requirements of the Senate in the bill have been finally settled, a message is sent informing the Senate accordingly.

When disagreement between the Houses cannot be resolved, the process of negotiation by message having failed, any of the following courses may be adopted:

- a conference between representatives of the two Houses may be requested;
- the Governor-General may dissolve both Houses pursuant to section 57 of the Constitution, in the case of the conditions of that section having been met; or
- the bill may, on motion, be laid aside, thereby putting an end to the proposal.

Instead of returning the Bill to the Senate according to I, II or III above (that is, if it is decided that further negotiation by message would be pointless), the House may request a conference or order the bill to be laid aside at this point. In the latter case the most recent message from the Senate is ordered to be taken into consideration, usually forthwith. A Minister then moves 'That the House insists on disagreeing to the amendments insisted on by the Senate', and, when this question is resolved in the affirmative, moves 'That the bill be laid aside'.<sup>683</sup>

If the bill is returned to the Senate in accordance with options under I, II or III above and the Senate then again returns the bill to the House with any requirements of the House still disagreed to, the standing orders give the House only the options of requesting a conference or of ordering the bill to be laid aside. If the House instead wishes to save the bill by agreeing to Senate amendments it has previously insisted on disagreeing to (and again insisted on by the Senate), or wishes to propose alternative amendments, standing orders must be suspended to allow this action. Only positive action is appropriate at this stage—it is considered that the suspension of standing orders to enable the House to again insist on disagreeing to the Senate amendments should not be permitted. In whatever way the House disposes of a bill returned with amendments by the Senate, the Clerk shall, at every stage, certify accordingly on the bill.<sup>684</sup>

(See also Chapter on 'Disagreements between the Houses'.)

## SENATE BILLS AMENDED BY HOUSE

When a bill originating in the Senate has been amended by the House, a schedule of amendments, certified by the Clerk, is prepared, indicating the clause, page and line where the amendments occur in the bill.<sup>685</sup> If the Senate returns the bill with any of the amendments made by the House disagreed to, or further amendments made, together with reasons<sup>686</sup> the message is considered usually forthwith.<sup>687</sup> The procedure of the House is then as follows<sup>688</sup>:

682 VP 1973–74/640–2.

683 VP 1974–75/771, 827–8.

684 S.O. 252.

685 S.O. 255.

686 S.O. 256. As is the practice of the House, where a House amendment is disagreed to, but another amendment made in place thereof, no reasons are given, VP 1920–21/389.

687 VP 1974–75/759–60.

688 S.O. 257.

In cases where the Senate—

- I. Disagrees to amendments made by the House; or
- II. Agrees to amendments made by the House with amendments<sup>689</sup>:  
the House may, as to I.—

Insist<sup>690</sup>, or not insist, on its amendments; or make further amendments to the bill consequent upon the rejection of its amendments; or make new amendments as alternative to the amendments to which the Senate has disagreed<sup>691</sup>; or order the bill to be laid aside;

and may, as to II.—

Agree to the Senate's amendments on its own amendments, with or without<sup>692</sup> amendment, making consequential amendments to the bill if necessary; or disagree thereto and insist on its own amendments which the Senate has amended; or order the bill to be laid aside:

and, unless the bill be laid aside, a message shall be sent to the Senate to such effect as the House has determined. On any further return of the bill from the Senate with any of the requirements of the House still disagreed to<sup>693</sup>, the House may order the bill to be laid aside.<sup>694</sup>

The courses of action under I. have not been interpreted as being mutually exclusive. For example, the House has declared that it did not insist on an amendment before going on to propose an alternative.<sup>695</sup> It has also stated that it insisted on an amendment but proceeded to revise its wording.<sup>696</sup> When a bill is returned to the Senate with any of the amendments made by the Senate on the amendments of the House disagreed to, the message returning the bill to the Senate also contains reasons for the House not agreeing to amendments made by the Senate. A committee of reasons (*see* p. 425) is appointed on motion without notice to draw up reasons and report them to the House.<sup>697</sup>

If any further amendments are made by the House on the Senate's amendments on the original amendments of the House to a bill originating in the Senate, a schedule of further amendments is prepared and certified by the Clerk.<sup>698</sup>

No amendment may be moved to any words of a bill which, having received the concurrence of the Senate, have not been the subject of, or immediately affected by, some previous amendment, unless the proposed amendment is consequent upon an amendment already agreed to or made by the House.<sup>699</sup>

If the Senate makes an amendment which is not relevant to the amendments made by the House to a Senate bill, it is necessary for the House to suspend standing orders to enable the amendment to be considered. In the case of the International War Crimes Tribunal Bill 1994 the Senate agreed to all but one of the amendments made by the House, proposed another amendment in place of the one it disagreed to, and made further amendments to the bill and to a related bill. Before the House considered the Senate messages, standing and sessional orders were suspended to enable the further amendments to be considered.<sup>700</sup>

689 VP 1950–51/152; VP 1974–75/759 provides an example of I. and II.

690 VP 1950–51/152.

691 VP 1920–21/138–9.

692 VP 1974–75/759–60.

693 The Senate having insisted on disagreeing to amendments insisted on by the House to the Human Rights Commission Bill 1980, consideration of the Senate's last message lapsed at dissolution of the Parliament, VP 1978–80/1378–9, 1483.

694 The Senate having insisted on disagreeing to amendments insisted on by the House to the Development Allowance Authority Amendment Bill 1996, the House ordered the bill to be laid aside, VP 1996/361.

695 VP 1920–21/139.

696 VP 1903/179.

697 S.O. 258; VP 1913/204.

698 S.O. 259.

699 S.O. 261.

700 VP 1993–95/1920–36.

In whatever way the House disposes of a bill returned by the Senate after having been amended by the House, the Clerk certifies accordingly on the first page of the bill.<sup>701</sup>

## LAPSED BILLS

Prorogation of a Parliament by the Governor-General brings to a close a session of the Parliament. The effect of a prorogation is to suspend immediately all business until Parliament is again summoned. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed. On the other hand, a long adjournment between sittings has no more technical effect on parliamentary proceedings than does an adjournment from day to day, and when the House re-assembles all proceedings may be resumed at the stage at which they were left. A dissolution has the effect of quashing all proceedings, and there is no provision for proceedings to be carried over from Parliament to Parliament.

Both Houses have provisions for the resumption of business that has lapsed due to a prorogation of Parliament.<sup>702</sup> Any bill which lapses by reason of a prorogation before it has reached its final stage may be proceeded with in the next session at the stage it had previously reached, provided that a periodical election for the Senate or a general election has not taken place between two such sessions. (The proviso in relation to a general election is necessary because on occasions the House has been prorogued prior to it being dissolved for the purposes of an election.) The procedure is as follows:

- If the bill is in the possession of the House in which it originated and has either not been sent to the other House<sup>703</sup> or, if sent, has been returned by message<sup>704</sup>, it may be proceeded with by a resolution of the originating House, restoring it to the Notice Paper. For example the Financial Corporations Bill 1973 was restored to the Notice Paper of the House.<sup>705</sup> In the Senate examples are the Estate Duty (Termination) Bill 1973 [1974] and the National Health Bill (No. 3) 1973 [1974] (both private Senators' bills).<sup>706</sup> The stage which the bill had reached at prorogation may be made an order of the day for the next sitting<sup>707</sup> or for a specified future day.<sup>708</sup> Speaker Holder, in a private ruling, held that a bill cannot be proceeded with on the day of the resolution to restore, as it must first be restored to and printed on the Notice Paper.<sup>709</sup> More recently, a bill has been proceeded with immediately after the House has agreed to a motion that the proceedings be resumed forthwith at the point where they were interrupted.<sup>710</sup>
- If the bill is in the possession of the House in which it did not originate, it may be proceeded with by resolution of the House in which it is, restoring it to the Notice Paper, if a message has been received from the originating House requesting resumption of consideration. Following prorogation of the 1st Session of the 28th Parliament on 14 February 1974 the House requested the Senate to resume consideration of the Australian Industry Development Corporation Bill 1973 and

701 S.O. 260.

702 S.O. 264; Senate S.O. 243. See Ch. on 'The parliamentary calendar' for the effect of prorogation and dissolution.

703 The Financial Corporations Bill 1973 lapsed at second reading stage at prorogation in 1974, VP 1974/32.

704 The Papua (British New Guinea) Bill 1904 lapsed at stage of consideration in committee of Senate amendments, VP 1905/21.

705 VP 1974/32.

706 J 1974/24.

707 VP 1974/32; NP 4 (12.3.74) 110.

708 VP 1908/17.

709 VP 1908/12; NP 3 (22.9.08) 12.

710 VP 1993-95/2353-4; 2360-2.

the National Investment Fund Bill 1973<sup>711</sup>, and the Senate requested resumption of consideration of the Legislative Drafting Institute Bill 1973 and the Parliament Bill 1973.<sup>712</sup> The House orders consideration of messages requesting resumption of consideration to be made an order of the day for the next sitting (the most common practice) or for a specified future day.

Bills appropriating revenue and moneys are deserving of special consideration in this context. The Constitution provides<sup>713</sup>:

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** [emphasis added] been recommended by message of the Governor-General to the House in which the proposal originated.

On occasions when the House has agreed to resume consideration of a lapsed bill appropriating revenue or moneys which, of constitutional necessity, originated in the House, and in respect of which a message from the Governor-General recommending an appropriation had been announced in the previous session, a new message is announced.<sup>714</sup> This has occurred before the motion to resume proceedings was moved<sup>715</sup>, and immediately after the motion to restore was agreed to.<sup>716</sup> None of the bills on which the House has asked the Senate to resume consideration has involved an appropriation of revenue and moneys, but the matter has been canvassed in the Senate.<sup>717</sup> Senate requests for resumption of consideration do not relate to bills appropriating revenue or moneys (or taxation bills) as they are bills which the Senate may not originate.

Motions to resume proceedings on bills interrupted by prorogation and motions to request the Senate to resume consideration may be debated. Any bill so restored to the Notice Paper is proceeded with in both Houses as if its passage had not been interrupted by a prorogation, and, if finally passed, is presented to the Governor-General for assent. Should the motion for restoration to the Notice Paper be not agreed to by the House in which the bill originated, the bill may be re-introduced and proceeded with in the ordinary manner.<sup>718</sup>

In 1990 the Senate, following suspension of its standing orders, sent a message requesting the House to resume the consideration of a bill which had lapsed in the House at the dissolution of the previous Parliament. The House returned a message to the Senate to the effect that the request was irregular in that it requested action prevented by the standing orders of the House and accepted parliamentary practice, and suggesting that the Senate should introduce the bill again and transmit it to the House in accordance with normal procedures. The Senate subsequently acted as suggested.<sup>719</sup>

## PRESENTATION OF BILLS TO THE GOVERNOR-GENERAL

The Constitution provides that on the presentation of proposed laws for assent, the Governor-General declares, according to his discretion but subject to the Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves assent for the Queen's pleasure, or he may recommend amendments.<sup>720</sup> Before assenting,

<sup>711</sup> VP 1974/32.

<sup>712</sup> VP 1974/45.

<sup>713</sup> Constitution, s. 56.

<sup>714</sup> VP 1905/18; VP 1908/33.

<sup>715</sup> VP 1905/21.

<sup>716</sup> VP 1908/33.

<sup>717</sup> S. Deb. (30.8.05) 1628-34.

<sup>718</sup> S.O. 264.

<sup>719</sup> VP 1990-92/172, 196.

<sup>720</sup> Constitution, s. 58.

the Governor-General formally receives written advice from the Attorney-General as to whether there are any amendments that the Governor-General should recommend, and as to whether the Governor-General should, in the Attorney-General's opinion, reserve the bill for the Queen's pleasure. This advice, known as the 'Attorney-General's Certificate', is prepared by the Office of Parliamentary Counsel.

### Preparation of bills for submission for assent

When a bill which originated in the House of Representatives has finally passed both Houses in identical form, the assent copies of the bill are printed, incorporating any amendments not yet incorporated and some minor adjustments, including a special cover and the addition to the back page of the Clerk's certificate stating that the bill originated in the House and has finally passed both Houses.<sup>721</sup> The Clerk's certificate in the circumstances of the passage of a normal bill is:

I hereby certify that this bill originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

On the back page of the assent copy of a bill are printed the words of assent used by the Governor-General as follows:

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
[Date]

If a bill were to be reserved for assent, the Governor-General would cross out these words and write in the following:

I reserve this proposed law for Her Majesty's pleasure.

*Governor-General*  
[Date]

The question has been raised as to whether it would be more correct to use the word 'bill' or the constitutional expression 'proposed law' instead of 'Act' in the words of assent. The Parliamentary Counsel has expressed a view for the retention of the word 'Act', on the ground that the Governor-General assents to the bill and converts it into an Act, *uno actu*.

Four copies of bills are presented to the Governor-General for assent.<sup>722</sup> When assented to, two copies are returned, one for the originating House and one for the other House.<sup>723</sup> The Governor-General's Office retains one copy and forwards another to the Office of Parliamentary Counsel.

It is desirable to have bills available for the Governor-General's assent before a Parliament is prorogued or the House is dissolved.<sup>724</sup> This may mean that there is not sufficient time for the 'handmade' assent copies of the bill to be prepared, and ordinary copies, that is, a print of the bill with manuscript amendments, may have to be submitted to the Governor-General. Where this occurs, the normal assent copies are obtained as soon as possible and forwarded to the Official Secretary to the Governor-General with a note seeking the Governor-General's signature for permanent record. This procedure may also be adopted in other circumstances where a clearly demonstrable need for urgent assent exists.

<sup>721</sup> S.O. 265. For bills which originate in the Senate, assent arrangements are the responsibility of the Senate (Senate S.O. 246).

<sup>722</sup> S.O. 265.

<sup>723</sup> Joint Standing Order 1.

<sup>724</sup> See Ch. on 'The parliamentary calendar'.

The Governor-General advises each House by message of the assent to bills, and the messages are announced in each House.<sup>725</sup>

### **Presentation of first bill for assent**

It has become the practice for the first bill to be assented to by a newly-appointed Governor-General to be presented by the Speaker in person, accompanied by the Clerk of the House. The Attorney-General has sometimes been present also, and, as a formal procedure, at the Governor-General's request, provided advice as to the desirability of assent. The Speaker informs the House accordingly.<sup>726</sup>

### **Governor-General's assent forthwith**

Other than on rare occasions the Governor-General, in the Queen's name, is pleased to assent to the bill forthwith. The Queen may disallow any law within a year from the Governor-General's assent, an action which has never been taken. Such disallowance on being made known by the Governor-General by speech or message to each of the Houses of Parliament, or by proclamation, would annul the law from the day when the disallowance was made known.<sup>727</sup>

### **Bills reserved for the Queen's assent<sup>728</sup>**

Resulting from the Statute of Westminster in the United Kingdom in 1931 and the passing of the *Statute of Westminster Adoption Act 1942*<sup>729</sup> by the Australian Parliament, the necessity was removed of reserving for the Queen's assent certain shipping and related laws. The Constitution<sup>730</sup> provides that proposed laws containing any limitation on the prerogative of the Crown to grant special leave of appeal from the High Court to the Privy Council shall be reserved for Her Majesty's pleasure. However, since the passing of the *Privy Council (Limitation of Appeals) Act 1968*<sup>731</sup> and the *Privy Council (Appeals from the High Court) Act 1975*<sup>732</sup>, the latter bill being the last bill of any kind reserved for the Queen's assent<sup>733</sup>, it would appear that there will be no further bills coming within this ground of reservation.

In respect of other bills reserved for the Queen's assent, in the lack of any legal requirement a decision would probably be based on the appropriateness of the bill (*Flags Act 1954*) or the appropriateness of the occasion, that is, the Queen's presence in Canberra, or both (*Royal Style and Titles Act 1973*<sup>734</sup>). In the latter case the Prime Minister informed the House that the Queen had indicated that it would give her pleasure to approve the legislation personally.<sup>735</sup>

A proposed law reserved for the Queen's assent shall not have any force unless and until within two years from the day on which it was presented to the Governor-General

725 VP 1985-87/673-5; J 1985-87/744-6.

726 VP 1978-80/70; VP 1987-89/1061; VP 1996/235.

727 Constitution, s. 59. The Constitution Alteration (Removal of Outmoded and Expended Provisions) Bill 1983 proposed to remove this section, but the bill was not submitted to referendum.

728 15 proposed laws have been reserved, see Appendix 19.

729 Act No. 56 of 1942.

730 Constitution, s.74.

731 Act No. 36 of 1968.

732 Act No. 33 of 1975.

733 The *Australia Act 1986*, having been assented to by the Governor-General, came into operation on 3 March 1986 following proclamation by the Queen during her visit to Australia, Gazette S85 (2.3.86).

734 Act No. 114 of 1973.

735 H.R. Deb. (24.5.73) 2642.

for the Queen's assent the Governor-General makes known, by speech or message to each House, or by proclamation, that it has received the Queen's assent.<sup>736</sup>

### **Presentation of constitution alteration bills**

On the passage of a constitution alteration bill through both Houses, it is necessary to present a copy of the bill to the Governor-General in order that a referendum may be held. A certificate, signed by both the Clerk and the Speaker and indicating the date of final passage, is printed at the top of the first page of the bill in the following terms:

THIS Proposed Law originated in the House of Representatives, and on [date], finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. In accordance with section 128 of the Constitution, the Proposed Law is required to be submitted to the electors.

In the case of a constitution alteration bill which has twice passed the House and which has on each occasion been rejected by the Senate or the Senate has failed to pass it or passed it in a form not agreeable to the House of Representatives, both bills passed by the House are presented to the Governor-General with certificates signed by the Clerk and the Speaker. For example, the certificates in respect of the Constitution Alteration (Simultaneous Elections) Bill 1974 was on the first occasion as follows:

THIS Proposed Law originated in the House of Representatives and on 14 November 1973 was passed by the House of Representatives by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate on 15 November 1973 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 14 February 1974.

and on the second occasion:

THIS Proposed Law originated in the House of Representatives and on 6 March 1974 was passed by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate for its concurrence on 6 March 1974 and has not to date been returned to the House.

The certificate in respect of the Constitution Alteration (Mode of Altering the Constitution) Bill 1974 introduced on the first occasion was in the following form:

THIS Proposed Law originated in the House of Representatives, and on 21 November 1973 was passed by the House of Representatives by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate for its concurrence on 21 November 1973. On 4 December 1973 the Senate returned the Proposed Law with amendments to which the House of Representatives did not agree. On 5 December 1973 the Senate insisted upon its amendments disagreed to by the House. The House insisted on disagreeing to the amendments insisted on by the Senate and the Bill was laid aside.

The certificate in respect of the bill introduced on the second occasion was similar to that for the Constitution Alteration (Simultaneous Elections) Bill as indicated above.

Where a constitution alteration bill has been approved by the electors, and no petition disputing the referendum has been filed in the time allowed by law, the following certificate is printed on the bill and signed by the Clerk and the Speaker:

THIS is a copy of the Proposed Law as presented to the Governor-General, and, according to the Constitution, in pursuance of a Writ of His Excellency the Governor-General, submitted to a Referendum of the Electors. The period allowed by law for disputing the Referendum has expired, and no petition disputing the Referendum, or disputing any return or statement showing the voting on the Referendum, has been filed. The said Proposed Law was approved in a majority of the States by a majority of the Electors voting, and also approved by a majority of all the Electors voting. The Bill is now presented to the Governor-General for the Queen's assent.

<sup>736</sup> Constitution, s. 60; VP 1973-74/465.

**Amendment recommended by Governor-General<sup>737</sup>**

The Constitution makes provision for the Governor-General, in practice on the advice of the Attorney-General, to return to the House in which it originated, a proposed law presented for assent with a recommendation for amendment.<sup>738</sup> On all occasions of such amendments the Governor-General has acted on advice when it has become apparent to the Government, after a bill has passed both Houses, that further amendment to the bill is desirable, for example, by reason of an error in the bill. On all but one occasion (*see below*) the Houses have agreed to the amendments recommended.

Standing orders 266 to 269 supplement the constitutional provision concerning amendments recommended by the Governor-General to bills presented for assent. Such amendments are considered and dealt with in the same manner as amendments proposed by the Senate.<sup>739</sup> Any amendment is recommended by message and is considered by the House.<sup>740</sup>

When the House has agreed to any amendment proposed by the Governor-General with<sup>741</sup> or without<sup>742</sup> amendment, such amendments, together with any necessary consequential alterations, are forwarded to the Senate for its concurrence. The House transmits to the Senate by message a copy of the Governor-General's message, together with a copy of the bill forwarded for assent, acquaints the Senate of the action the House has taken in respect of the amendment, and requests the concurrence of the Senate.<sup>743</sup> Any amendments made by the Senate are dealt with in the same manner as amendments made by the Senate in bills originating in the House.<sup>744</sup> The Senate returned the message of the Governor-General recommending amendments in the Customs Tariff (British Preference) Bill 1906, together with a copy of the bill as presented for assent, and acquainted the House that the Senate had disagreed to the amendments recommended by the Governor-General. The message from the Senate was ordered to be taken into consideration forthwith and the House resolved not to insist on the amendments disagreed to by the Senate.<sup>745</sup> The Governor-General reserved the bill for the King's assent which was never given.

Amendments recommended by the Governor-General in bills which originated in the Senate and which have been agreed to by the Senate are forwarded for the concurrence of the House by means of message. The form of the message is similar to that of the House and conveys recommended amendments of the Governor-General and an assent copy of the bill.<sup>746</sup> The message is considered in the same manner as amendments made by the Senate on the House's amendments to bills first received from the Senate.<sup>747</sup>

When recommended amendments are made, the assent copy of the bill is reprinted and presented again to the Governor-General for assent. The Speaker and the Clerk sign letters to the Governor-General and the Official Secretary, respectively, confirming that the recommended amendments have been made. If any amendments recommended have

737 14 proposed laws have been returned to one or other of the Houses by the Governor-General recommending amendments *see* Appendix 19.

738 Constitution, s. 58.

739 S.O. 266.

740 VP 1974-75/532.

741 VP 1905/147.

742 VP 1974-75/532.

743 J 1974-75/562-3.

744 S.O. 267.

745 VP 1906/175.

746 VP 1912/293.

747 S.O. 268.

been disagreed to by the House, or if no agreement between the two Houses is arrived at prior to the last day of the session, the Speaker shall again present the bill for assent in the same form as it was originally presented.<sup>748</sup>

### Errors in respect of bills assented to

In 1976 the Governor-General purportedly assented to a bill which had not been passed by both Houses of Parliament as required by section 58 of the Constitution. A States Grants (Aboriginal Assistance) Bill 1976 passed the House<sup>749</sup> but did not proceed past the second reading stage in the Senate. A second bill, slightly different in content but with exactly the same title, passed the House<sup>750</sup> and the Senate.<sup>751</sup> Due to a clerical error in the Department of the House of Representatives, the Clerk's certificate, as to the bill having originated in the House and having finally passed both Houses, was placed on the first bill which had not passed both Houses and the bill was assented to by the Governor-General. When the error was discovered, the Governor-General cancelled his signature on the incorrect bill and gave his assent to the second bill, which **had** passed both Houses.<sup>752</sup>

It is considered that should a bill be assented to with typographical or clerical errors in it (such as might result from incorrect re-numbering of clauses following amendment), if necessary a court would interpret the Act so as to remedy the mistake (the 'slip rule') and there would be no question of invalidity. Depending on the circumstances, legislative amendment at a suitable time may still be desirable.<sup>753</sup>

### Publication of Acts

Acts are numbered in each year in arithmetical series, beginning with the number 1, in the order of assent.<sup>754</sup> When the signed assent copy of the Act is returned from the Governor-General, details concerning Act number and date of assent are transposed to a 'publication' copy of the Act. If there is no commencement provision the date of commencement is inserted (although modern practice is that explicit commencement provisions are always included in bills). While it is not possible to make corrections in bills after assent, typographical corrections found necessary during the checking processes before assent may be made. Since 1985 the dates of Ministers' second reading speeches in each House have been noted on the last page of the Act. When the Act has been printed with the additional details and the new material checked, the Australian Government Publishing Service is given permission to release copies of the Act.

Details of assent are published in the Gazette by the authority of the Clerk of the House (or the Clerk of the Senate for bills originating in the Senate). The Gazette notification shows the Act number, long title, short title and date of assent.

### Presentation of double dissolution bills<sup>755</sup>

When a Prime Minister is to request the Governor-General to dissolve both Houses of the Parliament in respect of a bill (or bills), the Prime Minister asks the Clerk in writing

748 S.O. 269.

749 VP 1976-77/240.

750 VP 1976-77/480.

751 J 1976-77/528.

752 VP 1976-77/575; H.R. Deb. (15.2.77) 2-10.

753 Advice from Attorney-General's Department, 17 October 1995.

754 *Acts Interpretation Act 1901*, s. 39.

755 See also Ch. on 'Disagreements between the Houses'.

for a copy of the bill, duly certified by the Clerk as to the proceedings in the House on the bill, to accompany the submission to the Governor-General. There is no requirement of the Constitution or the standing orders of the House in respect of such a certificate, but it has become the practice for such a certificate to be attached to a copy of a bill which is to be the basis of a request for a dissolution of both Houses.

A certificate reciting the parliamentary history of the bill is attached to the Minister's copy of the bill as first introduced and also to the second bill introduced after the interval of three months, with the exception of a bill amended in the House, in which case the third reading print is used for the first bill and the Minister's introduced copy for the second bill. The traditional form of the certificate has been as follows:

THIS Bill originated in the House of Representatives and, on [date], was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on [date] and

- had not been returned to the House of Representatives at the date of the prorogation of the Parliament on [date]; or
- has not to date been returned to the House.

Where the history of the bill has been more complex the certificate reflects this; for example, the certificate used in respect of the Petroleum and Minerals Authority Bill 1973 as first introduced, one of the six bills submitted as a basis for a double dissolution on 11 April 1974, was as follows:

THIS Bill originated in the House of Representatives and on 12 December 1973 was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on 12 December 1973 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 14 February 1974. The Bill lapsed by reason of the prorogation. On 7 March 1974 the House of Representatives requested the Senate to resume consideration of the Bill and on 13 March 1974 the Senate acquainted the House that it had agreed to resume consideration of the Bill. To date the Bill has not been returned to the House.

Should the deadlock between the Houses in respect of the legislation continue after the double dissolution, section 57 of the Constitution provides further that the Governor-General may convene a joint sitting of members of both Houses, which may deliberate and shall vote together on the proposed law. In 1974, the only occasion when a joint sitting for this reason eventuated<sup>756</sup>, the Prime Minister requested certified copies of the six bills indicating details of their subsequent consideration by the Houses following the double dissolution. The bills were necessary to support a submission to the Governor-General for the convening of a joint sitting. A certificate similar to those used on the bills submitted for the double dissolution was attached to a copy of each of the bills. (*And see* Chapter on 'Disagreements between the Houses'.)

## DELEGATED LEGISLATION

Delegated (also known as subordinate) legislation is legislation made not directly by an Act of the Parliament, but under the authority of an Act of the Parliament. Parliament has regularly and extensively delegated to the Executive Government limited power to make certain regulations under Acts.<sup>757</sup> Other forms of delegated legislative authority include:

- ordinances (of Territories and regulations made under those ordinances<sup>758</sup>);

<sup>756</sup> See Ch. on 'Disagreements between the Houses'.

<sup>757</sup> Regulations, etc., made under authority of an Act are required to be tabled and are included in the sessional index of papers presented to Parliament.

<sup>758</sup> E.g. regulations made under the *Christmas Island Act 1958*, the *Cocos (Keeling) Islands Act 1955* and the *Heard Island and McDonald Islands Act 1953*.

- determinations (for example, of the Public Service Commissioner and the Presiding Officers<sup>759</sup> and of the Remuneration Tribunal<sup>760</sup>);
- orders<sup>761</sup> and rules<sup>762</sup>;
- by-laws<sup>763</sup>;
- principles, declarations, notices, plans of management.

Delegated legislation can take a multitude of forms and this list is not comprehensive.

Delegated legislation is necessary and often justified by its facility for adjusting administrative detail without undue delay, its flexibility in matters likely to change regularly or frequently, and its adaptability for other matters such as those of technical detail. Once Parliament has by statute laid down the principles of a new law, the Executive may by means of delegated legislation work out the application of the law in greater detail within, but not exceeding, those principles.

It is possible, although rare, for the power to amend Acts by regulation to be delegated. The *Re-establishment and Employment Act 1945* gave the Governor-General power to make regulations providing for the repeal or amendment of, or addition to, any provision of the Act<sup>764</sup>; subject to the disallowance provision of the Acts Interpretation Act.<sup>765</sup> The power thus given was unusual, and one that should not be given except under special circumstances (a war-time limit was placed on any amendments of the Act effected by the regulations). The Attorney-General stated that in this case it was thought that the methods for re-establishment and employment laid down in the Act, being to some extent of an experimental nature, might need urgent revision from time to time in the light of experience, and, for that reason, the regulation-making power had been extended. Moreover, the cessation of operation of any regulation under the Act at the termination of the war would then necessitate an overhaul of the Act and amendments made by regulations.<sup>766</sup> The *Re-establishment and Employment Act 1951* repealed the power of amendment by regulation and provided for the repeal of the Re-establishment and Employment Regulations and the continuance of certain amendments.<sup>767</sup> In more recent times the *Administrative Arrangements Act 1987* empowered the Governor-General to make amendments to any Act by regulation if made necessary or convenient as a result of specified new administrative arrangements. However, a 'sunset' provision provided that this section of the Act would only be in effect for one year.<sup>768</sup>

## Parliamentary scrutiny and control

All regulations, ordinances, and so on, made under an Act are required to be notified in the Gazette.<sup>769</sup> They are also required to be laid before each House, thereby becoming subject to parliamentary scrutiny and the Parliament's ultimate power of veto. Some Acts prescribe a time within which regulations, ordinances, and so on, are to be laid before each House of Parliament.

<sup>759</sup> Under the *Public Service Act 1922*.

<sup>760</sup> Under the *Remuneration Tribunals Act 1973*.

<sup>761</sup> E.g. under the *Environment Protection (Impact of Proposals) Act 1974*.

<sup>762</sup> E.g. rules of court under the *Family Law Act 1975*.

<sup>763</sup> E.g. under the *Federal Airports Corporation Act 1986*.

<sup>764</sup> *Re-establishment and Employment Act 1945*, s. 137.

<sup>765</sup> *Acts Interpretation Act 1901*, s. 48.

<sup>766</sup> See *Senate Standing Committee on Regulations and Ordinances*, 6th report, S.1 (1946-48) 4.

<sup>767</sup> *Re-establishment and Employment Act 1951*, ss. 3, 13.

<sup>768</sup> *Administrative Arrangements Act 1987*, s. 20(2).

<sup>769</sup> *Acts Interpretation Act 1901*, s. 48(1)(a).

The requirements for tabling and disallowance vary considerably and consultation of the appropriate Act is necessary to ascertain the conditions operating in relation to any particular form of delegated legislation or type of instrument.

If no time is prescribed in the enabling Act, the *Acts Interpretation Act 1901* requires that regulations shall be laid before each House within 15 sitting days after being made.<sup>770</sup> Unless laid before each House within the specified time limit, regulations are void and have no effect.<sup>771</sup> In practice the tabling period may extend for some time, as a long adjournment or even dissolution and election could intervene between sitting days.

After a regulation has been made, no regulation the same in substance can be made while the original regulation remains subject to the tabling requirement, unless the remaking of the regulation has been approved by both Houses, or while a regulation remains subject to a notice of motion of disallowance.<sup>772</sup>

## Approval

The Parliament's control of delegated legislation is usually exercised through the disallowance procedure. An alternative means of parliamentary control is to provide that specific delegated legislation may come into force only with the explicit approval, by affirmative resolution, of both Houses. Although not common, this practice has been used from time to time in recent years, especially in respect of certain types of legislative instrument variously described as statements, charters, agreements, declarations, guidelines, etc.<sup>773</sup>

An Act may provide for the Houses to be able to amend the instrument in question during the process of approving it. If one House amends such an instrument the other House is informed by message, and when the message is considered, the motion put, for example, 'That the House approves the form of agreement ... as amended by the Senate and conveyed in Senate Message No. ...'.<sup>774</sup> The motion can be amended to amend the amendments or make further amendments.

The conditions for approval vary and depend on the requirement of the particular Act. The requirement may be simply that an instrument must be approved by both Houses to come into effect.<sup>775</sup> A more complicated requirement may be, for example, that an instrument comes into effect after 15 sitting days of being tabled in both Houses, unless a notice of motion to amend the instrument is given in either House, in which case the instrument, whether or not amended, must be approved by both Houses.<sup>776</sup>

While notices of motions of approval, moved by Ministers, are taken as government business, motions of amendment as in the above example, would in the normal course be moved by opposition Members and be subject to the usual private Members' business procedures.<sup>777</sup>

Approval provisions have sometimes been inserted into bills in the Senate when it has been thought that particular instruments merited special control procedures.<sup>778</sup> However, there may on occasion be another reason for their use—the approval of regulations by both Houses at the time of tabling does offer the possibility of a more rapid and certain

<sup>770</sup> *Acts Interpretation Act 1901*, s. 48(1).

<sup>771</sup> *Acts Interpretation Act 1901*, s. 48(3).

<sup>772</sup> *Acts Interpretation Act 1901*, ss. 48A, 48B.

<sup>773</sup> VP 1990–92/515–6, 1290–1.

<sup>774</sup> VP 1990–92/472–5.

<sup>775</sup> See, for example, amendments moved at VP 1987–89/1622–3.

<sup>776</sup> 'Form of agreement' under the *Aged or Disabled Persons Care Act 1954*, ss. 10DA, 10DB.

<sup>777</sup> VP 1990–92/537–9 (amendment moved), 595 (order of day discharged by mover).

<sup>778</sup> *Odgers*, 7th edn, p. 345.

outcome than waiting the required period for potential disallowance. An Act has provided for either disallowance or approval in respect of the same regulations—the disallowance procedures ceasing to apply in the case of the regulations being approved.<sup>779</sup>

## Disallowance

In most cases regulations, etc. are effective unless and until disallowed, but an Act may provide that a legislative instrument made pursuant to it does not come into effect until the disallowance period has expired. Either House may, in pursuance of a motion of which notice<sup>780</sup> has been given, within 15 sitting days after any regulations have been laid before that House, pass a resolution disallowing any of those regulations, and the regulations thereupon cease to have effect.<sup>781</sup> If the motion has not been withdrawn or otherwise disposed of, that is, passed or rejected, at the expiration of 15 sitting days after the notice was given, the regulations specified in the motion are thereupon deemed to have been disallowed.<sup>782</sup>

If, before the expiration of 15 sitting days after a notice of motion of disallowance has been given, the House is dissolved, expires, or the Parliament is prorogued, and the motion has not been withdrawn or otherwise disposed of, the regulations are deemed to have been laid before the House on the first sitting day after the dissolution, expiry or prorogation, as the case may be.<sup>783</sup> Any notice to disallow given in the previous session, or the last session of the previous Parliament, must be given again to have effect.<sup>784</sup>

Where a regulation has been disallowed or is deemed to have been disallowed, no regulation being the same in substance may be made within six months after the date of disallowance unless the House concerned has rescinded its resolution of disallowance or approved the re-making of the regulation, as the case may be.<sup>785</sup>

An Act may specifically allow for the disallowance of part of a regulation made under its authority.<sup>786</sup> However, as the Acts Interpretation Act refers to the disallowance of regulations in their entirety, it is possible that an attempt, pursuant to that Act, to disallow a regulation partially might be challenged as ineffective. Part of a management plan has been disallowed by the Senate.<sup>787</sup>

The provisions of an individual Act in respect of delegated legislation may override the general provisions of the Acts Interpretation Act—for example, by replacing the 15 day tabling and disallowance periods with different periods.<sup>788</sup> The passage of a resolution of disallowance or the deemed disallowance of an instrument is notified in the Gazette ‘for general information’ by the Clerk of the House responsible.<sup>789</sup>

779 *Telecommunications Act 1991*, ss. 408–9—see S. Deb. (14.11.91) 3253–4.

780 A notice of disallowance given by a Private Members is placed under Notices, Private Members’ Business, NP 133 (11.12.86) 9744. A notice of disallowance given by a Minister is placed under Government Business, NP (9.11.96) 831–2. In each case a note to the following effect added: (Notice given [date]. Regulation will be deemed to have been disallowed unless this motion is disposed of within [number of sitting days remaining] including today).

781 *Acts Interpretation Act 1901*, s. 48(4); VP 1980–83/221.

782 *Acts Interpretation Act 1901*, s. 48(5); NP 98 (10.5.79) 5354; NP 28 (11.9.96) 941.

783 *Acts Interpretation Act 1901*, s. 48(5A).

784 A ‘new’ 15 sitting day period thus commences.

785 *Acts Interpretation Act 1901*, s. 49; VP 1996/502.

786 E.g. *Seat of Government (Administration) Act 1910*, s. 12.

787 J 1987–89/1801.

788 *Telecommunications Act 1991*, ss. 408–9—changed to 5 days for regulations and instruments made during a restricted time, see S. Deb. (14.11.91) 3253–4.

789 Gazette GN2 (13.5.87) 55; S344 (18.9.96).

### Reckoning of time

Pursuant to the Acts Interpretation Act any period of time prescribed or allowed by an Act dating from a given day, act or event, unless the contrary intention appears in the Act, is reckoned exclusive of the day of such act or event.<sup>790</sup> The day on which a regulation is tabled therefore is not taken into account for the purposes of determining the number of sitting days within which it may be disallowed. A sitting may extend beyond a calendar day but constitute only one sitting day.<sup>791</sup> Similarly a sitting which is suspended and resumed on a later day constitutes only one sitting day.<sup>792</sup> Any disputed question on the reckoning of time would be initially, at least, for the House itself to decide. The possibility of the matter being subsequently the subject of litigation in the courts cannot be ruled out, in which case it could be a matter for the courts to consider.

### Notice to disallow before tabling

The question has been raised as to whether a notice of motion disallowing a regulation should be accepted before the regulation is laid before the House. The matter was canvassed in the Senate in 1942 when a Minister informed the Senate that Senators could move for the disallowance of a regulation without it being tabled, based upon the High Court judgment in Dignan's case.<sup>793</sup>

In response to a request for an opinion, the Attorney-General's Department advised the Clerk of the Senate on 25 March 1942 that the decision in Dignan's case should still be regarded as authority for the proposition that it is not a condition essential to the validity or operation of a resolution of disallowance that the regulations should first be laid before the House. The Chairman of the Senate Regulations and Ordinances Committee, in a memorandum on the disallowance of regulations, and on the judgments in Dignan's case, concluded that the question of whether disallowance is effective where a regulation is not laid before the Senate (or the House) was still an open one as far as the High Court was concerned, and that any doubt on the matter could be avoided if motions for disallowance were not moved before the regulations were tabled.<sup>794</sup> It is considered that a similar attitude might commend itself to the House of Representatives.

In the House a notice of motion has been given before the relevant regulations were tabled. On 29 November 1940 Statutory Rules No. 269 (National Security Aliens Control Regulations) were made, and on 3 December 1940 a Member gave a notice of motion for their disallowance, whereas the regulations were not tabled until 9 December 1940.<sup>795</sup> On 2 April 1941 the Member raised a matter of privilege in which he claimed that the regulations were null and void as his motion for disallowance had not been dealt with within 15 sitting days after notice was given. The Minister replied that he believed the motion was out of order as it was placed on the Notice Paper some days before the statutory rules were tabled; if the Member wished to take any action in the matter, the opportunity to do so was still open to him. The Speaker stated that the question of whether the statutory rules were null and void was a matter of law, the curtailment of any rights of the Member was a matter of privilege. The Member concluded, not by moving a motion relating to privilege, but rather by giving notice of motion of want of

<sup>790</sup> *Acts Interpretation Act 1901*, s. 36(1).

<sup>791</sup> VP 1978–80/596.

<sup>792</sup> VP 1917–19/171; see also Ch. on 'Routine of business and the sitting day'.

<sup>793</sup> S. Deb. (6.3.42) 235; *Dignan v. Australian Steamships Pty Ltd* (1931) 45 CLR 188.

<sup>794</sup> *Odgers* pp. 347–8.

<sup>795</sup> NP 7 (4.12.40) 15; VP 1940–43/45.

confidence in the Minister. Later in the day, standing orders having been suspended, the Member moved the motion of want of confidence but it lapsed for want of a seconder.<sup>796</sup>

### Delegated legislation procedure in the House

Regulations, ordinances, and so on, after notification in the Gazette, are delivered to the Clerk (or officers of the House) and are recorded in the Votes and Proceedings. Legislation so delivered to the Clerk is deemed to have been tabled in the House on the day on which it is recorded in the Votes and Proceedings.

Debate can occur if regulations, and so on, are tabled in the House in the same manner as ordinary papers and a motion to take note of the paper or papers is moved. An example of this occurred in 1986 when a Minister tabled an amending regulation to certain Export Control (Orders) Regulations and made a ministerial statement concerning them. Debate ensued on the question that the House take note of the papers (regulation and statement) to which a Member moved an amendment to disallow the regulation; debate was adjourned and not resumed.<sup>797</sup>

Of the hundreds of pieces of delegated legislation tabled each year very few are ever formally considered, let alone disallowed, by the House. Notices of disallowance, almost invariably given by private Members<sup>798</sup>, are subject to the same procedures as other items of private Members' business. However, in view of the fact that disallowance will occur unless a notice is called on and dealt with within the specified time, the general practice is for standing orders to be suspended to permit them to be moved and debated during government business time.<sup>799</sup>

### Regulations and Ordinances Committee

The Senate, in 1932, established by standing order a Standing Committee on Regulations and Ordinances to be appointed at the commencement of each Parliament, to which all regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate, and which are of a legislative character, stand referred for consideration and, if necessary, report. The committee scrutinises delegated legislation to ensure:

- that it is in accordance with the statute;
- that it does not trespass unduly on personal rights and liberties;
- that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- that it does not contain matter more appropriate for parliamentary enactment.<sup>800</sup>

The committee traditionally operates on a non-partisan basis and refrains from considering the policy of delegated legislation. The committee's reports usually consist of accounts of amendments made to legislation to accommodate the committee's objections. Notices of disallowance are given on occasion, but these are often withdrawn

796 VP 1940-43/103, 105; H.R. Deb. (2.4.41) 504-5, 553-7.

797 VP 1985-87/882. If passed it is considered that this amendment would not have been effective, as disallowance must be pursuant to a motion of which notice has been given.

798 An exception being notices by Ministers at the beginning of 38th Parliament disallowing regulations made under the previous Government. H.R. Deb. (28.5.96) 1570, H.R. Deb. (29.5.96) 1769. These notices were listed under Government Business.

799 VP 1993-95/1499.

800 Senate S.O. 23.

after undertakings are received from Ministers, for example, to have provisions changed.<sup>801</sup>

### **Legislative Instruments Bill 1996**

The Legislative Instruments Bill 1996 was being considered by the Parliament as this publication went to press. The bill uses the term 'legislative instrument' to cover the wide range of delegated legislation, although specific types of delegated legislation are excluded from the definition of legislative instrument and thus from the application of the bill. Principal features of the proposed new arrangements are summarised below.

#### *Incorporation of provisions of the Acts Interpretation Act*

The bill re-enacts, with some amendment, the provisions of sections 46A and 48 to 50 of the Acts Interpretation Act that relate to regulations and extends their operation to all legislative instruments. Changes include the provision for registration to replace gazettal as the means of publication of legislative instruments, and the requirement for their tabling in each House within 6 sitting days following registration (including cases where an existing Act prescribes a different time period). An explanatory statement for each instrument must also be tabled.

#### *Notification of intention to make legislative instruments and consultation*

Makers of legislative instruments are required, in most circumstances, to notify their intention to make a legislative instrument and then to consult with persons and organisations likely to be affected by the proposal.

#### *Register of Legislative Instruments*

All new legislative instruments made are required to be recorded in the Federal Register of Legislative Instruments. The Register is a public document and the Principal Legislative Counsel is required by the Act to ensure that the public has reasonable access to the Register and to copies of instruments and information contained in the Register. Generally, a legislative instrument that is required to be registered is not enforceable unless the instrument is registered.

The bill provides for pre-existing legislative instruments to be progressively registered. If a pre-existing legislative instrument is not registered on or before the relevant date it is taken to be repealed.

#### *Disallowance*

The bill provides for a House to disallow a legislative instrument in its entirety or to disallow a provision or provisions within a legislative instrument.

A House may resolve to defer consideration of a motion to disallow a legislative instrument for a period of up to six months to enable the instrument to be remade or amended to achieve a specified objective identified in the resolution. This provides an option to a House where it finds an instrument in some way objectionable but where immediate disallowance would have unacceptable consequences.

Where an instrument is made to amend, repeal or replace an instrument subject to a resolution deferring consideration of a motion of disallowance, the new instrument is not subject to the consultation requirements of the Act.

<sup>801</sup> For the history and operations of the committee see *Odgers*, 7th edn, pp. 354–6.

The disallowance procedures do not apply to a legislative instrument which, in accordance with its enabling legislation, does not come into operation unless it is approved by either or both Houses of Parliament.

#### *Sunset provisions*

With some exceptions, a five year sunset clause is imposed on all registered instruments, including pre-existing instruments. In the latter case the Act provides for the legislative instrument and the provisions of any other legislative instrument that amend it to cease to be in force on the fifth anniversary of the last day it could have been registered.

## **THE INTERPRETATION OF ACTS**

### **Construction of Acts subject to the Constitution**

Every Act must be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth.<sup>802</sup> In some circumstances an Act may be read down or read as if it did not contain any invalid provisions, so that it may be given effect to the extent that it is not in excess of the power of the Commonwealth.<sup>803</sup>

### **Regard to purpose or object of Act**

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act, whether expressly stated in the Act or not, must be preferred.<sup>804</sup>

### **Use of extrinsic material in the interpretation of an Act**

If any material not forming part of an Act is capable of assisting in the construction of a provision of the Act, consideration may be given to the material to confirm that the meaning of the provision is the ordinary meaning conveyed by the text, or to determine the meaning of the provision when the provision is ambiguous or obscure or the ordinary meaning conveyed by the text leads to a result that is manifestly absurd or unreasonable.

Material that may be considered in the interpretation of a provision of an Act includes:

- all matters not forming part of the Act that are set out in the document containing the text of the Act as printed;
- any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or similar body that was laid before either House before the provision was enacted;
- any relevant report of a parliamentary committee presented before the provision was enacted;
- any treaty or other international agreement referred to in the Act;
- any explanatory memorandum relating to the bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House by a Minister before the provision was enacted;
- a Minister's second reading speech on the bill containing the provision;

802 *Acts Interpretation Act 1901*, s. 15A.

803 E.g. see *Bank of New South Wales v. Commonwealth* (1948) 76 CLR 371.

804 *Acts Interpretation Act 1901*, s. 15AA.

- any document that is declared by the Act to be a relevant document; and
- any relevant material in the Journals of the Senate, the Votes and Proceedings of the House of Representatives or in any official record of parliamentary debates.

In determining whether consideration should be given to extrinsic material, or in considering the weight to be given to any such material, regard shall be had to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision, taking into account its context and the purpose or object underlying the Act, and to the need to avoid prolonging legal or other proceedings without compensating advantage.<sup>805</sup>

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<sup>805</sup> *Acts Interpretation Act 1901*, s. 15AB and see Pearce and Geddes, *op cit*, pp. 48–68 for comment on the practical application of s. 15AB.