



Infosheet

MAKING LAWS

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About half of the total sitting time of the House is spent considering bills, that is, proposed laws. These range from comparatively minor proposals of an administrative nature to comprehensive initiatives of major social, economic or industrial significance.

This Infosheet describes how government bills, that is those proposed by Ministers, are considered and passed by the House. However, all Members of the House, as well as Ministers, are entitled to propose legislation. Procedures for private Members' bills are, in the key elements, the same as those for government bills. Infosheet No. 6 'Opportunities for Private Members' discusses this topic in more detail and explains the differences that do exist.

The federal Parliament's legislative powers

A new Commonwealth (national) law can only be made, or an existing one changed or removed, by or under the authority of the federal Parliament, that is, by or in accordance with an Act of Parliament.

Under Australia's Constitution the federal Parliament can make laws only on certain matters. These include: international and inter State trade; foreign affairs; defence; immigration; taxation; banking; insurance; marriage and divorce; currency and weights and measures; post and telecommunications; and invalid and old age pensions. The Australian States retain legislative powers over many areas such as local government, roads, hospitals and schools.

In some respects the legislative powers of the two Houses of the federal Parliament—the Senate and the House of Representatives—are not equal. In matters relating to the collection or expenditure of public money the Constitution gives a more powerful role to the House of Representatives—the House of Government. Bills which authorise the spending of money (appropriation bills) and bills imposing taxation cannot originate in the Senate. The Senate may not amend bills imposing taxation and some kinds of appropriation bill, or amend any bill so as to increase any 'proposed charge or burden on the people' but it

can ask the House to make amendments to these bills.



The Governor-General assents to an Act of Parliament

Preparation of a bill

A bill, which is a formal document prepared in the form of a draft Act, is no more than a proposal for a law or a change to the law. A bill becomes an Act—a law—only after it has been passed in identical form by both Houses of the Parliament and has been assented to by the Governor-General.

The original ideas for government legislation come from various sources. They may result from party policy, perhaps announced during an election campaign, from suggestions by Members and Senators or from interest groups in the community. Many proposals, especially those of a routine nature which may be thought of as matters of administrative necessity, originate in government departments.

In whichever way a proposal originates it is considered by Cabinet or the Prime Minister and, if agreed to, the Minister responsible has his or her department arrange preparation of a bill. Bills are drafted by the Office of Parliamentary Counsel in accordance with detailed instructions issued by

departments. Draft bills are usually examined by government party committees on which Members of Parliament belonging to the governing party or parties serve. The Parliamentary Business Committee of Cabinet determines the program of bills to be introduced for each parliamentary sitting period.

Passage of a bill through the House—the normal routine

During its consideration by the House a bill passes through successive stages, at which proposals are made (motions moved) in relation to the bill's progress or content, speeches may be made for and against such proposals (debate) and the proposals are voted on (decisions of the House).

Giving notice

Usually a Minister who wishes to introduce a bill gives written notice (advance warning) of his or her intention to the Clerk of the House, who arranges for the bill to be listed on the Notice Paper (the House's agenda of business) for the next sitting day. The notice follows a standard format:

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

The 'long title' is the bill's full title and sets out in very broad terms the purpose or scope of the bill, for example 'A bill for an Act to amend the Trade Practices Act 1974 and for related purposes'. Each bill also has a short title—in this case Trade Practices Amendment Bill 2001. Notice is not necessary for bills which appropriate money or bills dealing with taxation.

Presenting a bill to the House—first reading

Bills are introduced when the House is dealing with government business (see Infosheet No. 2 'A typical sitting day' for information on the different types of business and the times they are considered). First the Clerk announces the next notice from the Notice Paper, for example, 'Notice No. 1' and reads the short title of the bill, then a Minister stands and says 'I present the Bill 2008', and hands a signed copy of the bill to the Clerk together with an explanatory memorandum (a document which explains the reasons for the bill and outlines its provisions). The Clerk stands and reads out the long title of the bill. This is known as its first reading. Copies of the bill (and the explanatory memorandum), which until this time have been treated as confidential, are then given to Members and made available to the public on the Parliament's Internet site www.aph.gov.au/legis.htm

The next step usually happens immediately with the Minister moving that the Bill 'be now read a second time'. He or she then makes a speech (second reading speech) explaining the purpose, general principles and effect of the bill.

At the end of the Minister's speech, debate on the bill is adjourned (deferred) and set down as an item of business for a future sitting. The purpose of this pause in proceedings is to give Members time to study the bill and its effects before speaking and voting on it, and to provide the opportunity for public discussion and reaction.

The second reading speech (along with the explanatory memorandum) plays an important role in the legislative process and may be taken into account by the courts in deciding the meaning or intention of an Act.

Second reading debate

The second reading debate is the discussion of the motion moved by the Minister. It is normally the most substantial debate that takes place on a bill. Its purpose is to consider the principles of the bill. Debate may cover, for example, reasons why the bill should be supported or opposed, the necessity for its proposals or alternative means of achieving the same objectives. Although listed on the Notice Paper 'for the next sitting', the second reading debate does not usually commence for several sitting days, and sometimes much later. The timing will depend on the Government's legislative program and is usually negotiated with the Opposition.

When the debate resumes an opposition Member (usually the 'shadow minister') outlines the Opposition's position on the bill. Government and opposition Members then usually speak in turn. The total time for the debate is not restricted by the standing orders, but in practice the number of speakers on each side is usually negotiated between the Government and Opposition and any independent Members.

At the end of the debate a vote is taken to decide the House's view on the motion moved by the Minister—'That this bill be now read a second time'. If this is agreed to the House has agreed to the bill in principle and the Clerk stands and reads out the long title of the bill to signify the completion of this stage—the second reading.

Consideration in detail

The purpose of this stage is to consider the text of the bill in detail, clause by clause, and to enable changes to it to be proposed. Proceedings are less formal than they are for the second reading debate and procedures can be more flexible. For example,

Members may speak briefly (5 minutes each) an unlimited number of times on each proposal put forward.

Clauses are taken in their numerical order but, if no Member objects, a number of clauses may be taken together, the question put from the Chair being 'That the clause (or clauses) be agreed to'. Often Members may be happy to consider the bill as a whole and in this case the question is simply 'That the bill be agreed to'.

The form of an amendment may be by omitting, substituting, or adding words. When an amendment has been moved, the Chair proposes a question to the House usually in the form 'That the amendment be agreed to', although sometimes more complicated procedures may be necessary. If the House votes to accept an amendment it must then decide on a further proposal 'That the clause/clauses/bill as amended be agreed to'. These procedures ensure that every part of the bill is considered and agreed to with or without changes.

However, Members may be in agreement that a particular bill does not need to be examined in detail. In this case the consideration in detail stage may be by-passed. The Chair ascertains the wish of the Members in the House and if no-one objects allows the bill to proceed directly to the third reading. Detailed debate is considered unnecessary for many bills which are supported by all parties or, in a technical or drafting sense, are very limited in scope or when, in the case of appropriation and taxation bills, private Members would be prevented from moving certain amendments.

Third reading

This is the final stage in consideration of a bill and is usually a formality. Although the standing orders (written rules) provide for the third reading to take place on another sitting after the consideration in detail has been completed, in practice the House allows the Minister to move the motion 'That this bill be read a third time' immediately. Debate at this stage is relatively rare and is restricted to the contents of the bill, that is, the matters contained in the clauses and schedules of the bill. When the motion has been agreed to, the Clerk again reads out the long title of the bill. This signifies that the bill has finally passed the House.



Alternative procedures

Bills considered by the Main Committee

Following the Minister's second reading speech in the House, a bill may be referred to the Main Committee for the remainder of the second reading and the consideration in detail stages. The Main Committee is a committee established to be an alternative to the main Chamber of the House for the consideration of a restricted range of business. All Members of the House can take part in the debates in the Committee. It meets while the House is sitting, making it possible for two streams of legislation to be debated at the same time. Generally speaking, only bills on which there is potential for agreement to be reached are referred to the Main Committee, following consultation between the Government and the Opposition.

The Main Committee's procedures are substantially the same as they are in the House. The Committee can amend the bill just as the House can and the same rules of debate apply. However, the Main Committee operates by agreement—divisions cannot take place—and matters on which the Committee cannot agree are referred back to the House for decision there.

Before their third reading, bills which have been considered in the Main Committee go through an additional stage—the report stage—when the House considers and votes on the bill as reported back to it. Debate is restricted to matters the Main Committee could not agree on.

(Infosheet No. 16 'The Main Committee' gives more details about the Main Committee.)

Cognate debate—bills debated together

When there are two or more related bills before the House, if no Member objects, a 'cognate' second reading debate may take place, during which the bills are debated together. On the conclusion of the debate separate questions are put as required on each of the bills and they pass through other stages separately.

Imposing a time limit on debate—the guillotine

If for some reason the Government wishes to hasten a bill's progress, a Minister can declare it an 'urgent bill'. The question 'That the bill be considered an urgent bill' is then put by the Chair and must be decided without debate. When a declaration of urgency has been agreed to by the House, the Minister proceeds to move a motion specifying the times to be allotted for the various remaining stages of the bill. If these details are agreed to, when the time fixed for a stage has been reached, the debate is interrupted immediately and the questions necessary to dispose of that stage are put. This procedure is known as "the guillotine". In recent years the Government has imposed a time limit on debate on a bill without first declaring it urgent. The de facto "guillotine" has the advantage of achieving the result required while avoiding one of the motions (and potential divisions). The change of procedure has resulted in a significant drop in the number of bills subject to a formal guillotine.

Reference to a committee

It is possible for a bill to be referred for an advisory report to a committee which specialises in the subject area of the bill. The committee can hear witnesses and gather evidence relating to the bill and can recommend action to the House, although it cannot amend the bill itself.

Special types of bill

Additional or slightly different procedures apply to financial legislation—appropriation and supply bills and taxation bills (see Infosheet No. 10 'The Budget and Financial Legislation'), and to proposals to make changes to the Constitution—constitution alteration bills (see Infosheet No. 13 'The Constitution').

Bills introduced from the Senate

The great majority of government bills are initiated in the House of Representatives, because of the constitutional restrictions on the nature of bills which can originate in the Senate and because of the fact that most Ministers are Members of the House.

When a Senate bill has passed all stages in the Senate, it is transmitted to the House under cover of a formal message and introduced to the House by the Speaker reading the terms of the message to the House. Subsequent proceedings follow the same processes as House bills.

Proceedings after leaving the House

Transmission to Senate

After a bill has passed the House the Clerk signs a certificate attached to the bill stating:

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

If the bill has been amended by the House it is reprinted before it is sent to the Senate. When the bill is ready, the Speaker signs a document, known as a 'message', addressed to the President of the Senate which reads:

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

The message and bill are then delivered to the Senate by the Serjeant-at-Arms.

Senate proceedings

The bill again goes through three readings in the Senate. When the bill has passed the Senate, the Senate then returns the bill to the House, either with or without amendments. The Senate may also request that the House make an amendment in cases where the Senate is prevented by the Constitution from making an amendment itself. Senate amendments and requests are considered by the House, and may be accepted or disagreed to.

Disagreement between the two Houses

Where there are disagreements, messages may pass between the two Houses to seek to reach agreement as to the bill's final form.

If the two Houses cannot agree, a bill may be 'laid aside' (not further pursued). In circumstances provided for by the Constitution an unresolved disagreement may lead to the dissolution of both Houses by the Governor-General and elections for each House (see Infosheet No. 18 'Double dissolution').

Assent

When a bill has finally passed both Houses in identical form and been checked and certified accordingly by the Clerk of the House, it is presented to the Governor-General for assent. The words of assent used by the Governor-General are:

In the name of Her Majesty, I assent to this Act.

At this point the bill becomes an Act of Parliament and part of the law of the land, although the validity of the Act may be tested in court subsequently.

When a law comes into effect

Acts do not necessarily come into operation immediately on assent, although this is common. An Act may specify a particular date for commencement, perhaps retrospective, or the day of a stipulated event, or a date to be decided later by the Government and announced ('proclaimed') by the Governor-General. If no commencement date is specified in an Act, it comes into effect on the 28th day after it receives assent.

Some statistics

Over the last ten years (1998 to 2007) an average of 166 bills became Acts each year, ranging from 135 in 1998 to 201 in 1999. These figures compare with an average of 185 bills per year introduced into the House of Representatives during the same period, ranging from 168 in 2007 to 254 in 2002.

Delegated legislation

The Parliament may delegate some of its legislative powers to the Executive Government, which may make regulations, statutory rules, by-laws, orders, ordinances, instruments or determinations according to the powers bestowed by an authorising Act of Parliament. Laws made in this way are known as delegated or subordinate legislation. Delegated legislation must be authorised by an Act, must be presented to both Houses of the Parliament and can be disallowed (vetoed) by a motion agreed to by either House. In some cases Acts provide that specific pieces of delegated legislation made under their authority must be approved by both Houses before coming into effect. All delegated legislation is closely scrutinised by the Senate Standing Committee on Regulations and Ordinances.

Historical note

The legislative processes followed in the Commonwealth Parliament (and in the Australian States) are derived from British practice dating back several centuries. The word 'bill' originally meant the same as 'petition' and was in effect a request from the Parliament to the King to take certain action or to state that the law was as the Parliament thought it should be. These bills became statutes if and when the King agreed to them.

The term 'reading' for a stage in a bill's progress dates back to the time when most people, including Members of Parliament, could not read and printed copies were not available. In those days a bill had to be read out in full by the Clerk of the House on several occasions so that Members would know what it was about. While we now have only 3 readings, up to 8 have been recorded in the House of Commons.

For more information

House of Representatives Practice, 5th edn. Department of the House of Representatives, Canberra, 2005 pp 335–429.

House of Representatives Standing Committee on Procedure. *About time: Bills, questions and working hours. Report of the inquiry into reform of the House of Representatives*. AGPS, Canberra, 1993. (Parliamentary Paper 194 of 1993) pp 4–18.

House of Representatives Standing Committee on Procedure. *Time for review: Bills, questions and working hours. Report of the review of procedural changes operating since 21 February 1994*. AGPS, Canberra, 1995. (Parliamentary Paper 108 of 1995) pp 3–19.

Legislation Handbook, Department of the Prime Minister and Cabinet, Canberra, 2000
www.dpmc.gov.au/guidelines/docs/legislation_handbook.rtf

For copies of bills, explanatory memoranda and second reading speeches: www.aph.gov.au/bills

For information on the progress of bills through the House: *House of Representatives Daily Bills List*, published daily during sittings and available from www.aph.gov.au/bills

For a list of bills introduced and debated: *Last week in the House*, published weekly during sittings and available from About the House online at www.aph.gov.au/house/house_news

Debates on bills can be found in *Hansard* available from www.aph.gov.au/hansard

The legislative process

Bills (proposed laws) may be introduced first in either the House of Representatives or the Senate but must be considered by each House in turn.

