

13. BILLS—SENATE CONSIDERATION

Passage by Senate and Senate amendments

Transmission to Senate

As soon as administratively possible after the third reading, the bill, certified by the Clerk, is sent to the Senate with a message, signed by the Speaker, asking the Senate to agree to the bill (S.O. 157).

The bill again goes through three readings in the Senate. Although varying in detail, the procedures of the two Houses have a basic similarity, the main difference being that a bill is more likely to be referred to a committee in the Senate.

Return to House—consideration of Senate amendments

When the bill has passed the Senate, the Senate returns it to the House under cover of a message. If the Senate has not amended the bill, the message is announced to the House by the Chair at a convenient time in proceedings between items of business, and the bill is prepared for assent.

The House may only amend a House bill which has been returned from the Senate if its further amendment is relevant to or consequent on any Senate amendments or requests (S.O. 160).

If a House bill is returned from the Senate with amendments, the amendments are listed in a schedule accompanying the bill. When the Senate message is announced by the Chair, a Minister moves a motion to fix the time for the House to consider the amendments—‘That the amendments be considered at the next sitting’ or ‘at a later hour’ (S.O. 158(a)). If copies of the amendments are available the Minister may move that they be considered immediately.

On the latter motion being agreed to, or on the order of the day for the consideration of the amendments being called on, the Minister moves a motion or series of motions in relation to the amendments. Standing order 158(b) describes the options for the House in addressing Senate amendments to House bills. The amendments are considered together, in groups, or individually, according to the motions moved. These are generally ‘That the amendment(s) (or specified amendments) be agreed to’ or ‘be disagreed to’. An amendment may also be amended and agreed to, or disagreed to but an amendment made in its place.

Debate on Senate amendments follows procedures similar to those used in the consideration in detail stage—each Member may speak for five minutes at a

time with no limit on the number of times. A motion for consideration of Senate amendments need not be seconded (S.O. 159).

Reasons

If the House disagrees to a Senate amendment to a House bill, the Member who moved the motion 'That the amendment(s) be disagreed to' must present to the House written reasons for the House not agreeing to the amendments and immediately move that the reasons be adopted (S.O. 161). The reasons are included in the message returning the bill to the Senate (S.O. 161(c)). The same requirement for reasons applies in the case of Senate bills if the House disagrees to any amendments made by the Senate to amendments of the House (S.O. 170(b)).

Negotiation by message

The process of negotiation by message between the Houses continues until agreement is reached on the bill's final form. The House may request the Senate to reconsider amendments which the House has disagreed to, or to consider amended or replacement amendments. In turn the Senate may insist on its original amendments, disagree to the House amendments or agree to them with further amendment (S.O. 162).

If agreement cannot be reached by an exchange of messages the House may request a conference of Members and Senators representing their respective Houses (S.O. 162(d)(iii)). The procedures for conducting conferences are set out in standing orders 262 to 266. However, in practice the conference procedure is not used, and if it is recognised that further negotiation by message would be pointless it is usual for the House to order the bill to be 'laid aside'—that is, abandoned and removed from the Notice Paper (S.O.s 162 and 169).

Requested amendments

The Senate is prevented by section 53 of the Constitution from making amendments to taxation bills or to appropriation bills for the ordinary annual services of the Government, or from making an amendment to any bill 'so as to increase any proposed charge or burden on the people'. However, the Senate may request the House to make such an amendment. In these cases the Senate returns the bill to the House with the request before the Senate third reading stage (which is proceeded with when the bill is received back from the House).

If the Senate has made both amendments and requests to a bill, only the requests are considered by the House at this stage, the amendments being considered after the third reading in the Senate. The House may make the amendments requested, not make them, or make them in modified form. The House then returns the bill with a message stating the manner in which the

requested amendment has been dealt with (S.O. 165). However, if it is unwilling to comply with a Senate request, instead of responding the House may simply lay the bill aside.

The House may make amendments requested by the Senate involving appropriation only if a further message from the Governor-General recommending an appropriation for the purpose of the requested amendment has been announced to the House (S.O. 181).

Pressed requests

If the House declines to make the amendments requested and returns the bill, the Senate may pass it without the requested amendment having been made or may refuse to pass the bill. On occasions the Senate has returned the bill with a message pressing or insisting upon its request.

The House has never recognised the power of the Senate to insist on or press a request and may decline to consider a Senate message purporting to do so. However, the House has on most occasions taken the Senate's message into consideration after passing a preliminary resolution refraining from determining its constitutional rights. 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.

Senate amendments which, in the view of the House, should have been made as requests

The precise meaning of paragraph 3 of section 53 of the Constitution (preventing the Senate from making an amendment to any bill 'so as to increase any proposed charge or burden on the people') has not been conclusively determined, nor agreed between the Houses. Occasionally the Senate makes an 'amendment' to a bill, when in the opinion of the House, the Senate proposal should have been sent to the House as a request for an amendment.

In such cases, prior to the consideration of the Senate message, the Chair may make a statement drawing the House's attention to the constitutional significance of the purported amendment. The House may then agree to a resolution stating its attitude to the matter. In some such cases the House has resolved to refrain from the determination of its constitutional rights, and has considered the amendment.

When the House has regarded a purported Senate amendment as having the effect of increasing expenditure under an appropriation, the House has sometimes disagreed to the amendment but, after the reporting of a Governor-

General's message recommending appropriation, itself made an amendment in the same terms, and then sought the Senate's concurrence.

On other occasions the House has declined to consider the purported amendment and has informed the Senate that it would consider a request for the amendment. Alternatively the House may lay the bill aside.

Continued disagreement between the Houses

When the two Houses disagree over proposed legislation in most cases compromises are reached and amendments are made by one or the other House until the bill concerned is in a state acceptable to both.

In the case of continued disagreement, section 57 of the Constitution sets out the steps for resolving a disagreement involving a proposed law originating in the House. The procedure does not apply to a bill originating in the Senate.

Double dissolution

- The House of Representatives passes a bill and sends it to the Senate.
- The Senate rejects the bill, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree.
(Although the term 'fails to pass' has not been strictly defined, the High Court has stated that a 'reasonable time' must be allowed.)
- After an interval of three months (but in the same or the next session of Parliament), the House of Representatives passes the bill a second time and sends it to the Senate again. The bill reintroduced must be the original bill, except that it may be modified by amendments made, requested or agreed to by the Senate.
- The Senate again rejects the bill, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree.

The Prime Minister may now advise the Governor-General to dissolve both Houses. However, a double dissolution cannot take place within six months of the end of a three year term of the House of Representatives (i.e. three years from the date of its first meeting).

(Once the preceding conditions have occurred, whether and when to advise a double dissolution is a matter for the Prime Minister. There is no constitutional necessity to do so, or to do so within any period of time.)

- Elections are held for both Houses.

Joint sitting

- In the new Parliament the House of Representatives passes the bill again and sends it to the Senate. The bill may be reintroduced with or without amendments made, requested or agreed to by the Senate.
(There is no constitutional necessity to reintroduce a bill that was the cause of the double dissolution.)
- The Senate again rejects the bill, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree.
- The Prime Minister may now advise the Governor-General to convene a joint sitting of the members of both Houses.
- The joint sitting votes on the bill as last proposed by the House of Representatives and on any amendments made by one House and not agreed to by the other. To be passed, amendments and the bill (as and if so amended) must be agreed to by an absolute majority—i.e. more than half of the total number of the members of both Houses.

Procedures for joint sittings

Rules for joint sittings pursuant to section 57 of the Constitution were adopted by both Houses on 1 August 1974, prior to the first, and to date the only, such sitting on 6 August 1974. Among other matters the rules provided for:

- Senate standing orders to be followed as far as applicable in any matter of procedure not provided for;
- detailed provisions for the election of Chairman;
- the Clerks of the two Houses to serve as joint clerks;
- maximum speech times of 20 minutes;
- at least four hours of debate or 12 speakers on each question ‘That the proposed law be affirmed’;
- detailed provisions for divisions.

Disagreements over constitution alteration bills

Similar provisions apply in the case of either House refusing to pass a constitution alteration bill passed by the other House. However, in this situation the deadlock is resolved by the Governor-General being able to put the matter to a referendum.

Section 128 of the Constitution provides that if either House passes a bill proposing to alter the Constitution by an absolute majority and the other House rejects or fails to pass it, or passes it with an amendment to which the originating House will not agree, and if, after an interval of three months, the originating House again passes the proposed law by an absolute majority with or without any amendment made or agreed to by the other House and the other House again rejects or fails to pass it, etc., the Governor-General *may*

submit to referendum the proposed law as last proposed by the originating House, with or without amendments agreed to by both Houses.