

Maintenance of the standing and sessional orders

First report

- **Debate on the election of Speaker**
- **Presentation of explanatory memorandums**

House of Representatives
Standing Committee on Procedure

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ISBN 0 642 78765 4

ISBN 0 642 78768 9 (HTML version)



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Foreword

On 9 February 2006 the Standing Committee on Procedure resolved to adopt the wide ranging reference 'The maintenance of the standing and sessional orders'. This is intended to be an ongoing inquiry, under which the committee will report from time to time on specific matters. The inquiry will encompass all sessional orders which the House has adopted for a trial period; and also proposals for minor adjustments to the standing orders which arise from time to time. Any more substantial matter will be subject to separate inquiry and report.

Over the course of each Parliament the committee's attention is drawn to various, often relatively minor, procedural issues arising from proceedings in the House. This ongoing inquiry provides a formal mechanism for the committee to consider these issues. This is the first report on such matters. The subjects – 'Debate on the election of Speaker' and 'Presentation of explanatory memorandums' – both arose from events in the House which caused the committee to reflect on the related standing orders.

On 9 February 2006 the House agreed to several sessional orders which are effective until the end of 2006. These cover arrangements for debate of committee and delegation reports in the Main Committee (as recommended by the committee's report on this matter in November); the duration of Members' statements in the Main Committee; debate times for dissent motions; and provisions relating to the maintenance of order in the Main Committee. Later in the year the committee will report on its review of the operation of these sessional orders.

Margaret May MP
Chair



Membership of the Committee

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Terms of reference

Terms of reference of the Committee

To inquire into and report on the practices and procedures of the House and its committees.

Terms of reference of the inquiry

Maintenance of the Standing and Sessional Orders.



List of recommendations

Recommendation 1

The committee recommends that standing order 11 be amended to permit movers and seconders to speak in support of their nominated candidate for Speaker in all cases, even when there is only one nominee.

Recommendation 2

The committee recommends that standing order 11 be amended to improve clarity in relation to the use of the word ‘question’.

Recommendation 3

The committee recommends that standing orders 141 and 142 be amended to provide that the Explanatory Memorandum to a bill is presented when the bill is presented, rather than at the conclusion of the Minister’s second reading speech.

Debate on the election of Speaker

Background — the Clerk's 'uncomfortable duty'

- 1.1 Current standing order 11(g) does not permit debate to take place on the election of Speaker unless there is more than one candidate. This provision was the same in the former standing orders.
- 1.2 The first extract below from the Hansard of 12 February 2002 gives an example of an uncontested election of Speaker proceeding in accordance with the standing orders. The mover and seconder of the motion 'That the honourable Member for Wakefield do take the Chair of this House as Speaker' did not speak in support of their candidate.
- 1.3 The second extract from the Hansard of 16 November 2004, at the start of the current Parliament, shows events not proceeding in accordance with the standing orders. The mover on this occasion spoke in support of the candidate, prompting the following intervention from the Clerk:

'It is my uncomfortable duty to remind the House that it is strictly not in order to speak in favour of the candidates unless the election is contested.'
- 1.4 This advice was promptly ignored by the seconder, who proceeded to also speak in support of the candidate, although briefly.

Examples from last two elections of Speaker

- 1.5 The following extracts from Hansard show examples of where the standing orders were and were not followed.

1) Standing orders followed — 12 February 2002

SPEAKER **Election**

The Clerk—Honourable members, the next business is the election of a Speaker.

Mr McArthur (Corangamite) (11.16 a.m.)—Mr Clerk, I would like to propose the honourable member for Wakefield as Speaker of the House of Representatives. I move:

That the honourable member for Wakefield do take the chair of this House as Speaker.

The Clerk—Is the motion seconded?

Mr Forrest— I have the great honour and privilege to second that motion.

The Clerk—Does the honourable member for Wakefield accept the nomination?

Mr Andrew—Mr Clerk, I do.

The Clerk—Is there any further proposal? There being no further proposal, the time for proposals has expired. I declare that the honourable member proposed, the member for Wakefield, has been elected as Speaker.

Honourable members—Hear, hear!

The SPEAKER (Hon. Neil Andrew)—I wish to express my gratitude and thanks to the House for the high honour that has been conferred upon me.

The Speaker having seated himself in the chair—

Mr Howard (Bennelong—Prime Minister) (11.18 a.m.)— . . .

2) Standing orders not followed — 16 November 2004

SPEAKER **Election**

The Clerk—Honourable members, the next business is the election of a Speaker.

Mr McArthur (Corangamite) (11.16 a.m.)—It is my great privilege to nominate David Hawker, the member for Wannon, as the new Speaker for the 41st Parliament. I move:

That the honourable member for Wannon do take the chair of this House as Speaker.

As members would be aware, David Hawker has represented the seat of Wannon for 21 years. He first joined this parliament in 1983 upon the by-election caused by the retirement of former Prime Minister Malcolm Fraser. By way of history, the former Prime Minister was the member for Wannon for 28 years. He won the election in 1955, having lost the election in 1952 by a handful of votes. So the former Prime Minister understood the necessity of winning the last few votes—even down in Wannon, which is now a safer seat under David Hawker. Former Prime Minister Malcolm Fraser and David Hawker have represented the seat of Wannon for 49 years.

I remind the House that the centre of political gravity has moved to western Victoria for these few fleeting moments, because the member for Corangamite will be escorting the new Speaker, supported by the member for Mallee. I want to ensure that this parliament understands where the real political decisions will be made in the next few moments.

By way of political historical perspective, former Speaker Neil Andrew joined this parliament as the member for Wakefield in 1983, David Hawker joined this parliament as the member for Wannon in the by-election in 1983, as I said, and Stewart McArthur joined this parliament as the member for Corangamite in February 1984. We became very good friends in the ensuing years. Friends are sometimes hard to find in this parliament, as some members would know. The three of us spent 13 long years in opposition and during that time we became quite well versed in electing Leaders of the Opposition. We learnt a lot about politics and about the parliament as three good friends on the opposition benches during those 13 long years. We would hope that current members of the opposition will stay on the opposition benches for a longer period.

David Hawker is a very good local member for Wannon. Wannon encompasses a number of regional cities and towns. He claims that Hamilton, the centre of Wannon, is the wool capital of the world. Some of us would challenge that particular view. Warrnambool, Ararat and many other smaller towns are in Wannon. As members on both sides would know, in these big rural electorates the electors think you have to be everywhere all the time. David Hawker has been a very outstanding local member. He has been everywhere. He has served the people. He has done an outstanding job as their

representative. He has even represented my home town of Camperdown in quite a good manner, although I am really the de facto member of that particular town.

Some of you may not recall that in the middle 1980s David Hawker was an advocate for the free market of domestic wheat—and some of you may think that a fairly difficult topic. The advocacy of David Hawker, with the assistance of the then government, freed up the domestic wheat market. That was a very big debate and David Hawker was the No. 1 advocate on the opposition side. I put on the record his remarkable contribution to that at times quite acrimonious debate. David Hawker, as Chairman of the House of Representatives Standing Committee on Economics, Finance and Public Administration, has brought the Reserve Bank and the Reserve Bank Governor to the parliament and to the Australian people. That has exposed that very important policy-making group to open parliamentary debate. David Hawker comes to the Speaker's job having had experience on the Speaker's panel.

David Hawker, by any measure, is a fair and honourable man. He is supported very strongly by his wife, Penny, who is in the chamber, along with his family. This is a very historic moment for David Hawker, who has spent many years in the parliament representing the seat of Wannon and his people. It is my very great pleasure on behalf of all members to propose David Hawker as the Speaker of the House of Representatives in the 41st Parliament.

Honourable members—Hear, hear!

The Clerk—It is my uncomfortable duty to remind the House that it is strictly not in order to speak in favour of the candidates unless the election is contested. Is the motion seconded?

Mr Forrest—I have heard your injunction, Mr Clerk. I have the great honour and privilege to second that motion. I would like the chamber to recall the fact that the motion was moved by the member for Corangamite and supported by the member for Mallee, the two nearest electoral neighbours to the member for Wannon. A very important aspect to today, as the member for Corangamite has said, is the significance of this region of Victoria. It is a great honour to second the motion. David Hawker is an honourable man. I am looking forward now to continuing order in this place under the stewardship of this candidate.

The Clerk—Does the honourable member for Wannon accept the nomination?

Mr Hawker—Mr Clerk, I do—with some reluctance.

The Clerk—Is there any further proposal? There being no further proposal, the time for proposals has expired. I declare that the honourable member proposed, the member for Wannon, has been elected as Speaker.

Honourable members—Hear, hear!

The SPEAKER—I wish to express my grateful thanks for the high honour that the House has chosen to confer on me today.

The Speaker having seated himself in the chair—

Mr Howard (Bennelong—Prime Minister) (11.24 a.m.)— . . .

Discussion

- 1.6 The committee commends the Clerk for attempting to apply the standing order during the most recent election for Speaker. However, the committee sees no necessity for the restriction imposed by the standing order.
- 1.7 The reason for the restriction is presumably that the time of the House does not need to be taken up if no decision is to be made.
- 1.8 However, the committee sees no harm and some benefit in the mover and seconder introducing their candidate to the House. Most elections for Speaker take place at the start of a Parliament when newly elected Members are likely not to be familiar with the Member being nominated. This also applies to visitors in the galleries and to members of the television or radio audience.
- 1.9 A short opportunity for proposers to introduce their candidate would also suit the ceremonial aspect of proceedings at the opening of a Parliament. If no-one speaks in support the election is over in the blink of an eye, as can be seen from the 2002 example.

Recommendation 1

The committee recommends that standing order 11 be amended to permit movers and seconders to speak in support of their nominated candidate for Speaker in all cases, even when there is only one nominee.

The use of the word ‘question’ in standing order 11

- 1.10 In the above recommendation the words ‘speak in support of their nominated candidate’ were deliberately chosen. Especially in the case of two (or more) nominees, there is a technical difficulty with the notion that the movers and seconders are speaking to a motion or question before the House.
- 1.11 The word ‘question’ is used in two different senses in this standing order. In paragraph (d) ‘question’ is used in its everyday sense of

request for information. Elsewhere the word is used in its technical sense – although in the committee’s opinion not always appropriately – meaning motion proposed to the House for decision.

- 1.12 If more than one Member is nominated there are in effect two or more motions for the House to consider simultaneously. The rule of debate that only one question can be before the House at the one time is sidestepped in practice by no question being proposed by the Chair on the motions nominating candidates, and no question being put by the Chair for decision. Instead paragraph (g) provides that Members may ‘speak on the election’.
- 1.13 Paragraph (h) provides the closure motion ‘That the question be now put’. In practice, even if the closure is agreed to, no question is in fact put (as no question exists). Instead a ballot occurs to select the preferred candidate.
- 1.14 To aid clarity, the committee has suggested that this opportunity be taken to make changes in the wording of paragraphs (d) and (h). We propose that in paragraph (d) the word ‘question’ is best avoided. In paragraph (h) we propose that the standard closure motion ‘That the question be now put’ be replaced by the motion ‘That the ballot be taken now’ – this achieves the same end but is a more accurate description of what actually happens. A similar situation arises in relation to discussion of a matter of public importance, where the closure motion moved is ‘That the business of the day be called on’. In that case too, there is no question before the House that can be put.

Recommendation 2

The committee recommends that standing order 11 be amended to improve clarity in relation to the use of the word ‘question’.

Proposed amended standing order 11, paras (a) to (h)

11 Election procedures

When electing a Member to fill a vacant office the routine shall be as follows:

Nominees proposed

- (a) The Chair shall invite nominations for the vacant office.
- (b) A Member shall propose the nomination of a Member to the vacant office by moving, without notice, that such Member 'do take the Chair of this House as Speaker'. The Member nominated must be present and the motion must be seconded. The mover and seconder may speak in support of their nominated candidate for no more than 5 minutes each.
- (c) The nominated Member shall inform the House whether he or she accepts the nomination.
- (d) The Chair shall ask:

Is there any further proposal?

~~This question shall be repeated~~ and shall ask this again after any further proposal and acceptance.

- (e) If no further proposal is made the Chair shall state:

The time for proposals has expired

No further nominations may be made.

If only one nominee – nominee elected

- (f) If a nominee is unopposed, the Chair, without question put, shall declare the Member, who has been proposed and seconded, to have been elected to the vacant office.

If two or more nominees – debate then ballot

- (g) If there are two or more nominees, when the time for proposals has expired, Members who have not yet spoken as mover or seconder may speak on the election, however:

- (i) debate must be relevant to the election; and
- (ii) no Member may speak for more than five minutes.

- (h) At any time during debate, and whether any Member is addressing the Chair or not, a Minister may move without notice –

~~That the question be now put~~ ballot be taken now.

The question shall be put immediately and resolved without amendment or debate. If the votes are equal the question shall be negatived, and debate may continue. If the question is carried, or when debate ends, the House shall proceed to a ballot.

Presentation of explanatory memorandums

Background

- 2.1 Currently the explanatory memorandum (EM) to a bill is presented at the end of the Minister's second reading speech. The committee has considered the proposal that the explanatory memorandum be presented when the bill is introduced at the first reading stage.
- 2.2 Standing order 142(c) currently provides:
- (c) For any bill presented by a Minister, except an Appropriation or Supply Bill, the Minister must present a signed explanatory memorandum at the conclusion of his or her second reading speech. The explanatory memorandum must include an explanation of the reasons for the bill.
- 2.3 This matter became subject of discussion in relation to the Workplace Relations Bill on 2 November 2005. The bill was introduced at 9.01 am; but a suspension of standing orders motion and a dissent motion were moved before the second reading. The Minister eventually presented the explanatory memorandum at the end of his second reading speech at 10.45 am. Because of the delay, the EM, which had been put up on the web after the bill was introduced, was removed from the web until it had been presented. Although the longstanding practice has been that EMs are released from embargo on the bill's introduction, Table Office staff had concern over the status of the EM as it had not been presented and there was uncertainty as to when it

would be. On 8 November the Speaker made a statement to the House on the matter, noting that he had asked the Clerk to review arrangements for making available copies of explanatory memorandums.

Availability of bill and explanatory memorandum

- 2.4 The explanatory memorandum is kept under embargo (as is the bill) until the bill has been introduced.
- 2.5 Bills are made available to Members in the Chamber, and to Members and others at the Table Office counter, and published on the web, when introduced. EMs and copies of Ministers' second reading speeches (if available) are also distributed with the bill and at the same time – that is, before the speech has been made or the EM presented.
- 2.6 In practice, the Minister's speech is normally started immediately the bill is introduced and the end of the speech and presenting of the EM is not usually more than about 20 minutes later than the first reading.
- 2.7 A supplementary EM relating to amendments is made available at the same time that the amendments are made available (the timing is decided by the Minister). This may be some time before the amendments are moved and the supplementary EM is presented.

History of explanatory memorandums in the House of Representatives

Before 1980	EMs were prepared for certain complex bills only
1980	Departments were instructed by the Government to prepare EMs for all bills (<i>Legislation Handbook</i>). EMs were circulated in the Chamber <i>with copies of the bill when the bill was introduced</i> .
1986	The practice (but not a standing orders requirement) of presenting EMs formally was introduced to facilitate court proceedings should an explanatory memorandum be required in court as an extrinsic aid in the interpretation of an Act (following the 1984 amendment to the <i>Acts Interpretation Act 1901</i>). Under the <i>Evidence Act 1905</i> Votes and Proceedings, Senate Journals, and papers presented in the Parliament could be admitted, on

	their mere production, as evidence in court. The act of presenting also caused a record of the EM's existence to be made in the Votes and Proceedings, whereas previously EMs had not been recorded. (The relevant Act is now the <i>Evidence Act 1995</i>) The introduction of this practice appears to have been an initiative of the House Clerks (to avoid having to give evidence in court to certify the circulation of an EM). The reason for the timing of the presenting of the EM at the end of the 2nd reading speech seems to have been procedural convenience.
1994	As part of the changes to legislation procedures at the time of the commencement of the Main Committee, the presenting of EMs first became a requirement of the standing orders. <i>The relevant standing order required the EM to be presented at the time of the bill's introduction.</i> (The second reading, including the Minister's speech, was on a later day.)
1996	In the 1995 review of the new procedures the Procedure Committee recommended that both the EM and the second reading speech should be available to Members <i>before</i> the continuation of second reading debate. The standing orders were amended on 1st May 1996 to change back to having the second reading speech immediately following introduction, and the former practice of presenting the EM at the end of 2nd reading speech was also reverted to (and put in the standing orders).

Practice in other Parliaments

- 2.8 In most Parliaments explanatory memorandums or explanatory notes 'accompany the bill' (i.e. are not presented separately), and are available to Members and to the public at the same time as copies of the bill following introduction (bills are authorised for publication by the first reading). This is the case in UK, Canada and New Zealand.
- 2.9 These three countries and the Australian lower houses not covered below (and the Australian Senate) do not have provisions in their standing orders regarding EMs.
- 2.10 Of the jurisdictions surveyed, the following mention EMs in their standing orders:
- In the New South Wales Legislative Assembly it is a standing orders provision that after the first reading 'The bill shall be printed, with an explanatory note'.

- In the Western Australian Legislative Assembly it is a standing orders provision that a bill must be accompanied by an explanatory memorandum when introduced.
- In the Queensland Legislative Assembly it is a standing orders provision that an EM may be presented during or after the second reading speech.

Discussion and recommendation

Purpose of explanatory memorandums

- 2.11 Consideration of the time of presentation needs to take into account the purpose of the explanatory memorandum. The *Legislation Handbook* describes an explanatory memorandum as ‘a companion document to a bill, to assist members of Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the bill.’ In addition the *Acts Interpretation Act 1901* (section 15AB) allows an explanatory memorandum to be used by a court to interpret the bill.¹
- 2.12 The section from the *Legislation Handbook* covering the purpose, form and content, printing and distribution of explanatory memorandums is reproduced in the attached appendix.

Principles considered

- 2.13
- While EMs are embargoed by the Government until the introduction of the bill, the Government expects them to be publicly released on the introduction of the bill;²
 - For legal purposes EMs need to be ‘laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted’ — *Acts Interpretation Act 1901*, s. 15AB(2)(e);

¹ *Legislation Handbook*, p. 38.

² In the *Legislation Handbook* government departments are advised that ‘the explanatory memorandum is available publicly once a bill is introduced’, p. 39. In addition, distribution instructions state that the Minister’s presentation copy is ‘for presentation to the House at the time of introduction or moving’, p.100.

- As an aid to Members preparing for the second reading debate, EMs should be available to them as early as possible;
- As information to the public, EMs should be available as early as possible;
- It is administratively convenient, and current (usual) practice, for hard copies of EMs to be released by the Table Office and made available in the Chamber, and for electronic copies to be made public on the internet, at the same time as the bill (that is, following introduction);
- To avoid uncertainty it is preferable that standing orders and administrative practice should align.

Recommendation 3

The committee recommends that standing orders 141 and 142 be amended to provide that the Explanatory Memorandum to a bill is presented when the bill is presented, rather than at the conclusion of the Minister's second reading speech.

Proposed amended standing orders 141 and 142

141 First reading and explanatory memorandum

(a) When a bill is presented to the House, or a Senate bill is first received, the bill shall be read a first time without a question being put. A Member presenting a bill during private Members' business may speak to the bill, before it is read a first time, for no longer than 5 minutes.

(b) For any bill presented by a Minister, except an Appropriation or Supply Bill, the Minister must present a signed explanatory memorandum. The explanatory memorandum must include an explanation of the reasons for the bill.

142 Second reading and explanatory memorandum

(a) If copies of the bill are available to Members, the Member presenting the bill may move immediately after the first reading, or at a later hour –

That this bill be now read a second time.

At the conclusion of the Member's speech the debate on the question must then be adjourned to a future sitting.

After the first reading of a bill presented during private Members' business, the motion for the second reading shall be set down on the Notice Paper for the next sitting.

(b) If copies of the bill are not available, a future sitting shall be appointed for the second reading and copies of the bill must then be available to Members.

~~(c) For any bill presented by a Minister, except an Appropriation or Supply Bill, the Minister must present a signed explanatory memorandum at the conclusion of his or her second reading speech. The explanatory memorandum must include an explanation of the reasons for the bill.~~

MARGARET MAY MP

Chair

2 March 2006

Appendix – Extract from *Legislation Handbook*

[*Legislation Handbook*, Department of Prime Minister and Cabinet, 1999 (May 2000 update), pp.38–43.
www.dpmc.gov.au/guidelines/docs/legislation_handbook.pdf]

EXPLANATORY MEMORANDUM

The purpose of an explanatory memorandum

8.1 An explanatory memorandum is a companion document to a bill, to assist members of Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the bill.

8.2 The *Acts Interpretation Act 1901* (section 15AB) allows an explanatory memorandum (and also a second reading speech – see paragraph 8.28) to be used by a court to interpret legislation to:

- (a) confirm that the meaning of a provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or
- (b) determine the meaning of a provision when:
 - (i) the provision is ambiguous or obscure; or
 - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or unreasonable.

When an explanatory memorandum is required

8.3 An explanatory memorandum is usually provided for every bill introduced in Parliament except for the annual appropriations bills (see paragraph 8.27 for other exceptions). The minister presents the memorandum during the process of introducing the bill. To meet the requirements of the *Acts Interpretation Act 1901* (paragraph 15AB(2)(e)), the explanatory memorandum, and any supplementary, revised or replacement explanatory memorandum or correction to an explanatory memorandum must be presented to the House or the Senate. Explanatory memoranda should be printed by your print provider.

8.4 Preparation and printing of the explanatory memorandum are the responsibility of the instructing department. Departments should commence preparation of the explanatory memorandum as soon as an early draft of the bill is received from OPC. The memorandum must be available for consideration by the

Parliamentary Secretary to Cabinet as part of the legislation approval process at the same time as the finalised bill; printing of the explanatory memorandum usually occurs after the approval process. (See chapter 9 on the legislation approval process and appendix O on the copies of documents required.)

The form and content of an explanatory memorandum

8.5 An explanatory memorandum must have:

- (a) a cover sheet (see paragraphs 8.9 and 8.10);
- (b) a general outline (see paragraphs 8.11 to 8.17) including:
 - (i) a financial impact statement;
 - (ii) a regulation impact statement, where required; and
- (c) notes on clauses or on amendments (see paragraphs 8.18 to 8.20).

8.6 An explanatory memorandum is circulated by authority of the responsible minister (either the portfolio minister or another minister in the portfolio), irrespective of whether he or she is a minister in the house in which the bill is to be introduced. The memorandum should be submitted to the minister for approval at the same time as the bill prior to the legislation approval process (see paragraph 7.6 and chapter 9).

8.7 As the explanatory memorandum is available publicly once a bill is introduced, it should not contain any confidential material.

8.8 In its report of June 1995, the House of Representatives Standing Committee on Procedure expressed disappointment at the general standard of explanatory memoranda⁸. An explanatory memorandum must be written in plain English and should focus on explaining the effect and intent of the bill, or the amendments, rather than repeating the provisions. Information contained in the explanatory memorandum must be accurate and not misleading, and must reflect the final form of the bill to be introduced or the amendments to be moved (see chapter 10 for requirements where a bill is amended during passage).

COVER SHEET

8.9 The cover sheet should indicate:

- (a) the year(s) of the current Parliament (as shown on the bill), eg. 1998 or 1998-99;
- (b) a heading “The Parliament of the Commonwealth of Australia”;
- (c) the name of the house in which the bill is first to be introduced (see paragraph 12.4);

⁸ The 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*, June 1995, p6

- (d) the exact title of the bill;
- (a) a heading “Explanatory Memorandum”; and
- (b) a statement that the bill is circulated by authority of the Hon Yyy, Minister for Xxx.

8.10 Different information is required on the cover sheet of an explanatory memorandum depending on whether the memorandum is:

- (a) for a bill being introduced for the first time (appendix G);
- (b) a supplement to a memorandum (paragraphs 10.13 to 10.15 and appendix H);
- (c) a replacement for a memorandum (appendix I);
- (d) a correction to a memorandum (appendix J);
- (e) for use in the second house where the bill has been amended in the first house (appendix K); or
- (f) for more than one bill (paragraph 8.27 and appendix L).

GENERAL OUTLINE

8.11 The general outline should have:

- (a) the exact title of the bill across the top of the page (or, in the case of a supplementary explanatory memorandum, “Amendments to the XYZ Bill”);
- (b) a brief but clear statement of the purpose/objective of the bill;
- (c) an outline of why the bill is required, the effect of the principal provisions, and an explanation of the policy background;
- (d) a financial impact statement (see paragraphs 8.14 to 8.15); and
- (e) a full version of the regulation impact statement (RIS), where a RIS is required (see paragraphs 8.16 to 8.17).

8.12 The general outline commences on page 1 of an explanatory memorandum and should be sequentially numbered where the outline is more than one page. The statement of purpose/objective, the outline of the bill and financial impact statement should be kept to one page if possible. A sample general outline is at appendix M.

8.13 Additional copies of the general outline, including the financial impact statement, must be provided to the Legislation Section separate from the copies of the explanatory memorandum for use in the legislation approval process (see paragraph 9.12, and appendix O for the number of copies required). These general outlines are circulated to non-government parties in the Senate at the time of a bill’s introduction.

Financial impact statement

8.14 A financial impact statement follows immediately on from, and forms part of, the outline. It describes both the direct and indirect financial impact for the Commonwealth of the proposed bill including any savings, expenses, revenue losses or gains, or changes in net asset position or the fiscal balance resulting from the

proposal(s) (see appendix M). The financial impact of legislative proposals is to be shown to one decimal place in \$million, eg \$18.2m, \$0.5m. If it is not possible to provide precise figures, an estimate of savings, expenses, revenue losses or gains, impact on net assets or the fiscal balance or a statement of the variable factors and difficulties in estimating the impacts must be included. If it is not possible to provide even an estimate of the impacts, the statement should give a broad outline of the expected financial impacts and reasons why it is not possible to provide figures. If there is no financial impact, this should be indicated.

8.15 Where the bill provides for taxation concessions, the explanatory memorandum should explain why the taxation system is preferred to direct outlays for giving assistance. Any impact of the bill on industry and other sections of the community should be addressed in the regulation impact statement.

Regulation impact statement

8.16 Responsibility for preparing a RIS lies with the department and the content of the RIS should be cleared by the minister. Nevertheless, a RIS should be prepared in consultation with ORR and in accordance with its *Guide to Regulation*⁹. See also paragraphs 2.9 to 2.14. The RIS follows the financial impact statement and forms part of the outline. A consultation statement should be incorporated into the RIS where consultation has been undertaken with those affected by the proposed legislation, in accordance with ORR's *Guide to Regulation*. The statement should explain the consultation process and state the views of the main interested parties.

8.17 Where ORR has advised that a RIS is not required in the explanatory memorandum, there should be no reference to the absence of a RIS. Neither should an explanation of why a RIS is not required or the advice from ORR to the department be included. If the RIS relates to particular schedules and not to the whole bill, this should be indicated at the beginning of the RIS. An explanation of why the RIS does not cover the whole bill should not be included.

NOTES ON CLAUSES

8.18 Notes on clauses are intended to be a companion explanation to the clauses of a bill. They should not simply repeat the words of the bill or restate them in simpler language. The notes should explain the purpose of the clause and relate it to other provisions in the bill, particularly where related clauses do not appear consecutively in a bill. Examples of the intended effect of the clause, or the problem it is intended to overcome, may assist in its explanation.

8.19 The House of Representatives Standing Committee on Procedure, in commenting on the standard of explanatory memoranda, quoted the following criticism by a member on one explanatory memorandum: "a prose rendering of each provision of this bill, a mere jargonistic paraphrase, (which) gives little understanding

⁹ Office of Regulation Review, Productivity Commission, *A Guide to Regulation*, 2nd Edition, December 1998, Internet: <http://www.pc.gov.au/orr>

of the operation of these provisions”¹⁰. Officers drafting explanatory memoranda should ensure that notes on clauses clearly and adequately explain their operation and purpose. Where a measure in a bill is likely to be the subject of comment by the Senate Standing Committee for the Scrutiny of Bills, the reasons for proceeding in the manner proposed in the bill should be explained in the explanatory memorandum (see paragraphs 6.17, 6.29 and 14.53 to 14.55).

8.20 Notes on clauses should commence on a new page, be serially numbered, and immediately follow the general outline, financial impact statement and, where required, the RIS. The notes should have internal paragraph numbers and a centered or shoulder heading for each clause or group of clauses. The heading should be the same as the heading in the bill for that clause or group of clauses. The pages should be numbered in series following on from the general outline. Sample notes on clauses are at appendix N.

Printing an explanatory memorandum

8.21 An explanatory memorandum must be printed on international B5 size paper for presentation to Parliament. For the legislation approval process the explanatory memorandum should be on A4 paper.

8.22 The instructing department is responsible for arranging printing of the memorandum. This generally occurs after the memorandum has been approved by the ministers and cleared through the legislation approval process. The printer should be supplied with an original “camera ready” copy of the memorandum for printing. The department funds the setting up cost of printing, introduction copies and any additional copies required for their own purposes; AusInfo will bear the cost of any run-on copies it requires for sale. Departments should advise AusInfo of any anticipated large demand for particular legislation to ensure sufficient sale copies are printed. The text of the explanatory memorandum on disk should be supplied to the Table Offices and AusInfo for electronic conversion for the parliamentary network. See appendix O for information on technical requirements for the disk.

8.23 If it is necessary to arrange printing of the explanatory memorandum in advance of the legislation approval process, departments should contact the Legislation Section before arranging printing.

Distributing an explanatory memorandum

8.24 The department is responsible for delivering copies of the explanatory memorandum to the Legislation Section for the legislation approval process, and to the Parliament and the PLOs prior to introduction. Copies should be delivered to both Table Offices before introduction in the first house. See appendix O for details of the number of copies required and their distribution.

¹⁰ The 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*, June 1995, p6

Replacement explanatory memorandum/correction to a memorandum

8.25 Where, before the passage of a bill, an explanatory memorandum is found to contain a mistake which needs correcting, it may be necessary to issue a replacement explanatory memorandum or a correction to the explanatory memorandum. A correction to an explanatory memorandum would normally be used where a minor correction is being made which could be contained on one or two pages. If the correction is more substantial or involves correction to several areas of the explanatory memorandum, then a replacement explanatory memorandum should be issued.¹¹ In any event, the department must alert the PLOs and the relevant Table Office to arrange for the minister to present the correction to the explanatory memorandum or the replacement explanatory memorandum to the Parliament without delay.

8.26 A sample cover sheet for a replacement explanatory memorandum and an example of a correction to a memorandum are at appendices I and J. See chapter 10 for information about supplementary explanatory memoranda.

Cognate bills and a combined explanatory memorandum

8.27 A separate explanatory memorandum is normally required for every bill, including cases where two or more related bills are to be debated cognately. However, in those rare cases where a number of very closely related bills are introduced at the same time, a single document incorporating explanatory memoranda for all the bills may be used if this is the most convenient way to present the information. A combined explanatory memorandum is appropriate only where all the bills are short and simple and closely related and where a single outline and financial impact statement will adequately explain the operation and effect of all bills in the package. A sample cover sheet for a combined explanatory memorandum is at appendix L.

¹¹ A revised explanatory memorandum is prepared for the second house if the bill has been amended in the first house (see paragraphs 8.37 and 10.21).