

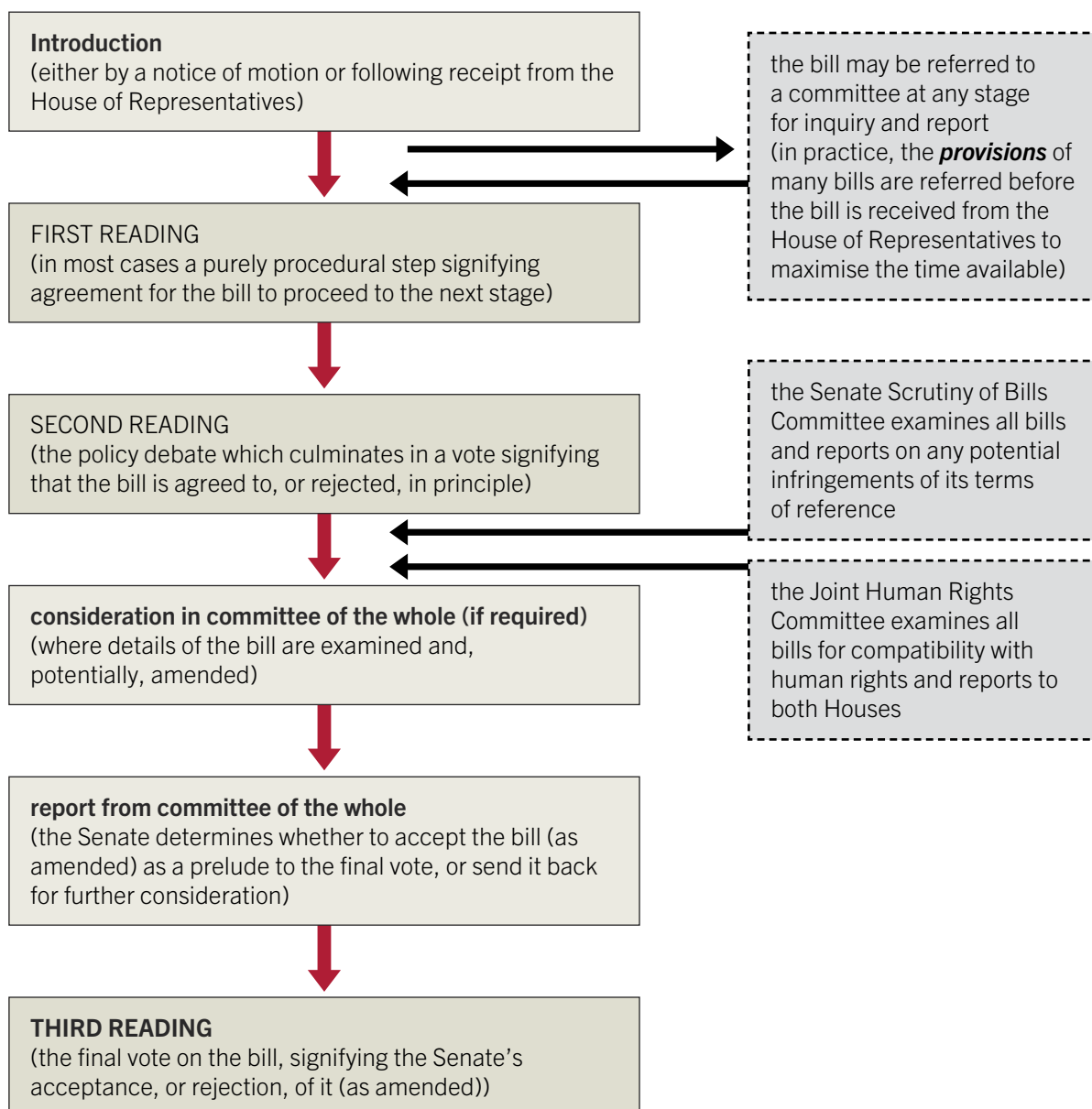
# 16 Consideration of legislation

## 1 An outline of the process

About half of the Senate’s time is spent considering proposed laws (*bills*). Although any senator may introduce a bill, most bills that are considered are introduced by the government of the day. Senators introduce their own bills as a way of making a policy statement, but limited time is available for their debate, and it is rare for a private senator’s bill to be passed into law.

### Stages of consideration

Each bill, regardless of its source, is considered in the same way, involving the following steps:



## 2 Some general issues

### Second reading and committee of the whole debate

A senator may make a second reading speech of up to 15 minutes and a further contribution to any second reading amendment moved after they speak (see below). Senators who speak after an amendment is moved are taken to be speaking to it. The second reading debate goes to the principles of a bill. It is opened by a minister who outlines the policies and rationale of the bill and is usually closed by a minister who may respond to issues or concerns raised during the debate.

Debate in committee of the whole is a flexible and interactive process in which the details of the bill are queried and amendments are moved, debated and determined. Although a senator may speak for up to 10 minutes at a time and there is no limit to the number of times a senator can speak on a question if other speakers are also participating, most contributions in committee are short.

### What is the “cut-off”?

The cut-off ([standing order 111\(5\)](#)) is a procedure developed by the Senate to prevent an end-of-sittings rush of legislation. For a bill to be considered by the Senate during a period of sittings (the *current period*), it must have been introduced in either House in a previous period of sittings. In addition, if it was introduced in the House of Representatives in a previous period of sittings, it must be received by the Senate before two-thirds of the current period expires. A period of sittings is any period during which the Senate is not adjourned for more than 20 days.

The procedure applies to all bills received from the House of Representatives and bills introduced in the Senate by a minister, but not to private senators’ bills.

The Senate may exempt particular bills from the *cut-off*, allowing them to be considered during the current period. Requests for exemption usually take the form of a notice of motion (see [Guide No. 8—Notices of Motion](#)) and must be accompanied by an explanation of the need for exemption. Occasionally an exemption will be moved by leave, or after a suspension of standing orders.

## 3 The role of committees

### What role do committees play in the consideration of legislation?

When bills are referred to a committee, the committee usually takes evidence from the minister, officials, interest groups and affected individuals and reports to the Senate. Although the committees may not amend bills, there is nothing to prevent them recommending amendments and the Senate adopting the recommendations.

### Referring bills to committees

There are several means of referring bills to committees for inquiry and report. The most commonly used method is via the [Selection of Bills Committee](#). Senators submit proposals to the committee for particular bills to be referred to the relevant Senate standing committee. The committee then makes recommendations to the Senate about bills to be referred, the committees to which (and the stage at which) they are to be referred, and the reporting dates. Adoption of the report by the Senate has the effect of referring the bills as recommended. The motion for the adoption of the report may be amended to vary the details of the recommendations or to add or delete bills.

Bills may also be referred by way of motion after notice, by an amendment moved to the motion for one of the stages of consideration of a bill (see below), or by a motion moved after the second reading of the bill is agreed to.

Since 2009, the Senate has adopted measures to ensure that ‘time critical’ bills introduced into the House of Representatives during the budget estimates fortnight may be referred to committees

before the Senate returns for the June sittings. A motion is moved to provide for the automatic referral of bills introduced during that period with provisions commencing on or before 1 July to the relevant committee. A committee may decline to examine a bill if, by unanimous decision, it considers that there are no substantive matters requiring consideration (see [Guide No. 13](#)—Referring matters to committees).

### **The Scrutiny of Bills Committee**

The [Scrutiny of Bills Committee](#) assesses all bills against terms of reference which are concerned with the protection of the rights and liberties of individuals and the rights of the legislature to hold governments accountable (see [standing order 24](#)). Where the committee detects a possible infringement, it seeks an explanation from the minister. An outline of the committee’s initial concerns and the results of considering the minister’s response are presented to the Senate in the [Scrutiny Digest](#). The committee often draws the Senate’s attention to problematic provisions in bills and individual senators may move amendments to address the problems.

If the committee has not finally reported on a particular bill because the minister has failed to respond to the committee’s concerns on the bill then, immediately before consideration of government business or consideration of the relevant bill, a senator may seek an explanation as to why a response has not been provided.

If the minister provides an explanation, the senator may move without notice that the Senate take note of the explanation. If an explanation is not provided, the senator may move without notice that the Senate take note of the failure to provide an explanation.

### **The Joint Human Rights Committee**

The [Joint Human Rights Committee](#) was established in 2012 pursuant to legislation. Using seven specified international human rights instruments, the committee examines the statements of compatibility with human rights which are included in explanatory memoranda to bills and explanatory statements for legislative instruments, and reports its findings to both Houses.

## **4 Amendments and other details**

It is important not to confuse two different types of amendments that can be moved during the consideration of legislation:

- amendments to the motions for particular stages of a bill’s consideration, which may affect the passage of the bill but not its content; and
- amendments to the text of the bill, which may affect the final content of the law.

### **Amendments to procedural motions**

Amendments may be moved to the procedural motions for particular stages of a bill’s consideration. These amendments may add words to, or change words in, the motion to, for example:

- express an opinion about the bill or the government’s handling of the related policy issues
- reverse the effect of the motion so that the bill is defeated at that point
- refer the bill to a committee; and
- delay further consideration of the bill.

The motion for the second reading (“That this bill be now read a second time”) is the motion most commonly amended in this way. Amendments are also sometimes moved to the motion “That the report of the committee be adopted”, especially if the committee of the whole stage reveals further action that the Senate may wish to take at the earliest opportunity. An example is an order for

production of documents which may not be appropriate to include as an amendment to the bill, but which may be achieved through an amendment to the motion to adopt the report of the committee of the whole.

An amendment to the motion for the second or third reading of a bill which replaces the word “now” with the words “this day six months” has the effect of finally defeating the bill. This amendment is the only one which may be moved to the third reading motion. This form of amendment has its origins in traditional parliamentary practice. These days a senator seeking to defeat a bill will simply vote against the motion for the second or third reading.

### Textual amendments to bills

Hundreds – sometimes thousands – of amendments are moved each year to bills in the Senate by ministers and by non-government senators. Approximately one third of all bills are amended. Non-government senators are assisted by the Clerk Assistant (Procedure) in drafting amendments while government amendments are usually produced by the government drafters. When amendments are finalised, the senator responsible for them authorises their circulation and they are distributed in the Senate and published on the Internet on the bills homepages, and on the Dynamic Red when the bill is being considered.

An amendment may be made to any part of a bill, provided that it is relevant to the subject matter of the bill (see [standing order 118](#)). Subject matter is usually assessed by reference to the long title of the bill (“A Bill for an Act to . . .”) and the explanatory memorandum, although the long title is only an indication of subject matter rather than determinative (see [chapter 12](#) of *Odgers’ Australian Senate Practice*). The relevance rule has always been interpreted liberally. Rulings of the President of the Senate since the early 1900s have rejected the British precedents which require amendments to be consistent with the scope and principle of the bill as agreed at the second reading.

Where there are several sets of circulated amendments for a particular bill, the Table Office prepares a **running sheet**, or marshalled list of amendments, for the guidance of the chair and those senators participating in the committee of the whole stage. Running sheets provide a suggested order of proceeding and also highlight where circulated amendments may conflict with one another and if amendments are consequential on others being agreed to.

### Proceedings in committee of the whole

[Standing order 117](#) prescribes the order in which bills are to be considered. This is the clause-by-clause method which, in practice, is almost never followed. Most bills are instead “taken as a whole”, meaning that the entire bill is before the committee and available for amendment, not necessarily in a sequential manner. This method provides maximum flexibility, particularly in so-called amending bills where the amendments to principal legislation are contained in schedules appended to the body of the bill (and which, under the clause-by-clause method, would be dealt with in a single block).

When a bill is taken as a whole, the chair puts the question on each amendment, or group of amendments, or on each amendment to an amendment. When all amendments have been dealt with, the final question is “That the bill, as amended, be agreed to” or, if no amendments have been moved or successful, “That the bill stand as printed”. Only one amendment may be before the chair at a time, but, in practice, amendments are frequently moved together in groups by leave (unanimous consent of senators present).

The question on an amendment to **delete** a clause, item or proposed new section (or a larger unit such as a Subdivision, Division, Part or Schedule) is put in the form “That the [unit] stand as printed”. This is designed to test whether the unit has majority support. An equally divided vote on that question results in it being decided in the negative and the unit being removed from the bill. If, on the other hand, the question took the form of “That the amendment [to omit the unit] be agreed to”, an

equally divided vote would result in that **question** being lost and a unit which did **not** have majority support remaining in the bill. Amendments of this type are always drafted in the form, “[unit], **to be opposed**” and are always put by the chair separately from other amendments. Note, however, that this practice does not apply to requests for amendments which must be supported by a majority (see below and [Guide No.3—Voting in the Senate](#)).

## Requests

The Senate sometimes **requests** the House of Representatives to make amendments that the Senate is prevented by the Constitution from making itself. Under [section 53](#) of the Constitution, the Senate may not amend:

- a bill imposing taxation; or
- a bill appropriating money for the ordinary annual services of government.

Any amendments proposed by the Senate to such bills must take the form of requests.

In addition, the Senate may not amend a bill “so as to increase any proposed charge or burden on the people”. Such amendments must also take the form of requests.

The interpretation of this provision is not entirely settled. As it refers to “proposed laws” it cannot be interpreted by the High Court.

In June 2000, the Senate agreed to an order requiring any circulated requests to be accompanied by a statement explaining why the amendments had been framed as requests and a statement by the Clerk of the Senate on whether the amendments would be regarded as requests under the precedents of the Senate. The former statement is prepared by the Office of Parliamentary Counsel (the government drafters) for government ministers’ requests and by the Clerk Assistant (Procedure) for non-government senators’ requests.

Requests may be made at **any** stage during consideration of a bill. The third reading of bills to which requests have been made is deferred until the House of Representatives responds and the Senate accepts the House’s response.

## What happens when the Senate amends a bill?

When the Senate amends a bill introduced in the House of Representatives, the Senate returns the bill to the House with a list (or *schedule*) of the amendments it has made and asks the House to agree to them. The House may accept or reject the amendments, amend them or agree to substitute amendments. Unless the House accepts the amendments, the bill is returned to the Senate seeking the Senate’s agreement to the action taken by the House. The Senate may agree, or insist on its original amendments or make substitute amendments. Areas of the bill that have been agreed to by both Houses may not be revisited except to make amendments that are consequential on the House’s rejection of the Senate’s amendments. These negotiations between the Houses (in the form of *messages*) are dealt with in committee of the whole to provide maximum procedural flexibility, and the same process is followed with requests.

When the Senate amends a bill introduced first in the Senate, the amendments are incorporated into the bill which is reprinted before being sent to the House for agreement. This is known as a *third reading print* and the cover of the bill indicates that it is “as read a third time”. Any disagreements about amendments then made by the House are handled in the manner described above.

When both Houses have agreed to the bill in identical terms, perhaps after several rounds of negotiations, the bill is assented to. If agreement cannot be reached, the bill may be laid aside. For possible consequences of failure to agree, see [section 57](#) of the Constitution which provides for the dissolution of both Houses and convening a joint sitting under certain circumstances.

## 5 Common questions about legislation

Q: When can the first reading of a bill be debated?

A: When the bill is one which the Senate may not amend under section 53 of the Constitution; that is, a bill imposing taxation or a bill appropriating money for the ordinary annual services of government. The relevance rule does not apply to the debate and any matters may be canvassed. This opportunity is seldom used because there are now so many other opportunities for senators to raise general issues in the Senate (for example, through notices of motion, senators' statements, matters of public importance or urgency, the adjournment debate or debate on relevant documents or reports).

Q: When does an Act take effect?

A: Each Act has a commencement provision that specifies when it will take effect. The most common options for commencement are:

- on assent
- on a specified day or date
- immediately after a specified event (such as the commencement of another Act); or
- on a date to be fixed by Proclamation.

If an Act is silent about its commencement, the *Acts Interpretation Act 1901* provides that the Act comes into effect on the twenty-eighth day after it is assented to. In practice, this no longer occurs.

The Scrutiny of Bills Committee keeps a close watch on Acts commencing on a date to be fixed by proclamation, to safeguard against the intentions of the legislature being overridden by the failure of the executive to advise the Governor-General about the proclamation of Acts. Common practice is for such provisions to be drafted to provide for a 6-month period after assent, after which, if no proclamation is made, the Act is taken to have commenced (or to have been repealed). If there is no such provision, or if the period allowed is longer than 6 months without adequate explanation, the Scrutiny of Bills Committee invariably seeks an explanation from the relevant minister and reports on the matter to the Senate. The Government presents a report annually to the Senate, listing Acts or parts of Acts which have not yet been proclaimed, and giving reasons for non-proclamation.

Q: Where can I get online copies of bills etc?

A: Bills are available online under “[Parliamentary Business](#)” by choosing [Bills and Legislation or on ParlWork](#). By following the links on these pages, you can access a ‘homepage’ for each bill, containing:

- the text of the bill
- the explanatory memorandum
- second reading speeches
- the text of any circulated amendments; and
- the schedule of amendments (a list of amendments agreed by one House for consideration of the House in which the bill originated).

Links to the pages for individual bills are also available on the Dynamic Red and the Senate daily and weekly summaries (See [Guide No. 1](#)—Senate business documents). Paper copies may be obtained from the Table Office.

Q: When will running sheets be available?

A: Running sheets are prepared by the Senate Table Office only if complex amendments are circulated by two or more senators. The earlier amendments are circulated, the more time the Table Office has to draw up the running sheet.

Running sheets do not take account of uncirculated amendments even if they may have been provided to the Table Office under embargo. Where possible, running sheets are revised as new amendments are circulated. Running sheets are made available via links on the Dynamic Red. Copies may also be obtained from the Table Office or the Chamber Attendants.

Q: Where can I find out more about amendments, requests and section 53?

A: *Odgers' Australian Senate Practice*, [Chapter 13](#).

Procedure Committee, First Report of 1996, Parliamentary Paper 194/1996.

## Need assistance?

For information about the progress of bills, see the [Senate daily and weekly summaries](#), and the [Senate Bills List](#).

Ministers and their staff should contact the Clerk Assistant (Table) on extension 3020 or [ca.table.sen@aph.gov.au](mailto:ca.table.sen@aph.gov.au). Non-government senators and their staff should contact the Clerk Assistant (Procedure) on extension 3380 or [ca.procedure.sen@aph.gov.au](mailto:ca.procedure.sen@aph.gov.au).

For general advice and documents contact the Senate Table Office on extensions 3010.

.....

Last reviewed: July 2022