10 *Legislation*

CONSTITUTIONAL PROVISIONS

The Constitution vests the legislative power of the Commonwealth in the Federal Parliament, consisting of the Queen represented by the Governor-General, the Senate and the House of Representatives.[1] The making of a law may be subject to complicated parliamentary and constitutional processes but its final validity as an Act of Parliament is dependent upon the proposed law being approved in the same form by all three elements which make up the Parliament.[2]

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

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

- financial or money bills (*see* Chapter on 'Financial legislation');
- assent to bills (*see* page 403);
- bills to alter the Constitution (*see* page 386); and
- disagreements between the Houses (*see* Chapter on 'Disagreements between the Houses').

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

BILLS—THE PARLIAMENTARY PROCESS

The normal flow of the legislative process is that a bill (a draft Act, or, in the terminology of the Constitution, a proposed law) is introduced into one House of Parliament, passed by that House and agreed to (or finally agreed to when amendments are made) in identical form by the other House. At the point of the Governor-General's

1 Constitution, ss. 1 and 2—*see also* Ch. on 'The Parliament and the role of the House'.
2 An Act to alter the Constitution must also have the approval of the electors (Constitution, s. 128). *See* Ch. on 'The Parliament and the role of the House'.
3 *See* particularly Constitution, ss. 49, 50, 52 and Ch. on 'The Parliament and the role of the House'.

assent a bill becomes an Act of the Parliament.[4] (The legislative process is presented in diagrammatic form on the back inside cover.)

In the House of Representatives all bills are treated as 'public bills'—that is, bills relating to matters of public policy. The House of Representatives does not recognise what in the United Kingdom and some other legislatures are called 'private bills'[5]—that is, bills for the particular interest or benefit of any person or persons, public company or corporation, or local authority. Hence there is also no recognition of what are termed 'hybrid bills'—that is, public bills to which some or all of the procedures relating to private bills apply.[6]

On average, about 200 bills have been introduced into the Parliament each year in recent years (the figure for 2011 was 265). Of these roughly 90 per cent (84 per cent in 2011) have usually originated in the House of Representatives.[7] Approximately 80 per cent (72 per cent in 2011) of all bills introduced into the Parliament finally become Acts.[8] The consideration of legislation takes up some 55 per cent of the House's time (49 per cent in 2011).

Provided the rules relating to initiation procedures are observed any Member of the House may introduce a bill. Until more recent times there were only limited opportunities for private Members to introduce bills, but in 1988 new arrangements were adopted and more opportunities became available (*see* Chapter on 'Non-government business').

Form of bill

The content of a bill is prepared in the exact form of the Act it is intended to become.[9] Bills usually take the form described below, although it should be noted that not all the parts are essential to every bill. The parts of a bill appear in the following sequence:

Long title

Every bill begins with a long title which sets out in brief terms the purposes of the bill or may provide a short description of the scope of a bill. The words commencing the long title are usually either 'A Bill for an Act to . . .' or 'A Bill for an Act relating to . . .'. The term 'long title' is used in distinction from the term 'short title' (*see* page 346). A procedural reference to the 'title' of a bill, without being qualified, may be taken to mean the long title. The long title is part of a bill and as such is capable of amendment[10] and must finally be agreed to by each House. The long title of a bill is procedurally significant. Standing orders require that the title of a bill must agree with its notice of

4 The texts of Acts (the laws of the Commonwealth) are found in annual volumes, in consolidations in pamphlet form, and in electronic form—the Attorney-General's Department's ComLaw database is accessible online at http://www.comlaw.gov.au.

5 As distinct from a private Member's bill.

6 *May,* 24th edn, p. 525.

7 Due principally to the fact that the majority of Ministers are Members of the House and also to the House's constitutional predominance in financial matters.

8 For the number of bills introduced and Acts passed by Parliament since 1901 *see* Appendix 17. The high level of legislation of the Australian Parliament compared, for example, with the United Kingdom and Canadian Parliaments, is due in part to the constitutional requirement (s. 55) of separate taxing bills for each subject of taxation and the federal nature of the Parliament.

9 'Bill' is thought probably to be a derivative of medieval Latin 'Bulla' (seal) and meaning originally a written sealed document, later a written petition to a person in authority and, from the early 16th century, a draft Act. The process of petitioning the King preceded Parliament. However the increasing part played by the Commons in making statutes was affected by a development of the procedure relating to petitions: the King's reply was entered on the back of the petition and judges turned into statutes such of the Commons requests as were suitable by combining a petition with its response. *See* Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, pp. 10–14, 22–25. The basis for discussion later moved from requests to draft proposals, *see* Josef Redlich, *The procedure of the House of Commons*, vol. I, Archibald Constable, London, 1908, p. 16 (summarised in Mark McRae (ed.) *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory* (2009), p. 192).

10 E.g. VP 1993–95/1936;VP 1996–98/258, 2062; H.R. Deb. (17.9.2002) 6515.

presentation, and every clause must come within the title.[11] In 1985 and 2002 bills were withdrawn when it was discovered that the long title on the introduced copy was different from the notice—immediately afterwards replacement bills with the correct long title were presented by leave.[12] In 1984 a bill was withdrawn as not all the clauses fell within the scope of the bill as defined in the long title.[13] Difficult questions can arise in this area.[14] A long title which is specific and limited in scope is known as 'restricted', and one which is wide in scope as 'unrestricted'. This distinction has significance in relation to relevance in debate on the bill (*see* page 364) and to the nature of amendments which can be moved to the bill (*see* page 376).

Preamble

Like the long title, a preamble is part of a bill, but is a comparatively rare incorporation. The function of a preamble is to state the reasons why the enactment proposed is desirable and to state the objects of the proposed legislation.

The *Australia Act 1986* contains a short preamble stating that the Prime Minister and State Premiers had agreed on the taking of certain measures (as expressed in the Act's long title) and that in pursuance of the Constitution the Parliaments of all the States had requested the Commonwealth Parliament to enact the Act. The *Norfolk Island Act 1979*, the *Native Title Act 1993*, and the *Natural Heritage Trust of Australia Act 1997* are examples of Acts with longer preambles.

Some bills contain objects or statement of intention clauses, which can serve a similar purpose to a preamble—*see* for example clause 3 of the Space Activities Bill 1998.[15] Section 15AA of the *Acts Interpretation Act 1901* provides that in the interpretation of an Act a construction that would promote the purpose or object underlying the Act, whether expressly stated or not, must be preferred (*and see* page 409).

Enacting formula

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

> 'The Parliament of Australia[16] enacts:'

The words of enactment have changed several times since 1901. Prior to October 1990 they were:

> 'BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:'

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

> In the Constitution of the Commonwealth the old fiction that the occupant of the throne was the principal legislator, as expressed in the [United Kingdom] formula, has been disregarded; and the ancient enacting words will hereafter be replaced by words more in harmony with the practice and reality of constitutional government. The Queen, instead of being represented as the principal, or sole legislator, is now plainly stated [by section 1 of the Constitution] to be one of the co-ordinate constituents of the Parliament.[17]

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11 S.O.140(b). In the case of an appropriation bill, the long title must also agree with the title cited in the Governor-General's message recommending appropriation, *see* Ch. on 'Financial legislation'.

12 VP 1985–87/520 (2 bills); VP 2002–4/100.

13 VP 1983–84/903–4.

14 H.R. Deb. (18.5.1988) 2515–22.

15 *And see* D.C. Pearce and R.S. Geddes, *Statutory interpretation in Australia*, 6th edn, LexisNexis Butterworths, 2006, pp. 154–5.

16 For bills with a preamble, the word 'THEREFORE' is inserted here.

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

Clauses

Clauses may be divided into subclauses, subclauses into paragraphs and paragraphs into subparagraphs. Large bills are divided into Parts which may be further divided into Divisions and Subdivisions.[18] When a bill has become an Act—that is, after it has received assent—clauses are referred to as sections.

Short title

The short title is a convenient name for the Act, a label which assists in identification and indexing.[19] Clause 1 of a bill usually contains its short title, and this clause describes the measure in terms as if the bill had been enacted, for example, 'This Act may be cited as the[20] *Crimes at Sea Act 1999*'. Since early 1976 a bill amending its principal Act or other Acts has generally included the word 'Amendment' in its short title. When a session[21] of the Parliament extends over two or more calendar years and bills introduced in one year are not passed until an ensuing year, the year in the citation of the bill is altered to the year in which the bill finally passes both Houses.[22] This formal amendment may be effected before transmission to the Senate after the passing of the bill by the House (when there may be a need to reprint the bill because it has been amended by the House) or before forwarding for assent.

It is not uncommon for more than one bill, bearing virtually the same short title, to be introduced, considered and enacted during the same year.[23] In this situation the second bill and subsequent bills are distinguished by the insertion of '(No. 2)', '(No. 3)', and so on, before the year in the short title.[24] Bills dealing with matters in a common general area may be distinguished with qualifying words contained in parenthesis within the short title.[25] In both these cases the distinguishing figures or words in the short title flow to the Act itself and its citation.

On other occasions a bill may, for parliamentary purposes, carry '[No. 2]' after the year of the short title to distinguish it from an earlier bill of identical title. Identical titles may be used, for example, when it is known that the earlier bill will not further proceed in the parliamentary process to the point of enactment or when titles are expected to be amended during the parliamentary process.[26] Identical titles have also occurred when the same bills have been introduced in both Houses.[27] This distinction in numbering also becomes necessary for bills subject to inter-House disagreement, in the context of the

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

19 However, identification may not be permanent—it is possible for the short (and long) title of an Act to be amended by an amending bill. For example, the Australian Passports (Transitionals and Consequentials) Bill 2004 proposed to amend the *Passports Act 1938* 'An Act relating to Passports' to become the *Foreign Passports (Law Enforcement and Security) Act 2004* 'An Act relating to foreign passports and other foreign travel documents'.

20 Note that 'the' is not part of the short title.

21 *See* definition in Ch. on 'The parliamentary calendar'.

22 There have been exceptions to this practice. For example, the *Safe Work Australia Act 2008*, introduced in 2009 as the Safe Work Australia Bill 2008 [No. 2], and passed in 2009 (Act No. 84 of 2009), retained its original 2008 short title, as other legislation already passed referred to it under that name.

23 For the numbering of appropriation and supply bills *see* Ch on 'Financial legislation'.

24 E.g. Anti-terrorism Bill 2004 followed by Anti-terrorism Bill (No. 2) 2004. As confusion can arise when bills are not passed in the year they are introduced—for example, Taxation Laws Amendment Bill (No.7) 2002 became *Taxation Laws Amendment Act (No.2) 2003*—the Office of Parliamentary Counsel now generally prefers to avoid using identifying numbers in titles (*see* Drafting Direction 1.1 of 2006).

25 E.g. Tax Laws Amendment (Retirement Villages) Bill 2004 and Tax Laws Amendment (Superannuation Reporting) Bill 2004.

26 E.g. Safe Work Australia Bill 2008 and Safe Work Australia Bill 2008 [No. 2].

27 E.g. Wild Rivers (Environmental Management) Bill 2010 (private Member's bill) and Wild Rivers (Environmental Management) Bill 2010 [No. 2] (private Senator's bill).

constitutional processes required by sections 57 and 128 of the Constitution. There have also been '[No. 3]' bills.[28]

Commencement provision

In most cases a bill contains a provision as to the day from which it has effect. Sometimes differing commencement provisions are made for various provisions of a bill—when this is the case modern practice is to set the details out in a table. Where a bill has a commencement clause, it is usually clause 2, and the day on which the Act comes into operation is usually described in one of the following ways:

- the day on which the Act receives assent;
- a date or dates to be fixed by proclamation (requiring Executive Council action). The proclamation must be published in the Gazette. This method is generally used if it is necessary for preparatory work, such as the drafting of regulations, to be done before the Act can come into force. Proclamation may be dependent on the meeting of specified conditions;[29]
- a particular date (perhaps retrospective) or a day of a stipulated event (e.g. the day of assent of a related Act); or
- a combination of the above (e.g. sections/schedules 1 to 6 to come into operation on the day of assent, sections/schedules 7 to 9 on a date to be proclaimed).[30]

Unusual commencement dates have included:

- the day after the day on which both Houses have approved regulations made under the Act;[31]
- a 'designated day', being a day to be declared by way of a Minister's statement tabled in the House.[32]

Since 1989 it has been the general practice with legislation commencing by proclamation for commencement clauses to fix a time at which commencement will automatically take place, notwithstanding non-proclamation. Alternatively, the commencement clause may fix a time at which the legislation, if not proclaimed, is to be taken to be repealed.[33]

In the absence of a specific provision, an Act comes into operation on the 28th day after the day on which the Act receives assent.[34] This period acknowledges the principle that it is undesirable for legislation to be brought into force before copies are available to the public. Modern practice is to include an explicit commencement provision in each bill. Acts to alter the Constitution, unless the contrary intention appears in the Act, come into operation on the day of assent.

An Act may have come into effect according to its commencement clause, yet have its practical operation postponed, for example pending a date to be fixed by proclamation.[35]

28 Appropriation Bill (No. 1) 1975–76 [No. 3] and Appropriation Bill (No. 2) 1975–76 [No. 3], VP 1974–75/1067–70.

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

30 E.g. where legislation licenses a certain activity, it may be necessary to have sections authorising the issue of licences to have effect to enable licences to be obtained before the sections prohibiting the activity without a licence come into effect. *And see* VP 1996–98/2033–4.

31 *Therapeutic Goods Act 1989*.

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

33 Office of Parliamentary Counsel Drafting Instruction No. 2 of 1989. There was previously no requirement for a proclamation to be made within any particular time limit, *see* S. Deb. (24.11.1988) 2774–80. The Senate has passed an order of continuing effect requiring details of unproclaimed provisions of Acts to be regularly tabled, J 1987–89/1205.

34 *Acts Interpretation Act 1901*, s. 3A.

35 E.g. *Broadcasting and Television Amendment Act 1982*, s. 24; Gazette S298 (29.11.1983).

It is also possible for provisions to operate from a day to be declared by regulation. As regulations are subject to potential disallowance by either House, this practice may not commend itself to Governments. The Australia Card Bill 1986, having passed the House, was not further proceeded with following the threat of such a disallowance in the Senate.[36]

Activating clause

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

Definitions

A definitions or interpretation clause, traditionally located early in the bill, sets out the meanings of certain words in the context of the bill. Definitions may also appear elsewhere in a bill and for 'amending' bills will be included in schedules. At the end of some bills there may be a 'dictionary' clause defining asterisked terms cited throughout the bill.

Substantive provisions

Traditionally, the substantive provisions of bills were contained in the remaining clauses. This is still the practice in respect of 'original' or 'parent' legislation. In the case of bills containing amendments to existing Acts, the modern practice is to have only minimal provisions in the clauses (such as the short title and commencement details) and to include the substantive amendments in one or more schedules.

Schedules

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

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

36 H.R. Deb. (6.10.1987) 749.

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

Associated documentation

Bills may also contain or be accompanied by the following documentation which, although not part of the bill and not formally considered by Parliament, may be taken into account by the courts, along with other extrinsic material, in the interpretation of an Act (*see* page 409).

TABLE OF CONTENTS

Since 1995 a table of contents has been provided for all bills.[37] This table lists section/clause numbers and section/clause headings under Part and Division headings. The Table of Contents remains attached to the front of the Act.

HEADINGS AND NOTES

Previously, elements such as marginal notes, footnotes, endnotes and clause headings were not taken to be part of the bill. Following amendments to the Acts Interpretation Act in 2011, all material from and including the first clause of a bill to the end of the last schedule to the bill is now considered to be part of the bill.[38]

EXPLANATORY MEMORANDUM

An explanatory memorandum is a separate document presenting the legislative intent of the bill in terms which are more readily understood than the bill itself. A memorandum usually consists of an introductory 'outline' of the general purposes of the bill and 'notes on clauses' which explain the provisions of each clause. When a number of interrelated bills are introduced together their explanatory memorandums may be contained in the one document.

Originally explanatory memorandums were prepared for certain complex bills only. These were circulated in the Chamber, but not presented to the House and thus not recorded in the Votes and Proceedings. Since 1983 it has been standard practice for departments to prepare explanatory memorandums for all government bills.[39] The practice (but not initially a standing orders requirement) of presenting explanatory memorandums formally was introduced in 1986 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 *Acts Interpretation Act 1901* which provided, among other things, that in the interpretation of a provision of an Act, consideration may be given to an explanatory memorandum.[40] Since 1994 the standing orders have required a Minister presenting a bill, other than an appropriation or supply bill, to present a signed explanatory memorandum.[41]

37 Office of Parliamentary Counsel Drafting Direction No. 9 of 1995.

38 *Acts Interpretation Act 1901*, s. 13. The reasoning behind the traditional position was that historically such elements were added by the printer following passage.

39 For a more detailed history see *'Was there an EM?'—Explanatory memoranda and explanatory statements in the Commonwealth Parliament,* Parliamentary Library research brief, no. 15, 2004–05. An index to pre–1983 EMs (and this research brief) can be found on the Parliamentary Library's website.

40 *Acts Interpretation Act 1901*, s. 15AB. *See also* 'Interpretation of Acts' at page 409. Under the *Evidence Act 1905*, Votes and Proceedings, Senate Journals, and papers presented in the Parliament could be admitted, on their mere production, as evidence in court. (The relevant Act is now the *Evidence Act 1995*).

41 S.O. 141(b). The EM is now presented when the bill is introduced (House bills) or immediately before the Minister moves the 2nd reading (Senate bills); before 2006 it was presented at the end of the Minister's second reading speech. In 2008, for the first time, explanatory memorandums were presented for appropriation bills.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Since 2012 it has been a legislative requirement that all bills and disallowable legislative instruments must be accompanied by a Statement of Compatibility with Human Rights, containing an assessment of whether the legislation is compatible with rights and freedoms recognised or declared by international treaties which Australia has ratified. The Member responsible for introducing a bill (including a private Member's bill) must cause the statement to be prepared and to be presented to the House.[42] Generally such statements have been incorporated into the bill's explanatory memorandum, but they may also be presented separately.

COMPARATIVE MEMORANDUM (BLACK TYPE BILL)

A comparative memorandum is occasionally produced for the benefit of Members debating a bill.[43] This is a document that sets out the text of a principal Act as it would appear if a proposed amending bill were to be passed, and identifies the additions or deletions proposed to be made. Alternatively, it may set out differences between a current bill and an earlier version of the bill, or between a bill as introduced and as proposed to be amended. The term 'black-type bill' derives from the practice that new material is shown in bold type.

Preparation of bills—the extra-parliamentary process

Government bills usually stem either from a Cabinet instruction that legislation is required (that is, Cabinet is the initiator) or from a Minister with the advice of, or on behalf of, his or her department seeking (by means of a Cabinet submission) approval of Cabinet. The pre-legislative procedure in the normal routine,[44] regardless of the source of the legislative proposal, is that within five working days of Cabinet approval for the legislation being received by the sponsoring department, or within 10 working days if Cabinet has required major changes to be made to the original proposals, final drafting instructions must be lodged with the Office of Parliamentary Counsel[45] by the sponsoring department. Parliamentary Counsel drafts the bill and arranges for its printing.[46]

A copy of the draft bill is provided to the sponsoring department for its clearance, in consultation with other interested departments and instrumentalities, and the Minister's approval. During these processes government party committees may be consulted. The procedures for such consultation vary, depending on the party or parties in government. When a proposed bill is finally settled, Parliamentary Counsel orders the printing of sufficient copies of the bill in the form used for presentation to Parliament and arranges for their delivery under embargo to staff of the House or the Senate.[47]

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42 *Human Rights (Parliamentary Scrutiny) Act 2011*.

43 Most recently in 1989, *see* H.R. Deb. (5.9.2005) 139. *See also 'Was there an EM?'* op cit.

44 In the case of emergency or urgent legislation the normal steps in the extra-parliamentary legislative process may not be observed. For further information on the pre-legislative process *see Legislation handbook*, Department of the Prime Minister and Cabinet, Canberra, 2000.

45 The Office of Parliamentary Counsel, under the *Parliamentary Counsel Act 1970*, is under the control of the First Parliamentary Counsel and is within the Attorney-General's portfolio. The office is responsible for the drafting of bills for introduction into either House of the Parliament and amendments of bills, and other related functions.

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

47 On occasion, when there has been insufficient time for a bill to be printed, Parliamentary Counsel has faxed a copy of the bill to the House, where photocopies have been made for the Minister to present and for circulation to Members. E.g. Remuneration and Allowances Bill 1990, Remuneration and Allowances Amendment Bill 1990 and Remuneration and Allowances (Amendment) Bill 1990—VP 1990–93/123–4; 129–30; 133–4.

The Government's *Legislation handbook* states that draft bills and all associated material are confidential to the Government and may not be made public before their introduction to the Parliament, unless disclosure is authorised by Cabinet or the Prime Minister.[48] Occasionally the Government may publish a draft bill and explanatory memorandum as an 'exposure draft' prior to its introduction to the Parliament.[49]

Synopsis of major stages

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

- Initiation (S.O.s 138–140);
- First reading[50] (S.O. 141);
- Possible referral to the Federation Chamber for second reading and consideration in detail stages (S.O. 143(a));
- Possible referral to a standing or select committee for advisory report (S.O. 143(b));
- Report from standing or select committee (if bill referred) (S.O. 144);
- Second reading (S.O.s 142, 145–146);
- Announcement of any message from the Governor-General recommending appropriation (S.O. 147);
- Consideration in detail (S.O.s 148–151);
- Report from Federation Chamber and adoption (for bills referred to the Federation Chamber) (S.O.s 152–153);
- Reconsideration (possible) (S.O. 154);
- Third reading (S.O. 155);
- Transmission to the Senate for concurrence (S.O. 157);
- Transmission[51] or return of bill from the Senate with or without amendment or request (S.O.s 158–165);
- Presentation for assent (S.O.s 175–177).

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

Initiation: Bills are initiated in one of the following ways:

- *On notice*—The usual method of initiating a bill is by the calling on of a notice of intention to present the bill. The notice is prepared by the Office of Parliamentary Counsel, usually concurrently with the preparation of the bill. The notice follows a standard form:

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

  The long title contained in the notice must agree with the title of the bill to be introduced. The notice must be signed by the Minister who intends to introduce the bill or by another Minister on his or her behalf. As with all notices, the notice of presentation must be given by delivering it in writing to the Clerk at the Table.

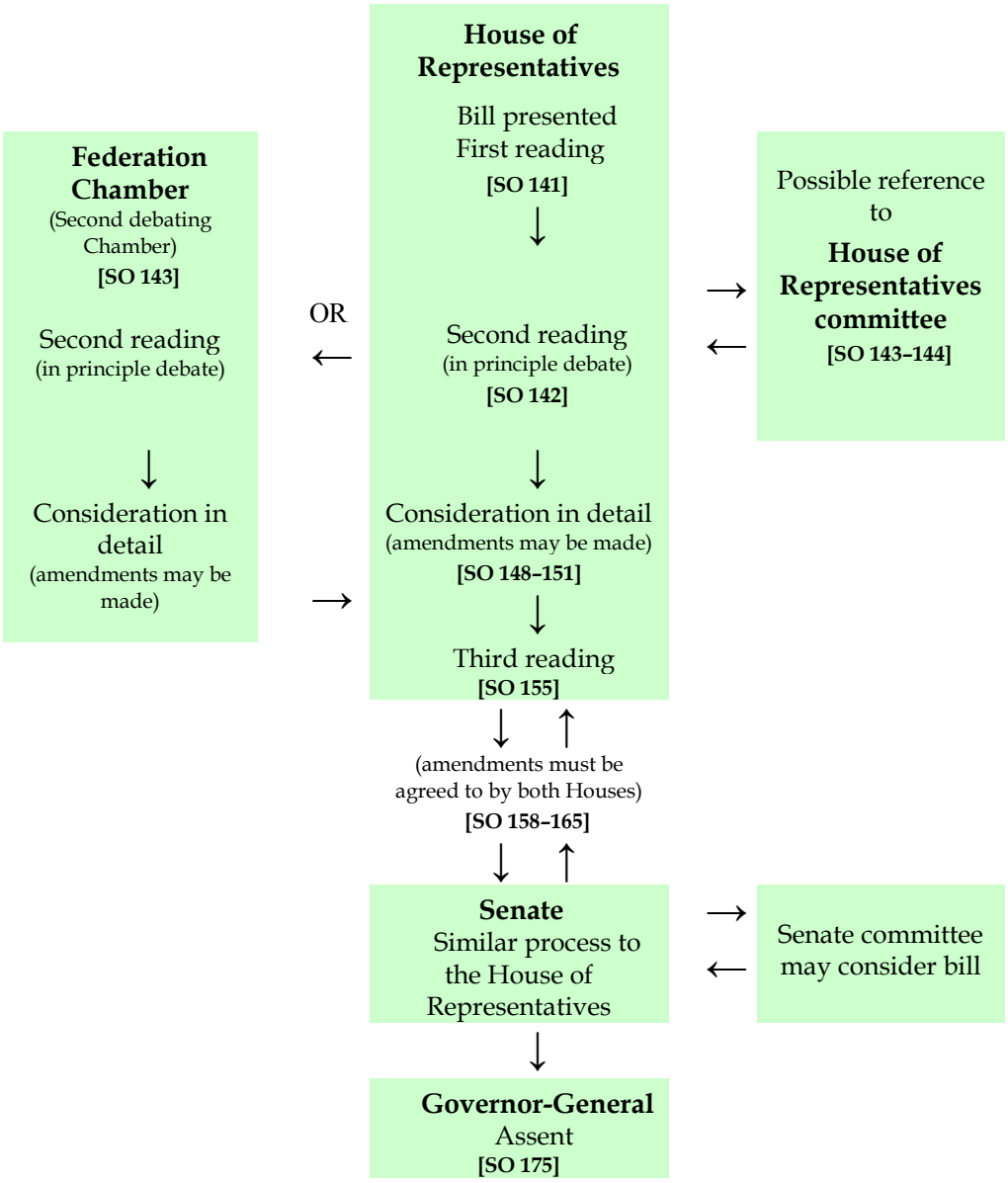
48 *Legislation handbook*, Department of the Prime Minister and Cabinet, Canberra, 2000, p. 38.

49 Exposure drafts of bills may be referred to a parliamentary committee, e.g. Exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, VP 2004–07/553.

50 The origin of the practice of reading a bill three times is obscure. Campion states that by 1580 it was already the usual (but not uniform) practice of the House to read a bill three times. Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 22.

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

Stages a House bill goes through



- *Without notice*—In accordance with the provisions of standing order 178, appropriation or supply bills or bills (including tariff proposals) dealing with taxation may be presented to the House by a Minister without notice—*see* Chapter on 'Financial legislation'.
- *On granting of leave by the House*—On occasions a bill may be introduced by the simple granting of leave to a Minister to present the bill.[52]
- *Senate bills*—A bill introduced into and passed by the Senate is conveyed to the House under cover of a message transmitting the bill for concurrence. The bill is, in effect, presented to the House by the Speaker's action of reading out the message.
- *Private Members' bills intended for the Federation Chamber*—If on Mondays the Speaker presents a bill for which notice has been given by a private Member, the first reading (later that day) is deemed to stand referred to the Federation Chamber.[53]

Standing order 138 also provides for initiation by order of the House. This procedure is no longer used.[54]

First reading: This is a formal stage only. On presentation of a bill the long title only is read immediately by the Clerk, and no question is proposed.[55]

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

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

Third reading: At this stage the bill can be reviewed in its final form after the shaping it may have received at the detail stage. When debate takes place, it is confined strictly to the contents of the bill, and is not as wide-ranging as the second reading debate. When a bill has been read a third time, it has passed the House.[56]

Classification of bills

Bills introduced into the House may, for procedural purposes, be described as follows:

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

52 E.g. VP 1978–80/1502; VP 1996–98/351; VP 2002–04/1642; VP 2008–10/989.

53 S.O. 41(d). This procedure was adopted in 2008 when a period on Monday evenings in the Main Committee (Federation Chamber) for committee and private Members' business was introduced, as a way of circumventing the constraint that business could not be initiated in the Main Committee.

54 Background information on these earlier provisions may be found in previous editions.

55 A Member presenting a private Member's bill may make a short statement at this time, *see* p. 385.

56 S.O. 155(c).

TABLE 10.1 PROCEDURES APPLYING TO DIFFERENT CATEGORIES OF BILLS

Description	*Special nature*	*Provisions of Constitution and standing orders relevant to class* [1]	*Major stages followed in respect of class* [2]
ORDINARY *Examples* Acts Interpretation Bill, Trade Practices Bill, Parliamentary Papers Bill.	Bills that: (a) do **not** contain words which appropriate the Consolidated Revenue Fund; (b) do **not** *impose* a tax; and (c) do **not** have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation in an Act.	Constitution ss. 53, 57, 58, 59, 60. S.O.s 138–164, 174–176.	*Initiation* on notice of intention to present; sometimes by leave; bills dealing with taxation may be presented without notice. Explanatory memorandum presented. *First reading*; Clerk reads title; no debate allowed. *Second reading* moved immediately (usually); Minister makes second reading speech; debate adjourned to a future day. Bill may be referred to Federation Chamber for remainder of second reading and detail stage, or to a standing or select committee for an advisory report. Second reading debate resumed; reasoned amendment may be moved; second reading agreed to; Clerk reads title. *Consideration in detail* immediately following second reading. Amendments may be made. (*Report* by Federation Chamber to House, if bill referred; House adopts report.) *Third reading* moved; may be debated; agreed to; Clerk reads title. Message sent to Senate seeking concurrence. NOTE: Detail stage is often bypassed.
SPECIAL APPROPRIATION *Examples* (a) States Grants Bill; (b) An amending Judiciary Bill to alter the remuneration of Justices as stated in the principal Act.	Bills that: (a) contain words which appropriate the Consolidated Revenue Fund to the extent necessary to meet expenditure under the bill; or (b) while not in themselves containing words of appropriation, would have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation in an Act.	Constitution ss. 53, 56. S.O.s 147, 180–182.	*Initiation* on notice of intention to present, sometimes by leave. Proceedings same as for ordinary bills except that immediately following second reading— **Message from Governor-General recommending appropriation for purposes of bill is announced and if required in respect of anticipated amendments to be moved during detail stage, a further message for the purposes of the proposed amendments is announced.** Subsequent proceedings same as for ordinary bills.

APPROPRIATION AND SUPPLY *Examples* Appropriation Bills (No. 1) and (No. 2) Supply Bills (No. 1) and (No. 2).	Appropriation Bills appropriating money from the Consolidated Revenue Fund (usually) for expenditure for the year. If necessary, Supply Bills appropriating money from the Consolidated Revenue Fund to make interim provision for expenditure for the year pending the passing of the Appropriation Bills.	Constitution ss. 53, 54, 56. S.O.s 165, 178, 180(b).	**Message from Governor-General recommending appropriation announced prior to introduction. If required a further message for the purposes of proposed amendments is announced prior to consideration in detail**. *Initiation* **without notice**. Proceedings otherwise same as for ordinary bills other than for sequence in detail stage.
TAXATION *Examples* Income Tax Bills and Customs and Excise Tariff Bills.	Bills imposing a tax or a charge in the nature of a tax.	Constitution ss. 53, 55. S.O.s 165, 178, 179.	*Initiation* **without notice**. Proceedings same as for ordinary bills. **Only Minister may move amendments to increase or extend taxation measures.** NOTE: Governor-General's message **is not** required.
CONSTITUTION ALTERATION *Example* Constitution Alteration (Establishment of Republic) 1999.	Bills to alter the Constitution.	Constitution s. 128. S.O. 173	Same as for ordinary bills but **with additional requirement for bill to be passed by absolute majority**.
SENATE INITIATED *Examples* Same as for ordinary bills.	Same as for ordinary bills.	Constitution s. 53. S.O.s 166–171.	**Message from Senate reported transmitting bill to House for concurrence**. First reading; second reading moved; debate adjourned. Subsequent proceedings same as for ordinary bills. (Senate bills sometimes referred to Federation Chamber before moving of second reading.) **Message sent to Senate notifying House agreement or, if amended, seeking Senate concurrence in amendments**.

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

The procedures in the House for all bills have a basic similarity. The passage of a bill is, unless otherwise ordered, always in the stages of first reading, second reading, consideration in detail and third reading. For the purposes of this text procedures common to all classes of bills are described in detail under ordinary bills. As is evident in Table 10.1, significant variations or considerations apply to bills in other categories and they are described when that category is examined.

Ordinary bill procedure

'Ordinary' bills for procedural purposes are those which:

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

Initiation and first reading

Ordinary bills are usually introduced by notice of intention to present or sometimes by leave.[57] Ordinary bills 'dealing with taxation' may be introduced without notice.[58] When the notice of intention to present the bill is called on by the Clerk, the Minister (or Parliamentary Secretary[59]) in charge of the bill rises and says 'I present the [short title of bill]'. The Minister then hands a signed[60] copy of the bill to the Clerk. This copy becomes the 'original' or 'model' copy of the bill.

It is the practice of the House that another Minister may present a bill for a Minister who has given notice.[61] When the notice is called on by the Clerk, the Minister who is to present the bill rises and says 'On behalf of the . . . , I present the [short title]'.[62]

There is no requirement for a Minister (or any Member) introducing a bill to present a printed copy. The standing order requires only that a legible copy signed by the Minister be presented to the House. Nevertheless printed copies are usually available when the bill is introduced. Immediately after presenting the bill the Minister presents the bill's explanatory memorandum.[63]

The Clerk, upon receiving the copy of the bill from the Minister and without any question being put,[64] formally reads the bill a first time by reading its long title.[65] Once a bill is presented, it must be read a first time.[66] The long title of the bill presented must

57 On occasion following suspension of standing orders when leave has not been obtained, e.g. VP 2002–2004/147–9; VP 2004–07/2086.

58 S.O. 178.

59 As in other procedures of the House unless otherwise stated all references to a Minister in the following text can be taken to include a Parliamentary Secretary.

60 S.O. 140(a).

61 E.g. VP 1998–2001/925.

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

63 S.O. 141(b). Prior to 2006 the EM was presented after the second reading speech.

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

65 S.O. 141.

66 H.R. Deb. (28.3.1973) 809.

agree with the title used in the notice of intention to present, and every clause of the bill must come within its title.[67] Any bill presented and found to be not prepared according to the standing orders shall be ordered to be withdrawn.[68]

Bills have been withdrawn because:

- the long title did not agree with the long title given on the notice of presentation;[69]
- several clauses did not come within its long title;[70] and
- the long title described in the Governor-General's message recommending appropriation did not agree with the long title.[71]

A bill is not out of order if it refers to a bill that has not yet been introduced,[72] and a bill may be introduced which proposes to amend a bill not yet passed.[73]

As no question is proposed or put, no debate can take place at the first reading stage. However, special provisions apply to the first reading of private Member's bills and the Member presenting the bill may make a statement at this time (*see* page 385).

Immediately after the first reading the usual practice is that the Minister moves that the bill be read a second time and makes the second reading speech. Copies of the bill and the explanatory memorandum are made available to Members in the Chamber. A bill is treated as confidential by the staff of the House until it is presented, and no distribution is made until that time. As soon as practicable after presentation the terms of bills and explanatory memoranda are made available on the Parliament's website.[74] Leave has been given for the presentation of a replacement copy of a bill after it was learnt that there were printing errors in the copy presented originally.[75]

The application of the same motion rule to bills

The Speaker has the discretionary power under standing order 114(b) to disallow any motion which he or she considers is the same in substance as any question already resolved during the same session. Proceedings on a bill are taken to be 'resolved' in this context when a decision has been made on the second reading, and the rule does not prevent identical bills merely being introduced. Sections 57 (double dissolution) and 128 (constitution alteration) of the Constitution, relating to the resolution of disagreements between the Houses, provide for the same bills to be passed a second time after an interval of three months.[76] These provisions override the standing order.[77]

In using his or her discretion in respect of a bill the Speaker would pay regard to the purpose of the rule, which is to prevent obstruction or unnecessary repetition, and the reason for the second bill. Hence, in addition to the cases provided for in the Constitution, a Speaker might not seek to apply the rule to cases arising from Senate disagreement, and

67 S.O. 140(b).
68 S.O. 138.
69 VP 1985–87/520; VP 2002–04/100.
70 VP 1983–84/903–4.
71 VP 1934–37/306–9. The States Grants (Administration of Controls Reimbursement) Bill 1951 was not introduced as intended on 26 September 1951, as a check indicated that the long title did not agree with the terms of the Administrator's message. A new message was prepared and the bill introduced on the next day, VP 1951–53/86, 106.
72 H.R. Deb. (26.9.1924) 4846.
73 E.g. the Conciliation and Arbitration Bill (No. 2) 1951, 'A Bill for an Act to amend the *Conciliation and Arbitration Act 1904–1950*, as amended by the *Conciliation and Arbitration Act 1951*', which was introduced in the House on 14 March 1951 (VP 1950–51/327), when the Conciliation and Arbitration Bill 1951 was with the Senate (passed by the House on 9 March, VP 1950–51/319–20, and introduced in the Senate on 15 March, J 1950–51/226).
74 http://www.aph.gov.au
75 VP 1993–95/2241.
76 In each case, the second time a bill is presented it may in certain circumstances include amendments made or agreed to.
77 VP 1950–51/189.

in the normal course of events it is only on such occasions that a bill would be reintroduced in the House and passed a second time.[78] For example, there have been occasions when the Senate has rejected bills transmitted from the House,[79] or delayed their passage,[80] and the House has again passed the bills without waiting the three months period. In one case the standing order providing for the same motion rule was suspended,[81] although in view of the Speaker's discretion in this matter the suspension may not have been necessary. It is also possible that a bill could seek to reintroduce provisions of a bill previously passed by the House but subsequently deleted from the bill by Senate amendment.[82]

Although there is no record of a motion on a bill being disallowed under the same question rule, in some circumstances the operation of the rule would be appropriate. In 1982 two identical bills were listed on the Notice Paper as orders of the day, one a private Member's bill and the other introduced from the Senate. Had either one of the bills been read a second time, or the second reading been negatived, any further consideration of the other bill would have been preventable under the same question rule, but in the event neither bill was proceeded with.[83]

A number of private Members' bills which have lapsed pursuant to the provisions of standing order 42 have been put forward again. As no resolution had been reached on the previous occasion, the same motion rule was not applicable.[84]

Referral to Federation Chamber

After the first reading but before the debate on the motion for the second reading is resumed, a motion may be moved without notice to refer the bill to the Federation Chamber[85] for the remainder of the second reading and consideration in detail stages. Bills may be referred by motion on notice or by leave after the resumption of debate on the second reading.[86] A motion may provide for referral at a future time.[87] An amendment has been moved to a motion of referral.[88] The Chief Government Whip, pursuant to powers bestowed by standing order 116(c) in relation to the conduct of business, rather than a Minister, usually moves the relevant motion. Generally the Chief Government Whip presents a list of bills proposed to be referred and moves a single motion, by leave, that bills be referred in accordance with the list.

When these procedures were first introduced in 1994, referral occurred between the first and second reading stages. The standing order was revised in 1996 to allow, but not compel, referral following the Minister's second reading speech, and this has become the usual practice.[89] In cases where the second reading has not been moved immediately following the first reading (e.g. bills introduced from the Senate), bills have continued to

78 And, on occasion, a third time. For numbering in the short title of such bills, *see* p. 346.
79 Post and Telegraph Rates Bill 1967 [No. 2], VP 1967–68/123. The second bill was not returned from the Senate.
80 In 1975 the main appropriation bills were passed and sent to the Senate three times. The Senate eventually passed the original bills, VP 1974–75/953–6, 1015–21, 1067–70.
81 VP 1967–68/123.
82 Health Legislation Amendment Bill (No. 3) 1982; H.R. Deb. (10.11.1982) 2998.
83 Institute of Freshwater Studies Bills, 1981 and 1982.
84 E.g. VP 1990–92/1358, 1782.
85 The Main Committee was renamed the Federation Chamber from 27 February 2012 (VP 2010–12/1179).
86 A motion to refer a bill moved (without leave) after debate had been resumed on the second reading has been ruled out of order, H.R. Deb. (26.8.2002) 5659–61.
87 E.g. VP 2002–04/239, providing for referral of bills at the conclusion of further debate in the House; VP 2002–04/1459 and VP 2008–10/285, providing for referral at the adjournment of the House.
88 VP 1993–95/2456–7.
89 On occasion bills have been referred following the speech of the opposition spokesperson.

be referred between the first and second reading stages, and Ministers' second reading speeches on these bills are delivered in the Federation Chamber.[90]

Proceedings in the Federation Chamber

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

In respect of legislation, proceedings in the Federation Chamber are substantially the same as they are for the same stage in the House. A significant difference, stemming from the lack of opportunity in the Federation Chamber for divisions, is the provision for the 'unresolved question'. Proceedings on a bill may be continued regardless of unresolved questions unless agreement to an unresolved question is necessary to enable further questions to be considered. If progress cannot be made the bill is returned to the House.[91]

At the conclusion of the bill's consideration in detail the question is put, immediately and without debate, 'That this bill be reported to the House, without amendment' or 'with (an) amendment(s)' ('and with (an) unresolved question (s)'), as appropriate.[92] If the Federation Chamber does not desire to consider the bill in detail it may grant leave for the question 'That this bill be reported to the House without amendment' to be moved immediately following the second reading.[93]

A bill may be returned to the House at any time during its consideration by the Federation Chamber by any Member moving, without notice or the need for a seconder, 'That further proceedings be conducted in the House'.[94] A bill may also be recalled to the House at any time by motion moved in the House (also without notice or need for seconder).[95]

Referral to standing or select committee

Referral for advisory report

After the first reading but before the debate on the motion for the second reading is resumed, a bill may be referred by determination of the Selection Committee to a standing or joint committee for an advisory report.[96] The committee reviews bills as they are introduced and selects for referral those that it regards as controversial or as requiring further consultation or debate. The determination may specify a date by which the committee is to report to the House.[97]

90 E.g. VP 2010–12/1116.
91 S.O. 195.
92 S.O. 198.
93 S.O. 148(b).
94 S.O. 197(a). The motion is successful even if opposed (becoming an unresolved question), e.g. VP 1993–95/2477–8; 2470 (motion that further proceedings be conducted in the House moved immediately after second reading speech).
95 S.O. 197(b), e.g. VP 1998–2001/371.
96 S.O. 143(b).
97 S.O. 222(a)(iii). The Selection Committee may provide reasons for the referral or indicate issues for consideration. One member of the Selection Committee is sufficient to select a bill for referral. In July 2011 the Procedure Committee recommended that referral be by majority decision of the Selection Committee.

Bills are referred to the general purpose standing committee or to the joint committee[98] most appropriate to the subject area of the bill. The participation of Members who are interested in the bill but not on the committee is facilitated by the provision that, for the purpose of consideration of bills referred for advisory reports, one or more members of the committee may be replaced by another Member.[99] In addition the normal provision for the appointment of supplementary members to a standing committee for a particular inquiry also applies.[100]

Committee proceedings on a bill are similar to proceedings on other committee inquiries; the committee may invite submissions and hold public hearings, and may refer the bill to a subcommittee. The committee's recommendations are reported to the House[101] in the same manner as other committee reports, with committee members expecting to be able to make statements. Motions to take note of the report are not moved however, as opportunity for debate will occur during subsequent consideration of the bill if it is proceeded with.

After the committee has presented its report, and if the bill is to be proceeded with, the (remainder of the) second reading and the consideration in detail stages will follow in the House, or the bill may be referred for these stages to the Federation Chamber. The bill cannot be considered in detail until the committee has reported.[102] The time for the consideration in detail stage is set by a motion moved (without notice) by the Member in charge of the bill.[103] Although a formal government response may be presented,[104] the Government's response to an advisory report may also be given by the Minister in speaking to the bill. If the Government accepts changes to the bill recommended in the advisory report, these are incorporated into government amendments moved during the consideration in detail stage.

Although the standing orders provide for bills to be referred to a committee before the resumption of debate on the motion for the second reading, referral at other times (e.g. during debate on the second reading) may occur following a suspension of standing orders.[105]

Bill referred to select committee

Pre-2004 standing orders provided for the possible referral of a bill by the House to a select committee immediately following the second reading. No bills were so referred. However, two bills were referred to select committees following the suspension of standing orders. On the first occasion the bill was referred to a select committee during the consideration in detail stage.[106] On the other occasion a bill was referred during the

98 Provision for bills to be referred to joint committees was added in 2010 (S.O. 222). Previously standing orders had been suspended to enable bills to be so referred, e.g. VP 1993–95/2678; VP 1996–98/265, 2534 (Public Accounts); VP 1996–98/2919 (Native Title and the Aboriginal and Torres Strait Islander Land Fund); VP 2002–04/151, 1253 (ASIO, ASIS and DSD); VP 2002–04/462 (National Crime Authority). The earlier provision in S.O. 227 for reference to a committee formed of House of Representatives members of a joint committee was never used.

99 By motion moved on notice, S.O. 229(c).

100 S.O. 215(d).

101 On occasion, when in a committee's view circumstances have not warranted a printed report, an oral statement by the chair has been used to discharge a committee's requirement to provide an advisory report on a bill referred to it by the Selection Committee, e.g. H.R. Deb. (16.8.2011) 8174–6, VP 2010–12/777; H.R. Deb. (18.8.2011) 5848–9, VP 2010–12/803–4; H.R. Deb. (22.8.2011) 5737–8, VP 2010–12/815.

102 S.O. 148. This restriction applies only to bills referred under S.O. 143(b).

103 S.O. 144.

104 E.g. VP 1993–95/1151, 1318, 1963; VP 2002–04/1533.

105 E.g. VP 1993–95/921–2.

106 VP 1901–02/455, 519–20 (Select Committee on the Bonuses for Manufactures Bill).

second reading stage, immediately following the Minister's second reading speech, to a joint select committee.[107]

The terms of reference of the Joint Select Committee on Gambling Reform established in 2010 provided for the committee to inquire into and report on, among other matters, any gambling-related legislation tabled in either House, either as a first reading or exposure draft.[108] In 2011 the Joint Select Committee on Australia's Clean Energy Future Legislation was appointed to inquire into and report on the provisions of a package of 19 related bills.[109]

Bill referred directly by Minister

Standing order 215 establishing the general purpose standing committees provides for the referral, by the House or a Minister, of any matter, including a pre-legislation proposal or bill, for standing committee consideration. Bills have been referred to a committee by a Minister directly (that is, without action in the Chamber), prior to[110] or even after[111] its introduction to the House, rather than through the advisory report mechanism provided by standing order 143.

Attempted referral by second reading amendment

Proposals to refer bills to committees have been put forward in second reading amendments.[112] Such amendments have on all occasions been rejected by the House.

Second reading

The second reading is arguably the most important stage through which a bill has to pass. The whole principle of the bill is at issue at the second reading stage, and is affirmed or denied by a vote of the House.

Moving and second reading speech

Copies of a bill having been made available in the Chamber, the second reading may be moved immediately after the first reading (the usual practice) or at a later hour.[113] The arrangements for private Members' bills provide that after the first reading, the motion for the second reading shall be set down on the Notice Paper for the next sitting.[114]

On the infrequent occasions when copies of the bill are not available, leave may be granted for the second reading to be moved immediately,[115] or at a later hour that day.[116] If leave is refused, the second reading is set down for the next sitting.[117] Alternatively standing orders may be suspended to enable the second reading to be moved immediately.[118]

If the second reading is not to be moved immediately or at a later hour, a future sitting is appointed for the second reading, and copies of the bill must then be available.[119] The

107 VP 1985–87/1029; 1343, 1608 (Joint Select Committee on Telecommunications Interception)—*see* 2nd edn, p. 392.
108 VP 2010–12/51–2.
109 VP 2010–12/881–2.
110 E.g. H.R. Deb. (9.2.1995) 835.
111 E.g. H.R. Deb. (13.5.1999) 5420.
112 E.g. VP 1959–60/155, 261; VP 1961/133–4.
113 S.O. 142(a). It is sufficient that some copies are available in the Chamber, H.R. Deb. (2.11.2005) 4–5.
114 S.O. 41(c), 142(a).
115 VP 1968–69/583 (copies of the National Health Bill 1969 not available for distribution).
116 VP 1950–51/151.
117 VP 1956–57/49.
118 Either without notice, VP 1951–53/443; or pursuant to contingent notice, VP 1956–57/109.
119 S.O. 142(b).

House appoints, on motion moved by the Minister, the day (that is, the next sitting or some later date) for the second reading to be moved.[120] The motion is open to amendment and debate. An amendment must be in the form to omit 'the next sitting' in order to substitute a specific date or day. Debate on the motion or amendment is restricted to the appointment of a day on which the second reading is to be moved, and reference must not be made to the terms of the bill.[121] The second reading is set down as an order of the day on the Notice Paper for the next sitting or a specific date.[122]

During the 37th Parliament the House adopted the practice of having bills presented together with explanatory memorandums, with the second reading not being moved immediately following the first reading but being made an order of the day for the next sitting. When the order was called on on a later day, the Minister moved the second reading, delivered his or her second reading speech, and further debate followed immediately. This practice was discontinued on the recommendation of the Procedure Committee, which felt that it helped Members to have the terms of the Minister's second reading speech available when preparing their own speeches.[123]

There may be reasons, other than the unavailability of printed copies of the bill, for the second reading to be set down for a future day. The Government may want to make public the terms of proposed legislation, with a view to enabling Members to formulate their position in advance of the Minister's second reading speech and debate.[124]

The common practice, however, is for the second reading to be moved immediately after the bill has been read a first time. The terms of the motion for the second reading are 'That this bill be now read a second time'[125] and in speaking to this motion the Minister makes the second reading speech, explaining, inter alia, the purpose and general principles and effect of the bill. This speech should be relevant to the contents of the bill.[126] The time limit for the Minister's second reading speech (for all bills except the main appropriation bill for the year) is 30 minutes.[127] A second reading speech plays an important role in the legislative process and its contents may be taken into account by the courts in the interpretation of an Act (*see* page 409). Ministers are expected to deliver a second reading speech even if the speech has already been made in the Senate. It is not accepted practice for such speeches to be incorporated in Hansard.[128] At the conclusion

120 VP 1956–57/50.

121 H.R. Deb. (9.6.1903) 587.

122 NP 46 (11.2.1975) 5085.

123 PP 108 (1995), pp. 3–4.

124 H.R. Deb. (12.2.1975) 134.

125 S.O. 142(a).

126 The Deputy Speaker explained to a Minister whose second reading speech was ranging beyond the contents of a bill that a certain latitude was allowed during a second reading speech. However, when the second reading debate occurred it would be difficult for the Chair to rule against speeches made in reply to the subjects raised by the Minister, H.R. Deb. (22.2.1972) 38–41.

127 S.O. 1.

128 A few instances have occurred in conflict with this rule. On one occasion leave was granted for a Minister to incorporate a series of second reading speeches, H.R. Deb. (27.8.1980) 804–13 (this instance preceded the comprehensive position set down by Speakers Snedden and Jenkins on the incorporation of material in Hansard, H.R. Deb. (21.10.1982) 2339–40, H.R. Deb. (10.5.1983) 341–2). On one occasion, instead of a second reading speech being made in the normal manner Members were referred to the Senate Hansard, H.R. Deb. (30.11.1995) 4447, and on another a brief summary of the provisions was given and Members then referred to the Senate Hansard, H.R. Deb. (12.11.1992) 3359. On one occasion, by leave, a Minister tabled the second reading speech to a Senate bill without reading it, VP 1996–98/1824–5, H.R. Deb. (27.6.1997) 6623. On one occasion leave was granted for a Minister to incorporate a second reading speech in circumstances when a bill had been withdrawn and presented again with a change to its long title, and substantially the same speech had been made previously (the speech was also presented), H.R. Deb. (13.3.2002) 1139–42, VP 2002–04/100. On one occasion, although it was acceptable to Members present for the remainder of a Minister's speech to be tabled because of time constraints, the Deputy Speaker noted that such action would be subject to the Speaker's agreement; this was not given, and the Minister completed the speech after intervening business, H.R. Deb. (29.5.2008) 3849–50, 3853–5.

of his or her speech the Minister sometimes presents documents connected to the bill, for example, a government response to a committee report on the bill.[129] Leave is not required for this or for the presentation of replacement memorandums or corrigendums.

When the second reading has been moved immediately pursuant to S.O. 142(a), it is mandatory[130] for debate to be adjourned after the Minister's speech, normally on a formal motion of a member of the opposition executive. This motion cannot be amended or debated,[131] and as adjournment is compulsory, no vote is taken.[132] A further question is then put 'That the resumption of the debate be made an order of the day for the next sitting'. This question is open to amendment and debate, although neither is usual. An amendment must be in the form to omit 'the next sitting' in order to substitute a specific day or date, for example, 'Tuesday next'[133] or '11 December 1989'.[134] Debate on the question or amendment is restricted to the appointment of the day on which debate on the second reading is to be resumed and reference must not be made to the terms of the bill.

Resumption of debate

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

An order of the day set down for a specified day is not necessarily order of the day No. 1 for that day, nor does it necessarily mean that the item will be considered on that day.[135]

The fixing of a day for the resumption of a debate is a resolution of the House and may not be varied without a rescission (on seven days' notice) of the resolution.[136] However, a rescission motion could be moved by leave or after suspension of standing orders. In 1973 the order of the House making the second reading of a bill an order of the day for the next sitting was rescinded on motion, by leave, and the second reading made an order of the day for that sitting.[137] The purpose of fixing 'the next sitting' or a specific future day ensures that, without subsequent action by the House, the order of the day will not be called on before the next sitting or the specified day.

On occasions debate may ensue, with the leave of the House, immediately after the Minister has made the second reading speech.[138] By the granting of leave, the mandatory provision of standing order 142(a) concerning the adjournment of the debate no longer applies, and a division may be called on any subsequent motion for the adjournment of the debate.[139] Alternatively, after the second reading speech, debate may, by leave, be

129 E.g. VP 1987/1608; VP 2002–04/1533. Examples of other papers tabled at this time include VP 1998–2001/695 (regulation impact statement), 1135 (proposed amendments to guidelines and code), 2406 (draft protocol), 2583 (report of a review of the principal Act); VP 2002–04/1297–8 (brief); VP 2004–07/626 (report); VP 2010–12/742 (draft regulations).

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

131 S.O.s 78, 79.

132 VP 1968–69/117.

133 VP 1970–72/596–8.

134 VP 1978–80/1473. But see VP 2002–04/175—'resumption of the debate not occur until the House has had the opportunity to consider the following motion: . . . [condemning the Government]'.

135 NP 45 (5.12.1974) 4942. For example the House resolved on 28 November 1974 to make resumption of the second reading debate on the Family Law Bill 1974 an order of the day for 11 February 1975, VP 1974–75/383–4. The item was listed as order of the day No. 3 but was not called on, NP 46 (11.2.1975) 5085.

136 S.O. 120.

137 VP 1973–74/243.

138 E.g. VP 1978–80/1188; VP 1990–92/1963, 2001; VP 1996–98/3173; VP 2004–07/1082.

139 H.R. Deb. (21.3.1972) 906.

adjourned until a later hour on the same day that the bill is presented.[140] If leave is refused in either of these cases, the same effect can be achieved by the suspension of standing orders.[141]

If the second reading has been set down for a future sitting day, on that day the Minister makes the second reading speech when the order of the day is called on, and debate may be adjourned by an opposition Member[142] in the normal way. Alternatively, the second reading debate may proceed immediately, as the provision concerning the mandatory adjournment of debate when the second reading has been moved immediately after the first reading does not apply.

As with all adjourned debates, when an adjourned second reading debate is resumed, the Member who moved the adjournment of the debate is entitled to the first call to speak.[143] However, usually it is the opposition spokesperson on the bill's subject matter who resumes the debate, and this may not be the same Member who obtained the adjournment of the debate. On resumption of the second reading debate the Leader of the Opposition, or a Member deputed by the Leader of the Opposition—in practice a member of the opposition executive—may speak for 30 minutes. The Member so deputed, generally the shadow minister, is usually, but not necessarily, the first speaker when the debate is resumed. Other speakers in the debate may speak for 15 minutes, or for a lesser time determined by the Selection Committee.[144]

Nature of debate—relevancy

The second reading debate is primarily an opportunity to consider the principles of the bill and should not extend in detail to matters which can be discussed at the consideration in detail stage. However, it is the practice of the House to permit reference to amendments proposed to be moved at the consideration in detail stage. The Chair has ruled that a Member would not be in order in reading the provisions of a bill seriatim and debating them on the second reading,[145] and that it is not permissible at the second reading stage to discuss the bill clause by clause; the second reading debate should be confined to principles.[146]

However, debate is not strictly limited to the contents of the bill and may include reasonable reference to:

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

However, discussion on these matters should not be allowed to supersede debate on the subject matter of the bill.

When a bill has a restricted title and a limited subject matter, the application of the relevancy rule for second reading debate is relatively simple to interpret.[147] For example,

140 E.g. VP 1968–69/312; VP 2002–04/291; VP 2008–10/289, 607.
141 A contingent notice of motion usually appears on the Notice Paper to facilitate this, *see* 'Contingent notices' at page 391.
142 VP 1974–75/449.
143 S.O. 79(b); H.R. Deb. (16.9.1958) 1251.
144 This power (not exercised up to July 2012) was given to the Selection Committee when re-established in the 43rd Parliament.
145 H.R. Deb. (24.11.1920) 6906.
146 H.R. Deb. (22.11.1932) 2601.
147 H.R. Deb. (29.3.1935) 541–2.

the Wool Industry Amendment Bill 1977, the long title of which was 'A Bill for an Act to amend section 28A of the *Wool Industry Act 1972*',[148] had only three clauses and its object was to amend the *Wool Industry Act 1972* so as to extend the statutory accounting provisions in respect of the floor price scheme for wool to include the 1977–78 season. Debate could not exceed these defined limits.[149] The Overseas Students Tuition Assurance Levy Bill 1993 was a bill for an Act to allow levies to be imposed by the rules of a tuition assurance scheme established for the purposes of section 7A of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, and contained only three clauses, thus allowing only a limited scope for debate.

A more recent example of a bill with a restricted title was the Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004, the long title of which was 'A Bill for an Act to extend for 2 years the operation of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund'. It also contained only three clauses.

To a lesser extent, the relevancy rule is easily interpreted for a bill with a restricted title to amend named parts of the principal Act, even though the bill may contain a greater number of clauses than the above examples. The Speaker ruled that the scope of debate on the States Grants (Special Financial Assistance) Bill 1953 should not permit discussion of the ways in which the States might spend the sums granted, that the limits of the debate were narrow and that he would confine the debate to whether the sums should be granted or not. The Speaker's ruling was dissented from, following which the Speaker stated that the expenditure methods of the States were clearly open for discussion.[150] Examples of amending bills with restricted titles were the Ministers of State Amendment Bill 1988, the long title of which was 'A Bill for an Act to amend section 5 of the *Ministers of State Act 1952*',[151] and the Veterans' Entitlements Amendment (Male Total Average Weekly Earnings) Bill 1998, its long title being 'A Bill for an Act to amend section 198 of the *Veterans' Entitlements Act 1986* to allow increases in the rate of pension payable under paragraph 30(1)(a) of that Act to the widow or widower of a deceased veteran to take account of Male Total Average Weekly Earnings'.

When a bill has an unrestricted title, for example, the Airports Bill 1995, whose long title was 'A Bill for an Act about airports' and which contained a large number of clauses, the same principles of debate apply, but the scope of the subject matter of the bill may be so wide that definition of relevancy is very difficult. However, debate should still conform to the rules for second reading debates and be relevant to the objectives and scope of the bill. Reference may be had to the second reading speech and the explanatory memorandum to help determine the objectives and scope of a bill. General discussion of a matter in a principal Act which is not referred to in the amending bill being debated has been prevented.[152]

148 VP 1977/149.
149 H.R. Deb. (26.5.1977) 1941.
150 VP 1951–53/714; H.R. Deb. (8.10.1953) 1170.
151 H.R. Deb. (14.4.1988) 1635.
152 H.R. Deb. (19.11.1935) 1768–9.

Questions during second reading debate

In September 2010 the House adopted, as a trial, a longstanding Procedure Committee recommendation designed to encourage interactivity in debate.[153] The sessional order provided that, at the end of each Member's speech during the second reading debate of a government bill, the Member could be questioned by other Members in relation to his or her speech. The Member was not obliged to take questions, and could indicate this during his or her speech. After each speech, questions and answers could continue for up to five minutes. Each question could take up to 30 seconds and each reply up to two minutes. This provision did not apply to the Minister's second reading speech and a Minister's speech closing the debate or to the speech of the main opposition speaker.

Second reading amendment

An amendment to the question 'That this bill be now read a second time', known as a second reading amendment, may only take one of two forms—that is, a '6 months' amendment (*see* page 371) or a 'reasoned amendment'.[154]

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

RELEVANCY AND CONTENT

The standing orders[155] specify rules governing the acceptability of reasoned amendments. An amendment must be relevant to the bill.[156] In relation to a bill with a restricted title, an amendment dealing with a matter not in the bill, nor within its title, may not be moved.[157] In relation to a bill with an unrestricted title, an amendment dealing with a matter not in the bill, but which is relevant to the principal Act or to the objects of the bill as stated in its title, may be moved even though the clauses have a limited purpose.

For example, the Apple and Pear Stabilization Amendment Bill (No. 2) 1977 had as a long title 'A Bill for an Act to amend the *Apple and Pear Stabilization Act 1971*' and the object of the bill was to extend financial support to exports of apples and pears made in the 1978 export season. The bill dealt with extension of time of support only, not with the level of the support.[158] A second reading amendment to the effect that the bill be withdrawn and redrafted to increase the level of support was in order as the level of support was provided in the principal Act.[159] Even though a bill may have a very broad title, an amendment must still be relevant to the subject matter of the bill.[160] Reference

153 Sessional order 142A. *See* Standing Committee on Procedure, *Arrangements for second reading speeches*. PP 407 (2003); and *Encouraging an interactive Chamber*. PP 430 (2006). As at March 2012 the procedure had not been used.

154 S.O. 145.

155 S.O. 145.

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

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

158 VP 1977/380; H.R. Deb. (1.11.1977) 2609.

159 VP 1977/422.

160 The long title of the Child Care Payments Bill 1997 was 'A bill for an Act to provide for payments in respect of child care and related purposes'. An amendment proposed by the Leader of the Opposition was ruled out of order when the Chair upheld a point of order that the amendment did not come within the title and was not relevant to the bill, VP 1996–98/1984–6.

may be made to the Minister's second reading speech and the explanatory memorandum to clarify the scope of the bill.

The case of the Commonwealth Electoral Bill 1966 provides a good example of acceptable and unacceptable second reading amendments. The long title was 'A Bill for an Act to make provision for Voting at Parliamentary Elections by Persons under the age of Twenty-one years who are, or have been, on special service outside Australia as Members of the Defence Force'. A second reading amendment was moved to the effect that, while not opposing the passage of the bill, the House was of the opinion that the vote should be given to all persons in the 'call-up' age group. The amendment was ruled out of order by the Speaker as the broad subject of the bill related to voting provisions for members of the defence forces under 21 years, whereas the proposed amendment, relating to all persons in the 'call-up' age group regardless of whether or not they were members of the defence forces, was too far removed from the subject of the bill as defined by the long title to be permissible under the standing orders and practice of the House. Dissent from the ruling was moved and negatived.[161] Another Member then moved an amendment to the effect that, while not opposing the passage of the bill, the House was of the opinion that the vote should be given to all persons in the Defence Force who had attained the age of 18 years.[162] This amendment was permissible as the practice of the House is to allow a reasoned amendment relevant to the broad subject of the bill.

LENGTH

Although there have been some excessively long second reading amendments,[163] these are not welcomed by the Chair. Speaker Halverson ruled[164] that a second reading amendment should not be accepted by the Chair if, when considered in the context of the bill, and with regard to the convenience of other Members, it could be regarded as of undue length, and that it was not in order for a Member to seek effectively to extend the length of his or her speech by moving a lengthy amendment, without reading it, but relying on the fact that the amendment would be printed in Hansard. The Chair has directed a Member to read out a lengthy second reading amendment in full and for the time taken to do so to be incorporated into the time allocated for his speech, giving as the reason that the amendment was larger than that which would normally be accommodated and that he did not want lengthy amendments to become the norm.[165] The incorporation of an extensive quotation in a second reading amendment is not allowed.[166]

ANTICIPATION OF DETAIL STAGE AMENDMENT

A reasoned amendment may not anticipate an amendment which may be moved during consideration in detail.[167] Following a Member's explanation that an amendment had been drafted not with reference to the clause but with reference to the principle of the bill, an amendment which could possibly have been moved in committee (i.e. the former consideration in detail stage) was allowed to be moved to the motion for the second

161 VP 1964–66/603; H.R. Deb. (12.5.1966) 1812.
162 VP 1964–66/604.
163 E.g. amendment to Appropriation Bill (No. 1) 1996–97, VP 1996–98/408–10.
164 Private ruling.
165 H.R. Deb. (7.12.1998) 1503, 1509. An extension of time was agreed to permit the Member to read out the amendment.
166 H.R. Deb. (28.11.1988) 3368.
167 S.O. 145(a)(iv); VP 1920–21/90. There is a sound reason for this rule because, if the wording of a second reading amendment is similar to the wording of a detail amendment and the second reading amendment is defeated, the moving of the detail amendment could be prevented by the application of the 'same motion' rule, S.O. 114(b).

reading.[168] The principle underlying an amendment which a Member may not move during consideration in detail can be declared by means of a reasoned amendment. A second reading amendment to add to the question an instruction to the former committee of the whole was ruled out of order on the ground that the bill had not yet been read a second time.[169]

ADDITION OF WORDS

A reasoned amendment may not propose the addition of words to the question 'That this bill be now read a second time'.[170] The addition of words must, by implication, attach conditions to the second reading.[171]

DIRECT NEGATIVE

In addition to the rules in the standing orders governing the contents of reasoned amendments, it is the practice of the House that an amendment which amounts to no more than a direct negation of the principle of a bill is not in order.

FORM OF AMENDMENT

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

- the bill be withdrawn and redrafted to provide for . . .
- the bill be withdrawn and a select committee be appointed to inquire into . . .
- the House declines to give the bill a second reading as it is of the opinion that . . .
- the House disapproves of the inequitable and disproportionate charges imposed by the bill . . .
- the House is of the opinion that the bill should not be proceeded with until . . .
- the House is of the opinion that the . . . Agreement should be amended to provide . . .
- whilst welcoming the measure of relief provided by the bill, the House is of the opinion that . . .
- the House notes with approval that, in response to public pressure, the Government has introduced this limited bill, but deplores . . .
- whilst not opposing the provisions of the bill, the House is of the opinion that . . .
- whilst not declining to give the bill a second reading, the House is of the opinion that . . .

MOVING OF AMENDMENT

A second reading amendment is usually moved by the relevant shadow minister during his or her speech at the start of the debate, but may be moved by any Member and at any time during the debate. By convention, if the Member has allowed sufficient time, copies of the terms of the amendment are circulated in the Chamber. If copies have been circulated, a Member may move an amendment by saying 'I move the amendment

168 VP 1951–53/246; H.R. Deb. (29 and 30.11.1951) 3140. The Speaker accepted a second reading amendment, some aspects of which could have been moved in committee, as it was the wish of the House (it was felt preferable to have one clear-cut issue than to be involved in numerous discussions in committee), H.R. Deb. (10.9.1952) 1214–16; *and see* H.R. Deb. (28.9.1954) 1666. *See also* VP 1978–80/727—in this case the proposals of the Opposition were so complicated that resources were not available to draft committee amendments. Following an assurance that the amendments would not be moved in committee, the proposals were incorporated into a second reading amendment.

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

170 S.O. 145(a)(iii); VP 1940/87. Until a change in the standing orders in 1965 this prohibition was not explicit and attempts to move amendments seeking to add words to the motion for the second reading were ruled out of order on the basis of House of Commons practice.

171 *May,* 24th edn, p. 549. Other kinds of amendment with conditional wording have been accepted by the House ('. . . will not decline to give the bill a second reading if . . .', VP 1993–95/1777–8).

circulated in my name', instead of reading the terms out in full.[172] The fact that the moving of a reasoned amendment permits Members who have already spoken to the second reading to speak again to the amendment may influence the use or timing of the procedure.

Following the suspension of standing orders to enable a number of bills to be considered together and one question to be put on any amendments moved to motions for the second readings,[173] second reading amendments have been moved to six bills in one motion.[174]

SECONDING

Immediately the Member moving the second reading amendment has finished his or her speech (not during the speech), the Speaker calls for a seconder. If the amendment is not seconded, there may be no debate on the amendment and it is not recorded in the Votes and Proceedings.[175] A copy of the amendment signed by the mover and seconder is handed to the Clerk at the Table.

DEBATE AND QUESTIONS PUT

When seconded, the Speaker states that 'The original question was "That this bill be now read a second time", to which the honourable Member for . . . has moved, as an amendment, that all words after "That" be omitted with a view to substituting other words'. The Speaker then proposes the immediate question, traditionally in the form 'That the words proposed to be omitted stand part of the question', but from June 2011 in the form 'That the amendment be agreed to'.[176] The question is open to debate.

A Member who moves an amendment, or a Member who speaks following the moving of an amendment, is deemed to be speaking to both the original question and the amendment. A Member who has spoken to the original question prior to the moving of an amendment may again be heard, but shall confine his or her remarks to the amendment. A Member who has spoken to the original question may not second an amendment subsequently moved. A Member who has already spoken in the second reading debate can only move a second reading amendment by leave of the House.[177]

The time limits for speeches in the debate are 15 minutes for a Member speaking to the motion for the second reading or to the motion and the amendment, including a Minister or Parliamentary Secretary speaking in reply. A limit of 15 minutes also applies for a Member who has spoken to the motion and is addressing the amendment.[178]

A Member may amend his or her amendment after it is proposed with the leave of the House (for example, to correct an error in the words proposed to be substituted).[179] A Member has been given leave to add words to an amendment moved by a colleague at an earlier sitting.[180] An amendment may be withdrawn only by leave.[181]

172 *But see* p. 367 for restrictions on length of amendment.
173 VP 1998–2001/207.
174 VP 1998–2001/233–5.
175 S.O. 116(a), e.g. H.R. Deb. (10.12.1998) 1857—time expired under guillotine before amendment seconded; H.R. Deb. (13.10.2003) 21259–60—amendment not seconded; H.R. Deb. (9.2.2010) 882–3, 887—not seconded.
176 S.O. 122. The change of practice was introduced as a trial—*see* Speaker's statement H.R. Deb. (2.6.2011) 5790. *See also* discussion of alternative ways of putting the question under 'Question on amendment proposing to omit words' in Ch. on 'Motions'.
177 VP 1987–89/570.
178 S.O. 1.
179 VP 1978–80/239; VP 1996–98/1237.
180 VP 1996–98/2913.
181 VP 1937–40/369.

When the question has been proposed in the form 'That the amendment be agreed to', a motion to amend the proposed amendment may be moved. If the question in that form has been put and the amendment disposed of, a further second reading amendment may be moved.

If the debate has been closed by the mover of the motion for the second reading speaking in reply before the question was put on the amendment, the question on the second reading is then put immediately.[182] In other cases debate may continue on the motion for the second reading.[183]

EFFECT OF QUESTION BEING PUT IN THE FORM 'WORDS OMITTED STAND'

No amendment can be moved to the words proposed to be inserted or added until the question 'that the words proposed to be omitted stand part of the question' has been determined.[184]

If the question 'That the words proposed to be omitted stand part of the question' is resolved in the affirmative, the amendment is disposed of.[185] If the question 'That the words proposed to be omitted stand part of the question' were to be negatived, another question would be put 'That the words proposed [the words of the amendment] be inserted'.[186] If this question was agreed to, a final question 'That the motion, as amended, be agreed to' would then be put.[187]

When the House has agreed that the original words of the motion should stand, no further second reading amendment is possible. The general rule that an amendment which adds other words may be moved to words which the House has resolved shall stand part of a question[188] does not apply in the case of a second reading amendment, which must not propose the addition of words to the question.[189]

When the question was routinely put in the traditional 'words stand' form, the alternative form 'That the amendment be agreed to' was proposed in special circumstances to allow the possibility of a further amendment after the first had been disposed of.[190]

See also 'Putting question on amendment' in the Chapter on 'Motions'.

EFFECT OF AGREEING TO REASONED AMENDMENT

As the House has never agreed to a reasoned amendment, it has no precedent of its own to follow in such circumstances. Although it seems unlikely, if a reasoned amendment were carried, that any further progress would be made, it could be argued that the amendment would not necessarily arrest the progress of the bill, as procedural action could be taken to restore the bill to the Notice Paper and have the second reading moved on another occasion.

This view was taken by the Chair during consideration of the Family Law Bill 1974, on which a free vote was to take place, when the effects of the carriage of an amendment

182 E.g. H.R. Deb. (24.6.2004) 31611.
183 E.g. VP/2002–04/330.
184 SO 123(c).
185 S.O. 122(a)(ii).
186 S.O. 122(a)(ii).
187 S.O. 118(a).
188 S.O. 123(d).
189 S.O. 145(a)(iii).
190 VP 2004–07/942 (the circumstances were a bill on which there was to be a 'free vote'). In the UK House of Commons, where the question is now put 'That the amendment be made', only one second reading amendment is possible because the main question on the second reading must be put immediately on the negation of the amendment. *May,* 24th edn, p. 550. Former UK practice was for the Speaker to automatically declare the bill read a second time, without putting a further question, as soon as the House had agreed to 'words stand'.

expressing qualified agreement were canvassed in the House.[191] The amendment proposed to substitute words to the effect that, whilst not declining to give the bill a second reading, the House was of the opinion that the bill should give expression to certain principles.[192]

On that occasion a contingent notice of motion was given by a Minister that on any amendment to the motion for the second reading being agreed to, he would move that so much of the standing orders be suspended as would prevent a Minister moving that the second reading of the bill be made an order of the day for a later hour that day.[193] Subsequently the Chair expressed the view that the contingent notice would enable the second reading to be reinstated. If the contingent notice was called on and agreed to, the second reading of the bill would be made an order of the day for a later hour of the day. It would then be up to the House as to when the order would be considered (perhaps immediately). If the motion 'That this bill be now read a second time' were to proceed, it would be a completely new motion for that purpose and open to debate in the same manner as the motion for the second reading then before the House.[194]

Any determination of the effect of the carrying of a second reading amendment in the future may well depend upon the wording of the amendment. If the rejection is definite and uncompromising, the bill may be regarded as having been defeated.[195] However wording giving qualified agreement could be construed to mean that the second reading may be moved on another occasion.

On the other hand it could be argued that the House may be better advised to follow the practice that, after a reasoned amendment of any kind has been carried, no order is made for a second reading on a future day. This would be consistent with the practice in cases of the second reading being negatived. This is the modern practice in the UK House of Commons.[196] However, in the House of Commons reasoned amendments record reasons for not agreeing to the second reading and amendments agreeing to the second reading with qualifications are not the practice.[197]

REASONED AMENDMENT IN THE FEDERATION CHAMBER

The view has been taken that an unresolved question on a second reading amendment prevents further consideration of a bill in the Federation Chamber.[198]

'6 months' amendment

A '6 months' amendment[199] is in the form 'That the word "now" be omitted from, and the words "this day 6 months" be added to the question'.[200] No amendment may be moved to this amendment. If the amendment is defeated the question on the second reading is then restated. Debate may then continue on the motion for the second reading. The acceptance by the House of such an amendment would mean that the bill has been

191 H.R. Deb. (12.2.1975) 180; H.R. Deb. (13.2.1975) 320.
192 VP 1974–75/449.
193 NP 56 (4.3.1975) 6006.
194 H.R. Deb. (28.2.1975) 934–5.
195 This view was taken by the Speaker in 2006 in respect of a second reading amendment to a Private Member's bill. In the event, the amendment was defeated, VP 2004–07/954–5.
196 *May,* 24th edn, p. 550.
197 *May*, 24th edn, p. 549.
198 VP 1993–95/2504–5, 2516;VP 1996–98/363.
199 S.O. 146; VP 1945–46/419. This form of amendment is identical to the form of a third reading amendment.
200 This procedure originated as a way of avoiding the direct negative, the assumption being that within the time specified the session would be over and the bill would lapse. Josef Redlich, *The procedure of the House of Commons*, vol. III, Archibald Constable, London, 1908, p. 89.

finally disposed of.[201] This form of amendment is rarely used as, from a debating and political viewpoint, it suffers by comparison with a reasoned amendment. On the last occasion it was moved on the motion for the second reading, the mover proposed to add 'this day six months in order that the Government may confer . . .'.[202] Although the amendment was permitted by the Chair, the inclusion of the additional words was strictly out of order. It is now so long since this procedure has been used that it could, especially in its current wording, perhaps be regarded as obsolete.

Determination of question for second reading

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

Only one government bill has been negatived at the second reading stage in the House of Representatives,[203] but there have been a number of cases in respect of private Members' bills.[204] The accepted practice of the House has been that in cases where the second reading has been negatived, the motion for the second reading has not been moved again.

The modern practice of the UK House of Commons is that defeat on second reading is fatal to a bill.[205] In the Senate rejection of the motion that a bill be read a second time does not prevent the Senate from being asked subsequently to grant the bill a second reading.[206]

Bill reintroduced

Should the Government wish to proceed further with a bill, the second reading of which has been negatived or subjected to a successful amendment, an appropriate course to take would be to have the bill redrafted in such a way and to such an extent that it becomes a different bill including, for example, a different long title. Alternatively, standing orders could be suspended to enable the same bill to be reintroduced, but this might be considered a less desirable course. *See also* 'The application of the same motion rule to bills' at page 357.

Bill not proceeded with

From time to time a bill will be introduced and remain on the Notice Paper until the reactions of the public to the proposal are able to be made known to the Government and Members generally. As a result of these representations, following an advisory report on the bill from a committee, or for some other reason,[207] the Government may wish to alter the bill substantially from its introduced form. This may not always be possible because the proposed amendments may not be within the title of the bill or relevant to the subject matter of the bill and may therefore be inadmissible under the standing orders.[208] In this

201 S.O. 146—the effect would be as if the House had resolved 'That this bill be not read a second time'.
202 VP 1961/51.
203 Parliamentary Allowances Bill 1922, VP 1922/207; H.R. Deb. (11.10.1922) 3571–97.
204 E.g. VP 1937–40/496; VP 1976–77/130, 442–3, 487.
205 *May,* 24th edn, p. 548.
206 *Odgers*, 13th edn, p. 301. E.g. 2nd readings of 4 Luxury Car Tax bills negatived on 4.9.2008 (J 2008/805); notice given same day that the bills be now read a second time, SNP 30 (15.9.2008) 3; motion agreed to (J 2008/903–4).
207 E.g. following the report of a joint select committee the Telecommunications (Interception) Amendment Bill 1986 was replaced by another bill incorporating many of the committee's recommendations, VP 1985–87/1029, 1343, 1608.
208 S.O. 150(a).

case, and sometimes in the case where extensive amendments would be involved, a new version of the bill may be introduced. If this is done, the Government either allows the order of the day in respect of the superseded bill to remain on the Notice Paper until it lapses on dissolution or prorogation, or a Minister or Parliamentary Secretary moves for the discharge of the order of the day.[209] The new version of the bill is proceeded with notwithstanding the existence or fate of a previous similar bill. Discharge of a bill may occur before the presentation of the second version,[210] or after the second version has passed the House.[211]

Proceedings following second reading

Immediately after the second reading of a bill has been agreed to, standing order 147 requires the Speaker to announce any message from the Governor-General in accordance with section 56 of the Constitution recommending an appropriation in connection with the bill. This requirement applies to special appropriation bills only and is covered in the Chapter on 'Financial legislation'.

Former standing orders provided for the possible referral of a bill to a select committee at this stage, but no bills were so referred. There was also provision for the moving of an instruction to a committee—very few instructions were ever moved and only one agreed to (probably unnecessarily). These obsolete provisions are discussed in previous editions.

Reference to legislation committee

Thirteen bills were considered by legislation committees pursuant to sessional orders operating from August 1978. Sessional orders were also adopted in March 1981 for the 32nd Parliament;[212] however, no bills were referred. The sessional orders provided that, immediately after the second reading or immediately after proceedings following the second reading had been disposed of, the House could (by motion on notice carried without dissentient voice) refer any bill, excluding an appropriation or supply bill, to a legislation committee (in effect, for its consideration in detail stage).[213]

Leave to move third reading/report stage immediately

The standing orders provide that, at this stage, the House may dispense with the consideration of the bill in detail and proceed immediately to the third reading.[214] If the Speaker thinks Members do not desire to debate the bill in detail, he or she asks if it is the wish of the House to proceed to the third reading immediately. If there is no dissentient voice, the detail stage is superseded and the Minister moves the third reading immediately. One dissentient voice is sufficient for the bill to be considered in detail. For a bill referred to the Federation Chamber the equivalent bypassing of the detail stage is achieved by the granting of leave for the question 'That the bill be reported to the House without amendment' to be put immediately.[215]

The detail stage is bypassed in the consideration of approximately 75% of bills.

209 S.O. 37(c); VP 1974–75/534.
210 VP 1973–74/190; H.R. Deb. (16.5.1973) 2219–20.
211 VP 1976–77/512, 524; H.R. Deb. (1.12.1976) 3083.
212 VP 1978–80/321–4; VP 1980–81/133–4.
213 For a description of the operation of legislation committees *see* pp. 331–2 and 341–2 of the 1st edition. *See also* comments by the Procedure Committee in its *About time* report, PP 194 (1993) 6.
214 S.O.148(a).
215 S.O. 148(b).

Former committee of the whole

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

Prior to 1994 the consideration in detail stage in the House of Representatives was taken in a Committee of the Whole House—that is, a committee composed of the whole membership of the House. Committee of the whole consideration took place (in the Chamber) at the same place in proceedings as the current detail stage and procedures[216] were similar to current procedures—the essential practical differences being the title (Chairman or Deputy Chairman) and seating position (between the Clerks at the Table) of the occupant of the Chair, and the time limits applying to speeches.

The abolition of the committee of the whole was one of the reforms flowing from the 1993 Procedure Committee report *About time: bills, questions and working hours,*[217] and accompanied other changes to the legislative process, including the provision for bills to be referred to committees for advisory reports, and the establishment of the Main Committee (now renamed Federation Chamber).

Rulings and precedents relating to the consideration of bills in the committee of the whole, where appropriate, have continuing application to the consideration in detail stage, whether in the House or the Federation Chamber.[218]

Consideration in detail

The following discussion describes the consideration in detail stage in the House; the process in the Federation Chamber is the same.

After the bill has been read a second time, and if it is the wish of the House, the House proceeds to the detailed consideration of the bill. The function of this stage is the consideration of the text of the bill, if necessary clause by clause and schedule by schedule,[219] the consideration of amendments, and the making of such amendments in the bill as are acceptable to the House. The powers of the House at this stage are limited. For instance, the decision given on the second reading in favour of the principle of a bill means that, at the detail stage, the bill should not be amended in a manner destructive of this principle, and an amendment which is outside the scope of the bill is out of order.[220]

While the House should not amend a bill in a manner destructive of the principle affirmed at the second reading, they may negative clauses the omission of which may nullify or destroy the purposes of the bill. They may also negative clauses and substitute new clauses, such a procedure being subject to the rule that any amendment must be within the title or relevant to the subject matter of the bill, and otherwise in conformity with the standing orders of the House.[221]

The title and the preamble (if any) are considered last. The reason for postponing the title is that an amendment may be made in the bill which will necessitate an amendment to the title.[222] The purpose of postponing the preamble is that the House has already

216 Described in earlier editions. The origin of the committee of the whole is covered at p. 233 of the 2nd edition.
217 PP 194 (1993) 7–8.
218 VP 1993–95/807.
219 S.O. 149. Greater detail is also possible, e.g. paragraph by paragraph.
220 *May,* 24th edn, p. 564.
221 S.O. 150(a). *See* examples of inadmissible amendments at page 376.
222 S.O. 150(d).

affirmed the principle of the bill on the second reading, and therefore has to settle the clauses first, and then consider the preamble in reference to the clauses only. The preamble is thus made subordinate to the clauses instead of governing them. No question is put on the words of enactment at the head of the bill,[223] as these words are part of the framework of the bill.

The standing orders specify a strict order in which the parts of a bill should be considered—*see* 'Bill considered clause by clause' at page 377. In practice, in the majority of cases the bill is taken as a whole or groups of clauses or schedules are taken together, by leave of the House—*see* 'Bill considered as a whole, or by parts' at page 380.

Moving of motions and amendments

A motion (including an amendment) moved during consideration in detail need not be seconded.[224] Although there is no requirement for notice to be given of proposed amendments, the Speaker has appealed to Members to have proposed amendments in the hands of the Clerk at least one hour before they are to be moved,[225] to allow time to ensure that they are in order and to prepare the appropriate announcements for the questions to be put, and in time for them to be printed and circulated to Members before they are considered. Members are encouraged in the practice of circulating amendments as early as possible so as to enable the Minister or Parliamentary Secretary in charge of the bill and other Members to study the effect of the amendments before they are put for decision. Amendments which the Government or other Members may wish to move only in certain circumstances—for example, depending on developments in the House or negotiations between parties—may be held under embargo by the Clerk until their release is authorised by the Minister or other Member responsible. Where amendments have been printed and circulated, it is acceptable for a Member to move 'the amendment (or 'amendment No. . . .') circulated in my name' rather than read the terms of the amendment in full. In reply to a Member's request that a lengthy amendment be read, the Chair has stated that it is quite customary for amendments to be taken as read when they have been circulated.[226]

An amendment may be moved to a proposed amendment.[227]

Debate

In debate on any question during consideration in detail each Member may speak for an unlimited number of periods of up to 5 minutes each.[228] If no other Member rises the Member who has just spoken may speak again immediately, after being recognised by the Chair. An extension of time could be agreed to, the extension not to exceed two and a half minutes. However, as there is no limit on the number of opportunities to speak, in practice it is unlikely that an extension would be sought.

Debate must be relevant to the subject matter of the clause(s), schedule(s), item(s) or amendment(s) before the House,[229] and cannot extend to other clauses or schedules which have been, or remain to be, dealt with. Discussion of matters relating to an

223 S.O. 149(c).
224 S.O. 151.
225 H.R. Deb. (24.8.1984) 398.
226 H.R. Deb. (22.11.1951) 2633.
227 E.g. VP 1929–31/660; VP 1950–51/145; VP 1978–80/493 (Legislation Committee).
228 S.O. 1.
229 S.O. 150(b).

amendment ruled out of order is not permitted.[230] When the question before the Chair is that a particular clause be agreed to, the limits of discussion may be narrow. When a bill is considered, by leave, as a whole, the debate is widened to include any part of the bill.[231] However, discussion must relate to the clauses of the bill, and it is not in order to make a general second reading speech.[232]

Questions put

If an amendment is moved to a clause (schedule, etc), the Chair normally puts the question in the form 'That the amendment be agreed to'.[233] When amendments are taken together by leave, the question is normally 'That the amendments be agreed to'. However, on occasion, where leave has been given to move amendments together, further leave has been given for separate questions to be put on each.[234]

If a clause (or schedule, etc) is amended, a further question is put 'That the clause (schedule, etc) as amended, be agreed to'.[235] If the title is amended, the further question is put 'That the title, as amended, be the title of the bill'.[236] If the bill is being considered as a whole, the further question is 'That the bill, as amended, be agreed to'.

See also 'Putting question on amendment' in the Chapter on 'Motions'.

Inadmissible amendments

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

- not relevant to the clause under consideration;[237]
- not within the scope of the bill;[238]
- neither within the scope nor the long title of the bill;[239]
- outside the scope of the bill and the principal Act;[240]
- not consistent with the context of the bill;[241]
- ironical;[242]
- not in conformity with the standing orders;[243] or
- in conflict with the Constitution.[244]

230 H.R. Deb. (14.9.1961) 1195–6.
231 H.R. Deb. (25.10.1955) 1856.
232 H.R. Deb. (16.5.1961) 1903.
233 S.O. 122(b).
234 E.g. VP 2002–04/439.
235 S.O. 150(c).
236 S.O. 150(d).
237 VP 1961/291 (two proposed amendments).
238 E.g. VP 1946–48/527.
239 E.g. VP 2002–04/1701; VP 1974–75/863 (proposed new clause).
240 VP 1961/76–7.
241 VP 1945–46/278.
242 E.g. amendments designed to alter the short title of the Government Preference Prohibition Bill 1914 to (a) the Anti-Trades and Labour Unions Bill 1914, (b) the Government Preference to Contractors, Lawyers, Doctors, and Others Bill 1914, and (c) the Government Preference to the Bar Association, to the British Medical Association, to the Contractors' and Employers' Associations, etc. Bill 1914, were ruled out of order, VP 1914/48–9. Similarly amendments proposing to substitute 'Reduciary', 'Reductionary' and 'Inflationary' for 'Fiduciary' in the Fiduciary Notes Bill 1931 (on the ground of being outside the scope of the bill), VP 1929–31/503; Words in short title'Work Choices' to, inter alia, 'No Work Choices', VP 2004–07/768, H.R. Deb. (10.11.2005) 38.
243 VP 1945–46/420. An amendment to the Wheat Export Charge Bill 1946 proposed to add a subclause to the effect that the bill should not be submitted for assent until approved by a majority of wheat growers at a postal ballot. The Chair ruled the amendment was not in order as the standing orders required a bill which had passed both Houses to be forwarded for assent, and a committee of the whole, by amendment to a bill, could not alter the operation of the standing orders.
244 VP 1946–48/527; but enforcement of the standing orders is the main concern of the Chair, who may not be in a position to judge constitutional implications.

Amendments may also be out of order because they infringe the restrictions imposed by standing orders in respect of financial proposals (*see* Chapter on 'Financial legislation').

The discussion of relevance in relation to second reading debate (*see* page 366) is also applicable to relevance in relation to detail stage amendments. However, an amendment to a bill, the nature of which has been agreed in principle, requires a more precise test of relevance than is the case in respect of the scope of general debate, and the relevancy rules are applied strictly to amendments.

An amendment may be moved to any part of a bill, if the amendment is within the title or relevant to the subject matter of the bill and conforms to the standing orders.[245] If the title of the bill is unrestricted, an amendment dealing with a matter not in the bill, but which is relevant to the principal Act or to the objects of the bill as stated in its title, may be moved, even though the clauses have a limited purpose.[246] Conversely, an amendment not relevant to the objects of the bill, or not within its scope, may not be moved.

The inclusion of such words as 'and for related purposes' or 'and for other purposes' in the long title of a bill does not open the bill to the introduction of any amendment whatsoever and cannot be used as a means of circumventing the intention of the standing orders.[247]

An amendment to add further Acts to a schedule of Acts to be amended by a Statute Law (Miscellaneous Provisions) Bill has been permitted, the long title of the bill being '. . . to make various amendments to the statute law of the Commonwealth . . .'.[248]

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

No amendment, new clause or schedule may be moved if it is substantially the same as one already negatived, or which is inconsistent with one that has already been agreed to, unless the bill is reconsidered.[249] An amendment which purports to omit a clause or schedule is not in order as the correct course, if a clause/schedule is opposed, is to vote against the question 'That the clause/schedule be agreed to'. However, if a bill is being considered as a whole (*see* page 380) such a proposal may be expressed as an amendment.

The terms of an agreement (or treaty) in a schedule cannot be changed, as the agreement has already been made. However, provisions elsewhere in the bill bringing the agreement into legal effect can be amended.[250]

Bill considered clause by clause

It should be noted here that clause by clause consideration of a bill is nowadays exceptional. It has become the usual practice for leave to be given for bills to be taken as a whole and for proposed amendments to be moved together (*see* page 380).

If a bill is to be considered clause by clause, the text of the bill is considered in the following order:

245 S.O. 150(a).

246 H.R. Deb. (31.5.1928) 5400.

247 E.g. VP 2002–04/1701. There is no record of the House suspending standing orders to allow an unrelated amendment to be made to a bill.

248 VP 1983–84/145–6.

249 S.O. 150(e). *See* e.g. VP 1964–66/491, where an amendment to a proposed new clause was ruled out of order by the Chair as the amendment was substantially the same as a proposed amendment to an earlier clause negatived. Leave has been given for an amendment which had been defeated to be moved again; it was then agreed to, VP 2004–07/1249.

250 E.g. VP 1934–37/484; VP 1940/74.

- clauses and proposed clauses, in numerical order;
- schedules and proposed schedules, in numerical order;
- postponed clauses (which have not been postponed to a specific point);
- preamble (if any), and
- title.

The schedules are considered before the clauses in the case of an amending bill (*see* page 379) and in the case of taxation and appropriation and supply bills.[251]

CLAUSES

Proceedings on clause by clause consideration begin by the Chair calling the number of the clause, for example, 'Clause 1', and stating the question 'That the clause be agreed to'.[252] If leave is given to consider a group of clauses together, for example, clauses 1 to 4, the Chair states the question 'That the clauses be agreed to'. The question is proposed without any motion being moved. A clause may be divided: a clause has been ordered to be considered by Divisions,[253] by proposed sections[254] and by paragraphs.[255] It has also been ordered that clauses be taken together[256] but it is usual when it is desired that clauses be taken together for leave to be obtained. Leave is necessary if a Member wishes to move, as one amendment, to omit more than one clause and substitute another Part.

An amendment may be moved only when the clause to be amended is before the House. When a clause has been amended, the Chair proposes a further question 'That the clause(s) as amended, be agreed to'[257] before proceeding to the next part of the bill.

NEW CLAUSES

The procedure for dealing with proposed new clauses is to consider them in their numerical order[258]—that is, at the point of consideration at which the new clause is to be inserted in the bill[259]—or at the end of the bill in the case of a proposed addition.[260] A proposed new clause can be amended in the same manner as an existing clause.[261] A new clause may be out of order for many of the same reasons as an amendment (*see above*), and in particular will not be entertained if it:

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

If more than one new clause is proposed to a bill, each is treated as a separate amendment. However, several proposed new clauses, which may comprise a new Part or

251 S.O. 149(a), (d).
252 S.O. 149(c).
253 VP 1962–63/342. Consideration of the clause had begun before it was ordered to be considered by divisions and the first question following the order was 'That the clause to the end of Division 1 be agreed to' (thereafter 'That Division 2 be agreed to' etc.).
254 VP 1960–61/270. The clause proposed to insert new sections in the principal Act. Consideration of the clause had begun and the first question was 'That the clause to the end of proposed section 24 be agreed to'.
255 VP 1959–60/264. The clause had been debated before the order and the first question after the order was 'That the clause to the end of paragraph (a) be agreed to' (thereafter 'That paragraph (b) be agreed to' etc.).
256 VP 1932–34/260, 332.
257 S.O. 150(c).
258 S.O. 149(a).
259 VP 1978–80/1210–13; VP 1993–5/2146.
260 VP 1974–75/193; VP 1993–5/2047–8.
261 VP 1983–84/689.

Division, may be moved together by leave.[262] New Parts or Divisions may only be moved together by leave.

SCHEDULES

With the exception of schedules belonging to amending bills, schedules are taken in numerical order after the clauses, and treated in the same manner as a clause, the questions proposed being 'That the schedule (or 'Schedule 2', for example) be agreed to'. A schedule to a bill can be amended[263] or omitted and another schedule substituted.[264] When a schedule has been amended, the further question is put 'That the schedule, as amended, be agreed to'.[265]

In the case of amending bills— that is, a bill whose principal purpose is to amend an existing Act or Acts, where the schedules contain the amendments[266]—schedules are considered in their numerical order before the clauses, and items within a schedule are considered in their numerical order. Consecutive items which amend the same section of an Act are considered together, unless the House otherwise orders.[267] Amendments can be moved to individual items, items can be omitted, or omitted and other items substituted, and items can be inserted or added.[268] If items are taken separately or in blocks of consecutive items the question is put in the form 'That the item(s) be agreed to'.[269]

POSTPONED CLAUSES

Consideration of a clause may be postponed by a motion which may be debated.[270] Debate is limited to the question of postponement, and the bill or the clause may not be discussed. Postponement motions have been moved, for example, in relation to a clause,[271] part of a clause,[272] clauses which had been taken together by leave,[273] a clause and an amendment moved to the clause,[274] and a clause which had been amended.[275]

The postponement may be specific, for example, 'until after clause 6'.[276] In relation to the Family Law Bill 1974 the House agreed to a procedural motion which, inter alia, postponed clauses 1 to 47 until after clause 48,[277] the clause that was attracting the attention of most Members. If not specific, postponed clauses are considered after schedules and before the title, or if there is a preamble, before the preamble.[278]

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

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

264 VP 1956–57/199–200.

265 VP 1993–95/2342;VP 1996–98/321.

266 The majority of bills are now of this type.

267 S.O. 149(d)(iii). These special provisions for amending bills were inserted in 1997 following Procedure Committee recommendations in response to concerns that the then new drafting practice of putting amendments in schedules *(see* p. 348), in conjunction with the practice of taking schedules as a whole, had removed the right of Members to debate and vote on individual amendments. Standing Committee on Procedure, *Bills—consideration in detail: Review of the operation of standing order 266*. PP 190 (1996).

268 E.g. VP 1996–98/319–332, 453–7; VP 1998–2001/378–9.

269 E.g. VP 1996–98/3051.

270 VP 1962–63/28; H.R. Deb. (27.2.1962) 222–34. The usual consideration in detail speech time limits of 5 minutes apply.

271 VP 1974–75/583.

272 VP 1970–72/771.

273 VP 1970–72/975.

274 VP 1970–72/1294.

275 VP 1956–57/192.

276 VP 1970–72/975.

277 VP 1974–75/639–40.

278 S.O. 149(a).

On occasions a motion has been moved that a clause be postponed 'as an instruction to the Government that . . .'[279] or 'so that the Government may redraft it to provide . . .'.[280] The proposed instruction was not recorded in the Votes and Proceedings.

PREAMBLE

When all clauses and schedules have been agreed to, the preamble is considered. A preamble may be debated and amended.[281] The questions proposed from the Chair are 'That the preamble be agreed to' and, where appropriate, 'That the preamble, as amended, be agreed to'.

TITLE

Where a bill is considered clause by clause, the long title is the last part of the bill to be considered. The title is amended[282] if a clause has been altered beyond the terms of a bill's title as read a second time, as every clause within the bill must come within the title of the bill.[283] The title may also be amended if a bill is amended in such a way as to reduce its scope.[284] When a title is amended, the Chair proposes the question 'That the title, as amended, be the title of the bill'. When the amendment of the title occurs in the Federation Chamber the amendment needs to be specially reported to the House.[285]

RECONSIDERATION OF PART OF BILL DURING DETAIL STAGE

Parts of the bill may be reconsidered (*see* page 382) while it is still being considered in detail, by leave (that is, if no Member present objects). A clause has been reconsidered, by leave, immediately after it has been agreed to,[286] shortly after the clause has been agreed to[287] and after the title has been agreed to.[288] A clause, previously amended, has been reconsidered, by leave, and further amended,[289] and a new clause previously inserted has been reconsidered, by leave.[290] Two clauses have been reconsidered together, by leave.[291]

Bill considered as a whole, or by parts

In the majority of instances leave is granted for the bill to be considered as a whole.[292] The Chair asks 'Is it the wish of the House to consider the bill as a whole'. If there is no dissentient voice, the Chair then proposes the question 'That the bill be agreed to'. Traditionally, if a clause was to be opposed, the question on that clause was put separately and the bill not taken as a whole. However, it may suit the convenience of the House for opposition to a clause to be treated as an amendment, and the bill taken as a whole.[293]

Amendments may be moved to any part of the bill when the bill is considered as a whole. As a general rule they are taken in the order in which they occur in the bill. However, amendments may also be moved in an order convenient to Members but which does not reflect the sequence of the bill, and leave is not necessary for this.[294]

279 H.R. Deb. (18.5.1956) 2269.
280 H.R. Deb. (18.5.1956) 2294.
281 VP 1929–31/929.
282 VP 1976–77/269.
283 S.O. 140(b).
284 VP 1996–98/258.
285 S.O. 150(d). E.g. VP 1976–77/270; VP 1993–95/1417, 1405.
286 VP 1976–77/289.
287 VP 1973–74/154.
288 VP 1974–75/676.
289 VP 1977/152.
290 VP 1974–75/690.
291 VP 1961/30.
292 S.O. 149(b).
293 E.g. H.R. Deb. (2.12.2004) 144.
294 E.g. H.R. Deb. (17.6.2004) 30752–63; VP 2004–07/454–5, 1005–8.

In the case of more than one amendment, the amendments may, by leave, be moved together.[295] This course may be consistent with the objectives of taking the bill as a whole. Leave may also be given for amendments to be moved in groups, for example to allow them to be considered and debated in subject groupings rather than following the sequence of the bill.[296] Although Members may be willing to have groups of amendments moved together by leave, it is not always possible for this to be done in the way desired. An example would be where there were both government and opposition amendments in the same area, in which case the amendments would be taken, if possible, in a way which did not result in a decision on one amendment making the other redundant. When an amendment is made to a bill taken as a whole, the further question is proposed 'That the bill, as amended, be agreed to'. The motion 'That the question be put' on the bill as a whole has been used as a form of closure to curtail the debate.[297]

On occasions parts of the bill may be considered together, by leave. The Chair may be aware, because of circulated amendments or personal knowledge, that a Member wishes to move amendments to particular clauses, for example, clauses 10 and 19. If the House does not wish to consider the bill as a whole and have the Member move the amendments together, by leave, it may, for example, be willing to consider clauses 1 to 9 together, clause 10 (to which the Member may move an amendment), clauses 11 to 18 together, and then the remainder of the bill (at which stage the Member will move the second amendment). Schedules have been taken together,[298] the clauses and the schedule have been taken together,[299] and a bill has been considered by Parts (clause numbers shown).[300] In each instance leave was required.

On occasion, to allow debate on the bill as a whole to continue without interruption by divisions on amendments, after each amendment has been moved, the House has agreed to allow debate to continue on the bill as a whole, including amendments moved up to that point. At the conclusion of the consideration in detail stage the question has then been put on each amendment in the order in which it had been moved.[301]

Report stage (for bills considered by Federation Chamber)

If a bill has been considered in detail by the Federation Chamber, when the bill has been fully considered, the question is put 'That this bill be reported to the House, without amendment' or 'with (an) amendment(s)' ('and with (an) unresolved question(s)'), as appropriate. After this question has been agreed to, a certified copy of the bill, together with schedules of any amendments made by the Federation Chamber and any questions which the Federation Chamber was unable to resolve, is provided for the Speaker to report to the House.[302] The Speaker reports the bill to the House at a time when other business is not before the House.[303] If a bill is reported from the Federation Chamber

295 VP 1978–80/198 (opposition amendments and proposed new clause not agreed to); VP 1978–80/287 (government amendments made);VP 1996–98/194; 257;VP 1998–2001/379.

296 E.g. VP 2002–04/1256–7.

297 H.R. Deb. (16.10.2003) 21628.

298 E.g. VP 1956–57/198–200.

299 E.g. VP 1960–61/333.

300 E.g. VP 1948–49/268.

301 Such action was taken in relation to amendments to the Native Title Amendment Bill 1997 with the prior agreement of Members arranged by the Whips (such prior arrangement is advisable to avoid divisions on the postponement motions). H.R. Deb. (29.10.1997) 10011–36 10098–152; VP 1996–98/2213–18, 2227–69. *See also* VP 2004–07/806–7, 1918–22.

302 S.O. 198.

303 S.O. 152(a).

without amendment or unresolved question, the question is put immediately 'That the bill be agreed to'. No debate or amendment is allowed to this question.[304]

If a bill is reported with amendments or with questions which the Federation Chamber had been unable to resolve, the report may be considered immediately if copies of the amendments or unresolved questions are available to Members,[305] and this is the usual practice. Otherwise the standing orders provide that a future time shall be set for considering the report and copies of the amendments or unresolved questions must then be available. However, the report may still be considered at once by leave of the House, or, if leave is not granted, following the suspension of standing orders.[306]

When the report is considered, the House deals first with any unresolved questions[307] (these are generally proposed amendments to the bill, but unresolved second reading amendments are also possible). Separate questions, open to debate or amendment, are put on each unresolved matter, but by leave, unresolved questions may be taken together.[308] The House then deals with any amendments made by the Federation Chamber. A single question is put 'That the amendments made by the Federation Chamber be agreed to'. No debate or amendment to this question is permitted. No new amendments to the bill may be moved except if necessary as a consequence of the resolution by the House of any unresolved question. Finally, the question is put 'That the bill (or the bill, as amended) be agreed to'. Once again, no debate or amendment of this question is allowed.[309]

Reconsideration of bill before third reading

At any time before the moving of the third reading, a Member may move without notice that a bill be reconsidered in detail, in whole or in part, by the House.[310] In the days of the former committee of the whole this practice was known as recommittal—the bill being returned to the committee for reconsideration. Precedents relating to the recommittal of bills, where appropriate, have continuing relevance to reconsideration.

There is no limit on the number of times a bill may be reconsidered, and there are precedents for a bill being reconsidered a second,[311] a third[312] and a fourth time.[313]

The motion for reconsideration must be seconded if not moved by a Minister.[314] Motions have been moved to reconsider clauses to a certain extent,[315] for the reconsideration of certain amendments[316] or to enable further amendments to be moved.[317] Clauses can be reconsidered in any sequence which the House approves.[318] An amendment to alter the scope of reconsideration may be moved to the motion to reconsider—that is, by adding other clauses or schedules to those proposed to be

304 S.O. 153(a).
305 S.O. 152(b), e.g. VP 1996–98/467–9; VP 1998–2001/930–1.
306 Since the establishment of the Main Committee/Federation Chamber a contingent notice of motion has appeared on the Notice Paper to facilitate this, *see* 'Contingent notices' at page 391.
307 E.g. VP 1996–98/146.
308 E.g. VP 1993–95/1524–5.
309 S.O. 153(b), e.g. VP 1993–95/1286; 1998–2001/931.
310 S.O. 154.
311 VP 1917–19/83–4, 85–6; VP 1914–17/458, 464.
312 VP 1911/164, 199 (2); VP 1903/44 (2), 47.
313 VP 1901–02/150, 151, 166, 175.
314 H.R. Deb. (15.11.1973) 3459.
315 VP 1905/95.
316 VP 1906/114.
317 VP 1906/114.
318 H.R. Deb. (27.9.1905) 2836.

reconsidered or by omitting certain clauses or schedules proposed to be reconsidered.[319] If a bill is ordered to be reconsidered without limitation, the entire bill is again considered in detail. A bill, or that part of the bill reconsidered, may be further amended.[320] In the case of a partial reconsideration, only so much of the bill as is specified in the motion for reconsideration may be considered.[321] Several bills which have been taken together have been reconsidered in order that an amendment could be moved to one of the bills.[322]

The motion for reconsideration may be debated[323] but debate is confined to the reasons for reconsideration. On the motion for reconsideration, details of a proposed amendment should not be discussed,[324] nor can the general principles of the bill and the detail of its clauses be debated.[325] A Member moving for reconsideration can give reasons but cannot revive earlier proceedings.[326] A Member who has moved for the reconsideration of a clause is in order in speaking to a motion to reconsider another clause moved by another Member, but is not in order in moving the reconsideration of a further clause as the Member has exhausted his or her right to speak.[327]

See also page 380 for reconsideration of parts of a bill during the consideration in detail stage.

Third reading and final passage

After completion of the consideration in detail stage, or following agreement to the second reading if no detail stage has occurred, the House may grant leave for the motion for the third reading to be moved immediately, or a future sitting may be set for the motion.[328] The latter option is, however, rarely used in practice in order to minimise unnecessary delay. The procedure for moving the third reading is based on one of the following alternatives, in order of frequency:

- in the case of the detail stage being bypassed, the House grants leave for the third reading to be moved immediately after the second reading (*see* page 373);
- following the adoption by the House of a Federation Chamber report on a bill, leave is usually granted for the third reading to be moved immediately; or
- if leave is not granted, a Minister may move a contingent notice of motion to suspend standing orders to enable the third reading to be moved immediately (*see* 'Contingent notices' at page 391).

The motion moved on the third reading is 'That this bill be now read a third time'.[329] The motion may be debated,[330] although such debates are not common. The scope of debate is more restricted than at the second reading stage, being limited to the contents of the bill—that is, the matters contained in the clauses and schedules of the bill. It is not in order to re-open or repeat debate on matters discussed on the motion for the second

319 VP 1917–19/85–6.
320 VP 1917–19/84.
321 H.R. Deb. (27.9.1905) 2832.
322 VP 1962–63/360.
323 H.R. Deb. (8.11.1973) 3040–5.
324 H.R. Deb. (2.8.1907) 1379; H.R. Deb. (4.7.1923) 640.
325 H.R. Deb. (5.9.1917) 1661.
326 H.R. Deb. (31.3.1920) 1094.
327 H.R. Deb. (27.10.1909) 5070.
328 S.O. 155(a).
329 S.O. 155(a).
330 E.g. VP 1978–80/273; H.R. Deb. (31.5.1978) 2886–7;VP 1996–98/264;VP 1998–2001/710. H.R. Deb. (15.5.2002) 2176–80; H.R. Deb. (5.8.2004) 32288–90 (cognate bill).

reading or during the detail stage, and it has been held that the debate on the motion for the third reading is limited to the bill as agreed to by the House to that stage.[331] Clauses may not be referred to in detail in the third reading debate,[332] nor may matters already decided during the detail stage be alluded to.[333] The time limits are as for a debate not otherwise provided for—that is, 20 minutes for the mover and 15 minutes for other Members. In practice, the opportunity to speak at this time may be taken by a Member who for some reason has been unable to participate in earlier debate (perhaps because of a guillotine), or, unacceptably, by a Member attempting to continue earlier debate.

A reasoned amendment cannot be moved to the motion for the third reading.[334] The only amendment which may be moved to the motion for the third reading is 'That the word "now" be omitted from, and the words "this day six months" be added to, the question', which question, if carried, finally disposes of the bill.[335] If the amendment is defeated debate may then continue on the motion for the third reading. A third reading amendment is rare and one has never been agreed to by the House. As in the case of the '6 months' amendment to the question for the second reading described at page 371, it is now so long since this procedure has been used that it could perhaps be regarded as obsolete.

When the question on the third reading is agreed to, the bill is read a third time by the Clerk reading its long title.[336] At this point the bill has passed the House and no further question may be put.[337] The bill, as soon as administratively possible, is then transmitted by message to the Senate seeking its concurrence (*see* page 401).

Rescission of third reading

The House has, on occasions, rescinded the third reading resolution. In 1945 standing orders were suspended to enable the rescission of the resolution relating to the third reading of the Australian National Airlines Bill, and to enable the third reading of the bill to be made an order of the day for a later hour. Subsequently a message from the Governor-General recommending an appropriation in connection with the bill was announced and the bill was read a third time.[338]

The vote on the third reading of the Constitution Alteration (Simultaneous Elections) Bill 1974, which did not attract an absolute majority as required by the Constitution, was rescinded following a suspension of standing orders. Due to a malfunction, the division bells had not rung for the full period and several Members had been prevented from participating in the division on the third reading. The question on the third reading was put again, and passed by an absolute majority.[339]

The resolution on the third reading of the National Health Bill 1974 [No. 2], which had been passed on the voices, was rescinded, by leave, immediately following the third

331 H.R. Deb. (7.11.1935) 1418.
332 H.R. Deb. (3.12.1918) 8637.
333 H.R. Deb. (4.5.1960) 1381.
334 The Speaker ruled out of order a proposed amendment 'That all words after "That" be omitted with a view to inserting the following words in place thereof: "the Bill be postponed for six months in order that a referendum of the Australian people might be taken to determine the acceptability or otherwise of the measure" ', VP 1951–53/272. An attempt has been made to suspend standing orders to allow a Member to move a reasoned amendment at this stage, VP 1996–98/2839.
335 S.O. 155(b)—the effect would be as if the House had resolved 'That this bill be not read a third time'; e.g. VP 1974–75/344 (not carried).
336 The 'reading' of the bill by the Clerk has been taken to be a necessary formality, H.R. Deb. (30.10.1913) 2789.
337 S.O. 155(c).
338 VP 1945–46/213.
339 VP 1974/28–9; H.R. Deb. (6.3.1974) 131–5.

reading, and the question put again, as opposition Members desired a division on the question.[340]

The second and third readings of the Customs Administration (Transitional Provisions and Consequential Amendments) Bill 1986 were rescinded by leave, following the realisation that the second reading had not been moved, and the order of the day was called on again.[341]

The recorded decisions of the committee of the whole and the House on the committee (detail) stage, report and third reading of the Copyright Amendment Bill 1988 were rescinded on motion following the suspension of standing orders, a misunderstanding having occurred during the previous consideration.[342]

The recorded decision of the House on the third reading of the Taxation Laws Amendment Bill (No. 5) 1994 was rescinded on motion following the suspension of standing orders. The bill was then considered in detail and amended, and the question on the third reading put again. At the previous sitting leave had been given for the third reading to be moved immediately (i.e. omitting the detail stage) and intended government amendments had not been moved.[343] (*See also* 'Rescission of agreement to Senate amendments' in Chapter on 'Senate amendments and requests'.)

PROCEDURAL VARIATIONS FOR DIFFERENT CATEGORIES OF BILLS

Private Members' bills

Private Members' bills may be taken during the periods on Mondays in the House and Federation Chamber reserved for committee and private Members' business. Bills are given priority over other private Member's business.[344] Bills to be read a first time in the Federation Chamber are first presented in the House by the Speaker and are automatically deemed to stand referred to the Federation Chamber.[345]

In the House, when the notice for a private Member's bill is called on and the Member concerned has presented the bill, or in the Federation Chamber, when the referred bill is called on, the Member may make a statement in support of his or her bill for a period not exceeding ten minutes.[346] The bill is then read a first time and the motion for the second reading is set down on the Notice Paper for the next sitting. The allocation of time for debate on the second reading on a subsequent private Members' day is subject to the determination of the Selection Committee. Whether a private Member's bill is voted on is also subject to Selelection Committee recommendation. If the second reading is agreed to by the House, further consideration of the bill is given priority over other private Members' business.[347]

340 VP 1974–75/467; H.R. Deb. (19.2.1975) 474.
341 VP 1985–87/893; H.R. Deb. (30.4.1986) 2774.
342 VP 1987–89/925.
343 VP 1993–95/1803–4.
344 SO 41(b).
345 SO 41(d).
346 S.O.s 41(c)(d), 141 (5 minutes, prior to 2010).
347 S.O. 41(e).

A private Member's bill may be considered during time normally reserved for government business following the suspension of standing orders. This has been the usual practice when Private Members' bills are voted on.

(For more detail *see* 'Private Members' bills in Chapter on 'Non-government business'.)

Constitution alteration bills

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

Absolute majority

Section 128 of the Constitution provides that a bill proposing to alter the Constitution must be passed by both Houses, or by one House in certain circumstances (*see below*), by an absolute majority. If, on the vote for the third reading, no division is called for and there is no dissentient voice, the Speaker draws the attention of the House to the constitutional requirement that the bill must be passed by an absolute majority and directs that the bells be rung. When the bells have ceased ringing the Speaker again states the question and, if no division is called for and there is no dissentient voice, the Speaker directs that the names of those Members present agreeing to the third reading be recorded by the tellers in order to establish that the third reading had been carried by an absolute majority.[348] If a bill initiated in the House is amended by the Senate and that amendment is agreed to by the House, thus causing a change to the bill, the question on the amendment must also be agreed to by the House by an absolute majority.[349] It follows that an absolute majority is not required in the case of the House disagreeing to an amendment of the Senate, as there is no change to the bill as agreed to by the House.[350]

There was some uncertainty in the past as to whether a bill proposing to alter the Constitution required an absolute majority on the second reading as well as on the third reading.[351] In 1965 the Attorney-General expressed the following opinion:

> My own view is that the Second Reading of a Bill is no more than the process through which the Bill passes before it reaches the stage at which the House can decide whether or not to pass it; the passing of the Bill occurs when the question on the Third Reading is agreed to. The fact that amendments can be made in the Committee [detail] stage after the Second Reading, and that the Bill can be refused a Third Reading, or re-committed before the Third Reading is agreed to, confirms this view. I am accordingly of the opinion that an absolute majority is not required at the Second Reading stage and that there is no need to record such a majority at that stage.[352]

This reasoning is supported by standing order 155(c), which states 'After the third reading the bill has passed the House and no further question may be put'. In recent years the practice has been to establish the existence of an absolute majority only on the third reading—that is, the final act in the passage of the bill through the House.

If a bill does not receive an absolute majority on the third reading, it is laid aside immediately and cannot be revived during the same session.[353] However, in the case of the Constitution Alteration (Simultaneous Elections) Bill 1974, the bill failed to gain an

348 E.g. VP 1976–77/597–600.
349 E.g. VP 1917–19/556;VP 1998–2001/770–1.
350 VP 1973–74/609–10;VP 1998–2001/768–9.
351 H.R. Deb. (9–10.4.1946) 1216–17.
352 Opinion of Attorney-General, dated 17 August 1965.
353 S.O. 173; J 1974/55.

absolute majority on the third reading because of a malfunction of the division bells. On the same day the House agreed to a suspension of standing orders to enable the vote to be rescinded and taken again. The question 'That this bill be now read a third time' was then put again and, on division, was agreed to by an absolute majority.[354]

Disagreements between the Houses

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

Senate bills

The form of bills introduced into the Senate is governed by the limitations, imposed on the Senate by the Constitution, that a proposed law appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate[355] (*see* Chapter on 'Financial legislation'). Bills received from the Senate are therefore either ordinary bills or constitution alteration bills. Only a minority of bills introduced into the House (less than 10%) are in fact received from the Senate.

Introduction and first reading

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

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

If the House is sitting, the message is delivered to the Chamber by the Usher of the Black Rod where it is received at the Bar by the Serjeant on duty and taken to the Clerk at the Table. If the House is not sitting, the message is delivered to the Clerk[356] or other staff.

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

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

At a convenient time in the day's proceedings the Speaker reads the terms of the message to the House. The action of reading the message in effect presents the bill to the House. The bill is then read a first time without any question being put[357] and, to the necessary extent, then proceeds as if it was a House bill[358] (that is, ordinary bill).

A message has been received from the Senate asking the House to consider immediately a bill earlier transmitted from the Senate. Consideration was not made an order of the day.[359]

The explanatory memorandum for a Senate bill is not presented when the bill is introduced, but immediately prior to the moving of the second reading, whenever that occurs.

354 VP 1974/19, 26–9.
355 Constitution, s. 53.
356 S.O. 261.
357 S.O. 141.
358 S.O. 166.
359 VP 1998–2001/1343.

Subsequent proceedings

If the second reading of a Senate bill is to be moved immediately after its first reading, copies of the bill must be available for distribution in the Chamber. Stocks of the bill are usually received from the Senate when the message transmitting the bill is sent to the House.[360] Leave is required to move the second reading immediately should copies of the bill not be available.[361] When the second reading is moved immediately after the first reading, debate must be adjourned after the Minister's second reading speech.[362] When copies of the bill are available, it may be the wish of the House that the second reading be moved at a later hour rather than immediately—in this case the debate must also be adjourned after the Minister's speech unless leave is obtained for it to proceed.

In most cases the second reading of a Senate bill is not moved immediately after its first reading (or at a later hour), and instead a motion is moved that the second reading be made an order of the day for the next sitting. The order of the day for the second reading may be referred to the Federation Chamber. When, on a future sitting day, the order of the day is called on (either in the House or the Federation Chamber), the second reading is moved and the second reading speech made. The second reading debate then generally proceeds directly—the mandatory provision requiring the adjournment of the debate after the Minister's speech does not apply in these circumstances.

It is usual for a contingent notice to be on the Notice Paper enabling a Minister to move the suspension of standing orders to permit a bill received from the Senate to be passed through all its stages without delay (*see* page 392).

In the case of a Senate bill for which a private Member has responsibility for carriage, subsequent proceedings follow the procedures for private Members' bills (*see* Chapter on 'Non-government business').

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

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

When a Senate bill has been amended by the House, the bill is returned with a schedule of amendments certified by the Clerk.[363]

The further procedural steps involved when the Senate returns the bill with any of the amendments made by the House disagreed to, or further amendments made, are covered in the Chapter on 'Senate amendments and requests'.

PROCEDURES TO SPEED THE PASSAGE OF BILLS

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

- its subject matter—whether the bill is of a controversial nature, whether it has the general agreement of the House, or whether it is of a 'machinery' kind;

360 E.g. VP 1993–95/138.
361 E.g. VP 1974–75/383.
362 S.O. 142.
363 S.O. 167.

- the nature of the Government's legislative program;
- the urgency connected with the passage of the bill;
- agreement reached between Government and Opposition; and
- the number of Members from each side who wish to speak on the bill.

When time for government business is under pressure, negotiations behind the scenes between the Leader of the House and Manager of Opposition Business or party whips and other Members may result in agreements regarding the number of speakers on particular bills or the length of Members' speeches. Such arrangements are not uncommon, although they are officially unknown to the Chair and cannot be enforced.

Cognate debate of related bills can be considered to be routine, and the granting of leave to avoid the usual delay between stages is very common. The other ways of speeding the passage of legislation outlined below involve the Government using its majority to limit debate or to impose a timetable.

Cognate second reading debate

When there are related bills before the House, it frequently suits the convenience of the House, by means of the cognate debate procedure, to have a general second reading debate on the bills as a group rather than a series of separate debates on the individual bills. A proposal for a cognate debate is usually put to the House by the Chair when the first bill of the group is called on.[364] If there is no objection the debate on the second reading of the first bill is then permitted to cover the other related bills, and no debate (usually) occurs when the questions on the second reading of the subsequent bills are put. Apart from this, normal procedures apply—the bills are taken in turn with separate questions put as required at each stage of each bill. If a Member wishes to move a second reading amendment to a bill encompassed by a cognate debate, other than to the first bill, the amendment may only be moved when the relevant order of the day for the later bill is called on.[365] Cognate debate is confined to the second reading stage. A separate detail stage, if required, occurs for each bill.

The House has allowed the subject matter of 16 bills to be debated on the motion for the second reading of one of those bills.[366] A group of bills relating to different subjects, but all Budget measures, has been debated cognately.[367] In 2004 and subsequent years the main appropriation bills were debated cognately in the Budget debate with additional appropriation bills (Nos 5 and 6) of the previous financial year.[368] Between 1994 and 1996 standing orders provided formal procedures for the cognate debate of related bills.[369] The traditional informal arrangements were resumed after the new provisions were found to be unduly prescriptive.

The normal cognate debate procedure operates, in effect, by leave. However, from time to time the House has ordered a cognate debate to occur. In the case of bills this has

364 The bills will usually be already grouped on the Daily Program following programming discussions between the Government and Opposition.

365 E.g. VP 2002–04/1144, H.R. Deb. (9.9.2003) 19595. The mover of such an amendment to a later bill would be entitled to then continue to speak for his or her full speaking time, although it would be within the spirit of the cognate debate procedure not to do so. Alternatively, if the contents of the bills are closely related, it may be possible, and more convenient, to move an equivalent amendment to the first bill in the group instead.

366 H.R. Deb. (28.9.1988) 1009.

367 H. R. Deb. (23.5.2001) 26841.

368 H.R. Deb. (24.5.2004) 28852.

369 VP 1993–95/762, former S.O. 217C.

been done in recent years by means of 'programming motions' following suspension of standing orders, as outlined at page 392. The Selection Committee has provided for cognate debate of private Members' bills.[370]

Bills considered together

On occasion, to meet the convenience of the House, standing orders are suspended to enable closely related bills to be considered together. A motion for the suspension of the standing orders may, depending on the particular circumstances, provide as follows:

- For:
  (a) a number of bills to be presented and read a first time together;
  (b) one motion being moved without delay and one question being put in regard to, respectively, the second readings, the detail stage, and the third readings, of all the bills together; and (if appropriate)
  (c) messages from the Governor-General recommending appropriations for some of the bills to be announced together.[371]

  This procedure facilitates consideration by the House of, for example, related taxation bills such as the Wool Tax (Nos 1 to 5) Amendment Bills,[372] where, because of the constitutional requirement that laws imposing taxation shall deal with one subject of taxation only,[373] a number of separate but related bills are presented. Such a motion to suspend standing orders used to be moved each session in relation to sales tax bills.[374]
- For the calling on together of several orders of the day for the resumption of debate on the motion for the second reading of a number of bills, with provision that they may be taken through their remaining stages together.
- For the calling on together of several orders of the day for resumption of debate on the motion for the second reading of a number of bills, with provision for:
  (a) a motion being moved 'That the bills be now passed'; and
  (b) messages from the Governor-General recommending appropriations in respect of some of the bills being then announced together.[375]

  In such a case as the group of 32 bills dealing with decimal currency[376] and in other cases where the passing of a number of related bills is a formal matter, this form of procedure is of great advantage in saving the time of the House.

A suspension of standing orders to enable related bills to be guillotined in the one motion has also included provisions to allow groups of the bills to be taken together.[377]

In 2011 the motion to suspend standing orders to provide for a package of 19 Clean Energy bills to be taken together also set time limits for the completion of the second reading and consideration in detail stages (*see* 'Programming motions' at page 392). While the 19 bills were to be debated concurrently, the motion provided for a single question to be put at each stage in relation to 18 of the bills together, and questions on the

370 E.g. H.R. Deb. (24.8.2011) 9218.
371 VP 1976–77/433.
372 VP 1993–95/28.
373 Constitution, s. 55.
374 VP 1987–89/613; H.R. Deb. (3.6.1988) 3252; VP 1993–95/26–7.
375 VP 1970–72/1033.
376 VP 1964–66/472, 510.
377 VP 1998–2001/206 (16 'A New Tax System' bills).

remaining bill to be put separately.[378] On another occasion in respect of a package of 11 Minerals Resource Rent Tax bills, the motion to suspend standing orders allowed the resumption of debate on the second readings of the bills to be called on together and the second readings to be debated together—providing in effect a cognate debate (*see* page 389) after which separate questions were put on the second readings[379] (and later stages) of each bill.

All stages without delay

On occasions, the House may consider it expedient to pass a bill through all its stages without delay, either by granting leave to continue consideration at each stage when consideration would normally be adjourned until the next sitting day, or by suspension of the standing orders to enable its immediate passage.

By leave

When it is felt necessary or desirable to proceed immediately with a bill which would normally require introduction on notice, a Minister (or Parliamentary Secretary) may ask leave of the House to present it. If there is no dissentient voice, the Minister presents the bill. If copies of the bill are available, the second reading may then be moved.[380] If copies of the bill are not available, the Minister must obtain the leave of the House to move the second reading immediately.[381] The second reading debate may then ensue, by leave. At the conclusion of the debate and any proceedings immediately following the second reading, the House may grant leave for the third reading to be moved immediately.[382] Alternatively, after the detail stage has been completed, the remaining stages may proceed immediately, with the leave of the House.[383]

Following suspension of standing orders

When it is wished to proceed with a bill as a matter of urgency, but it is not considered desirable or expedient to seek leave at the appropriate stages, or leave has been sought and refused,[384] the standing orders may be suspended with the concurrence of an absolute majority if the suspension is moved without notice, or a simple majority if moved on notice, to enable the introduction and passage of a bill through all its stages without delay, or for a bill already before the House to proceed through its remaining stages without delay. Once the standing orders have been suspended, leave is not necessary to proceed to the various stages of the bill.[385]

CONTINGENT NOTICES

It is usual for a set of contingent notices for the suspension of standing orders to be on the Notice Paper, to avoid the need for an absolute majority in the circumstances above.

Four contingent notices for the purpose of facilitating the progress of legislation are normally given in the first week of each session. In the 43rd Parliament these were:

378 VP 2010–12/884–5.
379 VP 2010–12/1033. However, during the second reading debate the question before the House was 'That the bills be now read a second time', VP 2010–12/1051.
380 E.g. VP 1993–95/118.
381 VP 1974–75/383.
382 E.g. VP 1976–77/492.
383 E.g. VP 1974–75/424–5, 536.
384 VP 1977/336.
385 E.g. VP 1978–80/365–6.

Contingent on the motion for the second reading of any bill being moved: Minister to move—That so much of the standing orders be suspended as would prevent the resumption of debate on the motion that the bill be read a second time being made an order of the day for a later hour.[386]

This contingent notice enables a motion to be moved to bypass the standing order requirement that, at the conclusion of the Minister's second reading speech, debate on the question for the second reading must be adjourned to a future sitting.

Contingent on any report relating to a bill being received from the Federation Chamber: Minister to move—That so much of the standing orders be suspended as would prevent the remaining stages being passed without delay.[387]

This contingent notice covers the situation where a bill is reported from the Federation Chamber with amendments or unresolved questions and copies of the amendments or unresolved questions are not available for circulation to Members. In such circumstances the standing orders provide that a future time shall be appointed to take the report into consideration.

Contingent on any bill being agreed to at the conclusion of the consideration in detail stage: Minister to move—That so much of the standing orders be suspended as would prevent the motion for the third reading being moved without delay.[388]

This contingent notice is intended to overcome the situation where leave is not granted to move a motion for the third reading to be moved immediately (the usual practice, even though the standing orders provide for a future day).

Contingent on any message being received from the Senate transmitting any bill for concurrence: Minister to move—That so much of the standing orders be suspended as would prevent the bill being passed through all its stages without delay.[389]

This contingent notice facilitates the speedy passage of a Senate bill without any of the normal delays between stages provided by the standing orders.

Any Minister or Parliamentary Secretary and the Chief Government Whip may move a motion pursuant to one of these contingent notices; it is not necessary for the motion to be moved by the Minister who lodged the notice.

Programming motions following suspension of standing orders

Standing orders have been suspended to enable the introduction and passage of a bill through all stages without delay by a specified time,[390] or to limit the duration of particular stages.[391] A motion to suspend standing orders for this purpose is, in effect, a kind of guillotine.

In recent Parliaments the Leader of the House has tended to use such motions (on notice) in preference to the less flexible formal guillotine procedure outlined below, which requires two or three separate motions to achieve the same end—that is, suspension of standing orders (if more than one bill), declaration of urgency and allotment of time.

As well as limiting time, 'programming' motions of this nature have imposed other procedural variations in order to streamline proceedings—for example, to provide for bills to be debated cognately,[392] or to be taken together (*see* page 390).[393] Another

386 E.g. VP 1985–87/1071(earlier form of the contingent notice, moved after the Minister's second reading speech).
387 E.g. VP 1985–87/1547 (report from committee of whole).
388 E.g. VP 2004–07/339, 410. *Also* VP 1998–2001/2678; VP 2010–12/1427–8 (cases where the bills were not considered in detail).
389 E.g. VP 1993–5/92, H.R. Deb. (13.5.1993) 892–4.
390 E.g. VP 1998–2001/752; VP 2002–04/273, 1379.
391 E.g. VP 2004–07/72, 849, 1218, 1915.
392 E.g. VP 2004–07/821.
393 E.g. VP 2010–12/884–5.

variation has been to provide for bills to be taken cognately and, at the conclusion of the second reading debate on the first bill, for questions on the remaining stages (of each bill) to be put without delay and without amendment or debate.[394] Such motions commonly include a provision that any variations to the arrangements outlined are to be made only by a motion moved by a Minister.

Bills declared urgent (guillotine)

In some cases the Government may wish to curtail or limit one or more stages of debate on a bill and finds it necessary to move the closure motion (the 'gag'), which has the effect of curtailing debate on the question immediately before the House.[395] On other occasions the Government may resort to the use of the procedure for the limitation of debate (commonly described as the 'guillotine'), prescribed in detail by standing orders 82–85. A guillotine is usually put in place prior to the commencement of the debate it proposes to limit. However, if applied to one bill only, it may be applied during consideration of the bill.

The guillotine procedure was introduced to the House in 1918.[396] Statistics for the number of bills declared urgent each year since 1918 are given at Appendix 17. It can be seen that this figure increased considerably, to a record of 132 bills in 1992. The increase was attributed by Governments to the imposition from 1986 of Senate deadlines for the receipt of legislation from the House.[397]

The use of the guillotine declined significantly after the provision of increased debating time with the establishment of the Main Committee (later Federation Chamber).[398] Another contributing factor to the decline in the 37th Parliament was that, with the introduction of three sitting periods each year instead of two, the Government could introduce bills during one period with the expectation that they would not pass until the next. In more recent Parliaments the formal guillotine procedure provided by standing orders 82–85 of declaring bills urgent and allotting time seems to have become superseded by programming motions following suspension of standing orders, which in effect impose a guillotine by other means (*see* page 392).[399]

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

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

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394 E.g. VP 2008–9/827. A similar motion providing for cognate debate of Appropriation Bills has also suspended the operation of S.O. 143(b) (referral to committee), VP 2010–12/1412–3.

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

396 H.R. Deb. (4.10.1918) 6682–5; H.R. Deb. (9.10.1918) 6715–53; H.R. Deb. (16.10.1918) 6967–78. Greater detail on the history of the procedure appears in earlier editions.

397 H.R. Deb. (21.11.1989) 2558–64.

398 H.R. Deb. (9.11.1994) 2950.

399 The most recent declaration of urgency occurred in 2005, VP 2004–7/606. Statistics in Appendix 17 for bills guillotined also include bills where time has been limited by means of such programming motions.

Declaration of urgency

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

Standing orders must be suspended if it is desired to include more than one bill in the declaration of urgency and to move one motion for the allotment of time in respect of the bills; as many as 67 bills have been dealt with together in this way.[400] If the time for consideration of a bill is to continue beyond the time fixed by the standing or sessional orders for the adjournment of the House, it is necessary to include in the motion for suspension of standing orders a provision to suspend standing order 31 (automatic adjournment) for the sitting in order to avoid an interruption at that time.[401] Also, if two or more bills are to be included in the declaration of urgency, and the allotment of time will provide for one or more of them to be called on and considered after the normal time of adjournment, a provision to suspend the new business rule[402] for the sitting must be included in the motion to suspend standing orders. The motion to suspend standing orders has also included other provisions—for example, permitting bills to be taken together and setting reduced speech time limits.[403]

The question 'That the bill be considered an urgent bill' is put immediately, no debate or amendment being permitted.[404] A declaration of urgency has been withdrawn, by leave, when the House was proceeding to a division on the question.[405]

When a bill has been declared urgent, the declaration is taken to apply to all stages of the bill including Senate amendments and requests,[406] and a motion for allotment of time may be moved in respect of these without a further declaration of urgency.

Allotment of time

On the declaration of urgency being agreed to, a Minister may move a motion specifying the times for any stage of the bill. It is not necessary to cover every stage.[407] Examples are:

- For the initial stages of the bill[408] (up to, but not inclusive of, the second reading of the bill), until . . . (rarely used).
- For the second reading[409] and the reporting of a message from the Governor-General recommending an appropriation, until . . . .
- In relation to the detail stage:
  (a) For the detail stage[410] (or the remainder of the detail stage,[411] if consideration in detail has commenced), until . . . , or
  (b) For the detail stage:
    (i) to the end of clause . . . , until . . . (and so on, clauses or parts separately or in groups)

400 VP 1990–93/1838–43.
401 VP 1978–80/783–5.
402 S.O. 33.
403 VP 1998–2001/206–7 (16 bills).
404 S.O. 82(b). A Member has spoken by indulgence at this time; H.R. Deb. (3.6.1988) 3235–6.
405 VP 1961/127.
406 E.g. VP 1950–51/142–3; VP 1993–95/560–5, 663 (amendments). VP 1993–95/287–8, 359 (requests).
407 H.R. Deb. (5.12.1935) 2669.
408 VP 1917–19/531.
409 VP 1974–75/1068.
410 VP 1974–75/717.
411 VP 1974–75/1091.

. . .

(v) remainder of the detail stage, until . . . ,[412] or

(c) For the detail stage (Appropriation Bill (No. 1)):

(i) Schedule

Department of . . . , until . . .

Department of . . . , until . . .

(ii) Remainder of bill until . . .[413]

- For the remaining stages, until . . . .[414]
- For all stages, until . . . .[415]
- In respect of Senate amendments (or requests):
  (a) For the consideration of the Senate's amendments and for the remaining stages until . . . ,[416] or
  (b) For No. 1 etc., until . . .[417]
  (c) For Group 1—Amendments 1 . . .
  For Group 2—Further Amendments . . . .[418]

The examples above are of terminating the stages of a bill at a fixed time but there are instances where it is more practicable to express the allotment of time in hours. This is the case when a bill is to be debated over a number of days and it is desirable that other business should intervene during that period. While this method has generally fallen into disuse in respect of an ordinary bill,[419] it has been seen as useful in respect of Appropriation Bills (Nos 1 and 2).[420] On an occasion when the estimates were declared urgent and times had been fixed for their consideration, and a point of order was raised that the estimates had priority of other business until disposed of, it was ruled that the times fixed were terminating times, and that, although the estimates had been declared urgent, the House should not be prevented from conducting other business.[421] Terminating times expressed in hours for a group of bills have been changed to fixed times.[422]

The allotment of time for a group of bills may provide for their consideration over more than one sitting day. In this case the ordinary order of business may be followed at the commencement of proceedings on the second sitting day before consideration of the outstanding bills is resumed.[423]

It has been the more recent practice for the Minister to move an allotment of time in respect of 'all stages of the bills' when several bills are under guillotine together and the second reading debate on the first of the bills has not been resumed.[424] Where standing orders have been suspended to enable one motion for the allotment of time to be moved for several bills, the details may vary depending on whether amendments are to be

412 VP 1956–57/244.
413 VP 1993–95/529–30.
414 VP 1993–95/330.
415 VP 1978–80/785.
416 VP 1987–89/600—in this case the motion also encompassed bills being considered for the first time.
417 VP 1950–51/142–3.
418 VP 1993–95/1886.
419 VP 1970–72/581; VP 1934–37/489–90.
420 VP 1970–72/298–300.
421 VP 1946–48/289.
422 VP 1970–72/581, 613.
423 VP 1993–95/330, 337–346;VP 1998–2001/210–11, 216–20, 225.
424 VP 1993–95/329–30.

moved—where there are no amendments provision may be made for 'the remaining stages', but where there are amendments the allotment would allow for a consideration in detail stage. The reporting of a message from the Governor-General recommending an appropriation is not necessarily included in the motion for allotment of time.[425]

The allotment of time may break up the detail stage,[426] for example:

(1) groups of clauses;[427]
(2) parts, groups of clauses (with exceptions), postponed and excepted clauses, new clauses, Schedule, remainder of detail stage;[428]
(3) clause 1 (clause 2 to be considered postponed), groups of articles in the schedule, schedules of the schedule, postponed clause 2 and remainder of detail stage;[429]
(4) to the end of a particular Part, remainder of detail stage;[430] or
(5) section of a clause, remainder of clause, new clauses, groups of clauses, remainder of detail stage.[431]

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

DEBATE AND AMENDMENT OF ALLOTMENT OF TIME MOTION

Debate on the motion for the allotment of time may not exceed 20 minutes, each Member speaking being allowed five minutes. Time taken to deal with a motion of dissent from a ruling of the Chair is counted as part of the 20 minutes[432] (a closure may be moved to such a motion[433]). An amendment may be moved to the motion for allotment of time,[434] and it has been found necessary, when midnight has intervened during consideration of the motion, for the word 'tomorrow' to be omitted from the motion and the word 'today' substituted.[435] The closure motion can be moved on the motion for allotment of time.[436]

When the time allotted for consideration of the second reading of a bill expired during the debate on the motion for allotment of time, the Chair ruled that it was in order to put the question on the allotment of time and (immediately after) the question on the second reading.[437]

VARIATION OF ALLOTMENT OF TIME

An allotment of time that has been agreed to may be varied by motion without notice without an additional declaration of urgency.[438] The allotted time has been extended for the second reading,[439] for the second reading and the detail stage,[440] and has been extended and further extended for the detail and remaining stages.[441] In the consideration

425 VP 1958/28–9; VP 1993–95/330.
426 Referred to as 'committee stage' in examples cited.
427 VP 1951–53/587.
428 VP 1937–40/134–5.
429 VP 1932–34/476–7.
430 VP 1954–55/154.
431 VP 1960–61/276.
432 H.R. Deb. (20.6.1950) 4547.
433 VP 2002–04/574.
434 VP 1978–80/1075.
435 VP 1923–24/165–6.
436 E.g. VP 1937–40/428–9.
437 H.R. Deb. (4.11.1952) 4100–5.
438 VP 1970–72/613–15; VP 1987–89/880, 881; VP 1993–95/663.
439 VP 1934–37/335–6.
440 VP 1948–49/342.
441 VP 1920–21/242, 252.

of an Appropriation Bill (No. 1) which is subject to an allotment of time, a motion may be moved, without notice, to vary the order of consideration of proposed expenditures,[442] and the time allotted for the consideration together of the proposed expenditures for two departments has been varied to allow the proposed expenditures to be considered separately for stated times.[443]

Proceedings under guillotine

When the time for each stage expires in accordance with the allotment of time, the debate is interrupted and the Chair puts (1) the question immediately before the Chair and (2) any other question necessary to conclude proceedings for that stage.[444] At the expiration of time for the detail stage, the immediate question is put by the Chair and a further question is then put on the remainder of the bill. This includes postponed clauses, and any amendments, new clauses and schedules, copies of which have been circulated by the Government at least two hours before the end of the allotted time, which are treated as if they have been moved.[445]

If an allotment of time is in the form 'for the remaining stages', at the expiry of time the immediate question before the Chair is put and then any further question is put which is needed to dispose of the business before the House—for example, the question 'That the remaining stages of the bill be agreed to'.[446] However, if there are government amendments (which have been circulated at least two hours before the end of the allotted time) to be taken into account in such circumstances and the time for the remaining stages of the bill has expired before the detail stage has been reached, or when time has been allotted for the completion of the detail stage but it has expired, the House determines immediately the question 'That the bill and the amendments (and/or new clauses) circulated by the Government be agreed to'. The final question is then put 'That the bill be now read a third time'.[447]

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

- question—That the amendment be agreed to (if there is a second reading amendment);
- question—That the bill be now read a second time;
- message(s) from the Governor-General to be announced;
- question—That the bill and the amendments (new clauses and schedules) circulated by the Government be agreed to;
- question—That the bill be now read a third time.[448]

By resolving that particular stages of certain bills should conclude at specified times, the House overrides, by deliberate decision, the requirement in the standing orders for a motion for a future day to be fixed for the third reading. It is therefore in order for the Minister to move that the bill be read a third time without the grant of leave. Even when

442 VP 1968–69/542.
443 VP 1968–69/550.
444 VP 1978–80/445;VP 1998–2001/248.
445 S.O. 85(b)(ii); VP 1983–84/716.
446 VP 1993–95/89.
447 VP 1970–72/619–25.
448 VP 1970–72/620–5; *and see*, for a more limited number of questions, VP 1990–92/361–2; VP 1993–95/381–2.

debate concludes before the expiry of time, the practice is that leave is not required. However, leave is required where it is the wish of the House to proceed to the third reading immediately (that is, to bypass consideration in detail).[449]

When the expiry of time has prevented opposition or other non-government Members from moving intended amendments which had been circulated, the Chair has allowed the terms of the unmoved amendments to be incorporated in Hansard so that their intentions could be recorded.[450] If the time expires while a Member is moving a motion to suspend standing orders, that motion lapses.[451]

A motion, during debate of a bill under guillotine, to suspend standing orders to reconsider the use of the guillotine has not been accepted.[452]

A motion to reconsider the bill may be moved at the appropriate time during consideration of the remaining stages of a bill.[453] The closure motion cannot be moved while any proceedings in respect of which time has been allotted are being considered.[454] This includes a motion for reconsideration of a bill, as such a motion is considered to come within 'the remaining stages of the bill'.

DIVISION OF A BILL

The House has only once divided a bill. In August 2002 the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 was divided into two bills—the Prohibition of Human Cloning Bill 2002, and the Research Involving Embryos Bill 2002. As the standing orders make no provision for the division of a bill, a motion was first moved, following a statement by the Speaker, to suspend standing orders and to specify the necessary procedural arrangements.[455] This motion was extensively debated and agreed to on division. Pursuant to the procedures thus adopted, after the conclusion of the second reading debate on the original bill, instead of the question on the second reading, the question 'That the bill be divided into . . . (contents of each bill specified)' was put to the House.[456] This question having been agreed to, separate questions (without further debate) were put on the second reading of the two new bills. Further proceedings on each of the bills followed the normal course. A call for the division of a bill may be incorporated in a second reading amendment.[457]

The House has taken the position that the division of a bill by the House in which it did not originate is not desirable, and has not accepted Senate attempts to divide House bills—*see* 'Division of a House bill by the Senate' in the Chapter on 'Senate amendments and requests'.

LAPSED BILLS

When the House is dissolved or prorogued all proceedings come to an end and all bills on the Notice Paper lapse. If it is desired to proceed with a bill that has lapsed following a

449 VP 1987–89/886 (two bills) and 1990–92/359–61 (three bills)—*but see also* VP 1985–87/1286 (three bills); VP 1998–2001/248.
450 E.g. H.R. Deb. (11.4.1986) 2129–2; H.R. Deb. (6.9.1993) 932–3, 934–5.
451 H.R. Deb. (14.11.2002) 9147.
452 H.R. Deb. (16.10.2003) 21637.
453 VP 1923–24/175.
454 S.O. 85(c). However, the closure motion may be moved to the motion for allotment of time, *see* page 396.
455 VP 2002–04/383; H.R. Deb. (29.8.2002) 6115–6.
456 VP 2002–04/386; H.R. Deb. (29.8.2002) 6196–7.
457 E.g. VP 2004–07/1983.

dissolution, a new bill must be introduced, as there is no provision for proceedings to be carried over from Parliament to Parliament. However, both Houses have provisions for the resumption of business that has lapsed due to a prorogation of Parliament.[458]

Any bill which lapses by reason of a prorogation before it has reached its final stage may be proceeded with in the next session at the stage it had previously reached, provided that a periodical election for the Senate or a general election has not taken place between two such sessions. (The proviso in relation to a general election is necessary because on occasions the Parliament has been prorogued prior to the House being dissolved for the purpose of an election.) A further proviso is that the House in which the bill originated must agree to the resumption of proceedings. The procedure is as follows:

- If the bill is in the possession of the House in which it originated and has either not been sent to the other House[459] or, if it has been sent, has been returned by message,[460] it may be proceeded with by a resolution of the originating House, restoring it to the Notice Paper. For example, the Financial Corporations Bill 1973 was restored to the Notice Paper of the House.[461] In the Senate examples are the Estate Duty (Termination) Bill 1973 [1974] and the National Health Bill (No. 3) 1973 [1974] (both private Senators' bills).[462] The stage which the bill had reached at prorogation may be made an order of the day for the next sitting[463] or for a specified future day.[464] Speaker Holder, in a private ruling, held that a bill cannot be proceeded with on the day of the resolution to restore, as it must first be restored to and printed on the Notice Paper.[465] More recently, a bill has been proceeded with immediately after the House has agreed to a motion that the proceedings be resumed immediately at the point where they were interrupted.[466]
- If the bill is in the possession of the House in which it did not originate, it may be proceeded with by resolution of the House in which it is, restoring it to the Notice Paper, if a message has been received from the originating House requesting resumption of consideration. Following prorogation of the lst Session of the 28th Parliament on 14 February 1974 the House requested the Senate to resume consideration of the Australian Industry Development Corporation Bill 1973 and the National Investment Fund Bill 1973,[467] and the Senate requested resumption of consideration of the Legislative Drafting Institute Bill 1973 and the Parliament Bill 1973.[468] The House orders consideration of messages requesting resumption of consideration to be made an order of the day for the next sitting (the most common practice) or for a specified future day.

Bills appropriating revenue and moneys are deserving of special consideration in this context. The Constitution provides:[469]

458 S.O. 174; Senate S.O. 136. *See* Ch. on 'The parliamentary calendar' for the effect of prorogation and dissolution.
459 The Financial Corporations Bill 1973 lapsed at second reading stage at prorogation in 1974, VP 1974/32.
460 The Papua (British New Guinea) Bill 1904 lapsed at the stage of consideration in committee of Senate amendments, VP 1905/21.
461 VP 1974/32.
462 J 1974/24.
463 VP 1974/32; NP 4 (12.3.1974) 110.
464 VP 1908/17.
465 VP 1908/12; NP 3 (22.9.1908) 12.
466 VP 1993–95/2353–4; 2360–2.
467 VP 1974/32.
468 VP 1974/45.
469 Constitution, s. 56.

> A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

On occasions when the House has agreed to resume consideration of a lapsed bill appropriating revenue or moneys which, of constitutional necessity, originated in the House, and in respect of which a message from the Governor-General recommending an appropriation had been announced in the previous session, a new message is announced.[470] This has occurred before the motion to resume proceedings was moved,[471] and immediately after the motion to restore was agreed to.[472] None of the bills on which the House has asked the Senate to resume consideration has involved an appropriation, but the matter has been canvassed in the Senate.[473] Senate requests for resumption of consideration do not relate to appropriation bills (or taxation bills) as they are bills which the Senate may not originate.

Motions to resume proceedings on bills interrupted by prorogation and motions to request the Senate to resume consideration may be debated. Any bill so restored to the Notice Paper is proceeded with in both Houses as if its passage had not been interrupted by a prorogation and, if finally passed, is presented to the Governor-General for assent. If the House in which the bill originated does not ask for the resumption of proceedings, the bill may be re-introduced.[474]

In 1990 the Senate, following suspension of its standing orders, sent a message requesting the House to resume the consideration of a bill which had lapsed in the House at the dissolution of the previous Parliament. The House returned a message to the Senate to the effect that the request was irregular in that it requested action prevented by the standing orders of the House and accepted parliamentary practice, and suggesting that the Senate should introduce the bill again and transmit it to the House in accordance with normal procedures. The Senate subsequently acted as suggested.[475]

ADMINISTRATIVE ARRANGEMENTS

Printing and distribution

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

The role of staff of the House in the distribution of bills was recognised early in the history of the House. In 1901 Speaker Holder drew the attention of Members to the fact that copies of a circulated bill had not passed through the hands of officers of the House, and expressed the view that it would be well in the future if the distribution of bills took place through the recognised channel. Prime Minister Barton stated that he would take

470 VP 1905/18; VP 1908/33.
471 VP 1905/21.
472 VP 1908/33.
473 S. Deb. (30.8.1905) 1628–34.
474 S.O. 174(d).
475 VP 1990–92/172, 196.

particular care that in future all necessary distribution was done through the officers of the House. A few days later the Speaker repeated that the distribution of bills was a matter for the officers of the House, and one for which they accepted full responsibility.[476]

Introduced copy

A Minister or Parliamentary Secretary on presenting a bill hands a signed copy to the Clerk at the Table. The title of the responsible Minister's portfolio is shown on the first page of the bill. If there are any typographical errors in this copy, the errors are corrected by the Office of Parliamentary Counsel and initialled in the margin of the bill by the Minister (or Parliamentary Secretary). Similarly, private Members sign and present a copy of bills they introduce and initial any necessary corrections.[477] All future prints of the bill are based on this introduction copy. Copies of a bill are circulated in the Chamber immediately after presentation.

Third reading print

If a bill has been amended at the detail stage, a 'third reading print', incorporating the amendment(s), is produced. The copies of the third reading print also have printed on the top left hand corner the Clerk's certificate recording the agreement of the House to the bill and certifying that it is ready for transmission to the Senate. It is the responsibility of staff of the House to arrange for a bill's reprinting. This may take some days in the case of a sizeable bill which has been heavily amended. The third reading print is checked carefully to ensure that the copy of the bill transmitted to the Senate accurately reflects all changes made to the bill by the House. This unavoidable delay is a factor of some importance in the programming of business in the closing stages of a period of sittings or on other occasions when it is the desire of the Government for a bill to be passed by both Houses expeditiously.[478]

Deputy Speaker's amendments

Clerical or typographical errors in a bill may be corrected by the Clerk acting with the authority of the Deputy Speaker.[479] In practice only bills introduced in the House are so amended. The Office of Parliamentary Counsel often asks for such correction, but where the matter has not been initiated by that office, its advice is first obtained as to whether or not any such amendment should be made. This type of correction is normally made prior to the transmission of the bill to the Senate but has also been made after the bill has been returned from the Senate.[480]

Clerk's certificate and transmission to the Senate

When the House passes a House bill, a certificate signed by the Clerk of the House is attached to an introduced copy of the bill.[481] The certificate is in the following form:

476 H.R. Deb. (19.6.1901) 1247; H.R. Deb. (26.6.1901) 1618.

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

478 Rarely, in cases of extreme urgency, the first reading print accompanied by a schedule of amendments has been sent to the Senate instead of a third reading print (e.g. Broadcasting Legislation Amendment Bill 2001).

479 S.O. 156. The function was inherited from the role of the former Chairman of Committees, amendments then being made in the Committee of the Whole. The Senate Chairman of Committees has similar authority.

480 Such corrections are not made in the House to Senate amendments to the bill.

481 S.O. 157(a).

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

[Signature]
Clerk of the House of Representatives

House of Representatives
[Date bill passed House]

A copy of the bill bearing the Clerk's certificate, together with a second copy for the Senate's records, is placed inside a folder known as a message to the Senate.[482] When a bill has been amended in its passage through the House, a copy of the third reading print, which has the Clerk's certificate printed on it rather than affixed, is placed in the message for transmission to the Senate, instead of a copy of the unamended bill. The message takes the following form:

Message No. [ ]
Mr/Madam President
The House of Representatives transmits to the Senate a **Bill for an Act** [remainder of long title]; in which it desires the concurrence of the Senate.
[Signature]
Speaker
House of Representatives
[Date of despatch]
[Short title]

The message to the Senate is signed by the Speaker or, if the Speaker is unavailable, by the Deputy Speaker.[483] Because of the unavailability of the Speaker and the Deputy Speaker, a Deputy Chairman (the former equivalent of a member of the Speaker's panel) as Deputy Speaker has signed messages to the Senate transmitting bills for concurrence.[484]

In cases where standing orders are suspended to enable related bills to be considered together, the bills are transmitted to the Senate by means of one message. For example, in 1965, 32 bills relating to decimal currency, which were together read a third time in the House, were transmitted to the Senate within the one message.[485] Similarly, on other occasions, nine Sales Tax Assessment Amendment Bills have been transmitted to the Senate in the one message.[486]

It is the responsibility of the Serjeant-at-Arms to obtain the Clerk's signature on the certified copy of the bill and the Speaker's signature on the message and, if the Senate is sitting, to deliver the message to the Bar of the Senate, where a Clerk at the Table accepts delivery. If the Senate is not sitting, the Serjeant-at-Arms delivers the message to the Clerk of the Senate. Senate practice is that the bill is reported by the President when the Senate Minister representing the Minister responsible for the bill in the House indicates that the Government is ready to proceed with the bill.[487]

Error in certificate

An error occurred in June 2009 when the Clerk's certificate was attached to an earlier version of a bill than the version introduced to and considered by the House, and the

482 S.O. 157(b).
483 S.O. 259.
484 J 1968–69/207–8.
485 VP 1964–66/472, 515; J 1964–66/452–3.
486 J 1983–84/1066–7; 1985–87/536; 1990–92/94–5.
487 *Odgers*, 13th edn, p. 293.

Clerk of the Senate's certification of the Senate's agreement was then affixed to the incorrect version. Apart from the certified copy, the correct version of the bill had been transmitted to the Senate, and only the correct version had been published on the Parliament's website.

The error was not discovered until the checking processes for assent purposes were commenced, after both Houses had adjourned. The Clerk of the Senate reported the circumstances to the President, the Deputy President, parliamentary leaders and independent Senators. He advised that he considered that it would be constitutionally and procedurally proper for him to certify the Senate's agreement to the correct version of the bill (the incorrect version never having been seen by Senators). The Clerk of the House provided a certified copy of the correct version, which was then certified by the Clerk of the Senate. The matter was drawn to the attention of the Official Secretary to the Governor-General when the bill was sent for assent and to the Government.

PRESENTATION OF BILLS FOR ASSENT

The Constitution provides that on the presentation of proposed laws for assent, the Governor-General declares, according to his discretion but subject to the Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves assent for the Queen's pleasure, or he may recommend amendments.[488] Before assenting, the Governor-General formally receives written advice from the Attorney-General as to whether there are any amendments that the Governor-General should recommend, and as to whether the Governor-General should, in the Attorney-General's opinion, reserve the bill for the Queen's pleasure. This advice is prepared by the Office of Parliamentary Counsel.

Preparation of bills for submission for assent

When a bill which originated in the House of Representatives has finally passed both Houses in identical form, the assent copies of the bill are printed, incorporating any amendments not yet incorporated and some minor adjustments, including a special cover and the addition to the back page of the Clerk's certificate stating that the bill originated in the House and has finally passed both Houses.[489] The Clerk's certificate in the circumstances of the passage of a normal bill is:

> I HEREBY CERTIFY that this Bill originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

On the back page of the assent copy of a bill are printed the words of assent used by the Governor-General as follows:

> IN THE NAME OF HER MAJESTY, I assent to this Act.
>
> *Governor-General*
> [Date]

If a bill were to be reserved for assent, the Governor-General would cross out these words and write in the following:

> I reserve this proposed law for Her Majesty's pleasure.
>
> *Governor-General*
> *[Date]*

488 Constitution, s. 58. Assent is given by the Governor-General signing the bill.

489 S.O. 175. For bills which originate in the Senate, assent arrangements are the responsibility of the Senate (Senate S.O. 137).

The question has been raised as to whether it would be more correct to use the word 'bill' or the constitutional expression 'proposed law' instead of 'Act' in the words of assent. The Parliamentary Counsel has expressed a view for the retention of the word 'Act', on the ground that the Governor-General assents to the bill and converts it into an Act, in one action.

Four copies of bills are presented to the Governor-General for assent. When assented to, two copies are returned, one for the originating House and one for the other House. The Governor-General's Office retains one copy and forwards another to the Office of Parliamentary Counsel.

It is desirable to have bills available for the Governor-General's assent before a Parliament is prorogued or the House is dissolved.[490] This may mean that there is not sufficient time for the specially printed assent copies of the bill to be prepared, and ordinary copies (that is, a print of the bill with manuscript amendments) may have to be submitted to the Governor-General. Where this occurs, the normal assent copies are obtained as soon as possible and forwarded to the Official Secretary to the Governor-General with a note seeking the Governor-General's signature for permanent record. This procedure may also be adopted in other circumstances where a clearly demonstrable need for urgent assent exists.

The Governor-General advises each House by message of the assent to bills, and the messages are announced in each House.[491]

Presentation of first bill for assent

It has become the practice for the first bill to be assented to by a newly-appointed Governor-General to be presented by the Speaker in person, accompanied by the Clerk of the House. The Attorney-General has sometimes been present also and, as a formal procedure, at the Governor-General's request, provided advice as to the desirability of assent. The Speaker informs the House accordingly.[492]

Governor-General's assent

Other than on rare occasions the Governor-General, in the Queen's name, is pleased to assent to the bill immediately. The Queen may disallow any law within a year from the Governor-General's assent, an action which has never been taken. Such disallowance on being made known by the Governor-General by speech or message to each of the Houses of Parliament, or by proclamation, would annul the law from the day when the disallowance was made known.[493]

Bills reserved for the Queen's assent

The Constitution allows the Governor-General to reserve assent 'for the Queen's pleasure'.[494] As a consequence of the United Kingdom Statute of Westminster of 1931 and the passing of the *Statute of Westminster Adoption Act 1942* by the Australian Parliament, the necessity was removed of reserving for the Queen's assent certain

490 *See* Ch. on 'The parliamentary calendar'.
491 E.g. VP 1998–2001/279; J 1998–2001/437; VP 2010–12/262: J 2010–11/371.
492 E.g. VP 1978–80/70; VP 1987–89/1061;VP 1996–98/235; VP 2002–04/1087; VP 2008–10/516.
493 Constitution, s. 59. The Constitution Alteration (Removal of Outmoded and Expended Provisions) Bill 1983 proposed to remove this section, but the bill was not submitted to referendum.
494 Constitution, s. 58. 15 proposed laws have been reserved, *see* list at Appendix 19.

shipping and related laws. The Constitution[495] provides that proposed laws containing any limitation on the prerogative of the Crown to grant special leave of appeal from the High Court to the Privy Council shall be reserved for Her Majesty's pleasure. However, since the passing of the *Privy Council (Limitation of Appeals) Act 1968* and the *Privy Council (Appeals from the High Court) Act 1975*, the latter bill being the last bill of any kind reserved for the Queen's assent,[496] it would appear that there will be no further bills coming within this ground of reservation.[497]

In respect of other bills reserved for the Queen's assent, in the lack of any legal requirement a decision would probably be based on the appropriateness of the bill (*Flags Act 1953*[498]) or the appropriateness of the occasion (that is, the Queen's presence in Canberra), or both (*Royal Style and Titles Act 1973*). In the latter case the Prime Minister informed the House that the Queen had indicated that it would give her pleasure to approve the legislation personally.[499]

A proposed law reserved for the Queen's assent shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each House, or by proclamation, that it has received the Queen's assent.[500]

Presentation of double dissolution bills

When a Prime Minister is to request the Governor-General to dissolve both Houses of the Parliament because of disagreement between the Houses in respect of a bill (or bills), the Prime Minister asks the Clerk in writing for a copy of the bill, duly certified by the Clerk as to the proceedings in the House on the bill, to accompany the submission to the Governor-General. There is no requirement of the Constitution or the standing orders of the House in respect of such a certificate, but it has become the practice for such a certificate to be attached to a copy of a bill which is to be the basis of a request for a dissolution of both Houses.

A certificate reciting the parliamentary history of the bill is attached to the Minister's copy of the bill as first introduced and also to the second bill passed after the interval of three months, with the exception of a bill amended in the House, in which case the third reading print is used for the first bill and the Minister's introduced copy for the second bill. The traditional form of the certificate has been as follows:

> THIS Bill originated in the House of Representatives and, on [date], was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on [date] and
>
> - had not been returned to the House of Representatives at the date of the prorogation of the Parliament on [date]; or
> - has not to date been returned to the House.

Where the history of the bill has been more complex the certificate reflects this. For example, the certificate used in respect of the Petroleum and Minerals Authority Bill 1973 (one of the six bills submitted as a basis for a double dissolution on 11 April 1974), as first introduced, was as follows:

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495 Constitution, s.74.

496 The *Australia Act 1986*, having been assented to by the Governor-General, came into operation on 3 March 1986 following proclamation by the Queen during her visit to Australia, Gazette S85 (2.3.1986).

497 *See also* Sir David Smith, 'The Clerk's tale' *Quadrant*, Oct. 2008, pp. 82–8.

498 Act No. 1 of 1954.

499 H.R. Deb. (24.5.1973) 2642.

500 Constitution, s. 60; E.g. VP 1973–74/465. Only one reserved bill has not been assented to, *see* Appendix 19.

> THIS Bill originated in the House of Representatives and on 12 December 1973 was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on 12 December 1973 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 14 February 1974. The Bill lapsed by reason of the prorogation. On 7 March 1974 the House of Representatives requested the Senate to resume consideration of the Bill and on 13 March 1974 the Senate acquainted the House that it had agreed to resume consideration of the Bill. To date the Bill has not been returned to the House.

Should the deadlock between the Houses in respect of the legislation continue after the double dissolution, section 57 of the Constitution provides further that the Governor-General may convene a joint sitting of members of both Houses, which may deliberate and shall vote together on the proposed law. In 1974, the only occasion when a joint sitting for this reason eventuated, the Prime Minister requested certified copies of the six bills indicating details of their subsequent consideration by the Houses following the double dissolution. The bills were necessary to support a submission to the Governor-General for the convening of a joint sitting. A certificate similar to those used on the bills submitted for the double dissolution was attached to a copy of each of the bills.

(*And see* Chapter on 'Disagreements between the Houses'.)

Presentation of constitution alteration bills

On the passage of a constitution alteration bill through both Houses, it is necessary to present a copy of the bill to the Governor-General in order that a referendum may be held. A certificate, signed by both the Clerk and the Speaker and indicating the date of final passage, is printed at the top of the first page of the bill. The most recent example was in the following terms:

> THIS Proposed Law originated in the House of Representatives, and on [date], finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. In accordance with section 128 of the Constitution, the Proposed Law is required to be submitted to the electors.

In the case of a constitution alteration bill which has twice passed the House and which has on each occasion been rejected by the Senate, or the Senate has failed to pass it or passed it in a form not agreeable to the House of Representatives, both bills passed by the House are presented to the Governor-General with certificates signed by the Clerk and the Speaker. For example, the certificates in respect of the Constitution Alteration (Simultaneous Elections) Bill 1974 was on the first occasion as follows:

> THIS Proposed Law originated in the House of Representatives and on 14 November 1973 was passed by the House of Representatives by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate on 15 November 1973 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 14 February 1974.

and on the second occasion:

> THIS Proposed Law originated in the House of Representatives and on 6 March 1974 was passed by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate for its concurrence on 6 March 1974 and has not to date been returned to the House.

The certificate in respect of the Constitution Alteration (Mode of Altering the Constitution) Bill 1974 introduced on the first occasion was in the following form:

> THIS Proposed Law originated in the House of Representatives, and on 21 November 1973 was passed by the House of Representatives by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate for its concurrence on 21 November 1973. On 4 December 1973 the Senate returned the Proposed Law with amendments to which the House of Representatives did not agree. On 5 December 1973 the Senate insisted upon its

amendments disagreed to by the House. The House insisted on disagreeing to the amendments insisted on by the Senate and the Bill was laid aside.

The certificate in respect of the bill introduced on the second occasion was similar to that for the Constitution Alteration (Simultaneous Elections) Bill as indicated above.

Where a constitution alteration bill has been approved by the electors, and no petition disputing the referendum has been filed in the time allowed by law, the following certificate is printed on the bill and signed by the Clerk and the Speaker:

> THIS is a copy of the Proposed Law as presented to the Governor-General, and, according to the Constitution, in pursuance of a Writ of His Excellency the Governor-General, submitted to a Referendum of the Electors. The period allowed by law for disputing the Referendum has expired, and no petition disputing the Referendum, or disputing any return or statement showing the voting on the Referendum, has been filed. The said Proposed Law was approved in a majority of the States by a majority of the Electors voting, and also approved by a majority of all the Electors voting.
> The Bill is now presented to the Governor-General for the Queen's assent.

Amendment recommended by Governor-General

The Constitution makes provision for the Governor-General, in practice on the advice of the Attorney-General, to return to the House in which it originated, a proposed law presented for assent, with a recommendation for amendment.[501] On all occasions of such amendments the Governor-General has acted on advice when it has become apparent to the Government, after a bill has passed both Houses, that further amendment to the bill is desirable, for example, by reason of an error in the bill. On all but one occasion (*see below*) the Houses have agreed to the amendments recommended.

Standing order 176 supplements the constitutional provision concerning amendments recommended by the Governor-General to bills presented for assent. Such amendments are considered and dealt with in the same manner as amendments proposed by the Senate. Any amendment is recommended by message and is considered by the House.[502]

When the House has agreed to any amendment proposed by the Governor-General with[503] or without[504] amendment, such amendments, together with any necessary consequential amendments, are sent to the Senate for its agreement. The House transmits to the Senate by message a copy of the Governor-General's message, together with a copy of the bill forwarded for assent, acquaints the Senate of the action the House has taken in respect of the amendment, and requests the concurrence of the Senate.[505] Any amendments made by the Senate are dealt with in the same manner as amendments made by the Senate to House bills. The Senate returned the message of the Governor-General recommending amendments in the Customs Tariff (British Preference) Bill 1906, together with a copy of the bill as presented for assent, and acquainted the House that the Senate had disagreed to the amendments recommended by the Governor-General. The message from the Senate was ordered to be taken into consideration immediately and the House resolved not to insist on the amendments disagreed to by the Senate.[506] The Governor-General reserved the bill for the King's assent which was never given.

Amendments recommended by the Governor-General to Senate bills and which have been agreed to by the Senate are forwarded for the concurrence of the House by means of

501 Constitution, s. 58. 14 proposed laws have been returned to one or other of the Houses by the Governor-General recommending amendments *see* list at Appendix 19.
502 VP 1974–75/532.
503 VP 1905/147.
504 VP 1974–75/532.
505 J 1974–75/562–3.
506 VP 1906/175.

message. The form of the message is similar to that of the House and conveys recommended amendments of the Governor-General and an assent copy of the bill.[507] The message is considered in the same manner as amendments made by the Senate on the House's amendments to bills first received from the Senate.[508]

When recommended amendments are made, the assent copy of the bill is reprinted and presented again to the Governor-General for assent. The Speaker and the Clerk sign letters to the Governor-General and the Official Secretary, respectively, confirming that the recommended amendments have been made. If any amendments recommended have been disagreed to by the House, or if no agreement between the two Houses is arrived at prior to the last day of the session, the Speaker shall again present the bill for assent in the same form as it was originally presented.[509]

Errors in bills assented to

In 1976 the Governor-General purportedly assented to a bill which had not been passed by both Houses of Parliament as required by section 58 of the Constitution. A States Grants (Aboriginal Assistance) Bill 1976 passed the House[510] but did not proceed past the second reading stage in the Senate. A second bill, slightly different in content but with exactly the same title, passed the House[511] and the Senate.[512] Due to a clerical error in the Department of the House of Representatives, the Clerk's certificate, as to the bill having originated in the House and having finally passed both Houses, was placed on the first bill which had not passed both Houses and that bill was assented to. When the error was discovered, the Governor-General cancelled his signature on the incorrect bill and gave his assent to the second bill, which had passed both Houses.[513] A similar cancellation occurred in the case of the Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Bill 2001, when due to a clerical error a Senate amendment which had not been agreed to by the House was incorporated into the original assent print.[514]

While typographical corrections found necessary during the checking processes before assent may be made, it is not possible to make corrections in Acts after assent. It is considered that should a bill be assented to with typographical or clerical errors in it, if necessary a court would interpret the Act so as to remedy the mistake (the 'slip rule') and there would be no question of invalidity. Depending on the circumstances, legislative amendment at a suitable time may still be desirable.[515]

Publication of Acts

Acts are numbered in each year in arithmetical series, beginning with the number 1, in the order of assent.[516] When the signed assent copy of the Act is returned from the Governor-General, details concerning Act number and date of assent are transposed to a 'publication' copy of the Act. If there is no commencement provision the date of

507 VP 1912/293.
508 S.O. 177.
509 S.O. 176(e).
510 VP 1976–77/240.
511 VP 1976–77/480.
512 J 1976–77/528.
513 VP 1976–77/575; H.R. Deb. (15.2.1977) 2–10.
514 VP 1998–2001/2379; H.R. Deb. (21.6.2001) 28261–2.
515 Advice from Attorney-General's Department, 17 October 1995.
516 *Acts Interpretation Act 1901*, s. 39.

commencement is inserted (although modern practice is that explicit commencement provisions are always included in bills). Since 1985 the dates of Ministers' second reading speeches in each House have been noted on the last page of the Act. When the Act has been printed with the additional details and the new material checked, permission is given to release copies of the Act.

Details of assent are published in the Gazette by the authority of the Clerk of the House (or the Clerk of the Senate for bills originating in the Senate). The Gazette notification shows the Act number, long title, short title and date of assent.

THE INTERPRETATION OF ACTS

Construction of Acts subject to the Constitution

Every Act must be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth.[517] In some circumstances an Act may be read down or read as if it did not contain any invalid provisions, so that it may be given effect to the extent that it is not in excess of the power of the Commonwealth.[518]

Regard to purpose or object of Act

In interpreting a provision of an Act, an interpretation that would best achieve the purpose or object of the Act, whether expressly stated in the Act or not, is to be preferred.[519] The purpose of an Act may be stated in an objects clause, its long title and, if one exists, the preamble. A preamble does not have separate legislative effect, but may be used for clarification if the meaning of a section is unclear.

Use of extrinsic material in the interpretation of an Act

If any material not forming part of an Act is capable of assisting in the construction of a provision of the Act, consideration may be given to the material to confirm that the meaning of the provision is the ordinary meaning conveyed by the text, or to determine the meaning of the provision when the provision is ambiguous or obscure or the ordinary meaning conveyed by the text leads to a result that is manifestly absurd or unreasonable.

Material that may be considered in the interpretation of a provision of an Act includes:

- all matters not forming part of the Act that are set out in the document containing the text of the Act as printed;
- any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or similar body that was laid before either House before the provision was enacted;
- any relevant report of a parliamentary committee presented before the provision was enacted;
- any treaty or other international agreement referred to in the Act;
- any explanatory memorandum relating to the bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House by a Minister before the provision was enacted;

517 *Acts Interpretation Act 1901*, s. 15A.
518 E.g. *see Bank of New South Wales v. Commonwealth* (1948) 76 CLR 371.
519 *Acts Interpretation Act 1901*, s. 15AA.

- a Minister's second reading speech on the bill containing the provision;
- any document that is declared by the Act to be a relevant document;[520] and
- any relevant material in the Journals of the Senate, the Votes and Proceedings of the House of Representatives or in any official record of parliamentary debates.

In determining whether consideration should be given to extrinsic material, or in considering the weight to be given to any such material, regard shall be had to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision, taking into account its context and the purpose or object underlying the Act, and to the need to avoid prolonging legal or other proceedings without compensating advantage.[521]

DELEGATED LEGISLATION

Delegated (also known as subordinate) legislation is legislation made not directly by an Act of the Parliament, but under the authority of an Act of the Parliament. Parliament has regularly and extensively delegated to the Executive Government limited power to make certain regulations under Acts. Other forms of delegated legislative authority include:

- ordinances (of Territories and regulations made under those ordinances[522]);
- determinations (for example, of the Public Service Commissioner,[523] the Presiding Officers[524] and the Remuneration Tribunal[525]);
- orders[526] and rules;[527]
- by-laws;[528] and
- standards, principles, guidelines, declarations, notices, plans of management, approvals.

Delegated legislation can take a multitude of forms and this list is not exhaustive. The Legislative Instruments Act uses the term 'legislative instrument' to cover the wide range of delegated legislation, although specific types of delegated legislation are excluded from the definition of legislative instrument and thus from the application of the Act.[529]

Delegated legislation is necessary and often justified by its facility for adjusting administrative detail without undue delay, its flexibility in matters likely to change regularly or frequently, and its adaptability for other matters such as those of technical detail. Once Parliament has by statute laid down the principles of a new law, the Executive may by means of delegated legislation work out the application of the law in greater detail within, but not exceeding, those principles.

520 For example, the Portfolio Budget Statements and Portfolio Additional Estimates Statements are declared in Appropriation Acts to be relevant documents.

521 *Acts Interpretation Act 1901*, s. 15AB *and see* D. C. Pearce and R. S. Geddes, *Statutory interpretation in Australia*, 6th edn, LexisNexis Butterworths, 2006, pp. 68–93 for comment on the practical application of s. 15AB.

522 E.g. regulations made under the *Christmas Island Act 1958*, the *Cocos (Keeling) Islands Act 1955* and the *Heard Island and McDonald Islands Act 1953*.

523 Under the *Public Service Act 1999*.

524 Under the *Parliamentary Service Act 1999*.

525 Under the *Remuneration Tribunals Act 1973*.

526 E.g. under the *Environment Protection (Impact of Proposals) Act 1974*.

527 E.g. rules of court under the *Family Law Act 1975*.

528 E.g. under the *Federal Airports Corporation Act 1986*.

529 *Legislative Instruments Act 2003*, ss. 6–7.

Parliament retains ultimate legislative authority over delegated legislation. As well as being able to nullify delegated legislation using its power of disallowance, as outlined in the following pages, it is able to pass primary legislation to modify or overturn provisions made in delegated legislation.[530]

It is possible, although rare, for an Act to provide that provisions set out in the Act can be altered by regulation.[531] The *Re-establishment and Employment Act 1945* gave the Governor-General power to make regulations providing for the repeal or amendment of, or addition to, any provision of the Act,[532] subject to the (then) disallowance provision of the Acts Interpretation Act. The power thus given was unusual, and one that should not be given except under special circumstances (a war-time limit was placed on any amendments of the Act effected by the regulations). The Attorney-General stated that in this case it was thought that the methods for re-establishment and employment laid down in the Act, being to some extent of an experimental nature, might need urgent revision from time to time in the light of experience and, for that reason, the regulation-making power had been extended. Moreover, the cessation of operation of any regulation under the Act at the termination of the war would then necessitate an overhaul of the Act and amendments made by regulations.[533] The *Re-establishment and Employment Act 1951* repealed the power of amendment by regulation and provided for the repeal of the Re-establishment and Employment Regulations and the continuance of certain amendments.[534] In more recent times the *Administrative Arrangements Act 1987* empowered the Governor-General to make amendments to any Act by regulation if made necessary or convenient as a result of specified new administrative arrangements. However, a 'sunset' provision provided that this section of the Act would only be in effect for one year.[535]

Legislative Instruments Act

Before 2005, delegated legislation was governed by the *Acts Interpretations Act 1901*, as outlined in earlier editions of this publication. The *Legislative Instruments Act 2003* commenced operation on 1 January 2005.[536]

The Legislative Instruments Act re-enacted, with some amendment, the provisions of former sections 46A and 48 to 50 of the Acts Interpretation Act that related to regulations and extended their operation to all legislative instruments. Changes included the provision for registration to replace gazettal as the means of publication of legislative instruments, and the shortening of the time allowed for their presentation to each House. Explicit provision for partial disallowance was also new.[537] In contrast to the previous situation in which instruments were declared disallowable by their enabling legislation, instruments are now disallowable unless specifically exempted.

530 E.g. *Remuneration and Allowances Act 1990*, Schedule 4.

531 Known as a 'Henry VIII provision' (referring to the Statute of Proclamations 1539, which enacted 'that proclamations made by the King shall be obeyed . . . as though they were made by Act of Parliament'). *See also* D.C. Pearce and S. Argument, *Delegated legislation in Australia*, 3rd edn, LexisNexis Butterworths, 2005, pp. 14–15.

532 *Re-establishment and Employment Act 1945*, s. 137.

533 *See* Senate Standing Committee on Regulations and Ordinances, *6th report*, S.1 (1946–48) 4.

534 *Re-establishment and Employment Act 1951*, ss. 3, 13.

535 *Administrative Arrangements Act 1987*, s. 20(2).

536 Guidance to government agencies on their obligations under the Act is provided by the *Legislative instruments handbook*, Attorney-General's Department, December 2004.

537 *Legislative Instruments Act 2003*, s. 42. For example of motion for partial disallowance *see* VP 2004–07/969.

Making and registration of legislative instruments

Notification of intention and consultation

Makers of legislative instruments are required, in most circumstances, to notify their intention to make a legislative instrument and then to consult with persons and organisations likely to be affected by the proposal.[538]

Register of Legislative Instruments

All new legislative instruments made are required to be recorded in the Federal Register of Legislative Instruments. The Register is a database of legislative instruments (including compilations consolidating amendments) which is publicly accessible.[539] Generally, a legislative instrument that is required to be registered is not enforceable unless it is registered.[540] The Act provided for pre-existing legislative instruments to be registered.[541] If a pre-existing legislative instrument was not registered on or before the relevant date it was taken to be repealed.[542]

Sunset provisions

With some exceptions, a ten year sunset clause is imposed on all registered instruments, dating from the registration of the instrument.[543] Continuation of the instrument may be granted by resolution of either House, in which case it is taken to have been remade.[544]

Parliamentary scrutiny and control

Delegated legislation is required to be laid before each House, thereby becoming subject to parliamentary scrutiny and, in most cases, to the Parliament's power of veto.

Consultation of the relevant enabling Act in conjunction with the Legislative Instruments Act is necessary to ascertain the conditions operating in relation to any particular form of delegated legislation or type of instrument. The provisions of an existing enabling Act in respect of delegated legislation may be different from the provisions of the Legislative Instruments Act—for example, by replacing the tabling or disallowance periods with a different period.[545] However, it should be noted that in such cases the Legislative Instruments Act may now override the provisions of the enabling Act.[546]

Under the Legislative Instruments Act legislative instruments must be tabled in each House within 6 sitting days following registration,[547] even in cases where the instrument is not disallowable. Unless laid before each House within this time limit, a legislative

538 *Legislative Instruments Act 2003*, ss. 17–19.

539 *Legislative Instruments Act 2003*, ss. 20–23. Internet access to the Federal Register of Legislative Instruments (FRLI) is via the Attorney-General's Department ComLaw database—http://www.comlaw.gov.au.

540 *Legislative Instruments Act 2003*, s. 31.

541 *Legislative Instruments Act 2003*, ss. 28–30.

542 *Legislative Instruments Act 2003*, s. 32.

543 And taking effect on 1 April or 1 October. The sunset date for pre-existing instruments registered on 1 January 2005 varies according to the year the instrument was made, *see* table in *Legislative Instruments Act 2003*, s. 50.

544 *Legislative Instruments Act 2003*, s. 53.

545 *Telecommunications Act 1991*, ss. 408–9—changed to 5 days for regulations and instruments made during a restricted time, *see* S. Deb. (14.11.1991) 3253–4. The *Australian Capital Territory (Planning and Land Management) Act 1988* provided for 6 days; also no provision for deemed disallowance if motion not disposed of. *Financial Management and Accountability Act 1997*, s. 22—to be effective a disallowance resolution must be passed within 5 sitting days of a determination being tabled.

546 *Legislative Instruments Act 2003*, s. 57.

547 Previously, if no time was prescribed in the enabling Act, regulations had to be laid before each House within 15 sitting days after being made—*Acts Interpretation Act 1901*, former s. 48(1).

instrument ceases to have effect.[548] Explanatory statements for legislative instruments are also presented.[549]

In practice the tabling period may extend for some time, as a long adjournment or even dissolution and election could intervene between sitting days. In the latter case there could, for example, be four sitting days in one Parliament and two in the next. Instruments do not need to be presented again in the new Parliament.[550]

After a legislative instrument has been registered, no instrument the same in substance can be made while the original instrument remains subject to the tabling requirement, unless the remaking of the instrument has been approved by both Houses.[551]

Presentation to the House

After registration, legislative instruments are delivered to the Clerk (or staff of the House) and are recorded in the Votes and Proceedings as 'deemed documents'.[552] An instrument so delivered to the Clerk is deemed to have been presented to the House on the day on which it is recorded in the Votes and Proceedings. Documents received on a sitting day before 5 p.m. (3 p.m. on Thursdays) are recorded in the Votes and Proceedings of the day of receipt. In other circumstances they are recorded in the Votes and Proceedings of the next sitting day.

Although this is not common, legislative instruments can also be presented to the House in the same manner as ordinary documents,[553] and a motion to take note of the document or documents may be moved and debated. An example of this occurred in 1986 when a Minister presented an amending regulation to certain Export Control (Orders) Regulations and made a ministerial statement concerning them. Debate ensued on the question that the House take note of the documents (regulation and statement) to which a Member moved an amendment to disallow the regulation; debate was adjourned and not resumed.[554]

Disallowance

Not all legislative instruments that are required to be presented are able to be disallowed. The Legislative Instruments Act lists categories of legislative instrument that are not subject to disallowance, and those that are not subject to disallowance unless subject to disallowance under their enabling legislation or by means of some other Act.[555]

In most cases legislative instruments are effective unless and until disallowed, but an Act may provide that an instrument made pursuant to it does not come into effect until the disallowance period has expired.

If a notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House after a copy of the instrument was laid before that House; and within 15 sitting days of that House after the giving of that notice, the House passes a resolution, in

548 *Legislative Instruments Act 2003*, s. 38.
549 *Legislative Instruments Act 2003*, s. 39.
550 Any differences between the House and the Senate sitting calendars also need to be taken into account. *See also* 'Reckoning of time' at page 415.
551 *Legislative Instruments Act 2003*, s. 46.
552 Legislative instruments are included in the sessional index of papers presented to Parliament.
553 E.g. VP 2004–07/966.
554 VP 1985–87/882. If passed it is considered that this amendment would not have been effective, as disallowance must be pursuant to a motion of which notice has been given.
555 *Legislative Instruments Act 2003*, s. 44.

pursuance of the motion, disallowing the instrument or provision, the instrument or provision so disallowed then ceases to have effect.[556]

If at the end of 15 sitting days of that House after the giving of that notice of motion:

- the notice has not been withdrawn and the motion has not been called on; or
- the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the instrument or provision specified in the motion is then taken to have been disallowed and ceases at that time to have effect.[557]

If the House is dissolved or expires, or the Parliament is prorogued, before the expiration of the 15 sitting days, any legislative instrument that is the subject of a disallowance motion is taken to have been laid before the House on the first sitting day after the dissolution, expiry or prorogation.[558] Any notice to disallow given in the previous Parliament (or in the case of prorogation, the previous session) must be given again to have effect.[559] For an instrument which is not the subject of a disallowance motion the count of 15 sitting days continues into the following session or Parliament.

Where a legislative instrument or provision of a legislative instrument has been disallowed or taken to have been disallowed, an instrument or provision that is the same in substance may not be made within six months after the date of disallowance unless the House concerned has rescinded its resolution of disallowance or approved the re-making of the instrument or provision, as the case may be.[560]

While a legislative instrument is subject to disallowance, a House may require any document incorporated by reference in the instrument to be made available for inspection.[561]

For advice on the calculation of the duration of disallowance periods *see* 'Reckoning of time' at page 415.

ACTION IN THE HOUSE—GIVING NOTICE OF DISALLOWANCE

Each sitting day the Table Office produces a Disallowable Instruments List. This is a listing of instruments which have been presented and which are subject to possible disallowance, showing the number of sitting days remaining for Members to give notice of disallowance.[562]

When a notice of disallowance is given it appears in the Notice Paper with a note showing the number of sitting days remaining before the instrument or provision concerned is taken to be disallowed.[563]

The content of a notice of disallowance is usually only the proposal that the legislative instrument in question be disallowed. However, on occasion notices have included additional comment—for example, proposing alternative measures or giving reasons.[564]

Of the hundreds of pieces of delegated legislation presented each year very few are ever formally considered, let alone disallowed, by the House. Almost invariably, notices

556 *Legislative Instruments Act 2003*, s. 42(1).
557 *Legislative Instruments Act 2003*, s. 42(2).
558 *Legislative Instruments Act 2003*, s. 42 (3).
559 A 'new' 15 sitting day period thus commences.
560 *Legislative Instruments Act 2003*, s. 48; VP 1996–98/502; *and see* J 2002–04/3415.
561 *Legislative Instruments Act 2003*, s. 41.
562 The list is publicly available via the House of Representatives web site (http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/).
563 A notice of disallowance given by a private Member is placed under Notices, Private Members' Business, e.g. NP 133 (11.12.1986) 9744. A notice of disallowance given by a Minister is placed under Government Business, NP (9.9.1996) 831–2.
564 E.g. VP 1968–9/422, VP 1993–96/202.

of disallowance are given by private Members,[565] and these are subject to the same procedures as other items of private Members' business. However, the Selection Committee does not select them for debate during the private Members' business period on Mondays and, in view of the fact that disallowance will occur unless a notice is called on and dealt with within the specified time, the general practice is for the Government to move that standing orders be suspended to permit them to be moved and debated during government business time.[566]

The passage of a resolution of disallowance or the deemed disallowance of a legislative instrument is notified in the Gazette 'for general information' by the Clerk of the House responsible.[567]

Reckoning of time

The periods specified for the presentation and disallowance of legislative instruments, or for that matter any period counted in sitting days, may extend for a considerable time. Months can elapse when a count continues into a new Parliament. Even in the same session, long adjournments can intervene between sittings. Any differences between the House and the Senate sitting calendars also need to be taken into account.

Pursuant to the Acts Interpretation Act any period of time prescribed or allowed by an Act dating from a given day, act or event, unless the contrary intention appears in the Act, is reckoned exclusive of the day of such act or event.[568] The day on which a legislative instrument is presented therefore is not taken into account for the purposes of determining the number of sitting days within which it may be disallowed. A sitting may extend beyond a calendar day but constitute only one sitting day.[569] Similarly, a sitting which is suspended and resumed on a later day constitutes only one sitting day.[570] Any disputed question on the reckoning of time would be, initially at least, for the House itself to decide. The possibility of the matter being subsequently the subject of litigation cannot be ruled out, in which case it could be a matter for the courts to consider.

A notice of disallowance lodged on the last possible sitting day has been regarded as valid, the provisions of standing order 108—that a notice only becomes effective when it appears on the Notice Paper—not being seen as cutting down the then provisions of the Acts Interpretation Act which referred to a notice given 'within 15 sitting days'.[571]

Notice to disallow before presentation

The question has been raised as to whether a notice of motion disallowing a legislative instrument should be accepted before the legislative instrument is laid before the House. The matter was canvassed in the Senate in 1942 when a Minister informed the Senate that Senators could move for the disallowance of a regulation without it being tabled, based upon the High Court judgment in Dignan's case.[572]

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565 An exception being notices given at the start of the 38th Parliament, H.R. Deb. (28. 5.1996) 1570 and H.R. Deb. (29. 5.1996) 1769, disallowing regulations made by the previous Government. The notices were not brought on for debate within the specified time and the regulations were deemed disallowed on 10 and 11 September 1996, *see* H.R.Deb. (17.9.1996) 4421. *See also* VP 2008–10/150 (motion by Minister).

566 E.g. VP 1993–95/1499;VP 1998–2001/382; VP 2002–04/551 (motion withdrawn, by leave); VP 2004–07/1819.

567 Gazette GN2 (13.5.1987) 55; S344 (18.9.1996).

568 *Acts Interpretation Act 1901*, s. 36(1).

569 VP 1978–80/596.

570 VP 1917–19/171; *see also* Ch. on 'Order of business and the sitting day'.

571 NP 154 (28.11.2000) 8674.

572 S. Deb. (6.3.1942) 235. In Dignan's case the High Court held that the Parliament could validly delegate law making powers to the Executive, *Dignan v. Australian Steamships Pty Ltd* (1931) 45 CLR 188.

In response to a request for an opinion, the Attorney-General's Department advised the Clerk of the Senate on 25 March 1942 that the decision in Dignan's case should still be regarded as authority for the proposition that it is not a condition essential to the validity or operation of a resolution of disallowance that the regulations should first be laid before the House. The Chairman of the Senate Regulations and Ordinances Committee, in a memorandum on the disallowance of regulations, and on the judgments in Dignan's case, concluded that the question of whether disallowance is effective where a regulation is not laid before the Senate (or the House) was still an open one as far as the High Court was concerned, and that any doubt on the matter could be avoided if motions for disallowance were not moved before the regulations were tabled.[573] It was considered that a similar attitude might commend itself to the House of Representatives. It is noted that section 42 of the Legislative Instruments Act refers to disallowance where a notice has been given 'within 15 sitting days of that House after a copy of the instrument was laid before that House'.

In the House a notice of motion has been given before the relevant regulations were tabled. On 29 November 1940 Statutory Rules No. 269 (National Security Aliens Control Regulations) were made, and on 3 December 1940 a Member gave a notice of motion for their disallowance, whereas the regulations were not tabled until 9 December 1940.[574] On 2 April 1941 the Member raised a matter of privilege in which he claimed that the regulations were null and void as his motion for disallowance had not been dealt with within 15 sitting days after notice was given. The Minister replied that he believed the motion was out of order, as it was placed on the Notice Paper some days before the statutory rules were tabled; if the Member wished to take any action in the matter, the opportunity to do so was still open to him. The Speaker stated that the question of whether the statutory rules were null and void was a matter of law, the curtailment of any rights of the Member was a matter of privilege. The Member concluded, not by moving a motion relating to privilege, but rather by giving notice of motion of no confidence in the Minister. Later in the day, standing orders having been suspended, the Member moved the no confidence motion but it lapsed for want of a seconder.[575]

Approval

The Parliament's control of delegated legislation is usually exercised through the disallowance procedure. An alternative means of parliamentary control is to provide that specific delegated legislation may come into force only with the explicit approval, by affirmative resolution, of both Houses. Although not common, this practice has been used from time to time in recent years, especially in respect of certain types of legislative instrument variously described as statements, charters, agreements, declarations, guidelines, etc.[576]

An Act may provide for the Houses to be able to amend the instrument in question during the process of approving it. If one House amends such an instrument the other House is informed by message, and when the message is considered, the motion put, for example, 'That the House approves the form of agreement … as amended by the Senate

573 *Odgers*, 13th edn, pp. 426–7.
574 NP 7 (4.12.1940) 15; VP 1940–43/45.
575 VP 1940–43/103, 105; H.R. Deb. (2.4.1941) 504–5, 553–7.
576 E.g. VP 1990–92/515–6, 1290–1; VP 2008–10/1374; VP 2010–12/140.

and conveyed in Senate Message No. . . .'. The motion can be amended to amend the amendments or make further amendments.[577]

The conditions for approval vary and depend on the requirement of the particular Act. The requirement may be simply that an instrument must be approved by both Houses to come into effect.[578] A more complicated requirement may be, for example, that an instrument comes into effect after 15 sitting days of being tabled in both Houses, unless a notice of motion to amend the instrument is given in either House, in which case the instrument, whether or not amended, must be approved by both Houses.[579]

While notices of motions of approval moved by Ministers are taken as government business, motions of amendment, as in the above example, would in the normal course be moved by opposition Members and be subject to the usual private Members' business procedures.[580]

Approval provisions have sometimes been inserted into bills in the Senate when it has been thought that particular instruments merited special control procedures.[581] However, there may on occasion be another reason for their use—the approval of regulations by both Houses at the time of presentation does offer the possibility of a more rapid and certain outcome than waiting the required period for potential disallowance. An Act has provided for either disallowance or approval in respect of the same regulations—the disallowance procedures ceasing to apply in the case of the regulations being approved.[582]

Unless provided in the enabling Act (or other legislation) the disallowance procedures of the Legislative Instruments Act do not apply to legislative instruments that, in accordance with the provisions of the enabling legislation, do not commence unless they are approved by either or both Houses of Parliament.[583]

Regulations and Ordinances Committee

The Senate, in 1932, established by standing order a Standing Committee on Regulations and Ordinances to be appointed at the commencement of each Parliament, to which all regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate, and which are of a legislative character, stand referred for consideration and, if necessary, report. The committee scrutinises delegated legislation to ensure that:

- it is in accordance with the statute;
- it does not trespass unduly on personal rights and liberties;
- it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- it does not contain matter more appropriate for parliamentary enactment.[584]

577 VP 1990–92/472–5.
578 *See*, for example, amendments moved at VP 1987–89/1622–3.
579 'Form of agreement' under the *Aged or Disabled Persons Care Act 1954*, ss. 10DA, 10DB.
580 VP 1990–92/537–9 (amendment moved), 595 (order of day discharged by mover).
581 *Odgers*, 13th edn, p. 423.
582 *Telecommunications Act 1991*, ss. 408–9— *see* S. Deb. (14.11.1991) 3253–4.
583 *Legislative Instruments Act 2003*, s. 44.
584 Senate S.O. 23.

The committee traditionally operates on a non-partisan basis and refrains from considering the policy of delegated legislation. The committee's reports usually consist of accounts of amendments made to legislation to accommodate the committee's objections. Notices of disallowance are given on occasion, but these are often withdrawn after undertakings are received from Ministers, for example, to have provisions changed.[585]

585 For the history and operations of the committee *see Odgers*, 13th edn, pp. 438–40.