

## Presentation of explanatory memorandums

### Background

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

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

## Availability of bill and explanatory memorandum

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

## History of explanatory memorandums in the House of Representatives

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

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

## Practice in other Parliaments

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

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

## Discussion and recommendation

### Purpose of explanatory memorandums

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

### Principles considered

#### 2.13

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

<sup>1</sup> *Legislation Handbook*, p. 38.

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

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

### Recommendation 3

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

## Proposed amended standing orders 141 and 142

### **141 First reading and explanatory memorandum**

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

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

### **142 Second reading and explanatory memorandum**

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

***That this bill be now read a second time.***

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

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

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

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

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Chair

2 March 2006