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# The Legislative Process

# THE LEGISLATIVE PROCESS

## THE LEGISLATIVE FUNCTION OF PARLIAMENT

The Queensland Parliament consists of the Queen and the Legislative Assembly. It has power to make laws for the peace, order and good Government of Queensland in respect of all matters not the direct responsibility of the Commonwealth of Australia Parliament, as defined by the *Commonwealth of Australia Constitution Act 1901*.

The making of a law by the passing of legislation is a fairly complicated parliamentary and constitutional process and its final validity as an Act of Parliament depends on the Bill, or proposed law being approved in the same form by both elements that constitute the Queensland Parliament.

Bills must be both passed by the Legislative Assembly and given Royal Assent, in the name of Her Majesty, by the Governor to become an Act or law.

## LEGISLATION – THE COURSE OF PROGRESS

The Constitution gives the Legislative Assembly the power to make rules and orders with respect to the order and conduct of its business and its proceedings (Standing Rules and Orders), including the procedure to be followed for the introduction and passage of Bills.

The normal flow of the Legislative progress is that a Bill (Bill is thought probably to be a derivative of medieval Latin *Bullà* (Seal) and meaning originally a written sealed document), is introduced into the Legislative Assembly, passed and agreed to, then given Royal Assent by the Governor and converted at that point into an Act. Act is short for Act of Parliament, and comes from the Latin via Norman French, which was the original language of the British Parliament – *Actum*, meaning a thing completed or formally done.

### ***Types of Bills***

In the Legislative Assembly Standing Orders two types of Bills are recognised: Government Bills and Private Members' Bills.

Provided the rules relating to initiation procedures are observed, any Member of the Legislative Assembly has authority to introduce a Bill.

Under Standing Order 128 (1) a Minister may present a Bill at any time during Government Business, so as to not interrupt other Government Business, and under sub section (2) a Member may present a Private Member's Bill during any time allocated for the introduction of Private Member's Bills.

### ***Form of Bill***

Bills take the form described below, although not all the parts of a Bill are necessarily essential to every Bill.

## ***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 the Bill. The term “long title” is used in distinction from the term “short title”. A general reference to the title of a Bill, without being qualified, usually means the long title. The long title is part of the Bill and as such is capable of amendment and must finally be agreed to by the House. For example the long title for the *Contract Cleaning Industry (Portable Long Service Leave) Bill 2005* appears as follows:

### **A Bill**

for

**An Act to provide for an equitable and efficient system of portability of long service leave in the contract cleaning industry, and for other purposes**

## ***Preamble***

Like the long title, the preamble is part of the Bill, but is a comparatively rare incorporation. Preambles are an introductory paragraph in which the reasons for introducing the Bill are set forth.

## ***The enacting formula***

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

"THE PARLIAMENT OF QUEENSLAND ENACTS".

Bills requiring the consent of the electors of Queensland use the following form:

"THE PARLIAMENT OF QUEENSLAND WITH THE CONSENT OF THE ELECTORS OF QUEENSLAND ENACTS".

## ***Short title***

The short title is the name of an Act. It is a title that assists in identifying and indexing. Clause 1 of a Bill usually contains its short title, an example of which is—

1. This Act may be cited as the *Sugar Act 1986*.

When a session of the Parliament extends into two or more calendar years and Bills introduced in the first year are not passed or assented to until the ensuing year, then under Standing Order 163, the Clerk is authorised to amend such first mentioned year date in the title, short title, or otherwise, as may be required.

It is not uncommon for more than one Bill, bearing virtually the same short title, to be enacted in the same year. In this particular situation the second Bill and subsequent Bills are distinguished by the insertion of (No. 2), (No. 3), and so on in the short title.

## ***Commencement provision***

In many instances Bills contain a provision as to the date from which it has effect. In other words Acts do not necessarily come into operation on the day of Royal Assent. When a Bill has a commencement clause, it is usually Clause 2, and the date on which the Act comes into operation is described in one of the following ways:

- (a) the date the Act receives Royal Assent;
- (b) a date to be fixed by Proclamation. This requires an Executive Council order and the Proclamation must be published in the Gazette;
- (c) a particular date;
- (d) a combination of (a) and (b), for example sections 1 to 2 come into force on the day of Royal Assent, sections 3 to 12 on a date to be fixed by Proclamation.

Where there is no stipulation laid down in the Act, it immediately comes into force from the date of Royal Assent.

### ***Dictionaries***

A dictionary or definitions clause sets out the specific meaning of certain words in the context of the Bill. Definitions may also appear elsewhere in the Bill in the form of a Schedule.

### ***Clauses***

The main part of a Bill is the clauses. Clauses contain what the Bill is all about. They may be divided into sub-clauses, sub-clauses into paragraphs and paragraphs into sub-paragraphs. Larger Bills are divided into parts. Once a Bill has received Royal Assent and becomes an Act, clauses are then referred to as sections.

### ***Schedules***

Matters of details may be appended to a Bill in the form of a schedule. A schedule may contain, *inter alia*, a table of Acts to be repealed by the Bill, a form of words for a document, an agreement, a plan, or a precise description of an area of land referred to in the Bill. A schedule is part of the Bill and is usually given legislative effect by a preceding clause or clauses in the Bill.

Where there are more than one schedule, they are referred to as Schedule 1, Schedule 2, and so on.

## **THE STAGES IN THE PASSAGE OF GOVERNMENT BILLS**

### ***Presentation and first reading***

The Minister presents the Bill and moves that the Bill be now read a first time. If this is agreed to, then the Clerk, who has been handed the Bill by the Minister, reads out the short title of the Bill.

It is the practice of the House that a Minister may present a Bill on behalf of another Minister. This is usually done by the Leader of Government Business if a Minister is absent and the Bill must be introduced on that particular day.

The Question, "That the Bill be now read a first time", is put without amendment or debate (S.O. 128 (3)).

There is no requirement that the Minister introducing a Bill must present a printed copy. Nevertheless, for convenience, printed copies are ready to be made available. The Bill is deemed to be printed once it has been read a first time and thus is then immediately distributed 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.) A Bill is not out of order if it refers to another Bill that has not yet been introduced.

### ***Second reading***

This is one of the two most important stages 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.

Once the Bill has been circulated to the Members, the Minister moves for the second reading of the Bill and in doing so makes his/her second reading speech.

At the conclusion of this speech, another Member moves that the debate be adjourned. (This Member is normally the Opposition spokesperson on that particular Bill.) Under Standing Order 128 (8), further debate is adjourned for a period of at least thirteen whole calendar days.

If the Government decides to bring the debate forward, then the only way it can do so is to move a motion (on or without notice), that so much of the Standing Orders be suspended as would prevent the Bill from being taken through its remaining stages at that day's sitting.

The reason for the thirteen-day rule is so that Members and other interested parties, persons or groups will have adequate time to study the Bill in detail before the resumption of the second reading debate.

During the second reading speech the Minister explains the purpose, general principles and effect of the Bill. The speech must be relevant to the Bill and, under the current Sessional Orders, the Minister has 60 minutes' speaking time. The debate is resumed at least thirteen clear days later by the Opposition spokesperson, who has 60 minutes' speaking time.

All other Members have 20 minutes to speak in the debate, and the Minister has a right of reply of 30 minutes.

The second reading debate is primarily an opportunity to consider the principles of the Bill and should not extend in detail to matters such as the individual clauses of the Bill, which can be discussed at the "consideration in detail" stage.

Debate can include reasonable reference to any matters relevant to the Bill, the necessity for it, alternative propositions and reasons why the Bill should be opposed or, alternatively, be supported. However, continued irrelevancy will draw the Chair's attention and the Member concerned will almost certainly be called to order. In very large Bills, the scope of the subject 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 debate and a general discussion of a matter in the principal Act which is not referred to in the Bill is not permitted. On 25 March 1970 Speaker Nicholson held that, "Individual clauses cannot be discussed during the second reading stage".

### ***Amendment to the question for second reading***

An amendment to the question, "That the Bill be now read a second time" may be moved by any Member. Known as a "second reading amendment", under Standing Order 132, it must be strictly relevant to the question for the second reading. It usually takes the form of an amendment to omit the word "now" and at the end of the question adding the words "on this day three months", or "on this day six months" or any other time. It could also be an amendment to delay the second reading until the Bill is considered by a committee.

Another type of amendment that may be used is often called a “reasoned amendment” and this enables a Member to place on record any special reasons for not agreeing to the second reading. A reasoned amendment must also however be relevant to the Bill and an amendment dealing with a matter not in the Bill, nor within its title, may not be permitted. The usual form of a reasoned amendment is to move that all words after “That” be omitted with a view to inserting the following words, “the Bill be withdrawn and redrafted to provide for...”.

### ***Determination of the question for second reading***

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

A Bill whose second reading has been negatived is then disposed of and removed from the Notice Paper. It is referred to as having “failed its second reading”.

### ***Bill not proceeded with***

From time to time a Bill is introduced for the purpose of it remaining on the Notice Paper until the reactions of the public and interested groups are known. As a result of subsequent representations, the Government may wish to change the Bill substantially from its introduced form. If extensive amendments, or amendments which would be inadmissible under the Standing Orders, need to be made, a new Bill can be introduced. This can be done in one of two ways:

- The Bill can remain on the Notice Paper until it lapses on dissolution or prorogation, or
- the Minister concerned can move for the discharge of the order of the day and a new Bill brought in and proceeded with in place of the old one.

### ***Proceedings following second reading***

Once a Bill has been read the second time, the House considers the Bill in detail, or the House can refer the Bill to a Select Committee.

### ***Reference to a Select Committee***

A proposal to refer a Bill to a parliamentary Committee can be moved by a second reading amendment, or after the second reading. The motion can be debated, but should not be a continuation of the second reading debate. It should be a debate on the reasons why or why not the Bill should be referred to a parliamentary Committee.

It is not normal practice for Bills in the Queensland Legislative Assembly to be referred to parliamentary Committees. The usual practice is for the House to consider the Bill in detail immediately after the Bill has been read a second time.

### ***Consideration in detail stage***

This is the second stage in the passage of legislation. At this stage, clauses and schedules (if any) of the Bill are considered in detail. The Speaker or Deputy Speaker presides either from the Chair or, if the clauses are debated, from the table of the House.

If there is a preamble in the Bill, it is always postponed until all the clauses and schedules (if any) have been agreed to. This is because the House has already affirmed the principles of the Bill in the second reading and it is therefore the duty of the House to settle the clauses first. The preamble is thus made subordinate to the clauses instead of governing them.

The text of the Bill is therefore considered in the House in the following order:

- (a) clauses as printed and new clauses, in their numerical order;
- (b) schedules as printed and new schedules, in their numerical order;
- (c) any clauses or schedules previously postponed; and
- (d) postponed preamble (if any).

### ***Moving of motions and amendments in consideration in detail stage***

Any motions (including amendments) moved in consideration in detail stage need not be seconded. Although there is no requirement for notice to be given of proposed amendments, it is most helpful that they be lodged with Table staff as early as possible so the proper forms may be prepared and they can be printed and circulated to Members before they are considered.

In debate on any question in the consideration in detail stage, the Minister in charge may speak for unlimited periods of time and each Member may speak for 20 minutes once, or for 10 minutes, and a second and third time of 5 minutes each, provided that a Member may prolong his/her first or second speech, but not so as to exceed the full time permitted for speaking on any one question.

Debate in the consideration in detail stage must be confined to the subject matter of the clause, schedule or amendment before the House, and cannot extend to other clauses or schedules.

Where amendments are proposed to clauses, the Speaker or Deputy Speaker proposes a question to the House, "That the amendment be agreed to".

If a clause or a schedule is amended, then a further question is proposed, "That the clause (or schedule) as amended stand part of the Bill".

If the amendment is designed to omit a clause, then the correct procedure is to vote against the clause when it is put.

### ***Inadmissible amendments***

Examples of amendments ruled out of order by the Chair have been amendments which would:

- (a) be a direct negative of the Bill;
- (b) amend the principal Act not covered by the amending Bill;
- (c) omit a clause; (the correct procedure is to vote against the clause)
- (d) create a charge on the Crown;
- (e) be consequential on one already negated;
- (f) be in conflict with a clause already agreed to;
- (g) negate a principle already affirmed;
- (h) not be relevant;
- (i) oppose the principle of the Bill;
- (j) be outside appropriation granted;
- (k) be the same as one already negated;
- (l) be subversive to the main principle of Bill, and
- (m) restrict the principle affirmed in the second reading.

### ***An amendment must not seek to appropriate a sum of money***

On 19 November 1935, Mr Moore MLA proposed to move the following amendment to the Wheat and Wheat Products Bill:

“To omit all the words after the word ‘That’ with a view to the insertion, in their place, of the words ‘the second reading of the Bill be postponed in order to give the Government an opportunity to insert provisions in the Bill for payment to the Queensland Wheat Board for distribution amongst the wheat growers supplying wheat to such growers through the operation of the *Wheat and Wheat Products Act*”.

Mr Speaker ruled that the amendment contravened section 18 of the *Constitution Act of 1867* in so far as it sought to appropriate a sum of money without a message from the Governor and was therefore not in order.

### ***Amendments to schedules containing agreements***

It is the practice of the House that amendments may not be moved to a schedule containing an agreement to be given effect by the Bill in which it is contained.

### ***New clauses***

New clauses are considered in the order they would appear in the Bill. A new clause may be out of order for the same reasons as an amendment.

### ***Reconsideration***

After consideration in detail, but before the third reading of the Bill, a Member may move for the reconsideration of the Bill. The motion may seek the reconsideration of the whole Bill, a particular clause or clauses, a particular schedule or schedules, or the preamble.

### ***Third reading and title***

Following consideration in detail – unless a motion for reconsideration is moved – the Minister moves that the Bill now be read a third time. If amendments have been made to the Bill, then the Minister moves that the Bill as amended be now read a third time.

The motion for the third reading may be debated. In order to avoid opening up or repeating debate on matters discussed in the motion for the second reading or during the consideration in detail stage, the debate on the motion of the third reading is limited.

Only verbal amendments can be moved at the third reading (S.O. 154). A verbal amendment seeks to omit from the question the word “now” and add “another time at which the Bill shall be read a third time”.

When the question for the third reading is agreed to, the Bill is read a third time by the Clerk reading its short title.

The final motion then moved by the Minister is, “That the long title of the Bill be agreed to”.

When this is agreed to, the Bill has finally passed the House and no further question need be put.

On 5 December 1929, Speaker Taylor ruled that, “The title of a Bill cannot be amended if the Bill itself was not amended during its passage through the House”.

### ***Royal Assent***

Electronic versions of the Bill prepared by Parliamentary Counsel are sent to the Government Printer after checking by officers of the House before the three parchment copies are printed and prepared for the Royal Assent.

Once the Bill has been checked and the three parchment copies prepared, the Clerk makes an appointment with His/Her Excellency the Governor of Queensland, for His/Her Excellency to sign the Bill on behalf of Her Majesty and thus give Royal Assent to the Bill, turning the Bill into an Act of Parliament.

If a Bill has been amended, Parliamentary Counsel produce the amended version which is checked by officers of the House so that an additional check can be made on the insertion of the amendments into the Bill before forwarding to the Government Printer.

Standing Order 158 deals with clerical errors and formal changes to any Bill. The Clerk of the Parliament may amend the Bills before they are presented for assent, provided the amendments fall within the following categories:

- (a) amendments of a formal nature necessary or desirable to any of the long title, the short title, and the method of citation;
- (b) amendments correcting clerical, grammatical or typographical errors and other amendments of a minor or formal nature; or
- (c) amendments to the citation of an Act.

The Clerk must report any amendments to the House on the next sitting day and, where possible, they shall be recorded in the Votes and Proceedings.

The Governor may also propose amendments to a Bill that has passed through the legislature. However this is a very rare occurrence.

## **QUESTIONS ABOUT THE LEGISLATIVE PROCESS**

### ***What is a Bill?***

A Bill is a proposal for a law, either a new law or a change to an existing law, placed before the Parliament for its consideration.

### ***Where do Bills originate?***

The majority of Bills are introduced by the Government. Ministers are responsible for introducing the Bills into the Parliament. Individual Members who are not Ministers may introduce Bills and such a Bill is known as a Private Member's Bill.

### ***What stages does legislation go through before it is introduced in the Parliament?***

The stages that occur before a Government Bill is introduced in Parliament are:

- Policy approval by the Government – Cabinet approves all major new policies, new or major expenditure and contentious matters. For legislation this is the “authority to prepare a Bill” stage. Cabinet ranks the proposed legislation in order of priority on the legislative program for the sitting.
- Drafting instructions are prepared by the department sponsoring the legislation and sent to the Office of the Parliamentary Counsel for the drafting of the Bill.

- The draft Bill and draft Explanatory Memorandum are submitted to Cabinet for “authority to introduce a Bill” approval.
- Cabinet reviews the Bill after drafting and before it is introduced in Parliament.
- The Minister responsible for the Bill seeks a clearance from the Caucus of his or her party, for the Bill’s introduction.
- The final Bill is printed ready for introduction in Parliament.

***What are the parliamentary stages of a Bill?***

There are steps, or stages, through which a Bill must pass. These are—

- (1) presentation
- (2) first reading
- (3) second reading
- (4) consideration in detail
- (5) third reading
- (6) long title

***What is the origin of the term “reading”?***

The term has its origins before printing was invented. At that time, the Clerk was required to read the whole Bill to the Parliament, so Members could be informed of its contents. By the end of the 16<sup>th</sup> century, it was the accepted practice for the Clerks to read Bills on three separate occasions before they were passed.

***What is the first reading?***

After the Bill has been introduced in the Parliament, the Clerk reads the short title of the Bill for the first time. This is the first reading of the Bill. The first reading stage is a purely formal procedure when the Bill is made available to the Members and to the public.

***What is the second reading?***

The motion for the second reading is moved by the Minister in charge of the Bill. The Minister then makes a speech outlining the principles and purposes of the Bill. Debate may take place but it is restricted to those principles and purposes. The debate is usually adjourned for thirteen calendar days. When the debate resumes and after agreement is reached that the Bill be given a second reading, the Clerk again reads the short title.

***What is consideration in detail?***

The next stage is the consideration of the Bill in detail. Bills are examined clause by clause. During this stage, amendments may be proposed to individual clauses of the Bill.

***What is the third reading?***

The Minister in charge of the Bill moves the motion for the third reading. This is the last opportunity for the Parliament to consider the Bill. The motion may be debated but it is restricted to the content of the Bill as it stands after consideration in detail and to why the Bill should or should not be read a third time. Debate from the second reading or the consideration in detail stages cannot be repeated. The motion for the third reading can only be amended to dispose of the Bill. The Clerk reads the short title of the Bill a third and last time after the third reading motion has been agreed to.

### ***What is an Act of Parliament?***

An Act of Parliament, usually just called an "Act", is a law passed by the Parliament and assented to by the Governor.

### ***When does an Act come into force?***

When an Act has a commencement clause it usually states when an Act will come into force. It will specify that the Act comes into force—

- on a particular date or dates;
- or upon proclamation in the *Government Gazette*.

If an Act does not have a commencement clause it will come into force on the date of assent (when it is signed by the Governor).

### ***What happens to the three parchment copies?***

When the Governor has assented to the Bill, the Clerk of the Parliament—

- deposits one copy in the Registry of the Supreme Court;
- deposits one copy in the Registry of Titles; and
- retains one copy in the records of the Parliament.