

Chapter 20 Passage of Legislation

20.1 Introduction

The introduction and passing of bills is the most important function of Parliament. The procedure of the three readings of a bill, based in historic origins of the earliest Parliaments, has been streamlined in modern times. In the earliest English Parliament, before printing or general literacy, the entire contents of a bill were read aloud at each stage so that members knew what they were agreeing or not agreeing to. Readings were retained not out of sentiment but because they represent in brief symbolic form the transition of a bill from one stage of its progress to the next.¹

In November 2006 the Legislative Assembly adopted new standing orders that modernised the terminology used for the various stages in the passage of legislation through the House to more accurately express what was happening and the term “reading” was replaced. The first stage is now referred to as the introduction of the bill (previously the first reading), the next stage is when a bill is agreed to in principle (previously the second reading). Finally, when a bill has been agreed to in the form in which it will leave the House, it is declared by the Speaker to have passed (previously third reading).

[Sessional orders adopted in April 2012, provided for a revision of the terminology used for the stages in the passage of legislation back to the first², second and third readings.³](#)

Documents related to the legislation before the House may also be tabled when a bill is introduced to Parliament. For instance, when an amendment is proposed to the *Parliamentary Contributory Superannuation Act 1971* a certificate issued by the Parliamentary Remuneration Tribunal approving the amendment must be tabled when the bill is introduced. Another example occurred in 2003 when a bill was introduced into the Legislative Assembly, which required that a document outlining further conditions in relation to the legislation be tabled when the bill was introduced into the Legislative Council. The document in question was tabled, by leave, when the Parliamentary Secretary in the Council moved that the bill be read a second time.⁴

A bill is a draft Act of Parliament presented to a House of Parliament by a member. It becomes an Act when, after passing both Houses, it receives royal assent.⁵ However, in certain circumstances defined in ss. 5A and 5B of the Constitution Act, the Governor may give the assent without the bill having passed the Legislative Council.

Nothing prevents identical bills from being introduced into both Houses simultaneously. However, only one such bill would receive assent. It is more likely to

¹ Extract from *Balancing Tradition and Progress*, a report from the House of Representatives Standing Committee on Procedure, August 2001, p. 4.

² A bill is introduced on the motion "That this bill be now introduced" and the bill is taken to be read a first time without question put.

³ VP 04/04/2012, pp. 743-51.

⁴ *Clyde Waste Transfer Terminal (Special Provisions) Bill 2003*, clause 4. See also Legislative Council Minutes, No. 34, 19/11/2003, p. 438.

⁵ Deputy Speaker ruled that an error in placing a bill on the Table or other technical fault in procedure does not interfere with or invalidate the bill before the House, PD 22/10/1997, p. 1272.

occur in relation to private members' bills. For instance, a bill in relation to Local Government amalgamations was introduced into both Houses in 2003. The bill successfully passed the Council but the bill that was introduced into the Assembly was negatived at the second reading stage. This meant that when the Council bill was reported in the Assembly the Speaker ordered it to be withdrawn on the basis that the same question cannot be determined twice.⁶

20.2 Public bills

A public bill is one which deals with a matter or matters of general public interest. Public bills may also refer to a specific person or persons or to a group of people. Whilst such bills are unusual a number of them have been introduced into the House.⁷ Public bills may be introduced and sponsored through both Houses by either a Minister or a private member, with Ministers introducing Government legislation. In one instance a Minister gave notice of a bill that did not fall within her portfolio responsibilities. A point of order was raised by a member of the Opposition that the bill was a private member's bill. However, there are no rules prohibiting a Minister from giving notice of their intention to introduce legislation which does not fall within their portfolio and the point of order was not upheld.⁸

Standing order 366 allows Parliamentary Secretaries to introduce Government legislation on behalf of Ministers and have carriage of the Government's business, and to be seated at the Table⁹ in order to undertake the functions undertaken by Ministers in this role. Standing orders have also been suspended to allow certain private members to introduce and have charge of certain Government bills.¹⁰

Bills may be originated in either House, except that bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost (so called "money bills"), must originate in the Legislative Assembly (Const. Act s. 5). (See Chapter 22 of Part One for further information on financial procedures).

In relation to public bills introduced by private members, it should be noted that such bills can only be introduced and considered at the time set aside for general business unless the House has agreed otherwise. There is nothing to prevent the Government from treating a private member's bill as a Government bill. The following table provides a summary of the private members' public bills that have been passed by the Parliament since the commencement of the 51st Parliament in 1995:

Session	No. of Private Members' Public Bills introduced in the Legislative Assembly	No. of Private Members' Bills assented to	Bills assented to	Member who had carriage in the House
1995-96 (1st)	22	2	<i>Queanbeyan Showground</i>	P.L. Cochran (non-Government)

⁶ VP 30/10/2003, p. 405; PD 20/10/2005, pp. 19033-4.

⁷ In 1993 a private member introduced a public bill to provide for the quashing of the conviction for murder imposed on Douglas Harry Rendell, and to provide for the assessment of compensation in relation to that conviction, PD 20/05/1993, pp. 2439-41. See also PD 13/10/1994, p. 3952 where a private member introduced a bill providing for a specific person to be admitted to the Bar was introduced.

⁸ The Minister had given notice of a bill that affected her constituency but did not fall within her portfolio responsibilities, PD 23/10/2002, p. 5776.

⁹ The Speaker has ruled that the requirement for a Minister to be seated at the Table during debate is a convention rather than a rule, PD 26/06/2001, p. 15332. The Speaker ruled that sessional orders do not prevent a Parliamentary Secretary from sitting at the Table during a motion of no confidence in a Minister, PD 06/06/2000, p. 6643.

¹⁰ VP 27/10/1998, p. 995.

session of the 51st Parliament)			<i>(Variation of Purposes) Bill;</i> <i>Threatened Species Conservation Bill</i>	member); Dr P.A.C. Macdonald (non-Government member)
1996-97 (2nd session of the 51st Parliament)	36	6	<i>Public Servant Housing Authority (Dissolution) Bill;</i> <i>Traffic Amendment (Learner Driver Supervisors) Bill;</i> <i>Trustee Amendment Bill;</i> <i>Warnervale Airport (Restrictions) Bill;</i> <i>Lane Cove National Park (Sugarloaf Point Additions) Bill;</i> <i>Parliamentary Precincts Bill;</i>	D. Beamer (Government member); P.B. Gibson (Government member); J.H. Turner (non-Government member); P.R. Crittenden (Government member); J.A. Watkins (Government member); J.C. Price (Government member)
1997-99 (3rd session of the 51st Parliament)	27	0		
1999 (1st session of the 52nd Parliament)	0	0		
1999-2002 (2nd session of the 52nd Parliament)	42	2	<i>Workplace (Occupants Protection) Bill</i> <i>Crimes Amendment (Child Protection- Physical Mistreatment) Bill</i>	G.R. Torbay (non-Government member) A.G. Corbett (non-Government member in LC – taken up by the Government in the LA)
2002 (3rd session of the 52nd Parliament)	44	4	<i>Bail Amendment (Confiscation of Passports) Bill;</i> <i>Crimes (Sentencing Procedure) Amendment (General Sentencing Principles) Bill;</i> <i>Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Bill;</i> <i>Public Health Amendment (Juvenile Smoking) Bill</i>	A.A. Tink (non-Government member); G.R. Torbay (non-Government member); D. Barr (non-Government member); Introduced in the Legislative Council by a non-Government member and then carried through the Legislative Assembly by a Parliamentary Secretary on behalf of a Minister as a Government bill.
2003-06 (1st session of 53rd Parliament)	40	3	<i>State Arms, Symbols and Emblems Bill</i> <i>Sydney University Settlement Incorporation Amendment Bill</i> <i>Constitution Amendment (Pledge of Loyalty) Bill</i>	Introduced into the Legislative Council by a non-Government member and carried through the Legislative Assembly by C. Moore (non-Government member). Introduced into the Legislative Council by a non-Government member and carried through the Legislative Assembly by a Minister. P. Lynch (Government member).
2006 (2nd)	22 (this includes bills	2	<i>Snowy Hydro</i>	Introduced into the Legislative

session of the 53rd Parliament)	that were restored to the business paper after prorogation)		<i>Corporatisation Amendment (Parliamentary Scrutiny of Sale) Bill</i> <i>Firearms Amendment (Good Behaviour Bonds) Bill</i>	Council by a non-Government member and carried through the Assembly by S. Whan (Government member). Introduced into the Legislative Council by a non-Government member and carried through the Assembly by G. R. Torbay (non-Government member).
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20.3 Private bills

A private bill deals with matters for the particular interest or benefit of a person or body of persons. It is not a measure dealing with public policy and is therefore not sponsored by the Government but by a private member. Private bills must not be confused with bills of a public nature introduced by a private member.

Today few private bills are introduced, the most recent being passed in 1992,¹¹ and have previously, for convenience, usually been introduced into the Legislative Council. It is not unusual for a private bill to be introduced by the Government as a public bill. The standing orders of the Legislative Assembly provide that a private bill from the Legislative Council is to be treated as a public bill (S.O. 361).

Private bills can only be initiated by petition. Standing orders 358-363 set out the special procedures for private bills. Under standing order 358(1), notice of intention to introduce a private bill on petition must be given three months prior to the presentation of a petition to apply for the bill and this notice must be published once a week for four consecutive weeks in the Government Gazette and in at least one major newspaper published in Sydney and in the district affected by the bill. This notice of intention must state what private interests are to be affected by the proposed bill.

The next stage is for the petition, with a printed copy of the proposed bill attached and signed by one or more parties applying for the bill, to be presented to the House (S.O. 358(2)). The petition must contain proof of the publication of the notice in the Gazette and the newspapers, a true statement of the general objects of the bill and a request to introduce the bill (S.O. 358(3)).

Members are requested to sponsor a private bill, which is usually the local member for the area affected by the bill. The sponsoring member will give a notice of motion to introduce the bill following its receipt by the House and the bill will be introduced within 30 days of the notice of motion being given (S.O. 358(4)). A motion to introduce a private bill cannot be objected to nor can it be amended or debated (S.O. 358(5)).

Before being introduced, the bill is to be printed and sufficient copies provided (S.O. 358(6)). In addition standing order 358(7) provides that:

Before being introduced, and from time to time thereafter, the Clerk shall be entitled to claim such expenses from the promoters of the bill as the Clerk deems reasonable.

¹¹ *Tamworth Tourist Information Centre Bill*, VP 27/11/1992, p. 762.

However, the House may suspend standing and sessional orders to permit the waiving of the remaining parliamentary expenses to the promoter of a private bill.¹²

After the bill has been read a first time, it is referred to a select committee (SO 358(8)). If this committee reports in favour of the bill, it is proceeded with as in the case of public bills, and a later time set down for the bill to be read a second time (SO 360(5)). Private bills which receive assent are not numbered as is the case with public bills (SO 362).

20.4 Hybrid bills

A hybrid bill is a public bill which affects particular private interests in a manner different from the private interests of other people or bodies in the same category or class.¹³ These types of bills are not common in New South Wales.

20.5 Cognate bills

Standing orders 193-197 deal with the procedure for cognate bills, i.e. the simultaneous consideration of bills which are related to each other and presented as a package. Whenever a member informs the House (in the notice of motion for their introduction) that bills are cognate or when such bills are sent from the Council, they will be dealt with together during their various stages through the House, except when the bills are considered in detail where they may be considered separately.

The standing orders also provide:

- that an amendment may be moved to separate one or more cognate bills (SO 194);
- that a motion can be moved for the question to be put separately on each bill at the second and third reading stage (SO 195); and
- that the bills must not be presented to the Governor for assent until all have been passed or otherwise disposed of (SO 197).¹⁴

An example of the operation of standing order 197 occurred on 1 June 1999 when messages were reported from the Legislative Council informing the Legislative Assembly that it had returned several cognate bills without amendment and had discharged the order of the day for the second reading of the *Public Finance and Audit Amendment Bill 1999*, which had been one of the cognate bills. The House later agreed that, notwithstanding the order of the day for the second reading of the *Public Finance and Audit Amendment Bill* being discharged by the Legislative Council, the remaining cognate bills in the package be presented to the Governor for assent as cognate bills.¹⁵

20.6 Stages in the passage of a bill

The several stages in the passage of a bill are as follows:

¹² See for example, VP 24/11/1992, p. 707.

¹³ *May*, pp. 640-1.

¹⁴ VP 25/05/1999, pp. 80-1; VP 18/11/1999, pp. 292-4.

¹⁵ VP 01/06/1999, pp. 110 and 112.

20.6.1 Bills originating in the Legislative Assembly

(1) Notice of motion (S.O. 188)

When the Speaker calls for notices of motion (for bills) the member rises and reads the notice of motion (which in most cases has been prepared by the Parliamentary Counsel).

"Mr Speaker,
I give notice to introduce the ... (short title of the bill)."

After reading the notice of motion, the member must hand three copies of the notice to the Clerk of the House, including the original signed by the member (S.O. 134) - two are for records, the third is kept in the Chamber for immediate reference.

The full text of the notice is printed in the business paper. In the rare situation that legislation introduced does not correspond to the title of the bill as set out in the notice of motion the House may give its concurrence for the notice to be corrected. For instance, when the *Constitution (Amendment) Bill* and cognate *Constitution (Entrenchment) Amendment Bill* were introduced in 1992 the Speaker drew the attention of the House to a procedural difficulty in that the long title of the bills did not correspond with the order of leave, that is, the terms of the notice of motion. In order that the records of the House were correct, the Speaker proposed that, with the concurrence of the House, the notices of motion be corrected to accord with the title of the bills as introduced. Concurrence was given.¹⁶

(2) Introduction, first and second reading (S.O. 188)

A bill is introduced after a notice of motion has been given either at the same of a subsequent sitting. If a bill has not been given notice of standing orders are required to be suspended to permit the bill to be introduced without notice. When the item of business is called on the member will rise and say:

*"Mr/Madam Speaker,
I move, That a bill be introduced for an Act ... (long title of the bill)."*

The Speaker puts the question "That the bill be now introduced."

(When agreed to) The member then says:

"Mr/Madam Speaker, I bring up the bill."

and hands three copies to the Clerk.

This constitutes the introduction of the bill and the bill is taken to be read a first time without question put. There is no debate at this formal stage.

The standing orders provide that the bill is automatically printed with its explanatory note (if any) after the motion for introduction is agreed to. The bill is then generally available to members and others. In practice, Parliamentary Counsel provides multiple copies when bills are introduced. After introduction, a copy of the bill is

¹⁶ PD 17/11/1992, p. 9004 and PD 18/11/1992, p. 9179.

available from the Legislative Assembly Table Office. An electronic version is also loaded onto the Parliament's website.

The mover may then proceed with their second reading speech after moving the following motion:

*"Mr/Madam Speaker,
I move, That this bill be now read a second time."*

Alternatively, the member may ask the Speaker to set down the second reading as an order of the day for (a later time).

The motion for a bill to be read a second time provides the vehicle for a wide-ranging debate on the bill.

After the member's speech, another member (usually the member who will speak first on the opposing side) then moves a motion to adjourn the debate.

When this is agreed to, the member moving the second reading will say:

*"Mr/Madam Speaker,
I ask that you fix the resumption of this debate as an order of the day for a future day."*

Under standing order 188(1) the debate cannot resume until at least five clear days ahead (e.g., if the motion is moved on Wednesday, debate cannot resume until the following Tuesday). Standing orders must be suspended to provide for the resumption of the second reading debate earlier than 5 clear days or to permit the bill to pass through all stages in one sitting.¹⁷

(3) Bill declared urgent (S.O. 189)

Under the standing orders, a member in charge of a bill may seek to deal with a bill as an urgent bill, provided that copies of the bill have been made available to members (S.O. 189).¹⁸

After making the second reading speech, the member will say:

*"Mr/Madam Speaker, I declare this bill to be an urgent bill."
The Speaker puts the question, "That the bill be considered an urgent bill" and if agreed to (no debate or amendment permitted) the member moves that the bill be now read a second time.*

The second reading debate and other stages may be proceeded with forthwith or at any time during the time set aside for Government Business or General Business depending on whether it is a bill introduced by a Minister or by a private member.

¹⁷ See for example, VP 31/03/2004, p. 714; VP 31/03/2004, p. 720; VP 14/09/2004, p. 968; VP 02/09/2003, p. 281; VP 15/10/2003, p. 355; VP 28/10/2003, p. 398; VP 19/10/2004, p. 1032; VP 18/10/2006, p. 260.

¹⁸ VP 08/06/1995, p. 176; VP 23/11/1995, p. 452.

The procedure for declaring an urgent bill is rarely used, Ministers in particular usually prefer to expedite procedures by suspending standing orders. However, it is a useful device for private members who must first obtain the leave of the House to move a motion to suspend standing orders.

(4) Resumption of adjourned second reading debate

If standing orders have not been suspended to provide otherwise, the adjourned second reading debate is resumed after five clear days. At this time, the Speaker calls upon the Clerk to read the order of the day for the resumption of the debate.

It is the practice of the House that the member who secured the adjournment of the debate has the right to speak first on the resumption of debate, subject to the right of pre-audience of the member in charge of the bill. The name of the member who adjourned the debate is recorded on the Business Paper.

The second reading is the stage at which the general principles of the bill are considered. The exact scope of the second reading debate has not been clearly delineated. For example, in some cases debate has been restricted to "the provisions of the bill"¹⁹ and in others to "the objects, or principles of the bill."²⁰ Whatever the exact limits the basic object is to avoid irrelevant discussion. Speakers' rulings have implied that where a bill is specific and of limited application debate is limited,²¹ but when the bill is a comprehensive measure²², a very complex one²³, or one which sets out new precedents²⁴ the debate may be wide-ranging.

Apart from this general principle setting the scope of debate, certain rulings of Speakers have helped to define what members can and cannot refer to during the second reading debate. For instance, brief reference may be made to an earlier bill on a similar matter,²⁵ complementary legislation,²⁶ an analogous situation,²⁷ matters which members believe should be included or considered,²⁸ and a bill that is not yet law.²⁹ Members, are however, generally prohibited from discussing a bill clause by clause,³⁰ referring to portions of the principal Act not affected by the bill³¹ or to the principles of the principal Act,³² and debate at large on Government policy.³³

Amendments may be moved to the question for a bill to be read a second time to refer the bill to a specific committee, dispose of the bill (S.O. 199), or defer its

¹⁹ See ruling of Acting Speaker Darby, PD 26/09/1973, pp. 1328-9.

²⁰ See ruling of Speaker Ellis, PD 02/03/1972, pp. 4803-6.

²¹ See rulings by Speaker Ellis, PD 08/03/1967, p. 3905; Acting Speaker Darby, PD 19/08/1970, p. 5308; PD 20/08/1970, p. 5356.

²² See for example, PD 17/11/1970, p. 7904 on the *Summary Offences Bill*.

²³ See for example, PD 07/11/1967, p. 2887 on the *Civil Aviation (Carriers Liability) Bill*.

²⁴ See for example, PD 10/09/1969, p. 829 on the *Listening Devices Bill*.

²⁵ See ruling of Acting Speaker Clough, PD 21/11/1967, p. 3453.

²⁶ See ruling of Acting Speaker Bruxner, PD 22/04/1971, p. 195.

²⁷ See ruling of Acting Speaker Clough, PD 05/11/1969, p. 2285.

²⁸ See ruling of Speaker Ellis, PD 22/08/1967, p. 659. In this situation relevancy is the test.

²⁹ See ruling of Speaker Ellis, PD 29/11/1967, p. 3920.

³⁰ See ruling of Acting Speaker Clough, PD 03/04/1968, p. 422.

³¹ See ruling of Speaker Ellis, PD 08/12/1971, pp. 4127-9; PD 02/03/1972, pp. 4803 and 4806.

³² See ruling of Acting Speaker Duncan, PD 17/03/1976, p. 4417.

³³ See ruling of Speaker Ellis, PD 02/03/1972, pp. 4803 and 4806 where it is noted that whilst members are generally prohibited from debating Government policy generally, members may refer to anything, including Government policy, if it has been raised by the Minister during the second reading.

consideration to a later time (S.O. 200)³⁴. Amendments to clauses of the bill are moved when the bill is considered in detail.

At the conclusion of the debate, the member who moved the second reading has a right of reply. The Speaker then puts the question, "That this bill be now read a second time."

If the question is agreed to, the Speaker will call on the member in charge of the bill to move the third reading of the bill unless a member has requested the consideration of the bill in detail; or the member in charge of the bill moves for consideration of the bill in detail pro forma; or requests the Speaker to set down consideration of the bill in detail as an order of the day for a later time (S.O. 203 as amended by sessional order). If a bill has not been considered in detail, the motion for the third reading cannot be debated nor amended.

In accordance with standing order 202, an order of the day for the second reading (or any subsequent stage of a bill), having been discharged and the bill withdrawn, the House may direct on motion for another bill to be brought in.³⁵ This in effect means that a new bill on the same subject matter to that previously given notice of may be brought in without notice replacing the bill that has been withdrawn. However, the new bill is required to go through all stages although standing orders may be suspended to expedite its passage.³⁶ Alternatively, notice of motion may be given afresh and another bill introduced in the normal manner.³⁷

(5) Consideration in detail

After a bill has been read a second time, any member may request that a bill be considered in detail; or the member in charge of the bill may move a motion for the consideration in detail pro forma or request the Speaker to set down consideration of the bill in detail as an order of the day for a later time.³⁸

When a bill is considered in detail an opportunity is provided for members to move amendments to the bill, as the bill is dealt with clause by clause and schedule by schedule (or in groups of clauses and schedules by leave). It also may allow for a question and answer session in respect of the specifics of the legislation, as members may speak more than once.

During the consideration in detail stage debate may be adjourned and the resumption of the proceedings on the bill will be set down as an order of the day for a later time. When the bill is next considered by the House it will resume at the point

³⁴ Deferring consideration of a bill is effected by moving an amendment to the second reading to omit the word "now" with a view to adding words indicating a later time. Under this procedure a member will specify a certain time frame such as "That this bill be read in six months" or any other time. This procedure does not dispose of the bill but rather defers debate on it for the specified timeframe. Hence, the bill will remain on the Business Paper as an order of the day with the resumption set down for a specific date. Prior to the adoption of the procedure to amend the second reading to dispose of a bill in 1992, the motion "That the bill be read in six months" effectively killed off the bill, whereas under current practice it defers consideration of it.

³⁵ See for example, VP 24/3/1936, pp. 220-1

³⁶ See for example, VP 10/12/1958, p. 165.

³⁷ See for example, VP 22/09/1971, p. 117, VP 28/09/1971, p. 128 & VP 30/09/1971, p. 143 in relation to the *Housing (Amendment) Bill 1971*.

³⁸ Under the former standing orders the member in charge of the bill could request the Speaker to set down consideration of a bill in the committee of the whole as an order of the day for a future time. If this was not done or if leave was not sought or not granted for the third reading to be moved forthwith, the Speaker left the Chair and the House resolved itself into a committee of the whole to consider the bill in detail.

where proceedings were adjourned.³⁹ Once the proceedings in consideration in detail have been completed the member in charge of the bill may move the third reading of the bill forthwith or, if the bill has to be reprinted because considerable amendments were made, ask the Speaker to set down the third reading as an order of the day for a later time. The only amendment that is able to be moved to the motion "That this bill be now read a third time" is for the House to reconsider the bill in detail (either in whole or in part).

If a bill has been amended it may be reprinted (the "second print" version incorporates amendments) before the bill is read a third time and forwarded to the Legislative Council for concurrence. To allow time for reprinting, the member will say:

*"Mr/Madam Speaker,
I ask that you fix the motion for the third reading as an order of the day
(for a future time) (S.O. 238 as amended by sessional order).*

If there are a large number of amendments proposed to be inserted in a bill from one source (e.g. Government amendments) there is a procedure that allows for members to be able to see the amendments in their context. In order to facilitate this, the member in charge of the bill may move that the bill be considered in detail pro forma after the second reading. The following motion is moved:

*"Mr/Madam Speaker,
I move, That this House consider the bill in detail pro forma".*

This question is put without amendment or debate. If passed, the Chair puts the question, "That the amendments as printed be inserted in the bill".

If that motion is agreed to the bill is reprinted in its amended form.

(6) Third Reading

At the conclusion of the second reading, or if the bill is considered in detail at the conclusion of that stage, the member in charge of the bill will say:

*"Mr/Madam Speaker,
I move, That this bill be now read a third time."*

The motion for the third reading is usually a formal proceeding but it can be debated if a bill has been considered in detail and the mover has a right of reply.

The third reading of a bill affords the last opportunity for discussion. The scope of the debate is restricted and comments should be brief. It is not in order to revive discussion of individual clauses. Members must confine themselves to the principles of the bill and must not merely repeat the second reading debate.⁴⁰ Furthermore,

³⁹ In contrast under the former procedures where bills were considered in a committee of the whole debate in committee could not be adjourned. Rather, to bring proceedings in committee to an end before their conclusion, a motion was required to be moved, "That the Chairman do now leave the Chair, report progress and ask leave to sit again (at a future time)".

⁴⁰ See ruling of Speaker Ellis, PD 13/09/1967, p. 1135.

members must not canvass newspaper statements⁴¹ nor refer to any matter outside the scope of the order of leave.⁴² Similarly, personal remarks are not allowed⁴³ as the debate simply provides members with an opportunity to make concluding remarks on the general principles of the bill.

If a bill is not considered in detail no debate nor amendment can be moved to the motion for the third reading. If the bill is considered in detail an amendment can be made to the motion for the third reading to reconsider a bill and the motion may be debated.

After the bill has been read a third time, it has passed all stages in the Legislative Assembly. The bill (with a certification from the Clerk)⁴⁴ is then forwarded to the Legislative Council with a message seeking its concurrence. The Council may then agree to the bill and return it for the Governor's assent, return the bill with amendments for the Assembly's consideration, withdraw the bill or not pass the bill.⁴⁵

It is accepted practice for bills that have passed through both Houses to be sent to the Governor for assent even if the message agreeing to any amendments made by the Council is yet to be reported.

20.6.2 Bill sent from the Legislative Council

The Speaker reports the receipt of the bill by reading the message from the Legislative Council.

The bill is automatically introduced and deemed to be read a first time – no motion is proposed.

The member who is in charge of the bill then moves the motion "That the bill be now read a second time" and gives the second reading speech on the bill or asks the Speaker to set down the second reading as an order of the day (for a future time). Standing order 229(4) (as amended by sessional order) provides that a truncated second reading speech may be given if the bill is received in the same form as introduced into the Council.⁴⁶

After the mover's speech the debate may be adjourned until a later time or can be proceeded with forthwith (the five clear day rule does not apply). After the bill has been introduced the bill is dealt with in the same manner as an Assembly bill (S.O. 229).⁴⁷

⁴¹ *Ibid.*

⁴² See ruling of Speaker Ellis, PD 03/04/1973, p. 4279.

⁴³ See ruling of Speaker Cameron, PD 25/11/1975, p. 3183.

⁴⁴ Under the former standing orders the Chairman was also required to certify the bill if it has been considered in committee of the whole.

⁴⁵ See for instance VP 08/04/1997, p. 709 where the Council discharged an Assembly bill.

⁴⁶ Minister gave a truncated second reading speech simply referring to the speech in the Council, PD 05/12/1995, p. 4130; Minister tabled speech for incorporation in Hansard, VP 18/11/1999, p. 268; Minister indicated that he had made an error in not having made his second reading speech on a Legislative Council bill before another member had spoken. The Minister did not deliver a second reading speech but advised the House that the speech made by the Minister on the Legislative Council was to be adopted by the House. PD 20/06/2001, p. 14961.

⁴⁷ Standing orders have been suspended to allow the consideration of clauses and schedules of two bills originating in the Legislative Council to be considered "in globo" and for any amendments to one of the bills to be dealt with by the Chair proposing one question, "That the amendments be agreed to", VP 29/06/1999, p. 197.

If the order of the day for a private member's bill that originated in the Legislative Council is discharged a message is sent to Council.⁴⁸

Council bills may be removed from the Business Paper in accordance with standing order 154 if they are the same in substance as bills already considered by the House. For example, the Speaker has directed that the order of the day for the second reading of a bill from the Council be removed from the Business Paper when the House has already dealt with the matter of an identical bill⁴⁹ or a bill that is the same in substance.⁵⁰

In relation to non-Government bills from the Legislative Council, standing order 229(2) provides that a message forwarding a private member's public bill from the Legislative Council cannot be reported until the Speaker is advised which Member of the Assembly will have carriage of the bill. The message can be reported at any time and the second reading speech is set down as an order of the day and is placed on the Business Paper in its relative order. When the bill is called on the member in charge of the bill will give their second reading speech and in accordance with standing order 299(5) debate on the bill can be adjourned or continued forthwith. If a Minister takes carriage of a private member's bill from the Legislative Council it may be introduced and considered during Government Business.⁵¹

20.6.3 All stages during one sitting by suspension of standing orders

Standing and sessional orders may be suspended to allow for a bill to be passed through all stages in one sitting. If a Minister is in charge of the bill the Minister does not have to seek leave to suspend standing and sessional orders (S.O. 365). However, private members require the leave of the House to move a motion to suspend standing orders.

The member moves:

“Mr Speaker,

I move, That standing and sessional orders be suspended to allow the (short title of bill) to be brought in and passed through all stages in one sitting.”⁵²

The above motion may also provide that the consideration of the bill take precedence over all or some other business set down for that day.⁵³

20.6.4 Assent

After the bill has passed both Houses of Parliament, the originating House will arrange for the bill to be prepared for the assent.⁵⁴

⁴⁸ VP 30/11/1996, p. 545.

⁴⁹ PD 30/10/2003, p. 4496.

⁵⁰ PD 20/10/2005, pp. 19033-4.

⁵¹ See for example, VP 4/12/2008, p 1133 when the Minister for Education and Training took carriage of a private member's bill from the Legislative Council.

⁵² VP 10/11/1999, p. 219.

⁵³ VP 03/06/1999, pp. 130 and 136.

⁵⁴ See article by Jessica Richardson, “Modernisation of Royal Assent in Canada” in *Canadian Parliamentary Review*, Summer 2004, pp. 32-6 in relation to the history of the royal assent procedure where it is noted that “the practice of signifying royal assent to bills passed by Parliament began during the reign of Henry VI, (1422 – 71) when the practice of introducing bills in the form of petitions was replaced by bills in the form of complete statutes. The Sovereign would attend Parliament in the House of Lords and give his consent in person. This practice was continued until 1541, when the task of signifying royal assent was assigned to a Royal Commission in order to spare King Henry VIII the indignity of having to give royal assent to the Bill of Attainder, which provided for the execution of his wife Catherine Howard. From this occurrence, the practice of appointing Lords Commissioners responsible for giving royal assent developed.”

A vellum copy of the bill (including any amendments) is prepared by the Parliamentary Counsel's Office. This copy is printed on yellow paper, akin to a vellum, and is referred to as the "vellum". The vellum is then signed by the Clerk of the originating House to certify that it has passed. It is also countersigned by the Assistant Speaker, who certifies as to its form. It is then sent to the Governor for signature (S.O. 239). The *Constitution Act 1902* also provides that the Crown may assent to any bill whilst personally present in the State.⁵⁵

At the same time that the vellum is sent to the Governor, paper copies are sent to the Attorney-General who will sign an "opinion" letter that there is no objection to the Governor assenting to the bill.⁵⁶ When this opinion is received, the Governor will sign the vellum and a message informing of this is sent to the Parliament and the Minister.

The signed vellum is returned to the originating House with the message and an Act number is allocated in the order of assent.

The assent details, including the Act number are published in the *Government Gazette* and the vellum is sent to the Registrar General for enrolment as a deed.

There have been occasions where injunctions have been sought to prevent a bill from receiving assent. In such instances courts have generally taken a position that enables the bill in question to complete all stages of the legislative process, including assent, before they will intervene.⁵⁷ This view stems from the idea that the Parliament as an independent arm of Government should not be interfered with by other arms of Government.⁵⁸ Courts will however, intrude upon the law-making process if it can be shown that there will be no avenue available to challenge the validity of legislation once the law-making process is completed⁵⁹ or when a bill fails to comply with a mandatory manner and form procedural provision.⁶⁰ For further information on judicial review of the legislative process see section 3.4.1 of Part Two.

20.6.5 Commencement of Acts

The commencement date of Acts, under the provisions of the *Interpretation Act 1987*, is 28 days after the date of assent, except where the Act itself provides for its

⁵⁵ Section 8A(2) of the *Constitution Act 1902*.

⁵⁶ Advice received from the Attorney-General's Department in 1927 notes that this procedure must occur prior to the Royal Assent being given but that there is no known authority, statutory or otherwise, for the procedure. Rather, it is the result of "custom and usage", and has been followed by successive Attorney-Generals from the earliest days of Responsible Government, having possibly originated in the first instance through the request of a cautious Governor to the Attorney-General for a memorandum that he was justified in assenting to some bill of a controversial nature. This procedure does not apply to bills which the Attorney-General had advised should be reserved "for the signification of His/Her Majesty's pleasure" – the procedure in such cases being defined by the Royal Instructions. See also PD 01/03/1927, p. 1734 where Mr McTiernan, the then Attorney-General, noted that the role of the Attorney-General is limited to advising the Governor whether or not there are any reasons why a bill should be reserved for the royal assent and that it is up to the courts to determine whether a bill that has passed the Parliament is constitutional. Reference is made to comments made by the Chief Justice Griffith in *D'Emden v Pedder* (1904) 1 CLR 91 at pp. 117-8 that "It is, however, the duty of the court and not of the Executive Government to determine the validity of an attempted exercise of legislative power. The assent of the Crown cannot, nor can the non-exercise of the power of veto, give effect to an invalid law. And it would be to impose an entirely novel duty upon the Crown's advisers if they were to be required before advising whether the power of veto should be exercised, to consider the validity under the Constitution of the provisions of each Act present for the royal assent. That, as already said, is the function of the judiciary. And even if such a duty were cast upon the Executive Government, it could neither relieve the judiciary of their duty of interpretation nor affect the principles to be applied in that interpretation."

⁵⁷ See *Eastgate v Rozzoli* (1990) 20 NSWLR 188 and *Bignold v Dickson & Ors* (1991) 23 NSWLR 683

⁵⁸ See comments by Kirby P in *Bignold v Dickson & Ors* (1991) 23 NSWLR 683 at 703-4

⁵⁹ See comments by Priestley and Handley JJA in *Eastgate v Rozzoli* (1990) 20 NSWLR 188 at 204

⁶⁰ See *Trethowan and Anor. v Peden and Ors.* (1930) 31 SR (NSW) 183 and *Attorney-General (WA) v Marquet* (2003) HCA 67.

commencement, whether by proclamation at some future time or by nomination of a specific date such as the date of assent or otherwise. For instance, Acts have been passed which have commenced on the day on which the bill for the Act was introduced into the Legislative Assembly⁶¹ and in 2003 a bill was introduced which provided that a particular time on a particular day could be appointed by proclamation as the time for the commencement.⁶²

Attempts have also been made to force the Government, through a resolution of the House, to have certain sections of legislation proclaimed to commence. For instance, a member of the Opposition attempted to amend a motion to adopt a report from the committee of the whole on a bill by adding the words "That this House formally resolves and calls on the Government to proclaim all sections of the Act." The proposed amendment was negated on division.⁶³

20.6.6 Other proceedings on bills

20.6.6.1 References of bills to committees

Bills may be referred:

- to a specific committee as an amendment to the motion "That this bill be now read a second time" (S.O. 198 as amended by sessional order) or by specific motion;
- to estimates committees if an Appropriation or Parliamentary Appropriation Bill (S.O. 246(1)); and
- to legislation committees (S.O. 323(1)).⁶⁴

In respect of legislation committees, the member must move the required motion (which does not need notice) immediately after the motion for the second reading is agreed to by the House. As a legislation committee specifically reports on proposed amendments to the clauses and schedules of the bill, its report, when tabled, is set down by the Speaker for consideration in detail with the bill.

Motions referring legislation to a committee are procedural steps in the stages of a bill and the practice of the House has been not to debate such motions.⁶⁵

20.6.6.2 Reconsideration

Members have an opportunity under standing order 217 (as amended by sessional order) to move for the reconsideration of a bill which has already been considered in detail. When the motion for the third reading is proposed any member can move an amendment to the motion to reconsider a bill in whole or in part.⁶⁶

When the Speaker proposes the question "That this bill be now read a third time", a member may move:

⁶¹ The *Penalty Notices Validation Act 2000* and the *Duties Amendment (Land Rich) Bill 2003*.

⁶² The *Workers Compensation Amendment (Insurance Reform) Bill 2003*, Clause 2.

⁶³ VP 30/11/2001, p. 1685 and VP 04/12/2001, p. 1695; see also VP 30/11/2001, p. 1686 and VP 04/12/2001, p. 1694.

⁶⁴ VP 25/02/1992, p. 33.

⁶⁵ VP 16/11/1993, p. 555.

⁶⁶ Under the former procedures of the House when bills were considered in detail in committee of the whole members were provided with two opportunities to have a bill reconsidered (1) recommittal of a bill on the motion for the adoption of the report from the committee of the whole VP 20/05/1993, p. 273; VP 03/05/1994, p. 214; VP 05/06/1996, pp. 227-8, and (2) recommittal of the bill on the motion for the third reading VP 04/03/1993, p. 68; VP 19/11/1993, pp. 597-6; PD 26/10/1994, p. 4692.

"That the question be amended by leaving out all words after the word 'That' with a view to inserting the words 'the House reconsider clause(s)..., schedule(s) ..., the whole bill'".

The Speaker will propose the question:

"The original question was: That this bill be now read a third time.

Upon which the member for ... has moved, That the question be amended by leaving out all words after the word 'That' with a view to inserting instead the words 'the House reconsider clause(s)..., schedule(s) ..., the whole bill'.

The question now is 'That the amendment be agreed to'."

(If agreed to), The Question now is "That the House reconsider clause(s)..., schedule(s) ..., the whole bill'."

20.6.6.3 Withdrawal

The procedure for withdrawing a bill which is already before the House is for the member who has carriage of the bill to move, "That the order of the day be discharged and the bill be withdrawn."⁶⁷ This motion is moved when the order of the day is read for the resumption of debate on the bill, or during the placing or disposal of business.

20.6.6.4 Divided bills

On occasion, a bill sent to the Legislative Council has been returned to the Legislative Assembly as a divided bill. For instance, in 2000, an instruction was given to the committee of the whole in the Legislative Council to split the *Industrial Relations Amendment Bill 2000* into two bills – the *Industrial Relations Amendment Bill 2000* and the *Industrial Relations Amendment (Independent Contractors) Bill 2000*.⁶⁸ The first bill was returned to the Assembly with amendments which were agreed to and the bill was assented to on 12 July 2000. The second bill, however, was never returned to the Assembly and it lapsed when the Parliament was prorogued in February 2002. It was not restored to the business paper in the next session.

In this case, the Assembly considered the amendments proposed to the Bill, which had been divided, agreeing with one amendment but disagreeing with the other. A message was sent to the Council stating that the Assembly considered that the established rules and practices of the Houses provided ample opportunity for the consideration and amendment of bills by each House and that the division of a bill in the House in which the bill did not originate is highly undesirable. The message also stated that the Assembly's action in this particular case was not to be taken as a precedent.

⁶⁷ VP 02/06/1999, p. 117; VP 18/11/1999, p. 301

⁶⁸ VP 29/06/2000, p. 669.

The division of a bill is a form of amendment. Given this, the Council may not divide a bill that it cannot amend, such as any bill appropriating money for the ordinary annual services of the Government.⁶⁹ However, in such cases the Council may request the division of the Bill.

20.6.6.5 Restoration of bills following prorogation

A bill which has lapsed because of prorogation, before it has been passed, can be restored to the business paper and proceeded with in the next session from the point of interruption as if its passage had not been so interrupted. If a motion for restoration is not agreed to by the House in which the bill originated, the bill may be re-introduced as a new bill. (S.O. 237).⁷⁰

Under standing order 237 bills can only be restored to the business paper by motion on notice moved by the member in charge of the bill. An Assembly bill in the possession of the Assembly at prorogation, including consideration of Council amendments, may be proceeded with by the member in charge moving a motion on notice restoring it to the business paper after receipt of a message from the Council requesting the same.⁷¹ If the motion for restoration is not agreed to, a message is sent to the Council accordingly.

In respect of a Council bill, the current standing orders require a notice of motion to be given, ostensibly to enable the House to decide when the matter will go forward and who will have carriage of the bill if this is in doubt.⁷² On one occasion a member, by leave, moved that standing and sessional orders be suspended to allow a notice of motion for the restoration of a Council bill to take precedence when general business notices of motions (for bills) were called on. The member subsequently moved that following the message from the Legislative Council in relation to the bill that the second reading be restored to the business paper as an order of the day.⁷³

If an Assembly bill is in the possession of the Council, a message may be sent to the Council requesting that the bill be restored to the Council's business paper. However, the Council does not have to agree to this request and has, at times, discharged or withdrawn the bill rather than restoring it to the business paper.⁷⁴

20.6.6.6 Cut off date for the consideration of Government bills received from the Legislative Assembly

On occasion the Legislative Council has adopted a sessional order which has the potential to affect the way Government bills are passed through the Parliament by specifying cut off dates for consideration of Government Bills received from the Legislative Assembly. For example, a sessional order adopted in March 2002 provided:

“That, during the present session and notwithstanding anything contained in the Standing and Sessional Orders, and unless otherwise ordered, the following procedures apply to the passage of Government Bills:

⁶⁹ The Council is precluded under section 5 of the *Constitution Act 1902* (NSW) from amending such bills.

⁷⁰ VP 7/06/2002, p. 281.

⁷¹ VP 13/03/2002, pp. 69 and 72; and VP 14/03/2002, p. 81.

⁷² The standing orders prior to those approved by the Governor on 12 December 1994 made provisions for a motion for restoration to be moved without notice immediately upon the reporting of the Council's message.

⁷³ See for example, VP 13/03/2002, p. 69 and VP 14/03/2002, p. 81.

⁷⁴ See for example, VP 04/03/1993, p. 67 and VP 29/04/1993, p. 198.

1. Where a Bill is introduced by a Minister, or is received from the Legislative Assembly:
 - (a) after 18 June 2002 (Budget Session), debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minister moving the motion, and the resumption of the debate is to be made an Order of the Day for the first sitting in September 2002;
 - (b) after 19 November 2002 (Spring Session) debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minister moving the motion, and the resumption of the debate is to be made an Order of the Day for the first sitting day in 2003
2. However, if after the first reading, a Minister declares a Bill to be an “urgent Bill” and copies have been circulated to Members, the Question “That the Bill be considered an urgent Bill” is to be decided without amendment or debate, except a statement not exceeding 10 minutes each by a Minister and the Leader of the Opposition, or a Member nominated by the Leader of the Opposition, and one cross-bench Member. If that Question is agreed to, the second reading debate and subsequent stages may proceed forthwith or at any time during any sitting of the House.”⁷⁵

The Government’s program in the Assembly was not unduly affected by this sessional order as motions were passed by the Legislative Council to enable it to deal with Government bills forthwith, at a later hour of the sitting or through all stages in any one sitting.⁷⁶ This meant that any amendments made by the Council to Government bills were returned to the Assembly in a timely fashion with little delay. In addition, the Government introduced a number of bills into the Legislative Council which meant that the sessional order did not apply.⁷⁷ A similar sessional order was adopted in May 2003,⁷⁸ November 2003⁷⁹ and June 2004.⁸⁰

20.6.6.7 Bills submitted to referenda

Part 2 of the *Constitution Act 1902* provides for a referendum in two situations:

- (1) When the Legislative Assembly and Legislative Council do not agree on the provisions of a bill, with the exception of appropriation bills (section 5B); and
- (2) When changes are proposed to the powers of either House or the procedures for election to the Parliament (sections 7A and 7B).

Referenda are to be conducted in accordance with the *Constitution Further Amendment (Referendum) Act 1930*. Essentially, this Act provides that the provisions of the *Parliamentary Electorates and Elections Act 1912* with regard to the conduct of elections are to be applied, so far as they are applicable, to a referendum as if it were an election. There have been 16 referenda held in New South Wales in relation to bills since the *Constitution Act 1902* was enacted:

⁷⁵ See the Legislative Council, *Minutes of Proceedings* 20 March 2002, pp. 72-4.

⁷⁶ PD 25/09/2002, p. 5243 and 19/11/2002, p. 6895.

⁷⁷ See for example, the *Environmental Planning and Assessment Amendment (Anti-Corruption) Bill 2002*, which fell under the portfolio responsibilities of the Minister for Planning (a Member of the Legislative Assembly), was introduced into the Legislative Council first rather than the Legislative Assembly.

⁷⁸ See Legislative Council, *Minutes of Proceedings*, 20/05/2003, pp. 91-2.

⁷⁹ See Legislative Council, *Minutes of Proceedings*, 18/11/2003, pp. 420-1.

⁸⁰ See Legislative Council, *Minutes of Proceedings*, 01/06/2004, pp. 808-9.

1. In December 1903 a referendum was held to reduce the number of members in the Legislative Assembly. This was passed with the number of members dropping from 125 to 90.
2. In June 1916 a referendum was held on liquor reform. Voters were given the choice of choosing any hour between 6.00 p.m. and 11.00 p.m. for closing time in a preferential ballot, with the majority of voters supporting a 6.00 p.m. closing time.
3. In September 1928 the voters overwhelmingly rejected a proposal to prohibit liquor in the State.
4. In May 1933 a referendum was held to reform and alter the powers of the Legislative Council, which was supported by the majority of voters.
5. In February 1947 a referendum was held on the closing hours for hotels, where the voters continued to support the 6.00 p.m. closing time.
6. In November 1954 the question regarding the closing time for hotels was once again put to the electors. It was voted that hotels could remain open until 10.00 p.m.
7. In April 1961 a referendum was held to abolish the Legislative Council. This was rejected by the electors.
8. In April 1967 electors in the South East of New South Wales were asked whether they supported the establishment of a new state in that area as described in the *New State Referendum Act 1966*. This was rejected by the electors in the area and was not submitted to a state-wide referendum.
9. In November 1969 electors were asked whether they supported an amendment to the law to enable hotels to trade on Sundays between 12 noon and 6.30 p.m. which was rejected.
10. In May 1976 electors showed their overwhelming support for daylight saving in a referendum.
11. In June 1978 electors passed a referendum which provided for the election of members of the Legislative Council directly by the people.
12. In September 1981 two referenda were held in conjunction with the General Election. In relation to the first referendum, the electorate overwhelmingly supported a referendum on the disclosure of pecuniary interests by members of Parliament.
13. The second referendum held in September 1981 was in relation to extending the maximum period between Legislative Assembly elections to four years. This was rejected by the majority of voters.

14. In May 1991 electors approved of a bill to reduce the number of members in the Legislative Council and their maximum term of office to two terms of the Assembly (i.e. 8 years). The bill also provided for the filling of casual vacancies in the Council in the same way as the Senate.
15. In conjunction with the March 1995 General Election electors approved a bill to prevent Parliament from changing laws about the independence of the judiciary without a referendum.
16. At the same time electors approved of a bill to make the term of Parliaments in New South Wales fixed at four years.

20.7 Impact of Commonwealth Legislation upon State Legislation

The introduction of bills into the New South Wales Parliament consequential upon Commonwealth legislation has resulted in some unusual procedures:

Corporations Bill 2000

On 30 November 2000 the Attorney General introduced the *Corporations (Commonwealth Powers) Bill*, a bill for an Act to refer certain matters relating to corporations and financial products and services to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth.

In an unusual procedure which was intended to be repeated in each State, the Attorney-General tabled the following five documents each bearing identification "as part of the tabled text" for the purposes of the *Corporations (Commonwealth Powers) Bill*:

- Commonwealth Australian Securities and Investments Commission Bill.
- Commonwealth Corporations Bill Volume 1 Part 1.
- Commonwealth Corporations Bill Volume 1 Part 2.
- Commonwealth Corporations Bill Volume 2 Part 1.
- Commonwealth Corporations Bill Volume 2 Part 2.

Dairy Industry Bill 2000

The bill deregulating the dairy industry in New South Wales had to be passed by both Houses by a certain date in order for farmers to qualify for the Commonwealth restructure package. The Opposition and certain Independent members were pressing for amendments to the bill to provide for a State-funded top up compensation package. The amendments providing for this package were defeated in the Assembly but passed in the Council. The Assembly disagreed with the amendments with reasons and the Council in turn insisted on its amendments.

Under the Assembly standing orders the available options left for the Assembly were to agree to the amendments; insist on its disagreement and lay the bill aside or request a conference. In the end the Government suspended standing orders to permit a motion to be moved in committee of the whole "That the Assembly insists on its disagreement to the Legislative Council amendments a second time". In committee, the Leader of The Nationals moved an amendment to this motion to refer the amendments to a conference of managers of both Houses to report this day. The amendment was negatived and the original motion agreed to.⁸¹ In the Council,

⁸¹ PD 29/06/2000, pp. 7855-66.

the amendments were not insisted on after the Government gave an undertaking to look at other avenues of assistance.

20.8 Certificate of Parliamentary Remuneration Tribunal

Section 4 of the *Parliamentary Contributory Superannuation Act 1971* (by virtue of an amendment to the Parliamentary Remuneration Act made in 1998), states:

It is not lawful for the Legislative Assembly to originate or pass any vote, resolution or Bill for the amendment of this Act unless a certificate approving the amendment made by the vote, resolution or Bill has been first issued by the Parliamentary Remuneration Tribunal, or any successor of the Tribunal, during the Session in which the vote, resolution or Bill is proposed to be passed.

Under section 14A of the *Parliamentary Remuneration Act 1989*, in determining whether any amendment is warranted, the Tribunal "(a) must have regard to the Heads of Government Agreement, which commenced on 1 July 1996, relating to the exemption of certain State public sector superannuation schemes from the Superannuation Industry (Supervision) Act 1993 of the Commonwealth, including whether the amendment is consistent with that agreement; (b) must have regard to the effects of any proposed amendment on the present and future liabilities of the Parliamentary Contributory Superannuation Fund; and (c) may obtain and have regard to, actuarial advice relating to the costs and effects of any proposed amendment".

The first use of this provision, which clearly limits the law making power of the House under the NSW Constitution, was made when the Government introduced the Superannuation Legislation Amendment (Same Sex Partners) Bill 2000. In the case of the Parliamentary Contributory Superannuation Scheme, the amendments extend the definition of spouse for the purposes of the Act to a person who is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with a member or former member of the scheme. The effect of this is that same sex partners or persons who are entitled to, or are receiving, benefits are now dealt with as spouses and will be entitled to the benefits payable to spouses on the death of the member or former member.

The certificate of the Parliamentary Remuneration Tribunal (PRT) stating that in the PRT's opinion, the amendments to the *Parliamentary Contributory Superannuation Act 1971* contained in the bill were warranted, was tabled following the first reading of the bill and also when the House considered amendments made by the Legislative Council.⁸²

⁸² VP 01/11/2000, p. 834 and VP 19/12/2000, p. 1028. See also VP 12/11/2003, p. 444; VP 15/11/2005, p. 1752.

