

## Chapter 21 Consideration in Detail

### 21.1 Introduction

After a bill has been read a second time, the Speaker will call on the member in charge of the bill to move the third reading forthwith unless:

- a member has requested that the bill be considered in detail; or
- the member in charge of the bill moves a motion to consider the bill in detail pro forma; or
- the member in charge of the bill requests the Speaker to set down consideration of the bill in detail as an order the day for a later time. (S.O. 203 as amended by sessional order).

The consideration in detail stage has replaced the former committee of the whole. However, many of the procedures are similar.

Under the previous practice the House proceeded to committee of the whole after a bill had been read a second time without question being put unless leave was granted or sought for the third reading to be taken forthwith, or for the bill to be committed pro forma, or if the Speaker was requested to set down consideration of the bill in committee of the whole as an order of the day for a future time.

When the House resolved itself into a committee of the whole the Speaker relinquished the Chair in favour of the Chairman of Committees who took the Clerk's chair at the Table. Under the current procedure where the House considers a bill in detail there is no requirement for the Speaker or other member presiding to relinquish the Chair. The presiding member does however step down from the Chair and sit at the Table.

Under the former committee of the whole procedure, the Speaker was able to participate in proceedings including taking a deliberative vote in any divisions taken in committee. Early Speakers often voted in committee<sup>1</sup> and in many cases did so in order to maintain a quorum.<sup>2</sup> From 1905 until 1991 Speakers chose not to exercise this right. However, the practice resumed during the 50th Parliament (1991 to 1994), when the balance of power in the House was held by three Independent Members of Parliament, with the Speaker exercising a deliberative vote in the majority of divisions held in the committee of the whole House.<sup>3</sup> The practice was also used extensively during the 51st Parliament when the Government had a slight majority and political necessity required that the Speaker exercise a deliberative vote in the committee of the whole in order to ensure that the Government's legislative program proceeded in a timely and appropriate manner.<sup>4</sup> Under the current procedure the House considers the legislation rather than the committee. However, amendments made to the *Constitution Act 1902* in June 2007 have ensured that this right of the Speaker to participate fully in the consideration in detail stage has been maintained.<sup>5</sup>

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<sup>1</sup> See VP 09/03/1859, p. 315 where Speaker Cooper voted in a number of committee divisions on the supply estimates for 1859.

<sup>2</sup> See VP 01/02/1859, p. 303.

<sup>3</sup> For examples, see PD 02/12/1994, pp. 6247-8 on the *Protected Disclosures Bill*; and PD 25/09/1991, pp. 1767-8 on the *Industrial Relations Bill*.

<sup>4</sup> For example, see PD 31/05/1995, p. 476 on the *Liquor Amendment Bill* and the *Registered Clubs Amendment Bill*.

<sup>5</sup> Section 31 of the *Constitution Act 1902* provides the Speaker may, when not presiding, take part in any debate or discussion and vote on any question, which may arise in the Legislative Assembly.

The House considers a bill or other matter in detail pursuant to:

- (1) the directions in the standing orders; or
- (2) a resolution of the House.

The consideration in detail stage is the only stage where a bill can be amended, hence it is also necessary for Legislative Council amendments in a bill to be considered in detail by the House.

The House cannot amend a bill that has been read a second time in a manner that is destructive of the principles agreed to at the second reading stage. However, the House can "destroy" a bill by negating a clause or clauses, the omission of which will nullify the bill.<sup>6</sup>

It is interesting to note that in the former committee of the whole, a bill could not be defeated but could be "laid down".<sup>7</sup> As such, while a bill was only able to be withdrawn in committee with the leave of the House, a committee of the whole could indirectly "destroy" a bill by:

- reporting progress, without asking leave to sit again;
- agreeing to a motion "That the Chairman do now leave the Chair" or in other words refusing to proceed with the bill; or
- by negating a clause or clauses, the omission of which would nullify the bill.<sup>8</sup>

The Chair has ruled that there is nothing stopping a committee of the whole from negating any clause or clauses which may destroy the bill. However, the Westminster practice has been for the member in charge of the bill to withdraw it and to introduce another bill in an amended form upon which the House and committee is likely to agree.<sup>9</sup> In 1934, Deputy Speaker Hedges commented on bills in committee noting that "it was not the practice to rule bills out of order after they had been committed simply because of an irregularity which was capable of being corrected in committee, or upon recommittal."<sup>10</sup>

## 21.2 Business dealt with in the consideration in detail stage

Most of the business dealt with by the Assembly may be considered in detail, but there are certain matters which the standing orders require to be so considered:

- (1) Motions for referenda in accordance with section 5B of the *Constitution Act 1902*;
- (2) Legislative Council amendments in bills (S.O. 223);
- (3) Messages from the Governor recommending bills for Loan or Appropriation and accompanying Estimates and Statements (S.O. 244)<sup>11</sup>; and
- (4) Reports of Estimates Committees appointed by the Legislative Assembly (S.O. 246(4)).

<sup>6</sup> *House of Representatives Practice*, 5th edition, 2005, pp. 364-5.

<sup>7</sup> See *May*, p. 601, where reference is made to observations made by John Moore, a member of the Long Parliament, in his unpublished diary on 16 April 1641 which argue that "no committee can destroy a bill, but they may lay it down".

<sup>8</sup> *May*, p. 601.

<sup>9</sup> See PD 06/05/1992, pp. 3680-1.

<sup>10</sup> VP 01/07/1934, p. 116.

<sup>11</sup> See ruling of Speaker Arnold, VP 08/10/1873, pp. 61, 64, 80 and 93-4. Confirmed by Speaker Dooley, PD 20/12/1926, pp. 12-3.

The House is not limited to considering bills in detail but may consider other matters in detail, such as the terms of a resolution, in order that members are able to speak more than once on the same question.<sup>12</sup>

The general rules applying to the House guide the proceedings during the consideration in detail stage unless otherwise specified. For example, during the second reading debate members are usually limited to one speech but during the consideration in detail stage, members are not so limited (S.O. 242).

### **21.3 Limited powers of the House during the consideration in detail stage**

It is important to remember that during the consideration in detail stage the House may consider only those matters referred. This point usually arises when a member desires to import matters by way of amendment, the nature of which (although at first glance appearing to be relevant and as being "within the title" of the bill) are outside the *scope* of the bill (or other matter) which has been referred for consideration in detail by the House (see section 21.12.1 of Part One).

The consideration in detail stage follows the same procedures as the former committee of the whole and accordingly a number of precedents are relevant to the discussion. It has been ruled that it was not competent for a committee to question the legality of proposed legislation and that it was not in order to change a motion in such a way as to make it express an opinion.<sup>13</sup> The same principles apply when the House is considering a bill or matter in detail and the only course open to members is to agree to the motion or vote it out.

In addition, during the consideration in detail stage a bill cannot be ruled out of order. A motion such as "That the bill be laid aside" or an amendment "That the bill be disposed of" cannot be accepted.<sup>14</sup>

When the House is considering a bill or matter in detail it is not within the powers of the Chair to rule any clauses out of order. Having been referred for consideration in detail they must be presumed to be in order.<sup>15</sup> Clauses must be dealt with either by amendment or otherwise.

Under the former committee of the whole procedure a committee could not adjourn. Occupants of the Chair held that any motion to adjourn the debate in the committee may be viewed as an obstructive motion and have refused to accept the motion.<sup>16</sup> However, "progress" could be reported at any time upon the motion of any member. In practice, the Chairman did not report the precise progress that had been made with the matter referred to the committee (as, for instance, "The committee has finished consideration of the first three clauses") but merely reports, "Mr Speaker, the committee reports progress and asks leave to sit again".

In contrast to the previous practice the current procedure enables the House to adjourn the debate during the consideration in detail stage and the matter becomes an order of the day and the proceedings in consideration in detail will resume when

<sup>12</sup> VP 12/05/1960, p. 323.

<sup>13</sup> PD 12/05/1960, p. 4046.

<sup>14</sup> VP 26/11/1929, p. 561.

<sup>15</sup> PD 30/11/1897, p. 5319; PD 27/09/1916, p. 2149.

<sup>16</sup> VP 10/12/1958, p. 205; PD 13/05/1931, pp. 2670-1.

the order of the day is next considered. There is no requirement for the Chair to seek permission for the House to consider the matter in detail again.

When a division on a proposed amendment has been deferred pursuant to standing and sessional orders the deferred division will be considered by the House at the appropriate time. For example, under the current standing orders a division cannot be held until 10:30 a.m. on those days when the House sits before that time. Any division deferred during the consideration in detail stage will be held at 10:30 a.m. and any business then before the House will be interrupted and recommenced after the division(s). In contrast, under the former practice, deferred divisions during a committee of the whole were set down as an order of the day and were conducted when the bill was next considered in committee. This required the Chairman to report progress and seek leave for the committee to sit again.<sup>17</sup> On one occasion a division called for in committee was deferred pursuant to the then standing orders as it was before 9:30 a.m. The committee considered other clauses of the bill and the deferred division was conducted later in the committee stage without the need for the Chairman to report progress and seek leave to sit again.<sup>18</sup>

The motion, "That you (the Chairman) do now leave the Chair and report progress, and ask leave to sit again" did not have to be accepted if, *in the opinion of the Chairman*, it was moved with the object of causing obstruction<sup>19</sup> or was not consistent with the regular and orderly conduct of business. However, when the motion was accepted, the question was put without debate in accordance with the standing orders.<sup>20</sup>

If a committee of the whole failed to "ask leave to sit again" when reporting progress, the order of the day lapsed and consideration of the business in question could not be resumed until the order of the day was restored to the business paper for a future day.<sup>21</sup> This was achieved upon a motion of which it was not necessary to give notice. Business interrupted by a count-out could be similarly "revived".

If the House did not agree to the question "That leave be given to sit again", the order of the day fell from the business paper and could not be restored unless the vote by which the leave was refused was rescinded.<sup>22</sup>

A committee could not suspend the operation of any standing or sessional order, nor could a member be suspended by a committee. The Chairman could, however, direct the Serjeant-at-Arms to remove a member who had been called to order more than three times. This action debarred the member from the House and from all the rooms set apart for the use of members until the termination of such sitting.<sup>23</sup> Under the current consideration in detail procedure the Chair is able to suspend a member

<sup>17</sup> See for example, VP 28/06/2002, p. 371 where an Independent member moved amendments to a bill and the division on the amendments was deferred. Following the suspension of standing and sessional orders the bill was recommitted to allow the deferred division to be conducted.

<sup>18</sup> See PD 05/06/1996, p. 2527 and pp. 2534-5. The former standing orders provided that members could not call a division on any question before 9.30 a.m. on any sitting day. The standing order was rescinded on 14 October 1996. The current standing orders prohibit members from calling a division before 10.30 a.m. on days when the House meets at 10.00 a.m.

<sup>19</sup> PD 03/05/1994, pp. 1817-8.

<sup>20</sup> PD 09/10/1918, p. 2063; PD 21/10/1997, p. 1115; Chairman ruled that a resolution of the House requiring that "all questions being put for all remaining stages" precluded the consideration of the question that he leave the Chair and report to the House, PD 21/10/1997, p. 1113.

<sup>21</sup> VP 16/11/1866, p. 369.

<sup>22</sup> VP 20/11/1923, pp. 145-6.

<sup>23</sup> See also PD 22/08/1991, pp. 452-66.

in the same way that a member can be suspended during any other proceeding in the House.

In committee it was not in order to lay papers upon the Table. However, members did place documents upon the Table in order that other members had access to them during debate.<sup>24</sup> This practice remains the same for the consideration in detail stage.

Questions of privilege could not be decided by a committee of the whole. Privilege matters were dealt with by the House once the Committee had formally reported the matter. Speaker Ellis ruled in 1970 that in future "...a contempt which takes place in committee must immediately and briefly and without debate be brought to the attention of the Chairman." He added that the Chairman's normal report to the House (either of progress or whatever) shall be deemed to contain a report of the alleged breach of privilege. Thus the House will be in possession of such information as will enable the matter to be raised in the House.<sup>25</sup> In contrast a matter of privilege suddenly arising during the current consideration in detail procedure can be determined by the House immediately.

Under the former committee of the whole procedure the Chairman was unable to decide:

- questions of order upon any proceedings in the House;<sup>26</sup>
- whether a guillotine notice covering committee stage was defective because it also included reference to another stage in the passage of legislation;<sup>27</sup>
- whether Legislative Council amendments were in order;<sup>28</sup> or
- whether, when the Chairman took the Chair in committee, the committee was properly constituted because of alleged breaches of the standing orders before a committee had been set up.<sup>29</sup>

Despite these limitations a ruling given by Speaker Ellis in 1970 indicates that the Chairman in committee could use whatever procedures were deemed necessary to preserve order in the committee. The former practice of the House was for the Chairman in committee to regulate debate and to enforce the observance of the rules which governed its conduct. Further, it was the duty of the Chair to intervene in the first instance for the preservation of order, if, in the Chair's judgement, interference was demanded.<sup>30</sup> If the Chairman refrained from interference (either because the Chair did not consider it necessary to do so or because it did not perceive that a breach of order had been committed) it was also the right of any member who wished to raise a point of order to rise in his or her place and direct the attention of the Chair to the matter provided he did so the moment the alleged breach of order occurred.<sup>31</sup>

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<sup>24</sup> PD 12/03/1958, pp. 2611-2.

<sup>25</sup> PD 11/03/1970, pp. 4133-4.

<sup>26</sup> VP 26/09/1912, p. 116.

<sup>27</sup> VP 26/11/1929, p. 564.

<sup>28</sup> PD 03/11/1909, p. 3223.

<sup>29</sup> VP 26/09/1912, p. 116.

<sup>30</sup> See *May*, pp. 795-7.

<sup>31</sup> PD 03/09/1970, pp. 5585.

This ruling reinforced the view expressed by Speaker Young in 1887-88 that if any wrong had been done, the proper time to take exception to it was at the time of the transgression.<sup>32</sup> The same principles apply in the consideration in detail stage.

#### 21.4 Debate

Except where otherwise specified, the same rules of debate apply to the proceedings in the consideration in detail stage as those that apply to other debates in the House:

- Time limits for speeches during the consideration in detail are set out in standing order 85 and are applicable to each question proposed; that is, to each clause, to each amendment to each clause, a clause as amended, and so on.
- During the consideration in detail stage there is no "reply" as there is during other debates in the House, hence when the mover of a motion or an amendment speaks a second time the debate is not closed. This was also the case during the former committee of the whole procedure.<sup>33</sup>
- Extensions of time may not be granted, as is the case in other debates in the House.<sup>34</sup> However, Ministers have, by leave, moved that members whose time has expired during debate in committee be permitted to conclude their remarks.<sup>35</sup>

The primary consideration in debate during the consideration in detail stage is relevancy. The discussion is to be of those matters that the House has decided should be considered in detail. This follows the same principles of the former committee of the whole where discussion was to be confined to those matters that were referred to the committee for consideration.

The scope of debate during the consideration in detail stage is quite restricted.<sup>36</sup> Agreeing to the second reading decides the principles of a bill, whereas when a bill is considered in detail members consider how the principles are best carried out.<sup>37</sup> In accordance with the basic rule, debate is confined to the matter of the actual question proposed from the Chair.<sup>38</sup> Therefore, at most, the content of each clause or group of clauses is at issue, and except in the cases of one-clause bills the scope of debate is obviously confined.<sup>39</sup> To raise doubts as to the necessity for a bill is not in order during the consideration in detail stage,<sup>40</sup> nor is it proper to canvass to the Minister's reply to the second reading debate.<sup>41</sup>

Strictly speaking when an amendment is proposed to a clause or to a motion only the amendment may be debated until the amendment has been disposed of.<sup>42</sup>

Bills are considered clause by clause, and schedule by schedule, unless leave is granted to consider the bill in groups of clauses or schedules, the object being to

<sup>32</sup> PD 02/11/1887, pp. 890-1.

<sup>33</sup> PD 29/10/1952, p. 1749.

<sup>34</sup> PD 30/10/1928, pp. 1338-40 (Dissent negatived).

<sup>35</sup> PD 09/06/2000, p. 7026.

<sup>36</sup> But see PD 12/11/1952, p. 2112.

<sup>37</sup> PD 27/10/1965, p. 1564.

<sup>38</sup> PD 30/09/1952, pp. 996-7.

<sup>39</sup> PD 07/11/1951, p. 4139.

<sup>40</sup> PD 24/10/1939, p. 6854.

<sup>41</sup> PD 27/10/1965, p. 1564.

<sup>42</sup> PD 10/03/1955, p. 2907; PD 30/09/1952, p. 997.

ensure as far as possible that the details of the bill are adequate to implement the principles of the bill as agreed to at the second reading stage.

When Legislative Council amendments are being considered, debate is confined to the amendments themselves. No other part of the bill is being considered in detail. However, if an amendment has a direct bearing on some other part of the bill a degree of latitude is sometimes allowed.

Priority of the call is given to the member in charge of the business being considered in detail, followed usually, though not necessarily, by the Leader of the Opposition or by the member leading on behalf of the Opposition.

Generally speaking, the proceedings during the consideration in detail are less formal than those of other proceedings. Relevant interjections are permitted, being rather similar to the "interventions" in the Commons<sup>43</sup>, although in New South Wales the member speaking remains on his or her feet and the interjector remains seated unless a point of order is being taken.

### 21.5 Constituent parts of a bill

A bill may consist of:

- (1) Explanatory note.
- (2) Long title.
- (3) Preamble.
- (4) The words of enactment.
- (5) The enacting provisions.
- (6) The short title.
- (7) Schedule or schedules.
- (8) The headings.

(1) *Explanatory Note*. Since 1938 it has been a requirement under the standing orders for an "*Explanatory Note*" to be affixed to the front of each bill when it is introduced. Such notes briefly and simply set out the provisions of the bill. The Explanatory Note is not considered in detail. In 1994 the standing order was amended to delete this reference and to simply provide that any explanatory note affixed to the bill be printed after the first reading. Under the current standing orders a bill is printed, with an explanatory note if applicable, once it has been introduced (S.O. 188(7)).

(2) *The Long Title* (the formal title) sets out in general terms the purposes of the bill. It is only amended if amendments made in the body of a bill render alteration necessary. It is not necessary to mention all the Acts affected (S.O. 188(1)).

(3) *The Preamble*, which, when it appears in a bill, runs into the words of enactment, and sets forth the reasons and intended effects of the proposed legislation.<sup>44</sup> Nowadays, preambles are rare, and for many years have appeared only in private bills (S.O. 360) and bills dealing with

<sup>43</sup> An intervention is somewhat similar to an interjection, although the member who intervenes is able to speak if the member who was speaking allows it. See *May*, p. 432.

<sup>44</sup> *May*, p. 536.

Commonwealth/State arrangements.

- (4) *The words of enactment* (the enacting formula)<sup>45</sup> are contained in the paragraph (not numbered) which reads "The Legislature of New South Wales enacts:" This paragraph may *not* be amended by the House and, therefore, is not proposed by the Chair (S.O. 206). However, the words of enactment may be altered by the Clerk should circumstances provided for by ss. 5A<sup>46</sup> and 5B<sup>47</sup> of the Constitution Act arise.
- (5) *The enacting provisions.* The enacting provisions of a bill follow immediately after the words of enactment and are divided into numbered clauses which may be subdivided into subclauses, paragraphs and subparagraphs. (The clauses of a bill become "sections" when, by the signification of the assent, a bill becomes an Act; in debate, to assist clarity, one refers to "clause so-and-so" of a bill, but "section so-and-so" of an Act.)
- (6) *The Short Title* usually forms the subject of clause 1 of a bill. The short title may be used in citing an Act in any other Act.<sup>48</sup> Obviously, it is the most convenient method of reference in debate. The figures indicating the year which follow the words of the short title are regarded as an integral part of the short title. The short title may not be amended by the House unless changes to the substance of the bill render it necessary.<sup>49</sup>

Should a bill, introduced in one year, be not passed until the following year, the alteration of the year number in the short title by amendment is not required. The change may be made administrably by the Clerk.<sup>50</sup>

Short titles of bills are usually not open to amendment unless amendments to the substance of the bill render it necessary.<sup>51</sup> However, there are exceptions to this principle. For instance in 2005 the short title of the *Crimes Amendment (Road Accidents) Bill* was amended to insert the words "(Brendan's Law)" after the words "(Road Accidents)". The amendment was symbolic and did not affect the substance of the bill.<sup>52</sup>

If the clause containing the short title has been omitted it may be inserted by the House upon reconsideration, when the motion is moved for the bill to be a third time, or by a proposed Legislative Council amendment.<sup>53</sup>

- (7) *The Schedule or Schedules* appear after the last clause, and are those matters not conveniently inserted in the clauses which precede them in the manner of appendices to a Report. There is an increasing trend for substantive amendments to be in Schedule 1 in short bills.

<sup>45</sup> *Constitution Act 1902*, sec. 5C for variations.

<sup>46</sup> Regarding disagreements between the two Houses in relation to appropriation bills

<sup>47</sup> Regarding disagreements between the two Houses on bills and the submission of the bill to the public by referendum.

<sup>48</sup> *Interpretation Act 1987*, sec. 66.

<sup>49</sup> PD 10/04/1992, p. 2622.

<sup>50</sup> See PD 02/03/1961, pp. 2870-1.

<sup>51</sup> See statement by Speaker Rozzoli, PD 10/04/1994, p. 2622. For example see PD 18/11/1993, p. 5668.

<sup>52</sup> PD 12/10/2005, pp. 18453-4. See also PD 27/06/1996, pp. 3757-8.

<sup>53</sup> PD 06/05/1992, p. 307.

- (8) *The Headings* to a Part, Division or Subdivision, or Schedule in an Act are taken to be part of an Act<sup>54</sup> and other headings, marginal notes, footnotes or endnotes *may* be taken to be part of the Act if it is referred to expressly in some other part of the Act or is the heading, etc, to a form or table in the Act

Clerical, typographical format and other obvious errors in a bill may be corrected by the Clerk before it is sent to the Council (S.O. 219).

A Bill can also be split into a number of different bills. For example, in the Legislative Council the Minister for Industrial Relations moved a motion, which was agreed to, for an instruction to be given to the committee of the whole in the Legislative Council that the *Industrial Relations Amendment Bill 2000* be split into two.<sup>55</sup> The Legislative 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 it did not originate was highly undesirable.<sup>56</sup> See section 20.6.6.4 of Part One for further information on divided bills.

## 21.6 How consideration of a bill proceeds

### 21.6.1 *Pro forma consideration in detail*

After a bill has been read a second time, the member in charge of the bill can move "That the House consider the bill in detail pro forma" (S.O. 204 as amended by sessional order).<sup>57</sup>

A bill is considered in detail pro forma because of numerous or complicated amendments and it appears to the member in charge of the bill that the amendments would be better understood in the context of the bill.

The member in charge must have already had the proposed amendments printed and circulated. The question is put, "That the amendments, as printed, be inserted in the bill". No debate or amendment is permitted upon this question but whether the proposed amendments are in order may be questioned.<sup>58</sup>

If the question is agreed to, the bill is reprinted in its amended form and on its reconsideration it will be considered as if considered for the first time.

If either the question for the pro forma consideration in detail or the question on inserting all the amendments is negated the bill is proceeded with in the usual way. The amendments which the House did not agree to insert as one question may, with debate, be moved separately in the appropriate places.

Amendments inserted in a bill by a pro forma consideration in detail should not include any amendment in the title.<sup>59</sup> If necessary, the title may be amended afterwards to cover the amendments.

<sup>54</sup> *Interpretation Act 1987*, sec 35.

<sup>55</sup> Legislative Council Minutes 28/06/2000, p. 567.

<sup>56</sup> VP 29/06/2000, pp. 670-1 and 674.

<sup>57</sup> Bills committed pro forma: VP 17/09/1974, p. 105; VP 21/02/1967, p. 243; VP 18/11/1975, p. 234; VP 26/02/1980, p. 256 (cognate bills); VP 04/03/1980, p. 271; VP 22/03/1983, p. 259; VP 26/02/1985, p. 244; VP 23/10/2001, p. 1536.

<sup>58</sup> VP 04/07/1911, p. 101.

<sup>59</sup> PD 04/07/1911, pp. 1258 and 1264.

Essentially, the procedure is used when there are many amendments so that members are able to see how the bill would look with the amendments incorporated. By considering a bill in detail pro forma the House is still able to consider the bill in detail at a later stage to agree to the amendments.

#### **21.6.2 Consideration in detail of a bill**

Proceedings on a bill being considered in detail are commenced by the Speaker or other occupant of the Chair who, without receiving a motion, announces the name of the bill and, if leave has not been sought to deal with the bill in groups of clauses/schedules, "reads" the first clause. For a clause to be "read" it is sufficient if the clause number is recited (S.O. 207). Having so read the clause the Chair proposes "That the clause/schedule be agreed to" (S.O. 208) and debate may proceed. Clauses (and schedules) are considered in their numerical order and they may be considered separately or, by leave, in groups, or as a whole (S.O. 208). On one occasion, when it was proposed to consider a number of clauses of a bill as a group, the Chair ruled that the division be deferred because if the question was now put it would preclude debate on the proposed amendments and noted that he proposed to deal with each of the clauses individually so that the various amendments could be debated.<sup>60</sup> Standing and sessional orders have also been suspended to enable one question to be proposed in respect of the clauses and schedules of a bill during the consideration in detail.<sup>61</sup>

A Minister and the Leader of the Opposition (or depute) are not limited in the number of times speaking as long as there are intervening speakers but the length of each contribution is limited as set out in standing order 85, as amended by sessional order. Other members may speak three times to each question, i.e. three times to each clause, any individual amendment proposed and, if the clause has been amended, three times to the question "That the clause/schedule as amended by agreed to", and so on (S.O. 85). Each time the clause is amended, this question is also proposed.

Having dealt with clause 1, clause 2 is similarly proposed by the Chair for consideration followed by clause 3 and so on until all the clauses have been dealt with. Then any schedules to the bill are considered in the same fashion, followed by any postponed clauses and postponed schedules (S.O. 209). If appropriate, the Chair then proposes the question "That the preamble be agreed to" (S.O. 205).

It is competent for the House to postpone the consideration of a clause which has been amended (S.O. 213). This is achieved by carrying a motion "That consideration of the clause be postponed". (The question is open to debate.) The effect of this is to postpone consideration of the clause until after the remaining clauses and schedules have been dealt with.

It is not in order to move that a clause be postponed until a specified date or time or order in relation to the other clauses.<sup>62</sup> If more than one clause is postponed, they

<sup>60</sup> PD 18/05/1993, pp. 2189, 2217 and 2224.

<sup>61</sup> VP 21/06/2001, p. 1308.

<sup>62</sup> PD 25/10/1922, p. 3022.

are later considered in the order in which they were so postponed. A clause must be postponed in its entirety.

It is not in order to move an amendment for the omission of a clause. To achieve this, a member votes against the question "That the clause/schedule be agreed to".

Proposals for new clauses and new schedules should be made in their numerical order (S.O. 209). However, if the first amendment of a group of related amendments fails to be passed the remainder cannot be moved.<sup>63</sup>

To omit a clause and insert another in its place, it is necessary to *negative* the clause when it is proposed and then move for the replacement clause.

A clause (or schedule) having been agreed to (either as proposed or amended) may not be considered again by the House unless, the House agrees to reconsider the bill (S.O. 217). A bill is seldom reconsidered in its entirety, and is usually reconsidered in relation to a specified clause (or clauses) or the insertion of new clauses. When the House is reconsidering a bill, only those particular matters set out in the reconsidered clause (or clauses) are open to consideration and amendment.

The preamble, if any, stands postponed until after the clauses (and schedules) have been dealt with (S.O. 205). The preamble may be amended if it appears to the committee that it is inconsistent with any clause in the bill regardless of whether such inconsistency was in the bill originally considered in detail or only after a clause has been amended.<sup>64</sup>

The long title of a bill is not proposed for consideration unless an amendment "has been made in the bill necessitating an amendment of the long title" (S.O. 211), and therefore, if considered at all, is the very last matter proposed. If any amendments agreed to in any clause or schedule render the long title inaccurate, the long title is proposed and the necessary amendment moved, followed by the question "That the long title, as amended, be the long title of the bill" (S.O. 211).

As stated earlier, a bill may not be ruled out of order during the consideration in detail stage on the grounds of any irregularity. Furthermore, it is outside the authority of the Chair to rule out of order a bill which proposes to amend an Act not already passed into law.<sup>65</sup> This follows a ruling given by Speaker McCourt in 1905 who said, in reply to a similar point taken during the second reading of a bill, "he did not consider he was called upon to decide whether the *Local Government (Shires) Bill* was an Act or not, it was sufficient that the Order of Leave covered the general scope and purport of the matters comprised in the bill".<sup>66</sup>

It is also permissible for the House to consider two bills, the provisions of one complementary to, and containing references to, the other bill before the latter bill has become law.<sup>67</sup>

<sup>63</sup> See for example, PD 20/08/1991, p. 195.

<sup>64</sup> PD 29/11/1906, p. 4252; PD 12/09/1923, p. 812.

<sup>65</sup> PD 27/11/1919, pp. 3114-5.

<sup>66</sup> PD 20/09/1905, p. 2309.

<sup>67</sup> PD 30/10/1963, p. 6059.

## 21.7 Amendments to bills

It is necessary, when moving an amendment, to inform the Speaker (and the House) the precise point at which the clause under consideration is affected. To facilitate this, the lines on each page are numbered.

The position of an amendment is described by giving (i) the page number(s); (ii) the clause number; and (iii) line number, in that order. For example, having secured the call, a member proceeds:

- Page 5, clause 8, line 17. After the word "house" insert the word "brick"; or
- Page 6, clause 10, line 12. Omit the words "but not earlier than six months"; or
- Page 8, clause 14, lines 4 to 10. Omit the words "brick house", insert instead "solid structure".

Proposed amendments must be handed to the Chair in writing and signed by the mover (S.O. 159). Leave is not required to move amendments without reading them.<sup>68</sup>

The Speaker does the utmost to preserve the rights of all members. For instance, if it appears to a member that an amendment moved would, if proposed from the Chair, preclude the moving of another amendment, the attention of the Chair must be drawn to this fact. The Chair will then request the first member to resume their seat to enable the second member to move their amendment.<sup>69</sup>

Once an amendment has been proposed from the Chair, any prior amendment may not be accepted unless the amendment which has been proposed is, by consent of the House, withdrawn.<sup>70</sup>

Usually only one clause is considered at a time and therefore it is not in order to move one amendment with the object of dealing with two or more clauses, although leave may be obtained to move a number of amendments *in globo* (i.e. together as the one question).<sup>71</sup> The grouping of amendments for debate is generally done for the convenience of the House and permits debate to range over a number of amendments that are linked or raise different aspects of the proposal under consideration and it is a way of preventing repetition.<sup>72</sup> The Chair with the concurrence of the House may also propose a bill by parts.<sup>73</sup>

Three different forms of amendments may be moved (S.O. 157).

- (1) to leave out words;
- (2) to leave out words in order to insert or add other words; or
- (3) to insert (or to add) words.

If an amendment is agreed to, the clause, *as amended*, is proposed (S.O. 212), and if an amendment is negatived the clause, as read, is again proposed "That the clause/schedule be agreed to" (S.O. 208).

<sup>68</sup> PD 28/10/1998, p. 9287.

<sup>69</sup> PD 14/02/1918, p. 2629.

<sup>70</sup> SO 171, but see VP 12/12/1929, p. 586.

<sup>71</sup> PD 18/08/1909, p. 1330; PD 07/03/1967, p. 3829.

<sup>72</sup> See *May*, p. 550.

<sup>73</sup> See for example, PD 06/12/1966, p. 3205 where the *National Parks and Wildlife Bill* was agreed to in parts.

When an amendment has been considered and either accepted or rejected, it is not in order to move an amendment to an earlier part of a clause (S.O. 161 (3)) unless the bill is reconsidered.<sup>74</sup> However, if a proposed amendment is *withdrawn*, the earlier portion of the clause still remains open to amendment (S.O. 161(3)).

Amendments that propose to change the principles of a bill, that have been agreed to at the second reading stage, have been ruled inadmissible and out of order for being subversive.<sup>75</sup>

### 21.8 Notice of amendments to bills

Since 1964 it has been the practice in the House for members to give written notice of amendments to be moved. Prior to this they were given orally and the Chair would request an amendment to be in writing only if necessary. Today, notice of amendments are not given orally in the House, but are handed to one of the Clerks-at-the-Table in accordance with standing order 159, which provides that "Amendments must be in writing and signed by the mover". Amendments upon proposed amendments must also be given in writing.

It is preferable that amendments be foreshadowed in the second reading debate and written notice handed to the Clerks. Whilst there is no requirement in the standing orders for members to give notice, if copies of their amendments are available to members in advance the consideration in detail stage is greatly assisted. For instance, experience has shown that Ministers more often accept amendments which they have had time to examine, and other members, when they are in possession of the exact wording of amendments, do not debate at cross-purposes. It also facilitates the Chair putting amendments in the correct order so a member's right to move an amendment is not compromised.

### 21.9 Test votes

Inevitably the occasion will arise when amendments clash. For instance one member desires to move for the omission of a paragraph while another member seeks to amend the same paragraph.<sup>76</sup> If the first amendment was accepted and proposed the second amendment could not be entertained because of the provisions of standing order 161(3).

This situation is met by the device known as "test votes" whereby the Chair (in the case instanced above) would propose only those words of the first amendment down to the point where the second amendment would begin.<sup>77</sup> If the House decides to leave out the words, the first amendment is held to have been agreed to without further question. If the House decides that the words stand, the first amendment is negated and the Speaker will propose the question for the second amendment.<sup>78</sup>

<sup>74</sup> PD 13/11/1952, p. 2180.

<sup>75</sup> PD 03/05/1994, pp. 1817-8.

<sup>76</sup> For example see VP 21/03/1963, p. 675 where a member proposed to leave out all words from lines 1 – 39 of a bill and a further proposal was moved to insert an amendment in line 4 of the same lines.

<sup>77</sup> PD 29/09/1904, pp. 429-30. For another example see PD 07/05/1992, pp. 3920-1.

<sup>78</sup> See for example, PD 03/04/1963, p. 4125 where a member proposed to leave out all words of a particular clause in a bill and another member wished to omit only some of the words and the Chairman put the question in the form "That the words proposed to be left out...stand part of the clause" in order to preserve the rights of both members. In this case, the question was resolved in the affirmative which meant that the second amendment to omit some of the words was then put to the Committee.

A second kind of test vote is taken when a proposed amendment requires alteration to the text of a clause at two or more separate points, or it may be that a proposal requires an amendment in one clause and a consequential or supplementary amendment in another clause to complete the proposal.<sup>79</sup> Cases such as these may be decided by a test vote on the first of the amendments. If the first amendment fails the consequential or supplementary amendments are held to have failed; but if the first amendment succeeds those consequential must be put to the House in the usual fashion. This is not always the case, for instance, on one occasion a number of amendments were moved to a bill that overlapped and in order to save confusion all the proposed amendments were considered as one question rather than dealing with each amendment separately by way of a test vote.<sup>80</sup>

Therefore, when it appears to a member that a decision upon a proposition would prevent the member from moving another, the member must immediately draw the attention of the Chair to this situation and the Chair will propose the first amendment in such a form as to preserve the rights of both members.<sup>81</sup>

Once a clause has been agreed to it cannot be again considered unless the House agrees to reconsider it in detail (S.O. 215).

### **21.10 Voting for or against amendments to bills**

An amendment to "insert" is proposed by the Chair in the form "That the words proposed to be inserted be so inserted" (S.O. 157(3)). Consequently, to vote *for* the amendment, a member votes with the "ayes". But an amendment to "leave out" is proposed in the form "That the words proposed to be left out *stand* part of the question" (S.O. 157(1)). Therefore to vote for the amendment a member casts their vote with the "noes", or, in other words, against a proposition for the words to remain.

When the purpose of an amendment is to leave out words with a view of inserting other words in their place, two questions are proposed, viz:

- (1) First, to create a "blank" – "That the words proposed to be left out stand part of the question".

If resolved in the affirmative the amendment is disposed of, but if it is negated the question then becomes:

- (2) "That the words proposed to be inserted be so inserted", which requires an "aye" majority.

Since 1994, the standing orders have allowed an alternative question to be put by the Chair – "That the amendment be agreed to". If it is a Government proposal, the practical effect is that it allows Government members, in the case of a division, to remain on their side of the Chamber. This form of question should not be proposed

<sup>79</sup> VP 05/03/1931, p. 631.

<sup>80</sup> PD 04/03/1964, pp. 7553-63.

<sup>81</sup> VP 26/03/1958, p. 270; PD 22/08/1963, p. 4389; PD 27/02/1964, p. 7332; PD 25/11/1959, pp. 2330-1; PD 31/03/1960, p. 3497.

if members have alternative proposals for the insertion of words after words are left out and a blank created.

### 21.11 Amending amendments to bills

It is in order to move an amendment upon an amendment as if the amendment were an original question (S.O. 164). The form for the motion is "I move, That the amendment be amended by ... (here state the proposal)".<sup>82</sup>

In the case of an amendment to leave out words with a view of inserting other words, if the member desires to leave out more or fewer words than the mover of the amendment proposed, this is done upon the question "That the words proposed to be left out stand". However should it be desired to amend the words it is proposed shall be inserted, the "blank" must first be created, i.e. the words proposed to be left out must first be left out.<sup>83</sup>

When the following question "That the words proposed to be inserted be so inserted" is proposed, then is the time to move any amendment upon the amendment.<sup>84</sup>

An amendment to an amendment that seeks to reinstate to the motion those parts of the original motion that the first amendment sought to exclude is out of order.<sup>85</sup>

### 21.12 Admissible and inadmissible amendments to bills

Inadmissible amendments include amendments which:

- (i) Directly or indirectly conflict with the principles of a bill as read.<sup>86</sup>
- (ii) An amendment cannot be "subversive of the principle", but it may "modify" a principle.<sup>87</sup>
- (iii) Contradict a principle already *agreed to* or seek to incorporate one already *negatived* by the committee.<sup>88</sup>
- (iv) Contain proposals earlier submitted and negatived.
- (v) Would render the provisions of a bill inconsistent.<sup>89</sup>
- (vi) In effect, contravene an Act of Parliament.<sup>90</sup>
- (vii) Introduce a new principle.<sup>91</sup>
- (viii) Are offered to an inappropriate clause.<sup>92</sup>
- (ix) Would render a bill unintelligible.<sup>93</sup>
- (x) Are moved in a spirit of mockery.<sup>94</sup>
- (xi) Would make a clause inoperative.<sup>95</sup>
- (xii) Propose to omit a whole clause. (This is achieved by voting against the clause.)

<sup>82</sup> See for example, VP 28/04/1964, p. 742 where an amendment was moved to add words to a proposed amendment.

<sup>83</sup> PD 09/10/1935, p. 564.

<sup>84</sup> See also *May*, p. 403. For example see VP 11/12/1928, p. 471-3 where the committee agreed to the omission of a word and both a Minister and private member moved for a word to be inserted in lieu thereof.

<sup>85</sup> See ruling of Speaker Murray, PD 11/06/1996, p. 2728.

<sup>86</sup> PD 18/10/1917, pp. 1845-6; PD 04/03/1918, p. 3186; PD 27/06/1934, p. 1335.

<sup>87</sup> PD 24/10/1906, p. 3120.

<sup>88</sup> PD 11/10/1905, p. 2819; PD 22/05/1996, pp. 1359-60.

<sup>89</sup> PD 25/10/1905, p. 3159.

<sup>90</sup> PD 08/11/1906, p. 3545; PD 17/10/1912, p. 2214.

<sup>91</sup> PD 03/04/1935, p. 6899; Amendments (including new types of leases in the *Native Title Amendment (New South Wales) Bill*) ruled to be outside the leave a the bill, PD 22/09/1998, p. 7770; Amendments ruled outside the leave of the bill as the title only referred to social housing tenancies while the amendments pertained to all residential tenancies, PD 27/10/1998, p. 9068.

<sup>92</sup> PD 11/03/1931, pp. 1838-9.

<sup>93</sup> PD 13/12/1904, p. 2456.

<sup>94</sup> PD 16/08/1917, p. 582; VP 08/04/1998, pp. 488-9.

<sup>95</sup> PD 08/11/1934, p. 3912.

- (xiii) Would make the operation of a bill contingent upon an affirmative vote at a referendum of the people.<sup>96</sup>
- (xiv) Would omit an existing provision for a referendum.<sup>97</sup>
- (xv) Seek to amend a schedule to a bill when such schedule is the copy of an agreement requiring ratification or authorisation. However, schedules of this nature may be negated.<sup>98</sup>
- (xvi) Would, in a bill providing for a charge upon the Consolidated Fund (the "Crown") involve an additional charge; or, in a bill not already providing for expenditure, create one.<sup>99</sup>
- (xvii) An amendment which is the direct negative of the motion proposed by the mover, is not in order.<sup>100</sup>
- (xviii) An amendment that relates to a specific person is outside the scope of a bill which is generic and prospective.<sup>101</sup>

The Chair is not able to rule on the constitutionality of amendments to a bill.<sup>102</sup>

#### **21.12.1 Scope and Relevancy**

When the House decides that a bill or other matter should be considered in detail the House must only consider matters within the scope of the bill or other matter being considered.

The broad terms in which long titles of bills are usually drawn often lead to a misconception of the scope of permissible amendments. An amendment which may well be within the title of a bill may be quite unrelated to the provisions of the bill. The "dragnet" wording which commonly concludes a long title: "... and for other purposes" does not throw the entire provisions of the principal Act, which the bill seeks to amend, open to amendment or, for that matter, debate.

The key to the interpretation of standing order 210, which provides that an amendment must be "within the long title of the bill or relevant to the subject matter of the bill and are otherwise in conformity with the standing orders and practice" lies in the words *of the bill*. The purport of these words is frequently overlooked, and many inadmissible amendments are moved as a consequence. The position is more clearly set out by rulings from the Chair.

The long title of a bill seldom sets forth the specific matters which the bill deals with even though standing order 188(1) requires that, "The title of a bill must agree with the notice of intention to present it, and every clause must come within the title. It shall not be necessary to specify in the long title every Act which it is proposed to amend."

A good example of amendments that were considered to be outside the scope of the bill was found in 1894 when the *Parliamentary Electorates and Elections Further Amendment Bill (No. 2)* was introduced with the object of the bill providing for the names of persons who had been omitted from the electoral rolls to be placed on

<sup>96</sup> PD 21/08/1912, p. 617.

<sup>97</sup> PD 23/09/1903, pp. 2709, 2717.

<sup>98</sup> PD 16/10/1923, pp. 1604-5; PD 03/12/1924, p. 4162.

<sup>99</sup> PD 29/09/1904, p. 432; PD 10/10/1906, p. 2691; PD 13/09/1916, p. 1716 (But see PD 23/09/1931, p. 6514).

<sup>100</sup> See House of Commons Parliamentary Debates, 4th series, vol. 167, p. 475.

<sup>101</sup> PD 08/05/1997, pp. 8345-6.

<sup>102</sup> PD 22/09/1998, p. 7770.

amended rolls. An amendment was moved to provide for electors who were absent from the electoral district in which they were enrolled to be able to vote for such district through a postal vote. The Chairman ruled that, whilst amendments moved might be covered by the title of the bill, they were out of order unless they were considered to be within the scope or subject matter of the bill. Debate on the admissibility of the amendment continued and the Speaker resumed the Chair to rule on the matter.<sup>103</sup>

The Speaker upheld the Chairman's ruling but subsequently sought advice from the Clerk of the House of Commons in the United Kingdom about "...whether it was regular to consider an amendment or new clause which, though fairly covered by the title, was not relevant to the provisions of the Bill itself as brought in and read a second time." The Clerk of the House of Commons advised the Speaker that he was correct in upholding the decision of the Chairman to rule the amendment out of order and commented "...that the relevancy of an amendment to a Bill must be tested not by the title of the Bill but by its subject matter; indeed it was to establish this principle that the House of Commons passed [its] standing order no. 34, and unquestionably, according to the rulings delivered from the Chair...a clause to establish a letter vote is wholly outside the scope of a Bill restricted to the registration of electors."<sup>104</sup>

Another illustration of an amendment being outside the scope of a bill lies in the *Maitland Sewerage Bill 1932*, which sanctioned the construction of sewerage works in West and East Maitland.<sup>105</sup> The bill followed the established form of such works bills in that certain sections of the *Public Works Act, 1912*, were not to apply to the proposed work, and the maximum cost was stated.

An amendment to the effect that the work be done by men receiving "Award rates and conditions" was held to be irrelevant and outside the scope of the bill.<sup>106</sup>

A more recent example of an amendment which was ruled out of order for being outside the leave of a bill and contrary to the principles agreed to at the second reading stage occurred in 1996 in relation to the *Transgender (Anti-Discrimination and Other Acts Amendment) Bill*. This bill amongst other things sought to amend the *Anti-Discrimination Act 1977* to include discrimination on transgender grounds as a separate ground of discrimination and this was agreed to in principle at the second reading stage of the bill. The Opposition attempted to move a number of amendments to the bill that were considered by the Government to be subversive to the objects and principles of the bill in that the proposed "amendments were aimed at changing the nature of the protection provided by the bill [which made] discrimination and vilification on transgender grounds unlawful to making discrimination on the ground of sexual preference unlawful." The Chairman agreed and ruled the proposed amendments out of order.<sup>107</sup>

<sup>103</sup> See PD 16/05/1894, pp. 3087-117.

<sup>104</sup> The Speaker tabled the correspondence between himself and the Clerk of the House of Commons on 12 September 1894, see VP 12/09/1894, p. 51.

<sup>105</sup> PD 27/02/1935, p. 5968

<sup>106</sup> See also:

Dairy Industry (Amendment) Bill, PD 01/12/1932, pp. 2555-7

Industrial Arbitration (Amendment) Bill, PD 04/03/1918, p. 3186

Local Government (Amendment) Bill, PD 23/09/1925, p. 1013

<sup>107</sup> PD 22/05/1996, pp. 1359-60

In other words, an amendment which might be related to the general subject under consideration need not necessarily be relevant to the particular subject contained in the bill under consideration, and is therefore, inadmissible, being beyond the scope of the bill.<sup>108</sup> As *May* indicates this is as “no matter ought to be raised in debate on a question which would be irrelevant if moved as an amendment, and no amendment should be used for importing arguments which would be irrelevant to the main question”.<sup>109</sup>

An extension of this rule of relevancy to the "subject matter" of the bill does not permit amendments to sections of Acts which are not varied in an amending bill. For example, if a bill proposed to amend a certain section of a principal Act only those sections referred to in the amending bill could be considered and amended in committee. Any amendments to other sections of the principal act would be considered outside the scope of the bill.<sup>110</sup>

The prime purpose of a bill may be considered when amendments are proposed to it to ensure that they are relevant. For instance, on one occasion a Minister asked that amendments to a bill be ruled out of order as they were contrary to the spirit of the bill. The Chair considered that the prime purpose of the bill was to amend a timetable for the carrying out of certain functions under an Act and that the bill specifically referred to the first year in which the altered timetable would operate. As such, the Chair considered that amendments to alter that date were in order.<sup>111</sup>

#### **21.12.2 Money amendments (See also Chapter 22 – Financial Procedures)**

It is not within the power of the Parliament to proceed upon any question of expenditure out of the Consolidated Fund or for any other tax or impost before a message of recommendation has been received from the Governor. This restriction does not apply to Ministers (S.O. 190).<sup>112</sup>

A number of amendments moved by members who were not Ministers have been ruled out of order under the standing orders:

- A proposed amendment to the *NSW Grain Corporation Holding Limited Bill* to relocate money provided by the Commonwealth Government as a grant to build a grain terminal at Port Kembla to the Illawarra region was ruled out of order as there had been no recommendation by a message from the Governor;<sup>113</sup>
- A proposed amendment to the *Casino Control Bill* was ruled out of order because it sought to establish in the Special Deposits Account in Treasury a Health Fund where the duty paid to the Casino Control Authority was to be placed in order to fund the recurring costs of health services, and a message was not obtained from the Governor authorising this appropriation.<sup>114</sup>

Motions that do not refer to the appropriation of any specific money but merely call upon the Government to take certain steps have been considered in order. For

<sup>108</sup> VP 18/10/1894, p. 136; VP 03/08/1910, p. 200; PD 09/11/1993, pp. 5022 and 5024

<sup>109</sup> *May*, p. 400

<sup>110</sup> For example see PD 28/08/1991, pp. 709-10.

<sup>111</sup> PD 25/10/1994, p. 4587.

<sup>112</sup> *Constitution Act 1902*, s. 46(2).

<sup>113</sup> PD 06/05/1992, pp. 3681-2.

<sup>114</sup> PD 08/04/1992, p. 2434.

instance, a motion was moved by an Independent member for a select committee to be appointed upon Homefund and FANMAC and that the Government provide the necessary financial resources to undertake inquiries. When a point of order was raised that the motion contravened section 46 of the *Constitution Act 1902* the Speaker argued he could not support the point of order as he did not consider the motion was so specific that it came within the provision of section 46 as it did not refer to the appropriation of any specific money.<sup>115</sup>

Messages do not usually specify the precise expenditure involved. However, Temporary Chairman Bruntnell explained that this did not necessarily mean that funds were unlimited. In 1921 he stated: "... if a message from the Governor is to have any meaning it must imply that there is in the mind of the authorities behind the bill some specific limitation to the amount of money involved, otherwise the message would be of no value at all."<sup>116</sup> In addition, other comments made in the House have argued that it is accepted that the expenditure involved in a bill as *presented* pursuant to leave is the maximum covered by the Governor's message.<sup>117</sup>

### 21.12.3 Amendments ultra vires

Whether or not an amendment would render a bill *ultra vires* under the Constitution is not a point to be determined by the Chair – it is one which should be raised in the courts after a bill becomes law.<sup>118</sup>

Although members often seek and receive guidance, the Chair will not rule on hypothetical amendments.<sup>119</sup>

### 21.12.4 Examples of amendments ruled out of order

Amendments ruled out of order include amendments:

- to a general bill which would make it apply to a specific person;<sup>120</sup>
- to an amendment which contained words in the original motion;<sup>121</sup>
- incapable of being actioned;<sup>122</sup>
- subversive of the principle of the bill;<sup>123</sup>
- introducing new principles;<sup>124</sup>
- conflicting with a previous decision of the House that session;<sup>125</sup>
- to amend the terms of reference of a Royal Commission;<sup>126</sup>
- to a motion of no confidence in the Speaker to refer certain standing orders to the Standing Orders and Procedure Committee that was considered beyond the scope of the original motion;<sup>127</sup>
- to a bill amending a section of a principal Act which would amend a different section of the principal Act.<sup>128</sup>

<sup>115</sup> PD 20/04/1993, pp. 1323 and 1330.

<sup>116</sup> Mr Bruntnell, PD 17/11/1921, p. 1833.

<sup>117</sup> Sir Henry Parkes, PD 04/03/1880, pp. 1383-4.

<sup>118</sup> PD 19/10/1926, p. 356; VP 06/11/1935, p. 103.

<sup>119</sup> PD 28/10/1965, p. 1593; PD 02/11/1887, p. 891.

<sup>120</sup> PD 08/05/1997, p. 8346.

<sup>121</sup> PD 11/06/1996, p. 2728.

<sup>122</sup> VP 18/08/1996, p. 398.

<sup>123</sup> PD 22/05/1996, pp. 1359-60.

<sup>124</sup> PD 07/07/1995, pp. 784-5.

<sup>125</sup> PD 30/11/1944, p. 1484.

<sup>126</sup> PD 11/03/1953, p. 37.

<sup>127</sup> PD 07/12/1995, p. 4419.

<sup>128</sup> PD 06/12/1995, pp. 4293-4.

### 21.13 Acts may be altered, etc. in same session

Under the provisions of s. 27 of the *Interpretation Act, 1987*, an Act may be amended or repealed in the same session as that in which it was passed.

### 21.14 Legislative Council's amendments to bills

Amendments made by the Council in a bill and any subsequent messages received relating to amendments are considered in detail by the House (S.O. 223).<sup>129</sup>

After the Speaker reports a message from the Council returning a bill with an amendment or amendments, consideration may take place immediately or at a later time (either later that same day or a future day). Standing order 222 prescribes that the Speaker fixes the time for consideration. The Speaker will consult the member in charge of the bill before so doing.

Before consideration takes place, a schedule of the amendments, numbered in the order in which they stand in the bill, should be available to members.<sup>130</sup>

Occasionally, particularly towards the end of a session, the House will suspend standing orders to allow the consideration in detail of Council amendments to several bills at the same time.<sup>131</sup>

#### 21.14.1 Procedure for consideration of Council amendments to Assembly Bills

Amendments may be considered separately (*seriatim*) or all together as one question (*in globo*).<sup>132</sup>

When the House resolves to consider Council amendments in detail the Chair announces the business to be considered in detail and calls the Minister in charge.

If the Minister intends to move for agreement (or disagreement) with all the amendments, a motion will usually be moved, "That the House agrees (or disagrees) to the Legislative Council's amendments." Before the question has been proposed from the Chair any member present may move a motion for the question to be put as separate questions in accordance with standing order 153.<sup>133</sup> If agreed to the Chair will propose each amendment separately, "reading" each one in its numerical order as, for instance, "Amendment No. 1," and call the Minister (or member in charge) who will move the appropriate motion (refer (1) to (5) below). It is competent to postpone consideration of an amendment in the same fashion as clauses are postponed during the consideration in detail after the second reading. However, if the closure under standing order 90 (guillotine) has been agreed to, the amendments must be put in globo.<sup>134</sup>

In dealing with Council amendments the committee may under standing order 224:

<sup>129</sup> VP 18/12/1924, p. 425.

<sup>130</sup> The Council's message, which is printed in the Votes and Proceedings, refers to the clauses and lines of the bill as it left the Assembly after the third reading.

<sup>131</sup> VP 19/06/1997, p. 1067; VP 18/12/1995, pp. 593-4; bills considered, VP 25/11/1998, p. 1194.

<sup>132</sup> In 1931 Council's amendments were (by consent) taken in groups. VP 16/09/1931, p. 708.

<sup>133</sup> VP 06/06/1930, p. 739.

<sup>134</sup> VP 06/06/1930, p. 742.

(1) agree to them; (2) disagree to them;<sup>135</sup> or (3) amend them.

In addition, there are combinations of these treatments which may be adopted to aid the Houses in arriving at a compromise in their disagreements; namely:

- (4) Agree and amend another portion of the bill which has a *direct* bearing upon the subject matter and the treatment of an amendment.<sup>136</sup>
- (5) Disagree but amend other words having a direct bearing upon the purport of the amendment as in (4) above.<sup>137</sup>
- (6) Amend to correct drafting errors.

The procedure for these ways of dealing with Council amendments are as follows:

- (1) & (2) To agree (or to disagree) requires one motion "That the House agrees (or disagrees) to the Legislative Council's amendment(s)".
- (3)(a) To amend an amendment which *inserts* words needs only a motion "That the Legislative Council's amendment be amended by ..." and words may be inserted or added or left out and others inserted or added in lieu.<sup>138</sup> Proposed amendments to Council's amendments are themselves open to amendment. A preliminary motion that the House agree before an amendment is amended is not required.
- (b) To amend a Council amendment which *leaves out* words the House must first disagree to the amendment – this reinserts the words left out – then a second motion is necessary to amend these words.<sup>139</sup> The House can also disagree to just part of a Council amendment.<sup>140</sup>
- (4) To agree to an amendment and arising out of such agreement amend another part of a bill, it is necessary first to agree to a motion "That the House agree", and when moving for agreement the mover must give notice of his or her intention to move the consequential amendment at the appropriate place, because normally only the actual amendments are under consideration and are proposed by the Chair.<sup>141</sup>
- (5) To disagree and amend another part of the bill as consequential, again two motions are necessary: the first to disagree and the second motion to amend.
- (6) To correct drafting errors requires an ordinary motion to amend.

There are also times when the House will need to propose consequential amendments due to the outcome of proceedings on the bill in the Legislative

<sup>135</sup> VP 02/04/1963, p. 688; see also VP 25/11/1998, p. 1144 where the Assembly rejected a Council amendment because it was of the view that the vote on the amendment in the Council was improperly recorded.

<sup>136</sup> PD 22/01/1926, p. 4390.

<sup>137</sup> PD 22/01/1926, p. 4401.

<sup>138</sup> PD 04/12/1963, p. 6757; VP 02/04/1963, p. 689; VP 30/07/1931, pp. 682-3; PD 30/07/1931, p. 4882.

<sup>139</sup> For example see PD 12/08/1931, pp. 5289-91.

<sup>140</sup> See for example, PD 14/11/1916, pp. 2706-13.

<sup>141</sup> PD 04/12/1963, p. 6757.

Council. For instance, on one occasion a bill having returned from the Legislative Council was further amended by the Assembly to, among other things, provide alternative proposals to those already rejected by the Council. The message sent to the Legislative Council agreed to a number of amendments, disagreed to others and proposed further amendments. It also emphasised that the proposed amendments maintained the intent of the proposed law and that this action should not be drawn into a precedent by either House.<sup>142</sup> This required the reconsideration of all clauses and schedules of the bill concurrently with the Council's amendments.<sup>143</sup>

Standing order 226 deals with the Council's response to amendments made on its amendments. This provides that if the Council returns an Assembly bill with a message either:

- (1) insisting on the original amendments to which the Assembly has disagreed; or
- (2) disagreeing to amendments made by the Assembly on the original amendments of the Council; or
- (3) agreeing to amendments made by the Assembly on the original amendments of the Council, with further amendments.

The Assembly may:

As to (1):

- Agree to the amendments to which it had previously disagreed;
- Insist on its disagreement to such amendments and lay the bill aside;
- Request a conference.

As to (2):

- Withdraw its amendments and agree to the original amendments of the Council;
- Insist on its amendments to which the Council has disagreed and lay the bill aside;
- Request a conference.

As to (3):

- Agree to such further amendments of the Council;
- Disagree and insist on its own amendments which the Council has amended and lay the bill aside;
- Request a conference.

This standing order does not affect the right of the Assembly to proceed in accordance with the provisions of section 5B of the *Constitution Act 1902* which provides that a referendum may be held on a bill to which the two Houses have not agreed after all avenues of communication have been exhausted.

An unusual motion was moved by the House in 2000 when the Assembly disagreed

<sup>142</sup> PD 10/03/1992, pp. 878-934.

<sup>143</sup> See also, VP 10/03/1992, p. 113 where standing and sessional orders were suspended to allow the committee of the whole when dealing with Council amendments to a bill to also reconsider in the usual manner all other clauses and schedules being considered.

to the amendments made by the Council for a second time. Instead of laying the bill aside as provided for under standing order 226, when amendments were disagreed with for the second time, the House suspended standing and sessional orders and passed a resolution which “insisted on its disagreement a second time to the Legislative Council amendments”. A message with reasons was sent to the Council.<sup>144</sup> The Legislative Council did not insist on its amendments.

Messages are sent informing the Council when its amendments are agreed to or disagreed to, a conference is desired, or the bill has been laid aside (S.O. 227). If amendments are disagreed to, the message is to contain reasons for the disagreement (S.O. 224). The reasons are prepared by the member in charge of the bill and are not debated (S.O. 80(6))<sup>145</sup> or subject to a vote.

While not specifically provided for in standing order 224, the Assembly has, in the past, used the additional option of disagreeing with a Council amendment and proposing a further replacement amendment. The further amendment is consequential on the rejection of the Council amendment. The message to the Council, seeking concurrence with the further amendment, includes reasons for the Assembly’s disagreement and may give reasons for the further amendment.<sup>146</sup>

If a closure motion is moved, pursuant to a guillotine notice, in relation to Council amendments to a bill, all amendments not dealt with are put as one question.<sup>147</sup>

When consideration of the amendments has been completed the House will send a message to the Legislative Council advising of its decision (i.e. to agree or disagree to the Council’s amendments or to make further amendments) or, with the concurrence of the House, reconsider the Council’s amendments in detail.

Under the former committee of the whole procedure the Chairman would leave the Chair without a question being put after the consideration of Council amendments to report the result of the committee’s deliberations to the House.<sup>148</sup> Upon the motion for the adoption of the report, the House could adopt the report, reject it, or recommit the amendments for reconsideration.<sup>149</sup>

#### **21.14.2 Debate on Council amendments**

It is not always practicable to confine the debate strictly to the precise substance of the Council’s amendments, but the Chair is bound to ensure that members do not indulge in second reading speeches and discuss the contents of the bill other than those subject to the proposed amendments.<sup>150</sup> Only the subject matter of the amendments appearing on the printed schedule are, in fact, before the House when the amendments are considered in detail.

<sup>144</sup> VP 29/06/2000, p. 680.

<sup>145</sup> PD 28/10/1998, p. 9292.

<sup>146</sup> VP 28/10/1998, pp. 1008-14; VP 21/05/1879, p. 527; PD 04/10/1906, p. 2584; PD 27/11/1906, p. 4131; PD 22/01/1926, p. 4390; PD 22/01/1926, p. 4401; PD 17/02/1926, pp. 240-1; VP 18/06/1997, p. 1023.

<sup>147</sup> VP 12/12/1928, p. 470; PD 12/12/1928, p. 2771.

<sup>148</sup> VP 06/06/1930, p. 742.

<sup>149</sup> PD 17/02/1926, p. 254.

<sup>150</sup> PD 07/03/1918, p. 3358.

However, new ideas may be introduced and discussed if they relate to additional clauses that are necessary in consequence of the amendments made by the Legislative Council.<sup>151</sup>

### 21.15 Reconsideration

On the motion for the third reading a bill may be reconsidered as a whole or in relation to any specified clauses or schedules, or for the insertion of new clauses or schedules (S.O. 217 as amended by sessional order). This was formerly known as recommittal when bills were considered by a committee of the whole. A bill could be recommitted in whole or in part<sup>152</sup> on the motion for the adoption of the report from the committee,<sup>153</sup> and also on the motion for the third reading.<sup>154</sup>

When a bill or portion is so referred for reconsideration, the rule against considering the same question twice in the same session does not apply. Hence it is possible for the House, when reconsidering a bill in detail, to reverse its previous decisions, even to the extent of omitting amendments which it had already inserted. In fact, it is by reconsidering a bill that irregularities made during the consideration in detail stage may be corrected.<sup>155</sup>

When a bill is reconsidered, only those portions of the bill specifically referred are open to debate and amendment.<sup>156</sup>

On occasion, members who have missed their opportunity to participate in the original consideration in detail of the bill may attempt to reconsider it in order to move an amendment.<sup>157</sup> This is due to the fact that bills may be amended in substance only during the consideration in detail stage.

<sup>151</sup> See for example, PD 10/03/1992, pp. 885-934.

<sup>152</sup> See VP 18/11/1993, p. 583 where a bill was recommitted on the third reading for consideration of specific clauses and new clauses.

<sup>153</sup> VP 20/05/1993, p. 273.

<sup>154</sup> VP 04/03/1993, p. 68; and VP 19/11/1993, p. 597-6.

<sup>155</sup> See ruling of Deputy Speaker Hedges, PD 11/11/1934, p. 1804 where he commented that it is not the practice to rule bills out of order after they have been committed because of an irregularity in committee which was capable of being corrected upon recommittal.

<sup>156</sup> See *May*, pp. 624-5.

<sup>157</sup> PD 13/11/1952, p. 2180.