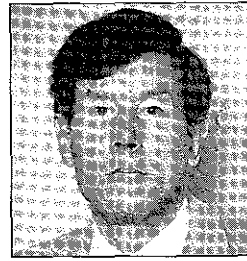


# ***Canberra Rules: Considering Legislation In Detail***

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*Canberra Rules: Considering Legislation In Detail* – RICHARD GRIFFITHS

Remember how you used to understand parliamentary procedure with bills? Well you don't now.

On 9/10 February, the Government announced its response to the report of the House of Representatives Standing Committee on Procedure, chaired by Dr Blewett, which had looked at ways to improve the operations of the House. The new procedures started on 21 February 1994.

The Government agreed to amend the sitting hours, with additional sitting days (Mondays) and some other adjustments making up for earlier rising of the House each night, normally at 8.00 pm. That, however, is of little interest to most law librarians. What should be of great interest, however, are the changes to the legislative processes in the House, and the new differences which now exist between its and the Senate's procedures.

## ***Introduction of Bills***

### **IN THE GOOD OLD DAYS**

Everyone will recall that, previously, when a bill was introduced in the House, its first and second reading motions occurred almost simultaneously. The first reading, which is really just the reading of its title, was succeeded almost immediately by the responsible Minister moving its second reading and reading the Second Reading Speech. The Senate's procedure was slightly different from that of the House, in that the Minister simply tabled the Second Reading Speech after the first reading (when the Clerk just read the title of the bill a first time).

Similarly, readers will recall that the Minister's Second Reading Speech outlines the political intent of the legislation and, along with other parliamentary material, is extrinsic evidence under Section 15AB of the *Acts Interpretation Act 1901*.

Obviously, the Minister's speech is more authoritative than the speech of, say, an Opposition backbencher, if you are attempting to establish the intent of the Parliament on an issue. It may need to be available to be referred to by courts, if there is any ambiguity in the wording of the legislation. Thus, the Second Reading Speech is (was) quite an important document, available, initially, separately through the Bills and Papers Office or, in due course, in the Hansard.

Resumption of the debate was usually deferred after the reading (or tabling) of the Minister's Second Reading Speech, until everyone had had an opportunity to read the bill, its explanatory memorandum and its Second Reading Speech (Of course, that delay still did not guarantee that everyone knew what they were talking about)

Assuming that the bill survived its second reading debate, a motion to give it its second reading had to be agreed, and its title was then formally read that second time. Quite often, at that stage, bills before the Senate would be referred to specialist committees, to hear outside comment, before reporting back to the Senate. The House or Senate might then transform itself into a Committee of the Whole, to discuss individual clauses and make any amendments. After that a further motion, that its title be formally read a third time, would be moved and, if agreed, that was the completion of the passage of the bill through that chamber.

### WHAT'S NEW?

The first point to realise is that now, when bills are introduced into the House of Representatives, they have their first reading, only, at that time. That means that the bill is presented by the Minister, its title is read out, after which the bill and its explanatory memorandum are tabled. The second reading is made an "Order of the Day" for "a future day", expected to be usually seven days' time. You can get copies of the bill and explanatory memorandum as soon as they have been presented.

Note that the explanatory memorandum will now contain, under House of Representatives Standing Order 215, an authoritative statement covering the policy and purposes of the bill. It should take over some of the former role of the minister's second reading speech.

"Well, what **has** happened to the second reading speech?" I hear you cry. The House has decided that the Second Reading Speech will be delivered by the Minister when the second reading debate commences, normally a week after the introduction of the bill. It is only then that the separate, A-4 speech document will become available.

Librarians will, therefore, be faced with the prospect of trying to obtain and then marry the separate Second Reading Speech with their copy of the bill and explanatory memorandum, which passed through their hands a week or more earlier. The alternative is relying on the publication of the speech in Hansard to provide them with their copy. As the Hansard will also incorporate the rest of the debates on the bill, I know what I would do, if I could afford to wait for the Hansard.

Now of course it will not have escaped the sharp minds of readers that many bills are first introduced into the Senate and the Senate procedure, where the Second Reading Speech is tabled as soon as the bill has been introduced, means that on those occasions the Second Reading Speech will be available simultaneously with the bill and explanatory memorandum. This difference between the House and the Senate should offer a splendid opportunity to lecture inquisitive lawyers, at bemusing length, about the differences between Reps and Senate procedures, the idiocy of our elected representatives, and the general iniquities of the Gubbermint

The second point is even more alarming. The House of Representatives now has a "Main Committee". Read on

### THE MAIN COMMITTEE

You and I may think it logical that the House would refer controversial legislation to committees, to elucidate all sides of the argument, leaving non-controversial legislation to pass, without fuss, through the normal, non-specialist, House stages. That shows why you and I are not politicians. The House of Representatives, you see, is not a chamber of legislative review; it is not interested in the detail of legislation.

A Main Committee has been established. This is supposed to be like a parallel House of Representatives chamber, with a Deputy Speaker, etc. Bills **may** be referred to that Main Committee for their second reading and "consideration in detail" (of which more anon) stages. It is intended to reserve this fate for non-controversial bills, sort of "talk them to death", to provide more time for the more important activities of the House, like ..... (fill in the blank with your favourite House of Representatives pastime).

To add to the confusion of observers who are still grappling with the concept of a second reading debate being conducted by a "committee", the Minister **may** move, before moving that the bill be read a second time, that it be referred to one of the House committees, i.e. a real committee, to conduct public hearings and present an "advisory" report to the House.

After that committee report has been presented, the bill **may** then be referred to the Main Committee, or it might stay in the House for its second reading and consideration in detail stages, depending on whether it is controversial. All bills dealt with by the Main Committee will be reported to the House for their final, third reading stage.

Note that, in the case of bills which are referred to a House standing committee for an advisory report before their second reading is moved, it could be several weeks before the select or standing committee's report is presented and the second reading can be moved. Readers will recall that only then will the assembled members hear the Minister's Second Reading Speech.

As if all this is not enough, there is still provision in the House Standing Orders to refer a bill to a select committee **after** the completion of the second reading stages and before its consideration in detail. It is not intended to use this provision to refer any bill to committees twice, but the facility is there.

Although that may not be the intention, then, just consider this. House Standing Orders now theoretically permit a bill, after introduction and first reading, to be referred to a committee for an advisory report, then go to the Main Committee for its second reading stages, then be referred again to a select committee, then come back before the Main Committee for its consideration in detail, before going back to the House for further consideration in detail, before its third reading. Quick, no peeking, how many committees was that?

### **Consideration in Detail**

You will remember (probably fondly, after all this) the old "Committee Stage" of the former stages in the passage of legislation. That was when the House formed itself into a "Committee of the Whole" (really just the Minister, the Shadow Minister, a couple of members and a Deputy Chairman of Committees) to examine a controversial bill clause by clause. Well, that is now called "Consideration in Detail" (if it is done in the House, of course). There, that did not hurt a bit and you can now confuse older lawyers even more comprehensively when you attempt to explain it all to them.

As indicated above, it is possible for a bill to be considered in detail by the Main Committee then, if the Main Committee was unable to resolve all the issues, have to be considered in detail, in relation to those unresolved issues, on the floor of the House, before being read a third time. You may, therefore, have to be careful to identify which "Consideration in Detail" stage you are talking about. Was it the stage in the Main Committee, or was it the stage in the House?

### **"Controversial" Bills**

Which way bills are handled will depend on whether they are considered controversial or non-controversial. There is no formal definition of "controversial" because a bill is considered "non-controversial" if all parties agree that it should be dealt with by the Main Committee. Any Member can ensure that a bill is returned to the House, i.e. make it "controversial" by moving a motion to that end, or insisting on disagreeing with a question.

It should be noted that the Main Committee is not yet functioning, partly because its venue and associated security, Hansard and other supporting staff requirements have not been finalised. (Only nit-picking readers would wonder whether some or all of these details should have been considered

by Dr Blewett's Committee in its report, months ago) The Main Committee's procedures are, therefore, "evolving", as we say in the trade, and we might also expect to see some "unintended consequences" as we say in Canberra.

### CONCLUSION (IF NOT EXPLANATION)

While the Senate goes about its business in the old way, a bill introduced into the House of Representatives:

**will** be read a first time, after which copies of the bill and explanatory memorandum will be available;

**may** be referred to a committee for an advisory report before moving the second reading in either the House of the Main Committee;

**will**, if controversial, have the motion for its second reading moved after seven days (or less, if urgent), after which the Second Reading Speech will be read (and become publicly available) and the bill may go through its second reading and consideration in detail stages *in the House*; **or**

**may** be referred to the Main Committee, if non-controversial, at least seven days after introduction, for second reading and consideration in detail; **and**

**may**, just possibly, after the second reading, be referred to a select committee for report before consideration in detail, either on the floor of the House or in the Main Committee; **and**

**will** (if it has passed through the above processes) receive its third reading in the House "at a future date", in practice immediately after it has been reported.

Well, I'm glad that's clear.

In any case, having introduced the new procedures on 21 February, the Government found it expedient on 22 March, less than six sitting days later, to extend sittings beyond 8 00 pm and ram several bills straight through the House, allowing an hour or so for all stages of each bill. It's nice to know that some things never change.