

10861NAT Diploma of Aboriginal and Torres Strait Islander Legal Advocacy

THE AUSTRALIAN LEGAL SYSTEM

PART 3: PARLIAMENT AND THE LEGISLATIVE PROCESS



Acknowledgement of Country

We acknowledge the traditional owners of the land on which Tranby stands, the Gadigal people of the Eora nation. We pay our respects to their Elders both past and present, who remain the traditional knowledge holders of this land.



We proudly extend this respect to all current and emerging leaders around Australia, for they hold the memories, the traditions, the culture and the future of their people.



Parliament and the Legislative Process

➤ In Australia there are two sources of law:

- Case law (made by judges), and
- Statute law (made by Parliaments – both State and Federal)

(We will discuss case law in the next presentation)



Parliament and the Legislative Process

- [Section 51](#) of the [Australian Constitution](#) gives the Australian Parliament the power to make laws in relation to certain matters.
- Some of these powers are exclusive; some are shared with the States; and any areas of power not mentioned in the Constitution reside with the States.
- Proposals for new laws (or changes to existing ones) are introduced into Parliament through what is called a bill. Bills often seek to address an important issue facing the Australian community.
- A bill can only become a law if it is passed by a majority vote in the [Senate](#) (upper house) and the [House of Representatives](#) (lower house).
- The bill must be agreed to in identical form by both houses and given Royal Assent by the [Governor-General](#).
- It is then known as an Act of Parliament.



Parliament and the Legislative Process

- Most bills are introduced into the House of Representatives and then sent to the Senate.
- Bills may start in the Senate, except for money and taxation bills.
- Most bills are introduced by government ministers; however, other members of parliament can introduce their own bills, known as private members' or private senators' bills.
- It may take months or even years for a bill to pass through Parliament. However, an urgent bill can be passed in a matter of hours or days.
- In recent years on average, about 200 bills have been introduced into the Parliament each year and approximately 70 per cent of these bills finally became Acts



Parliament and the Legislative Process

➤ Bills can originate in different ways:

- A government department may advise its minister about a specific problem that exists. The minister may then arrange for a bill to be drafted to fix the problem.
- Law reform committees, community groups, businesses or lobby groups may be interested in changing or improving a specific area of Australian law. They can approach members of parliament with suggestions for bills.
- Political parties have their own ideas about how Australia should be governed. Therefore, in Parliament, parties introduce bills which aim to put their ideas into action.
- The Parliament can set up a [parliamentary committee](#) to examine a current issue. If the issue requires action, the committee may suggest that a bill be introduced



Parliament and the Legislative Process

The process of a bill becoming a law is as follows:

Draft Bill

- The conversion of the policy into a series of statements and clauses that will eventually be placed before Parliament as a bill.
- Legal drafters from the Office of the Chief Parliamentary Counsel draft bills on the basis of instructions given to them by the relevant member of Parliament
- The public service can also recommend administrative changes to the relevant minister.
- When a draft bill is expressed in a form acceptable to the parliamentary party, it can be introduced to the Parliament.



Parliament and the Legislative Process

- Examination of the bill is then conducted in three formal stages

1. First Reading –

- Permission to introduce the bill into Parliament and to proceed with it is obtained in the First Reading.
- The member introducing the bill may be asked to give a brief explanation of it but otherwise, no debate is allowed.

2. Second Reading -

- In the Second Reading, some time after the first reading, the principles but not the details of the bill are debated.
- If at this stage the House decides to examine the bill's clauses it has the option of proceeding to the stage where the bill is scrutinised clause by clause and amendments may be considered.



Parliament and the Legislative Process

- In the Upper House this is called the Committee of the Whole stage and
- In the Lower house this is called the Consideration in Detail stage.
- Occasionally, bills are referred to a select committee for examination.
- The committee/consideration in detail stage is not compulsory.
- When bills are considered uncontroversial or are of a minor nature, the House may choose to avoid this stage and pass directly to the third and final stage of parliamentary consideration



Parliament and the Legislative Process

3. Third Reading

- At the Third Reading, further debate may be permitted, but this is restricted and rarely happens.
- If the third reading is agreed to, the bill is then passed.
- When the bill has passed the House of origin it is sent to the other chamber, where a similar scrutiny procedure is followed.
- Amendments may be made or suggested, in which case messages pass between the two Houses until unanimity is achieved.
- The bill is now expressed in identical terms, agreed upon and accepted by both Houses. The Parliamentary process has now finished.



Parliament and the Legislative Process

4. Royal Assent

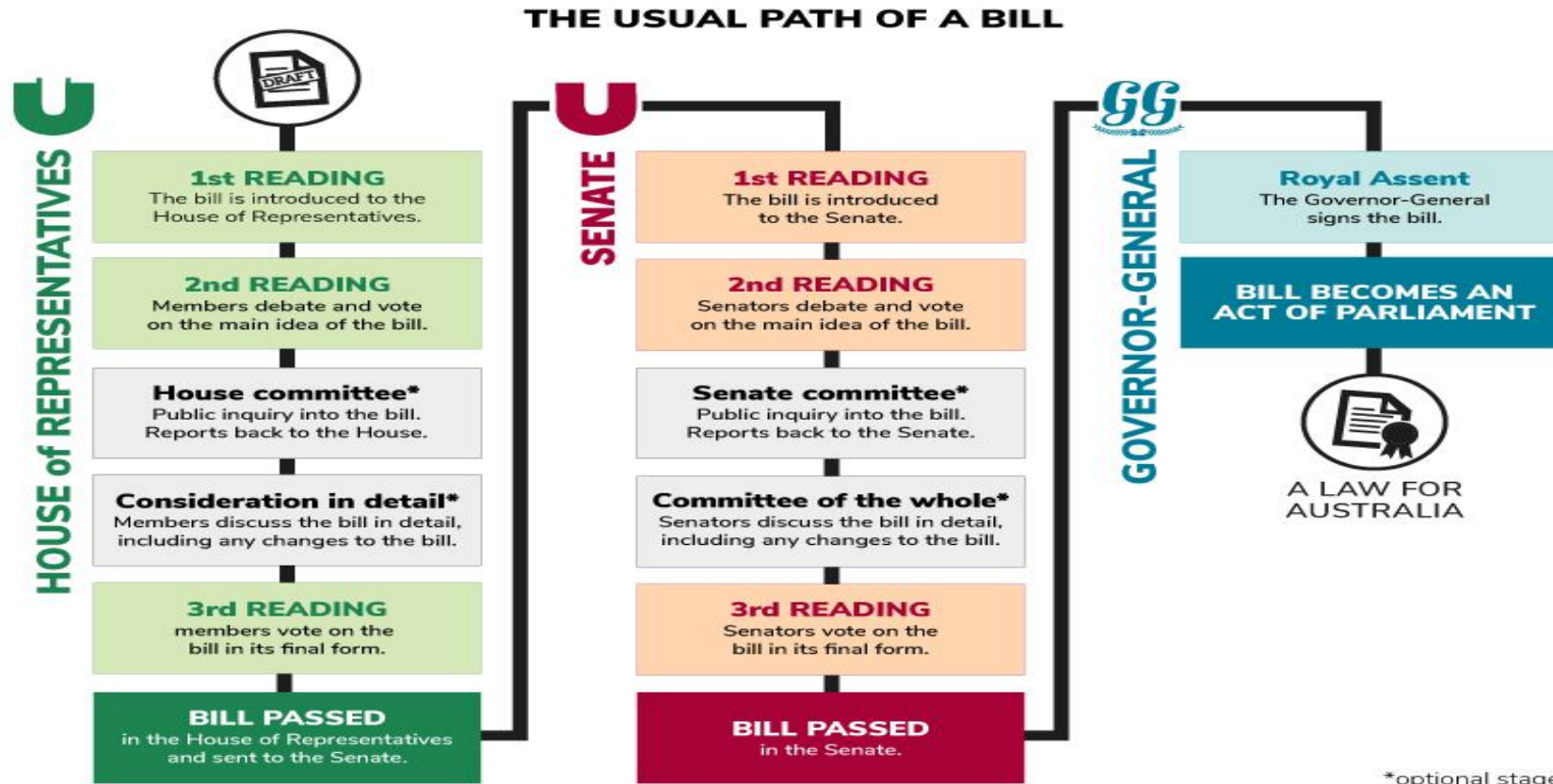
- The Queen, represented by the Governor-General, approves the bill.
- It is now referred to as an Act of Parliament.

5. Commencement

- The time from which the law, as specified in the Act of Parliament, applies.
- This occurs on a day specified in the Act or if the Act so provides, on a day proclaimed by the Governor
- Often this is the day after it receives Royal Assent; if no date specified then 28 days after.



Parliament and the Legislative Process



Senate referral

The Senate may refer the text of the bill to a Senate committee for inquiry (this can happen while the bill is in the House).

Parliament and the Legislative Process

➤ Delegated Legislation

- Delegated legislation (or subordinate legislation) is where Parliament delegates their legislation making powers to an Executive body.
- This results in the regulations of government departments, statutory bodies and the by-laws of local councils.

Forms of delegated legislative authority include:

- Orders, rules and regulations;
- by-laws; etc.



Parliament and the Legislative Process

- Laws are passed by State and Territory parliaments in much the same way.
- Every state except Queensland has a bi-cameral parliament – with an upper house and a lower house.
- Queensland and the NT and the ACT have unicameral parliaments with only one house.



Parliament and the Legislative Process

- Despite never ceding sovereignty to the Crown, Aboriginal and Torres Strait Island nations are subject to the laws of the parliaments with little to no say in the law-making process.
- This is because current policy-making does not have a systematic process for Aboriginal and Torres Strait Islanders to provide advice, meaning that policy (and the resulting law) is often made for Aboriginal and Torres Strait Islander people rather than with them.
- Aboriginal and Torres Strait Islander people have consistently called for self-determination to make a real difference to their lives. This could be in the form of a '*Voice to Parliament*' that would give Aboriginal and Torres Strait Islander people agency to help inform decisions that impact their lives.



Parliament and the Legislative Process

- A Voice to Parliament enshrined in the Constitution would enable Aboriginal and Torres Strait Islander people to give advice to the Federal Parliament about laws and policies that impact them through a simplified policy making process and structural change.
- This means that Aboriginal and Torres Strait Islanders are included in the law-making process, rather than having bureaucrats and politicians deciding what is best for them.
- A Voice to Parliament, enshrined in the Australian Constitution, would deliver real and practical advice to Parliament and the Government on how laws and policies can best improve the lives of Aboriginal and Torres Strait Islander people.



Parliament and the Legislative Process

- The Victorian government is currently discussing options for a permanent Indigenous voice in the state's political and legislative framework, which the Aboriginal community hopes could include a so-called "Black Parliament" or new seats in the regular Parliament.
- However, Victoria's Indigenous leaders have pushed back against the concept of a voice as recommended in the *Uluru Statement*, saying the shape of a permanent voice in Victoria's power structures would need to be agreed to by their community.



Parliament and the Legislative Process

- Options being canvassed include:
 - Reserved seats in Parliament for Indigenous representatives (which exist in NZ), or
 - A mechanism for Indigenous people to have a say in the cabinet process where ministers decide on policy, or
 - The current 32-person assembly that represents Victoria's Indigenous clans would gain constitutional power to pass laws on Aboriginal affairs
- Some of these options would require changes to the State's Constitution.
- The proposals have not yet been formalised and will come to a head in 2023 when the final stages of negotiations begin.
- If Victoria moved to having a permanent Indigenous voice it would be the first Australian jurisdiction to do so.



Next.....

The Common Law and the Court System

