

# LEGISLATION

Legislation, Act, Statute is law that is enacted by a legislature.

## LEGISLATIVE POWERS OF AUSTRALIAN LEGISLATURES

### STATE GOVERNMENT

Each state has the general legislative power from the constitution "to make law for peace, order and good government". The legislation enacted by the state or territory only operates within its own borders.

### COMMONWEALTH GOVERNMENT

The Commonwealth has a more limited legislative power as it can only create laws in Section 51 (shared powers) and 52 (exclusive powers) of the Commonwealth of Australia Constitution Act 1990.

## LEGISLATIVE PROCESS

### PROPOSAL

- **Identify the need for new law:** Beliefs/circumstance give rise to particular ideas and policies
- **Political process:** A decision is made by cabinet to introduce the proposals
- **Development of specific proposals:** When details are agreed upon, the BILL (drafted legislation) is drafted by experts in legal drafting hired by government.

### PROCEDURE IN THE HOUSE OF ORIGIN

- **First reading:** Title of Bill is read out.
- **Second reading:** Bill is read out second time. Minister delivers a speech outlining the provisions of the Bill, providing reasons for its introduction and explaining what it will achieve. Debate takes place. The motion is voted on. If agreed by the majority, the title of the Bill is read out a second time.
- **Third reading:** Bill is read a third time and the House votes on majority.

### PROCEDURE IN THE HOUSE OF REVIEW

Steps in House of Origin is repeated. If the Bill passes without amendments, the Bill proceeds to next stage. If there are amendments, the Bill is returned to the House of Origin to be accepted/rejected. If agreement cannot be reached, the government can abandon the bill or call for a double dissolution.

### ROYAL ASSENT

Once both Houses approve the Bill, the Bill is sent to the Queen's representative to receive Royal assent.

### COMMENCEMENT

The Bill becomes an Act is published in the Government Gazette.

The Act will state when the provisions come into operation otherwise by default it is 28 days after Royal assent.

## INTERPRETING LEGISLATION

Sometimes reading and interpreting legislation is uncertain.... The following rules of interpretation should be applied to resolve the interpretation questions, in order:

- **The literal approach:** Words are given their ordinary, natural, dictionary meaning.
- **The golden rule:** Very rarely used when the parliament makes a mistake. If the literal approach gives a absurd result that is inconsistent with overall act, modify the literal meaning to the extent necessary to avoid the absurdity and inconsistency.
- **The purpose approach:** If the literal approach does not give a clear meaning and ambiguous meaning, determine the meaning of words by referring to the purpose of the Parliament when the Act was passed. Choose the meaning that best serves that purpose.

For the purpose approach, Intrinsic evidence of the purpose can be found in the legislation (e.g. Title, Other sections...), Extrinsic evidence of the purpose can be found externally (e.g. Parliamentary papers, reports and documents, including the 2<sup>nd</sup> reading speech...)

## CITING LEGISLATION

Title Year (Jurisdiction) e.g. Damage by Aircraft Act 1999 (Cth)

## Proposals for new legislation

|  |   |
|--|---|
| <b>Identifying the need for new law</b>  | Circumstances or beliefs give rise to particular ideas and policies that require change to the law. |
| <b>Political processes</b>               | A decision is taken by those with political power to introduce new proposals into the legislature.  |
| <b>Development of specific proposals</b> | A Bill is drafted by parliamentary draftspersons.   |

## Procedure in the House of Review

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|--|--|
| <b>Initiation, First Reading, Second Reading, Committee, and Third Reading</b> | The procedures that were followed in the House of Origin are followed again in the House of Review.  |
| <b>Un-amended Bills</b>  | If the House of Review passes the Bill without amendment, the Bill is returned to the House of Origin and then proceeds to the next stage.   |
| <b>Amended Bills</b>   | If the House of Review passes the Bill with amendments, the Bill is returned to the House of Origin which may accept or reject the amendments. If agreement can't be reached, the Government can be dissolved and a general election called. |

## Procedure in the House of Origin

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|-----------------------|--|
| <b>Initiation</b>     | The clerk of the house lists the Bill for its first reading.   |
| <b>First Reading</b>  | The house grants permission to introduce the Bill and its long title is read out. There is no debate at this stage.  |
| <b>Second Reading</b> | It is moved that the Bill be read a second time. The relevant Minister makes a speech explaining the purpose of the Bill. Debate occurs, and the motion is then voted on. If agreed to, the title of the Bill is read a second time. |
| <b>Committee</b>      | The members of the house form a committee to consider the Bill in detail, or the house refers the Bill for consideration to a select committee.  |
| <b>Third Reading</b>  | It is moved that the Bill be read a third time. The house votes on the motion. If agreed to, the title of the Bill is read a third time.   |

## Final stages before the bill becomes operational as law

|                     |   |
|---------------------|---|
| <b>Royal Assent</b> | The Bill is sent to the Queen's representative to receive Royal Assent. |
| <b>Publication</b>  | The Act is published in the Government Gazette.                         |
| <b>Commencement</b> | The Act commences operation as law.                                     |