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Introduction

During the current Parliament (since April 2003), 1223 amendments to bills have been moved in the New South Wales Legislative Council. Of these 481 have been agreed to. Clearly, the detailed consideration of legislation, including the amendment of legislation, is a major part of the work of this state's upper house.

This paper begins by placing in context the House's role in relation to legislative scrutiny. The main focus of the paper is on the logistics of the consideration of amendments, from the perspective of the Clerks.

Role of New South Wales Legislative Council

The New South Wales Legislative Council was the first legislative body in Australia, originally established in 1824 as an advisory body to the Governor. Between 1824 and 1856 this original Council went through a number of changes until in 1856 it was re-established as the state's upper House. The role of the Legislative Council in active scrutiny of the executive and detailed scrutiny of legislative proposals has been affected by changes to the constitution and powers of the House and developments in the voting system since that time. The most significant changes occurred in the reconstitutions of the House which took place in 1934¹ and 1978.²

Before 1934, members of the Council were appointed by the Governor for life and the Council's legislative powers were almost the same as those of the Assembly, including the power to amend or reject any bill sent from the Assembly, even money bills. However, in the reconstitution of that year some of the key features which characterise the House today were established: (1) members became elected (although at that stage, election was by the members of both Houses); (2) bills appropriating revenue or imposing new taxes were required to originate in the Assembly; (3) the Council could reject, fail to pass, or return to the Assembly with suggested amendments any bill "appropriating revenue or moneys for the ordinary annual services of the government", but if that occurred the bill could still be presented for royal assent (effectively removing the Council's former right to "block supply"); and (4) "deadlocks" between the Houses over other types of bills were to be resolved by a referendum of the people.

¹ *Constitution Amendment (Legislative Council) Act 1932, No. 2 of 1933*

² *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*

In the reconstitution of 1978, members of the Council became directly elected by the people on a state-wide franchise, under a system of proportional representation. This development, together with certain subsequent changes to the voting system including the introduction of “above the line” voting in 1987, precipitated a growth in cross-bench membership, and the loss of government control of the House, which continues today. These factors have coincided with increasing levels of Council scrutiny of executive action through measures such as the expansion of the Council committee system, increasing use of orders compelling the tabling of government documents, and amendments to government bills.

The most authoritative statements concerning the role of the upper House in recent years have emanated from the courts, in the landmark *Egan* cases of the 1990's,³ in which the Council's power to compel a government Minister to table documents was upheld. In those cases, the Council's functions were identified as being the making of laws in accordance with section 5 of the *Constitution Act 1902*, and the scrutiny of executive conduct, within the framework of the system of responsible government in New South Wales. Particular emphasis was placed on the importance of the Council's role in relation to the “superintendence of the conduct of the executive”.

In relation to both the legislative and the scrutiny functions identified in *Egan*, one of the most important tools available to the House is the detailed consideration of bills in committee of the whole and the making of amendments to bills.

History of development of Committee of the Whole

The early Parliaments in England saw the development of the practice of petitioning the King with requests for action. These petitions were submitted to Receivers, who systematically sorted them, and were heard by committees called Triers. At first these committees consisted of a single member, the process being more a request for the opinion of the member who, by virtue of their official position, could state the view of the Royal Court. The King's reply was usually entered on the back of the petition, which was then returned to the House. Over time collective petitions from the Commons developed into public bills ie the Commons would petition the King to secure the enactment of their petition as a form of statute, and judges would draft the statute by combining the petition with the response. The committees themselves also developed into small and then increasingly larger groups of members.

The transition to committee of the whole House occurred during the reign of James I, and seems to indicate a desire on the part of the ordinary members to deal in open House with the process which until that time had occurred behind closed doors. During this period the Speaker acted as intermediary between the House and the King, and was the manager of the King's business in the chamber. As such, not only was he not allowed to participate in debate, he was actually a constraining presence on debate by other members. His removal from committee, together with the ability of members to speak more than once, meant that the committee of the whole House provided an opportunity for fuller and freer debate on legislation.

³ *Egan v Willis* (1998) 195 CLR 424; *Egan v Chadwick and Others* [1999] 46 NSWLR 563

Logistics of dealing with amendments

1. *Preparation for Committee*

Timing of provision of amendments

A critical issue, certainly from the perspective of the Clerks as well as from the perspective of the House generally, is the timing of the lodgement of amendments. It is important that amendments to bills are provided to the Clerks at the earliest opportunity prior to consideration of the bill in committee of the whole.

Timely provision ensures that the Clerks can provide advice in relation to the admissibility of amendments. For example, amendments outside the leave of the bill will be ruled out of order in committee, but if such amendments are provided to the Clerks before hand with adequate notice, the Clerks may be able to advise the member concerned of options for progressing their amendments, such by way of an instruction to the committee of the whole. An instruction to a committee of the whole allows the committee to consider amendments which would otherwise not be admissible.

Timely provision also enables the essential preparatory work to be done prior to consideration in committee, such as the “marshalling” of amendments and the preparation of the Chair’s copy of the bill (see below). If inadequate time is available for these preparations there is a risk that proceedings in committee may need to be interrupted or adjourned. Such considerations are particularly relevant in the case of controversial bills, where there are often many amendments, with some occurring at the same point in the bill.⁴ It also ensures that amendments are properly circulated, so that all Ministers and members are given adequate time to consider the effects of the amendments. Even if a member wishes to withhold amendments from circulation while negotiations are ongoing or for other tactical reasons, amendments should still be provided to the Clerks so that the necessary preparations for consideration in committee can be completed prior to circulation.

When providing amendments to the Clerks, members are expected to clearly indicate whether or not the amendments are to be circulated immediately. Once the member in charge of the amendments has given authority for circulation, copies of the amendments are made available to Ministers, members, and advisers.

Admissibility

As noted earlier, the Clerks check proposed amendments to ensure that they conform to the rules of admissibility. Where an amendment is considered to be out of order, this is discussed with the member concerned with a view to re-drafting the amendment, or with preparing an instruction to the committee. The main rules on admissibility are contained in standing order 144, which provides:

⁴ See for example discussion of proposed amendments to Companies (Amendment) Bill, *LC Debates*, 9/11/1971, pp. 2668-2671. Rulings of the Chair of Committees: Healy, Petroleum (Submerged Lands) Amendment Bill, *LC Debates*, 12/11/85, p. 9260; Kelly, Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill, *LC Debates*, 21/11/2004, p. 7291.

- (i) An amendment may be made to any part of the bill, provided it is relevant to the subject matter of the bill and otherwise in conformity with the rules and orders of the House.
- (ii) No new clause or amendment may be proposed which is substantially the same as one already negatived by the committee, or which is inconsistent with one that has been agreed to by the committee, unless a recommittal of the bill has intervened.
- (iii) No amendment or new clause may be inserted which reverses the principle of the bill as read a second time.
- (iv) If a clause is amended, a further question will be put “That the clause, as amended, be agreed to”.
- (v) If an amendment has been made in the bill, which does not come within the original title, the title will be amended, and that amendment will be specially reported to the House.
- (vi) No clause, schedule or amendment in substance may be proposed in any bill, except in committee of the whole.
- (vii) A clause may be negatived, even if amended, and a new clause proposed in its place.

The key principles embodied in the standing order are:

- any amendment must be relevant to the subject matter of a clause;
- new clauses or schedules may be proposed if relevant to the subject matter of the bill, or according to any instruction; and
- no amendment or new clause may be inserted which reverses the principle of the bill as read a second time.⁵

Other preparations

Prior to consideration of a bill in committee, amendments are “marshalled” by the Clerks in the order in which the text of the bill is considered, or if they relate to the same point in the bill, in the order in which they were handed in. However, amendments by the Minister or member in charge of the bill take precedence of others offered at the same place in a bill.⁶ When more than one member has handed in a significant number of amendments, a marshalled list of amendments is prepared by the Clerks to the committee and copied and circulated for the convenience of the committee.

The Clerk to the committee is also responsible for preparing the Chair’s copy of the bill. The Chair’s copy is marked up by the Clerks, indicating the places in the bill where any amendments occur, the order in which amendments have been “marshalled” and any amendments which are in conflict. The Chair uses this to cite each clause and deal with amendments when going through the bill. The Clerks also prepare the “committee bill”, which is the official record of the proceedings in committee of the whole and contains information equivalent to the Minutes of Proceedings in the House. The committee bill is completed by the Clerks after the committee stage.

⁵ Other rules governing admissibility of amendments are referred to in *Procedure in Committee of the Whole House*, December 2004, Department of the Legislative Council, pp. 8-10.

⁶ *Erskine May*, 23rd edn, 2004, p. 604.

2. *In Committee*

Order in which parts of Bill considered

The clauses of the bill, and any schedules to the bill, are considered in the order in which they stand in the bill.⁷ Consideration of a clause or schedule may be postponed on motion, whether amended or not.⁸ As postponement occurs by motion, it may be debated. The committee may also, by leave, consider clauses, parts, divisions or schedules together, and in the case of cognate bills, may consider a bill in whole or in part.⁹

Generally, the practice of the committee of the whole in the Legislative Council is to consider the text of a bill in the following order:

- (i) clauses (and any amendments)
- (ii) new clauses (at the place intended to be inserted)
- (iii) schedules (and any amendments)
- (iv) new schedules (at the place intended to be inserted)
- (v) preamble (if any)
- (vi) title (and any amendments).

The title and preamble (if any) of the bill are postponed until after the consideration of the clauses.¹⁰ New clauses or schedules may be considered at the place intended to be inserted or after the original clauses and schedules have been dealt with.¹¹

Questions from the Chair

In proceeding through a bill the Chair proposes a question to the committee in the following forms:

- | | |
|---------------------|--|
| (i) Clauses: | Clause 1. The question is: That the clause, as read, stand a clause of the bill. ¹² |
| (ii) New clauses: | The question is: That the amendment be agreed to. |
| (iii) Schedules: | Schedule 1. The question is: That the schedule, as read, stand a schedule of the bill. ¹³ |
| (iv) New schedules: | The question is: That the amendment be agreed to. |
| (v) Preamble: | The question is: That the preamble, as read, stand the preamble of the bill. |
| (vi) Title: | The question is: That the title, as read, stand the title of the bill. |

⁷ Ibid.

⁸ Standing orders 142 and 143.

⁹ Standing order 142(6).

¹⁰ Standing order 142.

¹¹ Standing order 143.

¹² Standing order 142(2).

¹³ When schedules contain amendments to a Principal Act, the numbers appearing in brackets before the text of each amendment are referred to as items and sub-items. For schedules that contain enacting word such as “Savings and Transitional provisions” the numbers appearing before each paragraph are referred to as clauses.

Once the question has been proposed, debate may ensue and amendments may be moved.¹⁴

As soon as debate on a question is concluded, the question is again put from the Chair and the result stated by the Chair as to whether the “Ayes” or the “Noes” have it.¹⁵ If the opinion of the Chair is not accepted, members who have given their voices against the majority may call a division.¹⁶

Where an amendment to a clause or schedule etc is moved (see below), the question from the Chair is: “That the amendment be agreed to”.¹⁷ If the amendment is agreed to, the following question from the Chair is put: “That the clause/schedule/preamble/title, as amended, stand as a clause/schedule/preamble/title of the bill.”

Types of amendments

Amendments may be proposed by omitting certain words; by omitting certain words in order to insert or add words; or by inserting or adding words.¹⁸ In relation to omissions, when a bill is being considered clause by clause an amendment to omit a clause is not in order. The proper course is for the committee to vote against the question that the clause stand part of the bill.¹⁹ It is in order to negative a clause, even if amended, with a view to inserting a new clause in its place.²⁰ However, where a bill is being considered by parts, it is necessary to move an amendment for the omission of a clause from the part. The question put from the Chair in such cases is “That clause 4, as read, stand a clause of the part.”

In the case of conflicting amendments to insert words, the amendment first proposed is considered first and if the insertion is agreed to, the question on the second insertion is not proposed by the Chair since it is in conflict with the decision already made by the committee.

An amendment may also be proposed to a proposed amendment.²¹ In such cases the amendment on the amendment is dealt with first. Then the question on the original amendment, as amended (if the amendment on the amendment is agreed to), is put.

Where a series of related amendments are proposed in a bill (for example to omit “Board” and insert “Trust” wherever appearing throughout a bill) it is possible for the amendments to be considered together. In such cases it is usual for the member in charge of the amendments to seek the leave of the committee for the amendments to be considered in globo. In this way the amendments can be moved as circulated and one question put from the Chair “That the amendments, as circulated, be agreed to.” This

¹⁴ Standing orders 102, 109.

¹⁵ Standing order 102(5).

¹⁶ Standing orders 102(6), 112(1).

¹⁷ Standing order 111.

¹⁸ Standing order 109.

¹⁹ *Erskine May*, 23rd edn, 2004, p. 611.

²⁰ Standing order 144(7).

²¹ Standing order 109(2). Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill, *LC Debates*, 16/3/2004, p. 7233.

procedure is often used on recommitment where there are many consequential amendments to clause references.²²

Where a clause, sub-clause, paragraph, sub-paragraph or schedule to a bill is omitted or a new one inserted, a consequential amendment may be necessary. For example, if other text in the bill contains cross-references to matter omitted, corrections or redrafting will be required. Likewise, the insertion of a new clause may affect cross-references in other clauses of the bill. Consequential amendments are usually effected whilst going through the bill in committee of the whole, but in other cases may require recommitment of the bill after the effect of the amendments has been properly examined.

The Chair of Committees or the Clerks may correct clerical, typographical or other obvious errors in a bill.²³ When a bill is introduced in one calendar year but does not pass the third reading until the next calendar year, the year reference in the short title or clause 1 to the bill is altered and initialled by the Clerks before the bill is sent to the Assembly.²⁴ It is not usual for the bill to be reprinted in such cases, but the year reference is altered prior to assent.

Order in which amendments taken

The rules regulating the order in which amendments to motions in the House may be proposed²⁵ apply equally to amendments to bills in committee of the whole House. A member is precluded from moving an amendment to a former part of a clause if a later part has been amended, or proposed to be amended, except if a proposed amendment has been withdrawn by leave.²⁶ An amendment cannot be proposed to words already agreed to, except the addition of other words.²⁷ Amendments can only be entertained back to the point at which the committee last came to a decision.²⁸ Therefore, the committee cannot go back over part of a bill if a decision has already been reached on a later part. Only recommitment of the bill, or portions of the bill, as explained below, may achieve this.

In recent years it has become commonplace for the Chair to allow conflicting amendments to be moved and debated together, before the question is put that the first proposed amendment (or, if one of the amendments has been moved by the Minister or other member with carriage of the bill, that amendment) be agreed to. If agreed to, the other amendments lapse. This procedure has the advantage of allowing debate to take place and provides all members with an opportunity to speak to their amendments, even if there is little prospect of them being agreed to.

Once an amendment has been proposed, it can only be withdrawn by the mover, or in the absence of the mover with the mover's authority, by leave of the committee.²⁹

²² Gambling Legislation Amendment (Gaming Machine Restrictions) Bill, *LC Debates*, 3/5/2000, p. 5079.

²³ Standing order 150.

²⁴ *JLC (Minutes)* (1972-73) 219.

²⁵ See standing orders 109 to 111, and *Erskine May*, 23rd edn, 2004, p. 347.

²⁶ Standing order 109(3).

²⁷ Standing order 110.

²⁸ *Erskine May*, 23rd edn, 2004, p. 402.

²⁹ Standing order 109(5).

Reconsideration/ recommittal

When a bill has been fully considered in committee of the whole, the Chair certifies that the bill is in accordance with the bill as reported from the committee, and the member in charge of the bill then moves: “That the Chair do now leave the Chair and report the bill to the House” (with or without amendment).³⁰ At this point, a member may move an amendment to the motion, for the reconsideration of any clause or clauses in the bill. This allows the committee to reconsider the clause without having to report back to the House first.³¹

As a bill is reported to the House, an amendment may be moved for the bill to be recommitted for further consideration by the committee, either in whole or in part. If a bill is recommitted for consideration as a whole, the entire bill is again considered in committee and reported a second time with or without further amendments. In other cases, only those portions of the bill as specified in the order for recommittal are considered in committee on recommittal. The recommittal of a bill may also be moved as an amendment to the motion for adoption of the committee’s report by the House, or to the motion for the third reading of the bill.

A bill is generally recommitted for the following purposes:

- (i) to enable the committee to reconsider amendments it has previously made³²
- (ii) to enable the committee to take advantage of an instruction from the House to make certain amendments³³
- (iii) to enable the committee to make amendments consequential on amendments previously made³⁴ or
- (iv) to enable the committee to consider an amendment to a stage which had already passed in committee.

Any member may move to recommit or partially recommit a bill but priority is given to the member in charge of the bill.³⁵ An amendment may be moved to the motion for recommittal to add or omit clauses.³⁶ Clauses which have been omitted from a bill may be re-inserted on recommittal.³⁷ A bill may be recommitted as often as the House thinks fit. Bills have been recommitted twice³⁸ and even up to three or four times.³⁹ On the

³⁰ Standing order 146.

³¹ Standing order 146(2).

³² Crimes Legislation Amendment (Parole) Bill, *LC Debates*, 24/6/2003, p. 1885-6.

³³ Standing order 180(2).

³⁴ Workers Compensation (Benefits) Amendment Bill & Statute Law (Miscellaneous Provisions) Bill, *LC Debates* 4/06/1990, p. 4993; Constitution (Legislative Council) Amendment Bill, *LC Debates*, 20/3/1991, p. 1402; Land Acquisition (Just Terms Compensation) Bill, *LC Debates*, 27/8/1991, p. 537; Constitution (Legislative Council) Further Amendment Bill (No 2), *LC Debates*, 25/9/1991, p. 1729; Local Government (Amalgamation and Boundary Changes) Bill, *LC Debates*, 2/7/1999 am, p. 1897; City of Sydney (Electoral Rolls) Bill, *LC Debates*, 7/5/2003, p 363, 2/8/1988, p. 9115.

³⁵ *Erskine May*, 23rd edn, 2004, p. 625.

³⁶ Crimes Legislation Amendment (Parole) Bill, *LC Debates*, 24/6/2003, p. 1885-6.

³⁷ Residential Tenancies (Amendment) Bill, *LC Debates*, 30/11/1988, p. 3994.

³⁸ Western Lands Amendment Bill 2002, *LC Minutes*, 19/6/2002, p. 249; 20/6/2002, pp. 253-4.

³⁹ Workers Compensation (Benefits) Amendment Bill, *JLC (Minutes)* (1988-89-90) 797, 808.

motion for recommittal debate is restricted to the amendment⁴⁰ or the whole clause proposed to be recommitted.⁴¹

The procedures in committee of the whole on recommittal are the same as when considering the bill a first time.

Conclusion

Since 1988 the government has made available the service of the Parliamentary Counsel to assist all members, including non-government members, in the drafting of amendments. Although amendments (particularly amendments to amendments) are sometimes required to be drafted by the Clerks on the floor of the House during committee, in New South Wales (unlike some other jurisdictions), the drafting of bills or amendments for non-government members is not usually the province of the Clerks.

The most important roles of the Clerks in relation to legislation in the New South Wales Legislative Council are the provision of advice to members about the admissibility of amendments, and the provision of advice to the Chair of Committees and other members about the rules for the consideration of bills and amendments in committee House, as outlined above. In addition, the Clerks are also responsible for the marshalling of amendments and the completion of the committee bill, the official record of the proceedings in committee, and the preparation of schedules of amendments agreed to for transmission in messages to the Legislative Assembly.

The appendix to this paper discusses a recent example of the provision of advice by the Clerks in respect of the admissibility of amendments, which is now a matter of public record, and the outcome from the provision of that advice.

⁴⁰ Ruling of President Hay, Stamp Duties Act Amendment Bill (No. 2), *LC Debates*, 4/8/1866, p. 3757.

⁴¹ Ruling of Deputy-President O'Connor, Fair Rents (Amendment) Bill, *NSW (LC)*, 1/11/1928, p. 1439.

Appendix

STATE REVENUE LEGISLATION AMENDMENT BILL 2004 AND POWERS OF THE LEGISLATIVE COUNCIL

On 6 April 2004 the former Treasurer, the Hon Michael Egan MLC, delivered a mini budget. In his speech, the Treasurer indicated that legislation would be introduced to change property related duties.

Those parts of the State Revenue Legislation Amendment Bill which sought to increase some duties and impose others were fiercely opposed. Before the bill was introduced in the Legislative Council there was considerable debate as to whether, under the New South Wales *Constitution Act 1902*, the Bill, being a “money bill”, was capable of being amended or rejected by the Legislative Council and whether, in the event of a dispute the will of the Assembly would prevail.

In the second reading debate on the bill the Opposition read into Hansard advice received from John Evans, Clerks of the Parliaments as follows:

Before considering the powers of the Council in relation to the bill it is perhaps useful to discuss the provisions of the Constitution Act 1902 in relation to money bills, which can be broadly classified as:

- Bills appropriating public revenue
- Bills imposing a new rate, tax or impost (raising revenue).

Sections 5, 5A and 5B of Constitution Act 1902

Section 5 of the Act states that the Legislature, subject to the Commonwealth of Australia Constitution Act, has power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever, provided that “all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.”

The prohibition in section 5 is that the above two types of money bills must **originate** (my emphasis) in the Assembly.

Sections 5A and 5B, inserted in the Act in 1933⁴², contain provisions for the resolution of deadlocks between the two Houses over bills.

Section 5A provides the procedures for resolving disagreements between the two Houses on appropriation bills for annual services. Under section 5A (1) “any Bill appropriating revenue or moneys for the ordinary annual services of the Government” which the Legislative Council “rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendments to which the Legislative Assembly does not agree” may be presented to the Governor for assent “notwithstanding that the Legislative Council has not consented to the Bill”.

⁴² Originally there was no prohibition on the Council amending money Bills and this provision was inserted as part of a package of reform of the Legislative Council by *Constitution Amendment (Legislative Council) Act 1932, No. 2 of 1933*.

The effect of section 5A on bills “appropriating revenue or moneys for the ordinary annual services of the Government”, is twofold. Firstly, the Council may **reject, fail to pass or return the bill** to the Assembly **suggesting amendments** (my emphasis). Secondly, despite the actions of the Council the Assembly may direct that such bills, with or without any amendments suggested by the Council, be presented to the Governor for assent.

It should be noted that the section does not apply to section 5 bills “imposing any new rate tax or impost” and any amendment by the Council to bills of that class would fall within the provisions of section 5B. This is discussed further below.

Section 5A (2) provides that the Council is taken to have failed to pass any such bill if it is not returned to the Assembly within 1 month after transmission to the Council and the session continues. The effect of this provision is to prevent the Council, for example by delay or inactivity, frustrating the wishes of the Assembly in respect of appropriations for ordinary annual services of the Government. For this to occur, however, the session must continue during this period and must not be prorogued.

Under section 5A (3) if a bill becomes law under the section then any provision in the Act dealing with “any matter other than such appropriation shall be of no effect.” This provision is to prevent the Assembly from “tacking on” or including provisions alien to “ordinary annual services of the Government” in an appropriation bill.

Section 5A applies only to bills “appropriating revenue or moneys for the ordinary annual services of the Government.” With respect to all other bills, the Council may reject, fail to pass, or pass the bill with amendments, to which the Assembly may not agree. Where this occurs the mechanism for resolving deadlocks between the two Houses is laid down in section 5B of the Act.

Under section 5B (4) the Council is taken to have failed to pass a bill for the purposes of the section if the bill is not returned to the Assembly within 2 months after transmission to the Council and the session continues.

Apart from the restriction in section 5 that all bills “appropriating any part of the public revenue” or “imposing any new rate tax or impost” must originate in the Assembly and the limitations in section 5A (1) on the power of the Council regarding bills “appropriating revenue or monies for the ordinary annual services of the Government”, the Council has the same powers in relation to bills imposing any new rate, tax or impost as it possesses in relation to all other bills.

The limitation on the power of the Council contained section 5A (1) of the Act is specific to appropriation bills for the ordinary annual services of the Government and does not apply to other types of bills appropriating money or bills imposing taxation. The latter bills may be amended by the Council and in the event of a deadlock between the Houses they must be dealt with under section 5B.

This view is supported by the debate on the *Constitution Amendment (Legislative Council) Bill 1932* which inserted section 5A into the Constitution Act. During debate on the bill several members of the Council emphasised that section 5A (1) was intended to be limited to appropriation bills only and not to extend to

other types of money bills (e.g. bills imposing taxation).⁴³ The Hon H E Manning stated in debate:

I should like to point out ... the essential difference between a bill appropriating revenue or moneys for the ordinary annual services of the Government and a taxation measure ... An Appropriation Bill appropriates money for the ordinary services of the Crown, whereas a taxation bill does not appropriate money, but merely affirms that there shall be charged, levied, collected and paid a tax upon the incomes or whatever it may be of certain individuals. It may provide that incomes from personal exertion or incomes from property shall be subject to a tax. But it does not appropriate any money derived from such tax. That money is paid into consolidated revenue, and an Act of Parliament is required to appropriate it for the annual services of the Crown. [T]he language used in proposed new section 5A(1) has been employed for the express purpose of differentiating between those two things.⁴⁴

Conclusions on effect of sections 5, 5A and 5B of the Constitution Act 1902

From the above discussion of the wording of sections 5, 5A and 5B of the Act it may be concluded as follows:

- section 5 of the Act requires that Bills **appropriating** any part of the public revenue or **imposing** any new rate, tax or impost must **originate** in the Assembly
- the proviso to section 5 of the Act merely requires that appropriation and taxation Bills originate in the Assembly and does not inhibit any amendment by the Council
- section 5A Bills which “appropriate revenue or moneys for the ordinary annual services of the Government” may be rejected by the Council, not passed or returned to the Assembly suggesting amendment
- the Council has 1 month to return section 5A Bills to the Assembly, otherwise the Assembly may direct assent⁴⁵
- the Assembly may direct that section 5A Bills be presented for assent, with or without any amendments suggested by the Council
- where Bills for “ordinary annual services” assented to under section 5A contain appropriations other than for ordinary annual services, those provisions are of no effect⁴⁶
- section 5A applies only to “any Bill appropriating revenue or moneys for the **ordinary annual services** of the Government” and not to other types of bills
- all Bills other than a section 5A Bill, including Bills “imposing any new rate, tax or impost” are caught by the provisions of section 5B
- for all other Bills, under section 5B the Council has 2 months to return

⁴³ *Parliamentary Debates*, 21 September 1932, p. 405 (Hon H E Manning); 15 December 1932, p. 3049 (Hon H J Connell), p.3070 (Hon W J McKell),

⁴⁴ *Ibid*, 28 September 1932, p. 588.

⁴⁵ Section 5A (2).

⁴⁶ Section 5A (3).

these Bills to the Assembly, otherwise the Assembly may follow the procedures for resolving the disagreement

- the Council may reject, fail to pass or pass with amendment all Bills other than a section 5A Bill, including:
 - Bills “imposing any new rate tax or impost”
 - Bills appropriating revenue or moneys other than for “ordinary annual services of the Government”.⁴⁷

As the State Revenue Legislation Amendment Bill did not appropriate revenue or moneys for the ordinary annual services of the Government, it was not a 5A Bill and was therefore capable of amendment by the Council and subject to the provisions of section 5B of the Constitution Act 1902.

In committee of the whole the Australian Democrats and the Greens proposed amendments to the bill, which were not agreed to. The question of the Council’s ability to amend the bill was not raised during debate on the amendments. While the Opposition did not propose amendments, it called for a division on those schedules of the bill it opposed. The bill was finally agreed to and reported to the House without amendment.

On 24 June 2004, the House received the State Revenue Legislation Further Amendment Bill from the Legislative Assembly. In his second reading speech, the Minister stated that the bill would clarify a number of issues that had emerged following passage of the State Revenue Legislation Amendment Bill. During debate on the second reading, and on amendments proposed in committee, the issue of the Council’s ability to amend the bill was not raised.

In June 2005 a new State Revenue Amendment Bill was dealt with by the Legislative Council. This bill amended certain State revenue legislation, in particular to remove loopholes in the *Duties Act 1997* which had a potential to allow duty to be avoided. The Opposition moved three amendments to the bill which were defeated on division. The question of the Council’s ability to amend the bill was not raised during debate on the amendments. It would appear that from comments during debate the advice provided by Mr John Evans, Clerks of the Parliaments, following a request concerning the State Revenue Amendment Bill 2004, and read onto the record during the second reading debate on that 2004 bill, has clarified the issue of the powers of the Council to amend money bills.

⁴⁷ NSWPD (LC), 12/05/04, pp. 8826

The background features a textured, light-colored paper surface. In the upper right, there is a faint silhouette of a mountain range. On the right side, a willow tree with dark, thin branches and small, dark buds is visible. The text is centered in the upper half of the page.

*AMENDMENTS IN
COMMITTEE*

An upper House perspective

Role of the Legislative Council

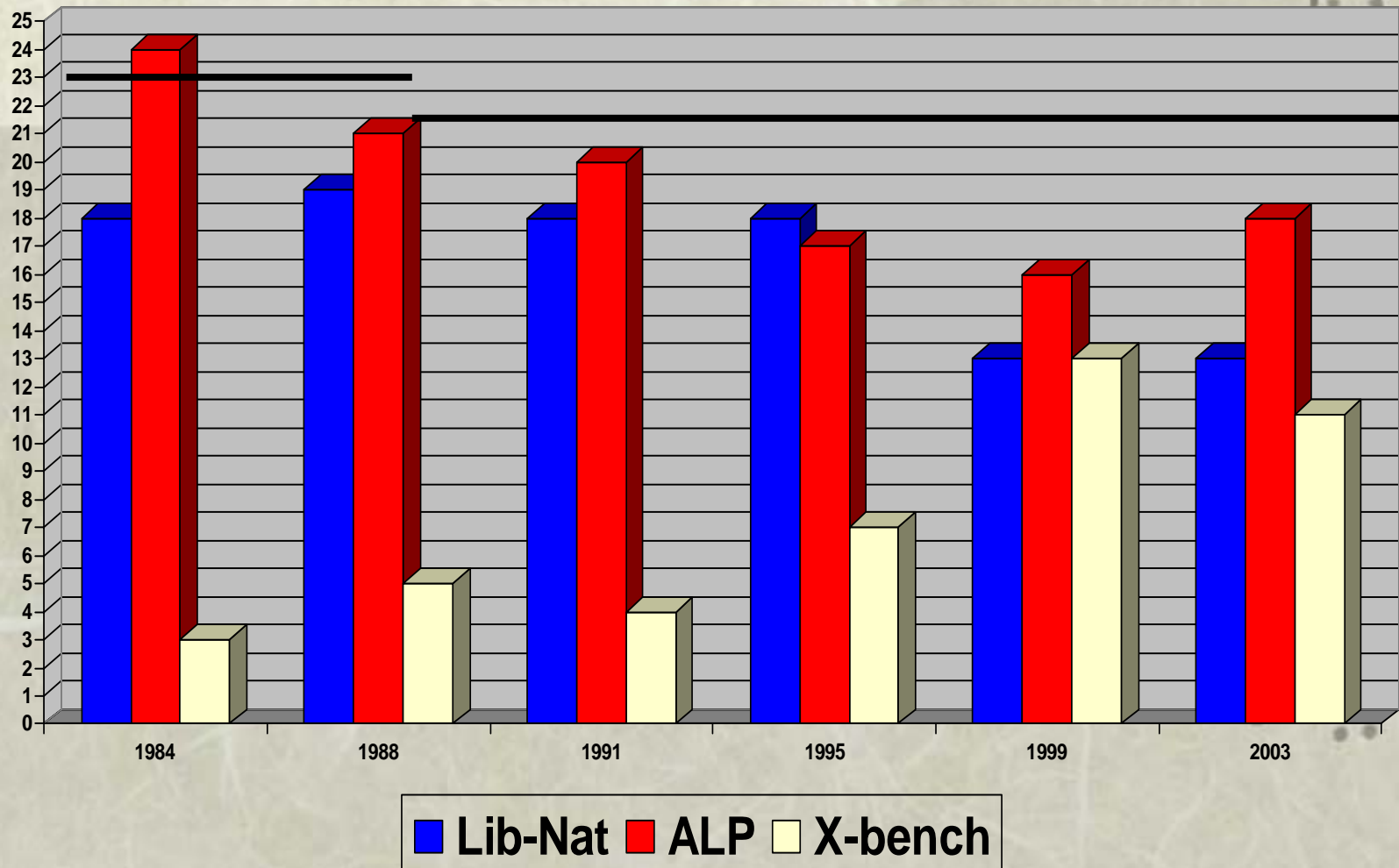
- ❖ Checks and balances
- ❖ Greater scrutiny of proposed legislation
- ❖ Greater scrutiny of other proposals
- ❖ Investigative roles
- ❖ Broader representation in the legislature
- ❖ Checking abuses by the executive
- ❖ Growth of power of political parties

Makeup of the House

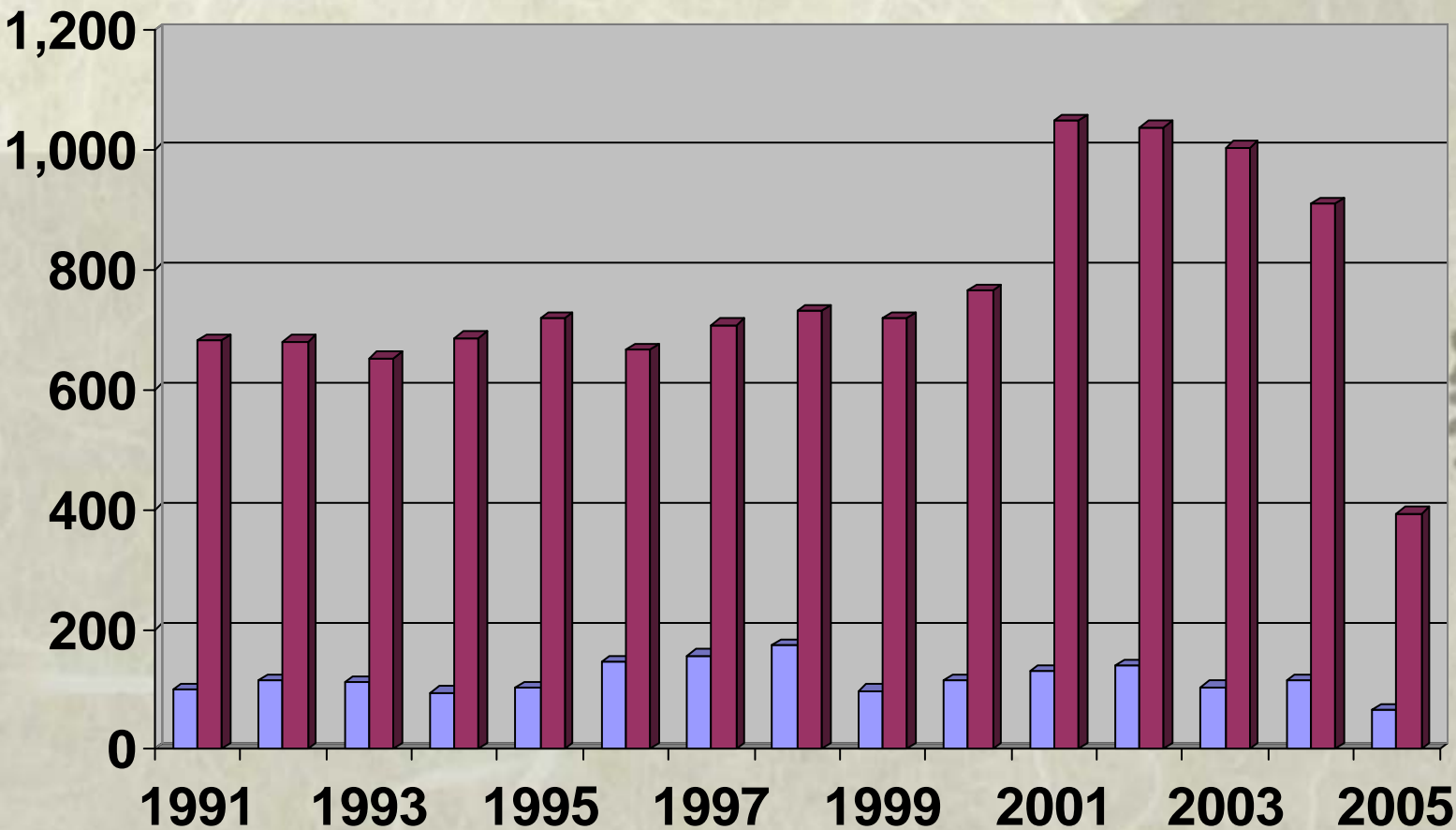
- ❖ Method of election - Proportional representation
- ❖ No government majority since 1984
- ❖ Provides representation of significant groups of electors not able to secure election to Legislative Assembly



Membership of House 1984-2003

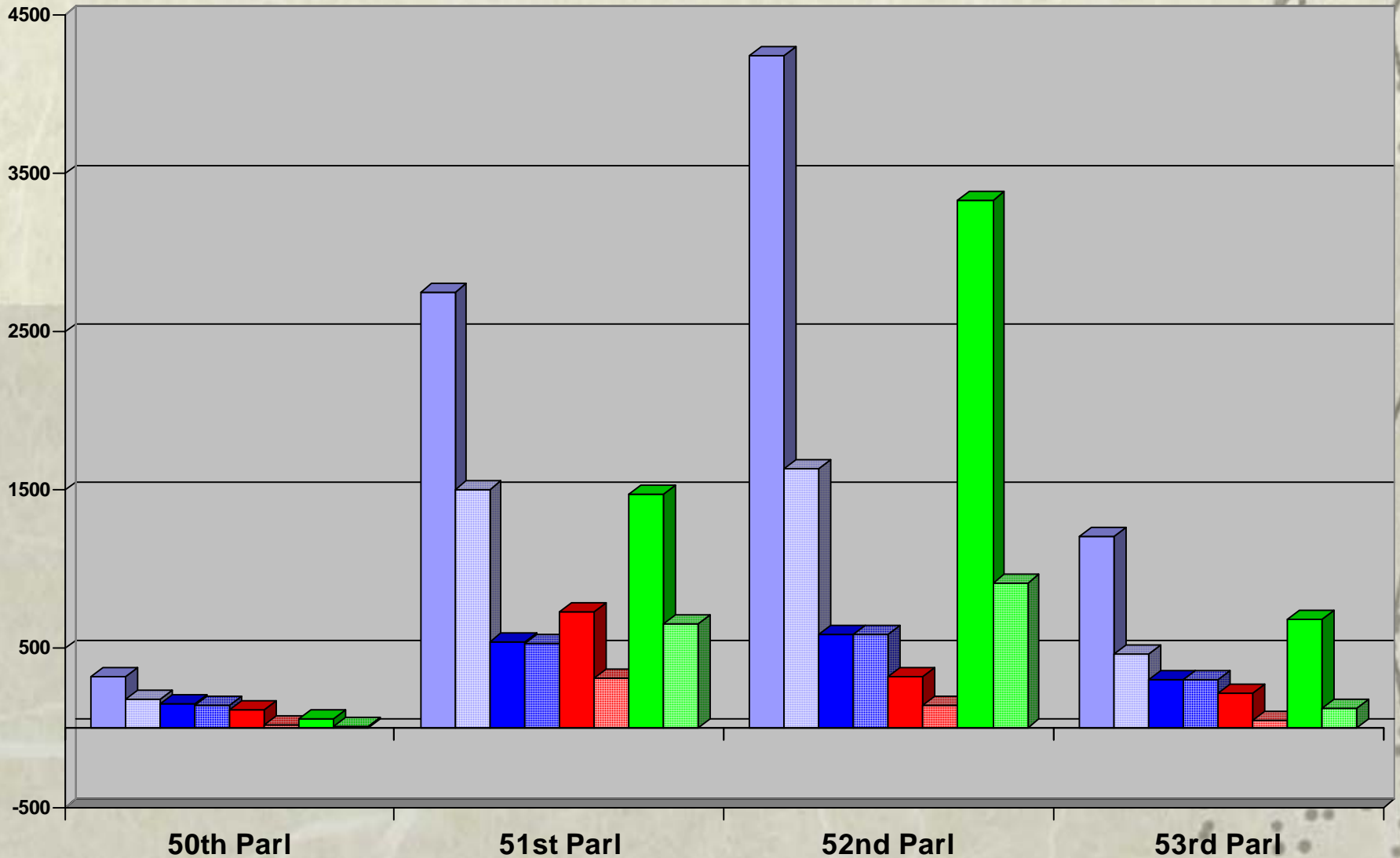


Acts and Regulations Passed Per Calendar Year



Acts
Regs

Amendments in committee



Behind the scenes

❖ Players

- Government, Opposition, Crossbench
- Internal lobby groups (caucus, crossbench meetings, factions)
- External lobby groups (unions, business groups, special interest groups)
- Ministerial advisors
- Departmental advisors

Behind the scenes

❖ Outcomes

- Negotiated deals
- Versions of amendments
- Alternative propositions (conflicting)
- Reduced debate in the House and Committee
- Divisions ('bread & butter' issues)
- Practicalities on the floor of the Chamber

Key Issues

- ❖ Timing of amendments
 - Checking/admissibility
 - Marshalling (running sheets)
 - Mark-up copies of bills for Chair
 - Circulation issues
- ❖ Admissibility
 - Relevancy (to subject matter of clause)
 - Substantially same, direct contradiction
 - Reversing principle of the bill

In committee – the realities

- ❖ Bus bill
- ❖ Money bills
 - State Revenue Legislation Amendment Bill 2004
- ❖ Game bill
- ❖ IR bills
- ❖ Dairy Industry bill