The term ‘legislature’ is the proper name given to the houses – or ‘chambers’ – of parliament within any of the governments in Australia. The legislature at both federal and state/territory levels of government is made up of people elected by citizens.

Federal parliament

Federal Parliament is made up of the House of Representatives, which is sometimes called ‘the lower house’, and the Senate, or ‘upper house’. Members of the Senate use the title ‘Senator’ in front of their name, while Members of the House of Representatives use the initials ‘MP’ (for member of parliament) after their name.

Members are elected to each of the two houses of federal parliament by Australian citizens who are enrolled to vote on the date of the federal election. There is a different system for voting in the two houses.

Members are elected to the House of Representatives on the basis of electorates. There are 150 electorates represented in the Federal House of Representatives. Voters in each electorate vote for who will represent them in the House of Representatives and the person elected is the person who is able to get more than 50 per cent of the votes cast in their electorate. This is referred to as ‘preferential’ voting.

Senators are elected by a state or territory; in other words the whole of the state or territory is the electorate. This means, for example, that every voter in NSW is asked to choose from the same list of Senate candidates. Each of the states elects 12 Senators, and each of the mainland territories elect two, a total of 76. In order to get elected as a Senator, a candidate must get a quota (a set percentage) of the votes cast in their state or territory. The usual quota for half-Senate elections for each of the states is approximately 14 per cent, approximately 33 per cent in territory elections, and for double dissolution elections it is approximately seven per cent. This system is referred to as proportional representation voting.

There are different systems for electing members to the state and territory parliaments.

Except for Queensland, all of the state legislatures have two ‘houses’ or ‘chambers’ of parliament. The two territories – the Australian Capital Territory and the Northern Territory – each have only one house: the Legislative Assembly. New South Wales, Victoria and Western Australia each have a Legislative Assembly (the ‘lower house’) and Legislative Council (the ‘upper house’); South Australia and Tasmania have a House of Assembly (‘lower house’) and a Legislative Council (the ‘upper house’). Queensland’s parliament is the Legislative Assembly. [1]

Legislatures with two ‘houses’ or ‘chambers’ are called ‘bicameral’ parliaments. Legislatures with only one ‘house’ or ‘chamber’ are called ‘unicameral’ parliaments.

Hot Tip

The word ‘legislate’ means ‘to make or enact laws’ and the term ‘legislature’ means ‘the power that makes or enacts laws; a body of people empowered to make or enact laws’.


Statute law

The legislature has a central role in making statute law (individual laws are called ‘Acts’). It is the body that decides whether or not a law will be made to regulate an aspect of society or a particular activity.
Statutory laws usually begin their formal process of becoming law as a ‘Bill’ (a draft Act) in the lower house. The process for a Bill becoming law is:

**Introduction and First Reading**

The Bill is presented to either the upper or lower house by a member of that house who is proposing that it becomes a law. This is called ‘tabling the Bill’. When the Bill is presented (or ‘introduced’), the ‘short title’ of the Bill is read out to the house – called the first reading speech – to let the members know that the Bill is being presented. The majority of Bills are presented in the lower house (the House of Representatives in the Federal Parliament).

**Printing the Bill and making it public**

Once the Bill has been introduced, an order is made for the Bill to be printed, along with a document – the ‘explanatory note’ or ‘explanatory memorandum’[2] – that explains the purpose of the Bill and then outlines how each of the sections of the Bill are intended to operate.

**Second Reading Speech**

The member of parliament proposing the Bill makes a detailed speech to the other members setting out the purpose of the Bill and why it is important for the Bill to become law.

**Debate**

Members of the house of parliament have an opportunity to debate for and against the Bill becoming law. Members can also propose changes to the Bill – called ‘amendments’ – and each of these amendments can be debated.

**Voting on the amendments and the Bill**

All of the members of the house are called into the house to vote on the amendments to the Bill and on the Bill itself.

**Introduction and first reading in the other house**

A Bill is usually presented to the other house of parliament after it has been passed by the first. It is presented by a different member of parliament, because it has to be presented by a member who is elected to that house of parliament.

**Second Reading in the other house**

Just as with the process in the first house, the member who introduces it in the second house makes a speech in support of the Bill becoming law and then there is a debate and possibly amendments.

**Committee review**

A member can ask to have the Bill reviewed by a Parliamentary Committee. There are a number of these Committees that have responsibility for particular aspects of the parliament’s work. If the Bill is sent to a Committee to be reviewed, the house will decide when the Committee has to report back. When a committee is asked to review a Bill, they can advertise the fact that they are doing this and invite members of the public to provide their views on the Bill. This can be done both through people writing to the committee and by going to speak to the committee. The committee considers all of the views and discusses the Bill in order to make a report to the house on whether or not the Bill should become a law and whether or not any changes should be made to the Bill before it becomes law.

**Tabling of Committee report**

The head of the committee that reviewed the Bill presents the committee’s report to the house. The debate about
whether or not to vote in favour of the Bill becoming law and about any amendments then continues.

Voting on the amendments and the Bill

Again, all the members of the second house are called into the chamber to vote on any amendments to the Bill and on the Bill itself.

If the Bill has been amended in the second house, it has to go back to the first house for voting on the amendments that have been made since it was originally passed in that house.

Assent

Once the Bill has been passed by both houses it becomes an Act of Parliament. It is sent to the executive to be approved by the head of state (the Governor-General if it is an Act of Federal Parliament or the Governor if it is an Act of NSW Parliament). This is called ‘assent’. The words used by the Governor-General are: ‘In the name of Her Majesty, I assent to this Act.’

Commencement: becoming law

An Act of Parliament does not automatically come into effect as a law. Sometimes an Act of Parliament will include a section that sets a particular date for the Act to come into effect. Others will include a section that says the Act will come into effect a certain amount of time after it is approved by the Governor-General or State Governor. Others include a section that says that the Act will come into effect on a ‘date to be proclaimed’. It is important to check whether a new Act has actually commenced. Some Acts commence immediately on Assent; others can take a long time, many months or in some cases years, before they become actual law.

Delegated legislation

The legislature can delegate responsibility to the executive to make laws under the authority of a statute. This is called ‘delegated legislation’, ‘legislative instruments’ or ‘subordinate legislation’.

At the Commonwealth level, a legislative instrument must be registered and tabled (presented) in both houses of Federal Parliament. In NSW, a statutory rule is made by publishing it in the NSW Government Gazette and both Houses of Parliament must be given written notice of rule being made within a specified time.

Generally, legislative instruments can be overruled by the relevant parliament, but there is a process for doing this and it usually has to be done within a specified period of time after the instrument was presented to parliament.

Legislative instruments must be consistent with the Act under which they are made and cannot go beyond what the Act sets out can be dealt with in the instrument.

Hot Tip


Examples

1. National Parks and Wildlife Act 1974 (NSW): section 126 states that the Director-General may issue a licence authorising a person to import into and export from New South Wales protected fauna (animals) on prescribed grounds.

The general power to make regulations to do with the National Parks and Wildlife Act is found in Part 13 of the Act. The National Parks and Wildlife Regulation 2009 (NSW) sets out the grounds on which an import or export licence can be refused.
2. Jury Act 1977 (NSW): section 72 says that a person is entitled to be paid the prescribed rate for jury duty. The prescribed rate is listed in the Jury Regulation 2010 (NSW).

3. Rail Safety Act 2008 (NSW): section 174 gives the general power to make regulations, including creating offences. Penalties for specific rail offences, such as not having a valid ticket are set out in the Rail Safety (Offences) Regulation 2008 (NSW).

1. The Queensland Legislative Council was abolished from 23 March 1922 by the Constitution Act Amendment Act of 1922 (Qld).


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